
(1987) 04 KAR CK 0013
In the Karnataka High Court

Assistant Commissioner

APPELLANT

Vs

Lakshmi Bai

RESPONDENT

Date of Decision : 10-04-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 110 (1), 18, 18 (1), 18 (3) (a)

Citation : AIR 1988 Kar 11 : (1987) ILR (Kar) 2132

Hon'ble Judges : N. Venkatachaliah, J; M. Ramakrishna, J

Bench : Division Bench

Judgement

Venkatachaliah, J.—This Appeal involves the question whether a reference made by the Land Acquisition Officer under S. 18(3)(a) of the Karnataka Land Acquisition (Extension and Amendment) Act, 1961 ("Act" for short) beyond the period of 90 days stipulated therein is, by that reason alone, an invalid reference. In Uppara Basappa Vs. Spl. L.A.O., a learned single Judge has taken the view that a reference made by the Land Acquisition Officer beyond 90 days contemplated in S. 18(3)(a) is an invalid reference.

Another learned single Judge, in The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another, has held such reference to be valid if the reference was within 3 years and 90 days from the date of filing of a valid application under S. 18(1) of the Act. There is thus a divergence of judicial opinion on the point, which requires to be resolved here.

The appeal is by the Assistant Commissioner, B.S. Division, Belgaum, directed against the judgment and Award dated 7th Aug., 1986 made in L.A.C. No. 73 of 1986 on the file of the Principal Civil Judge, Chikodi enhancing compensation in respect of certain extents of land in Sy. No. 268/1, 268/3, 262/3, 262/9 and 262/ 10 of Nidasoshi village. Hukkeri Taluk, Belgaum District, acquired, for the purpose of formation of public road, pursuant to the preliminary Notification published in the Gazette dated 21-5-1981.

2. The claim before the Land Acquisition Officer was at the rate of Rs. 25,000/-

per acre. The Land Acquisition Officer determined the market value of the land at Rs. 5300/- per acre uniformly treating the lands at Jirayat lands. Respondent-claimant did not accept the offer contained in the L.A.O's Award. She sought for reference to the Civil Court. In the present case, the L.A.O. passed the award on 28-2-1984. Notice of Award under S. 12(2) was served on 15-4-85. Respondent-claimant filed the application under S. 18(I) seeking a reference on 13-5-1985 well within the time prescribed by the proviso to S. 18(2). But the L.A.O. did not send the reference to the Civil Court within 90 days from 13-5-1985; but made the reference on 10-3-1986.

The Civil Court on an appreciation of the evidence, treated an extent of 0. 18 guntas out of the acquired lands in SY. No. 268/3 as Bagayat land, capable of raising irrigated crops and fixed the market value of that extent at Rs. 14,000/- per acre. The rest of the acquired lands were treated as Jirayat lands and on that basis of the capitalisation of the net income a sum of Rs. 8500/- per acre was determined as market value.

3. We have heard Sri Chandrasekharaiah, learned Government Advocate for the appellant and Sri Kothavale, learned Counsel for the Respondent-claimant. We have been taken through the judgment and Award under appeal and the evidence on record.

On the contentions urged at the hearing of this appeal the following points fall for determination : . -

(a) Where, a "person interested" files a valid application under S. 18(I) within the time prescribed therefore but the Land Acquisition Officer makes the reference beyond the period of 90 days contemplated in S. 18(3)(a), whether such a reference would be an invalid reference by reason alone of the delay on the part of the L.A.O. in making the reference?

Whether the pronouncement in Uppara Basappa Vs. Spl. L.A.O., can be said to lay down the law on the point correctly?

(b) Whether the re-classification of the lands into bagayat and jirayat portions made by the Court below and the enhancement of compensation in respect of the former to Rs. 14,000/- per acre and in respect of the latter to Rs. 8500/- per acre is not supportable on the evidence on record?

(c) If so, what is the proper market value to be determined in respect of the acquired lands?

(d) Whether the respondent-claimant is entitled to the benefits of higher solutions under S. 23(2); to the higher rate of interest on the enhanced amount of compensation under S. 28 and to the additional amount under S. 23(IA) of the Karnataka Act 17 of 1961, read with the Central Amending Act 68 of 1984."

Section 18(I) of the Act, inter alia, provides that "Any person interested who has not accepted the award may, by written application to the Deputy Commissioner

require that the matter be referred by the Deputy Commissioner for the determination of the Court whether his objection to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested." Proviso to sub-s. (2) of S. 18 requires that an application under S. 18(I) shall be made within ninety days from the date of service of the notice under S. 12(2). This proviso prescribes a period of limitation within which an application under S. 18(I) shall be filed. It is necessary to set out S. 18(3). It says :

"(3)(a) The Deputy Commissioner shall within ninety days from the date of receipt of an application under sub-s. (1) make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix."

In *The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshnavva and Another, Swami, J.*, after an examination of the scheme of the Act. was persuaded to the view that the period of 90 days contemplated in S. 18(3)(a) of the Act, is a mere direction as to the period of time within which the statutory obligation on the part of the L.A.D. would require to be performed; that such statutory obligation does not come to an end as long as the right in the person interested to compel a reference subsists; that since a person interested is entitled to make an application under S. 18(3)(b) within the period of 3 years after the expiry of the said 90 days from the date of filing of an application under S. 18(I), the statutory obligation on the part of the L.A.O. to make a reference must be held to subsist co-extensively and that, therefore, a reference made within that time should be held to be a valid reference. Swami, J. observed :

"5.3 As long as the jurisdiction to give a direction to the Deputy Commissioner to make a reference exists in the Civil Court the statutory obligation of the Deputy Commissioner to make a reference must be held to continue. In that event, only the two sub-clauses can be read together otherwise it will be defeating the very object of the Act. Clauses (a) and (b) of sub-s. (3) of S. 18 of the Act, are not mutually exclusive as contended by the Learned Government Pleader. In fact, the entire S. 18 of the Act, has to be read as a whole."

In *Uppara Basappa Vs. Spl. L.A.O.*, the view that commended itself to Kulkarni, J. was this :-

" 11.....the prescription of ninety days imposed on the Deputy Commissioner to make a reference, debars the Deputy Commissioner from making a reference after the expiry of ninety days from the date of receipt of the application under sub-s. (1) of S. 18 of the Land Acquisition Act."

The question is which of these two views can be said to lay down the law

correctly.

4. We may now notice briefly the arguments of the learned Counsel on either side. Sri. Kothavale submitted that, consistent with this statutory-right of the person interested to compel a reference and the correlative-duty on the part of the L.A.D. to make such reference, the prescription of the time in S. 18(3)(a) is not one of limitation but a direction to the L. A.O. to act expeditiously and is a provision built-in for the benefit of the persons interested to avoid inconvenience to them by undue delays in the performance of the statutory obligation on the part of the L.A. O. Sri. Kothavale contended that having regard to the purpose for which this statutory duty is cast on the LA.O. it would only be reasonable to construe that the duty would subsist till it is discharged by performance and, at any rate, any construction which would lead to the result that the person charged with the duty could, by his own inaction, get rid of his own duty and thereby extinguish the right of the person for whose benefit the duty existed would be unreasonable. Sri. Kothavale submitted that serious inconvenience and great injustice would follow if the nullification of the obligation itself is to be inferred from the disobedience of the statutory-duty by the very person charged with that duty.

Sri. Chandrasekharaiah, learned Government Advocate, strongly supporting the view that commended itself to Kulkarni J. in Uppara Basappa Vs. Spl. L.A.O., submitted that the, expression "shall" in S. 18(3)(a) would connote the significance of the time-limit for the performance of the duty and that since a remedy for the nonperformance of this duty by the L.A.O. within the time prescribed is also provided in Cl. 180)(b), the statutory obligation under S. 180) (a) comes to an end as a consequence of the creation of a new right in the persons interested under S. 18(3)(b) to move the Civil Court for a reference. The argument is that the right of the persons-interested is not defeated by the non-performance by the L.A.O. of his obligation under S. 18(3)(a) but is replaced by a new right to work out this remedy under S. 18(3)(b) and that therefore, the assumption basic to the contention of Sri. Kothavale that the construction placed on the relevant provisions in Uppara Basappa Vs. Spl. L.A.O., would lead to-a total extinguishment of the right of the person interested is an untenable one.

Learned Government Advocate, accordingly, contended that if Cls. (a) and (b) of S. 18(3) are, as indeed they must be, construed together, the inference becomes inescapable that the period of 90 days provided in S. 18(3)(a) is intended to be made the outermost limit, in point of time, of the subsistence of the obligation on the part of the LA.O. to make a reference and with the extinguishment of that obligation upon the expiry of ninety days, a new remedy under S. 18(3)(b) is born. The coming into being of the remedy under S. 18(3)(b), according to the argument, is itself the result of the extinguishment of the obligation of the LA.O. under S. 18(3)(a).

Learned Government Advocate also submitted that if the statute bids that a certain thing be done in a particular manner it can only be done in that manner

and in no other.

5. We shall, first, examine whether the contentions of the learned Government Advocate have, really, any substance. S. 18(l) confers a right on the person-interested, who has not accepted the award, that he may "require" that the matter be referred by the Deputy Commissioner for determination of the Court. In *K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others*, the right of the person-interested to "require" that the matter be referred to the Civil Court and the correlative duty of the L.A.O. to make the reference are referred to thus :

"(2)..... Indeed, whenever applications are made under S. 18 of the Land Acquisition Act, it is the duty of the Land Acquisition Officer to make a reference unless there is a valid ground for rejecting the applications such as for instance that the applications were barred by time. Where an officer of the State is remiss in the performance of his duties in fairness the State ought not to take advantage of this fact

In *Dr. G.H. Grant Vs. State of Bihar*, it was observed

"(13) Again under S. 18 the Collector is bound to make a reference on a petition filed by a person interested

In *Mohammed Hasnuddin Vs. State of Maharashtra*, Supreme Court observed that the expression "require" implies an element of compulsion and observed :-

"24The word "require" in S. 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under S. 18 on the fulfilment of certain conditions

The reference to be made pursuant to S. 18(b) is pursuant to and in effectuation of the same right of the person interested on which an application under S. 18(l) is based and in enforcement of the same statutory obligation on the part of the L.A.O. to make reference under S. 18(3)(a). There are no two

sets of rights and obligations separately under S.18(3)(a) and 18(3)(a)

*(Emphasis not found in original-Ed) -

The purposes for which stipulation of time for the performance of the Duty by the L.A. O. under S.18(3)(b) is built-in is set out in the report of the Joint Select Committee in its recommendations : -

"In some cases, the Deputy Commissioners do not make a reference even when an application has been made. We therefore, consider it necessary to make it obligatory on the Deputy Commissioner to make a

reference within ninety days from the date of receipt of an application under S. 18(b). We are also of the opinion that provision should be made empowering the Court to require the Deputy Commissioner to make a reference. We accordingly,

inserted a new sub-s. (3) in S. 18." (Underlining supplied)

The Joint Select Committee's report would indicate that jurisdiction of the Court is to require the Deputy Commissioner to make a reference. That obligation is not independent of the one arising from the right of the person interested to require a reference under S. 118(l) of the Act.

The statutory obligation on the part of the L A.O. to make a reference on the application filed under S. 18(l) does not come to an end with the expiry of ninety days contemplated under S. 180(a). The obligation subsists till the Court is moved in the matter under S. 18(3)(b).

6. If the time limit under 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 LA.O. cannot benefit by his own wrong. S. 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 giving 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.

7. There is a fundamental distinction between the nature and quality of the prescription of time in the second proviso to S. 18(2) on the one hand-and in S. 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. A provision prescribing limitation is a disabling one. An accessory right - a right to a remedy - gets barred. In M. P. Industries Ltd. v. State of Maharashtra (1968) 22 STC 400 Supreme Court observed :

"It is a common knowledge that the law generally prescribes limitation for initiating proceedings and not a period within which a pending proceeding should be disposed of."

But the prescription of a time-limit in S. 18(3)(a) relates to the performance of a statutory duty. As we have seen, S. 18(3)(a) imposes a duty on the L.A.O. to make a reference when there is a valid application

Reference when there is a application under S.18(1) in that behalf .The statute then says that that duty shall be discharged by performance within a specified time. Does it lie in the power of the L.A.O to defeat the provisions which impose the duty by disregarding its performance within the time prescribed? The answer must needs rest on whether the prescription of time -where it is one bearing on

the performance of a public duty-is mandatory or merely directory. On this Maxwell says (Maxwell on "Interpretation of statutes" Twelfth Edition ,at page 314.):-

" No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."