

(1994) 03 KAR CK 0009
In the Karnataka High Court
Case No : M.F.A. No. 100 of 1991

Assistant Commissioner

APPELLANT

Vs

Bhima Shiddappa Naik

RESPONDENT

Date of Decision : 25-03-1994

Acts Referred:

Limitation Act, 1908 — Section 18, 18 (3) (b)

Citation : (1994) ILR (Kar) 1644

Hon'ble Judges : Tirath Singh Thakur, J;Hakeem, J

Bench : Division Bench

Advocate : R.I. D'Sa, for the Appellant; S.N. Hatti, for the Respondent

Final Decision : Dismissed

Judgement

Hakeem, J.—Certain extent of land comprised in various Sy.Nos. situated in Biranal and Byakud villages of Raibag Taluk were acquired for the construction of an irrigation tank under Preliminary Notification published on 11.10.1973.

2. As against the Land Acquisition Officer's award dated 31.3.77 at the rate of Rs. 840/- per acre, the Reference Court has fixed the market value of the land at Rs. 4,000/- per acre, in addition to awarding statutory benefits. The State being aggrieved by the enhancement has preferred this Appeal.

3. A preliminary objection regarding the question of limitation arises in this case. It is not disputed that an application u/s 18 for referring the award to the Court for adjudication of the market value was filed before the Land Acquisition Officer within a period of 3 months i.e., on 18.5.77. Admittedly, no Reference having been made, the claimant made an application on 28.6.86 u/s 18(3)(b) of the Land Acquisition Act seeking direction for a Reference to be made. The question for consideration is whether this application made after the expiry of 3 years and 90 days from the date of the application u/s 18 to the Land Acquisition Officer seeking Reference, is barred by time.

In Assistant Commissioner Vs. Lakshmi Bai, while considering the statutory

obligation on the Land Acquisition Officer to make Reference u/s 18(1), M.N. Venkatachaliah, J (as he then was), has observed thus:-

"The statutory obligation on the part of the L.A.O. to make a reference on the application filed u/s 18(1) does not come to an end with the expiry of ninety days contemplated u/s 18(3)(a). The obligation subsists till the Court is moved in the matter u/s 18(3)(b).

If the time limit u/s 18(3)(a) is built in for the benefit of the person-interested, no construction can be placed on it which would defeat its very purpose by the delay on the part of the person charged with the duty to act promptly. The L.A.O. cannot benefit by his own wrong. Section 18(3)(2) is a procedural provision. It is a sound rule of construction that procedural enactments should be construed liberally and in such manner as to render the enforcement of substantive rights effective (See : N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, The procedure is after all the hand-maid and not the mistress of justice. To construe a provision which was intended to give speedy relief to the persons-interested and in aid of their substantive rights should not be construed in a manner which would defeat the very rights of those persons. Any construction which would lead to serious injustice should be avoided.

There is a fundamental distinction between the nature and quality of the prescription of time in the second proviso to Section 18(2) on the one hand and in Section 18(3)(a) on the other. The first is a case of limitation for the enforcement of a right and seeking a remedy; the other is a case of prescription of time for the performance of a statutory duty. In the very nature of things, these two prescriptions cannot be put on the same footing, for purposes of construction....

xxx xxx xxxx What emerges from these pronouncements is that, the time-limit prescribed for performance of a duty is rarely mandatory. In the present case, as long as the right on the part of the person interested to compel a reference subsists that right must be held to subsist till the right to move the Court u/s 18(3)(b) is not lost - a reference made by the L.A.O. even if it be after the period of ninety days prescribed in Section 18(3)(a), would require to be sustained. Section 18(3)(a) directs the L.A.O. to act promptly and the period of ninety days referred to therein is the Legislature's standard of promptitude. It does not mean that if the L.A.O. is not prompt in performing the duty, the right, to aid which the duty exists as correlative, is itself lost. Such a construction would palpably be an unjust construction."

In that view of the matter, the only question that remains for consideration is as to the power of the Court to condone the delay in filing of the application u/s 18(3)(b) of the Act. Along with their application seeking direction for Reference, the claimants had filed an application u/s 5 of the Limitation Act for condonation of delay, which was allowed by the Reference Court. It is well settled that Article 137 of the Schedule to the Limitation Act applies to an application u/s 18(3)(b)

of the Act which provides period of limitation in respect of an application, not provided elsewhere. If that is so, the provisions of Section 5 of the Limitation Act are clearly applicable vesting the Court with the jurisdiction to consider and condone any delay in filing the application. This position is also not seriously disputed, as indeed it cannot be disputed, in view of the settled position. The claimants' application for condonation of delay having been allowed by a considered order of the Reference Court, the question of limitation does not survive any more.

4. This takes us to the merits of the Appeal. The Reference Court has determined the market value by adopting the capitalisation method. Admittedly, the crop yield is of groundnut. Taking the yield per acre and the price as per price-list issued by the A.P.M.C., the Reference Court has rightly found the gross annual income to be Rs. 636/- per acre. However, it has gone wrong in deducting only 1/3rd towards the cost of cultivation; It is well settled that for dry crops the normal deduction is 40% of the gross income. This would leave a net income of Rs. 381/- to which by applying the proper multiple of 10 the value would come to Rs. 3,810/-. This may be rounded off to Rs. 3,900/-. Having in view the imponderables, the nature of the land and possibility of some subsidiary crops being grown, the valuation of Rs. 4,000/- per acre by the Reference Court cannot be said to be excessive or unreasonable.

5. In so far as the statutory benefits are concerned, the statutory benefits awarded by the Reference Court include the additional amount u/s 23(1A) of the Act, payment of which will be subject to the final opinion of the Apex Court in the case of K.S. Pariapoornan and Others Vs. State of Kerala and Others, pending consideration before its larger Bench. The claimants are entitled to receive the same by furnishing security to the satisfaction of the Reference Court.

6. In the view we have taken above, the Appeal has to fail and accordingly it is dismissed, subject to the direction regarding payment of additional amount u/s 23(1A) of the Act.