

(1998) 08 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 32825 of 1996

Basappa Kotrappa Chalageri (Deceased) by L.Rs

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 18 (1), 28 A

Citation : (1999) 2 KarLJ 576

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : Sri F.V. Patil, for the Appellant; Sri B. Veerappa, High Court Government Pleader, for the Respondent

Judgement

1. The orders dated October 10, 1995 and August 9, 1996 passed by respondent 2 as per Annexure-B and A respectively are sought to be quashed by the petitioner in this petition.

2. The petitioner was the owner of Sy. No. 64/1 measuring 15 acres 16 guntas situated in Kodihalli village, Hirekerur Tq., Dharwad District. The said land was acquired vide the declaration dated February 16, 1978 and the award was also made on April 7, 1979.

3. The petitioner appears to have been satisfied with the award and, therefore, did not seek reference u/s 18(1) of the Land Acquisition Act, 1894 (for short, "the Act"). However, the owner of the land bearing Sy. No. 71/1 sought reference and the reference Court by its award dated November 9, 1983 enhanced the compensation. The owner again approached this Court in MFA No. 1061 of 1984 and it was disposed of on August 14, 1986. The petitioner, thereafter, filed an application u/s 28-A of the Act to redetermine the compensation in accordance with the compensation in MFA No. 1061 of 1984. The said application was filed on November 13, 1986. The Land Acquisition Officer by his order dated October 10, 1995 dismissed the application as having been barred by limitation. The petitioner filed another application on August 2, 1996 requesting the Land

Acquisition Officer to dispose of his earlier application inter alia contending that application dated November 13, 1986 was not disposed of. The Land Acquisition Officer by order dated August 9, 1996 informed the petitioner that the application filed by him u/s 28-A of the Act has already been disposed of by order dated August 10, 1995. Hence, this petition by the petitioner for the reliefs mentioned in paragraph 1 of this order.

4. The petitioner has specifically stated in the petition that, "the said application came to be rejected on 10-10-1995 without notice to the petitioner and without affording an opportunity of personal hearing. The petitioner was under the bona fide impression that his application is still pending and the same has not been disposed of. He has also contended that, the starting point of limitation to file an application for redetermination of the compensation u/s 28-A of the Act is the disposal of the appeal as the order of the reference Court having been merged with the order on the appeal.

5. Sri. B. Veerappa, the learned High Court Government Pleader, produced the records for my perusal. The Government has also filed its statement of objections inter alia contending that the application u/s 28-A of the Act should be filed within 90 days from the date of the order made by the Court in a reference u/s 18 of the Act; The judgment and decree made by this Court in an appeal is not relevant for making the application u/s 28-A of the Act. It was further contended by him that the petition is liable to be dismissed for suppression of material facts by the petitioner. It is specifically stated that the petitioner was represented by a Counsel before the Land Acquisition Officer. The Counsel has also filed the written argument. They were heard in the matter. The copy application was filed by the Counsel on 28-10-1995 and it was supplied to the petitioner on November 6, 1995. The second application was filed by the petitioner to overcome the delay to file this petition against the order made on the application dated November 13, 1986.

6. Section 28-A(1) of the Act which deals with the redetermination of the amount of compensation on the basis of the award of the Court, reads as follows:

"28-A. (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of

the award shall be excluded".

From the aforesaid provision it is clear that Section 28-A is applicable to an award made under Part HI of the Act whereas the judgment and decree in an appeal is enumerated under Part VIII of the Act. It is also material to see that the redetermination has to be made on the basis of the amount of compensation awarded by the Court.

The "Court" is also defined by Section 3 of the Act as follows:

"3(d) The expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed as it is hereby empowered to do, a special Judicial Officer within any specified local limits to perform the functions of the Court under this Act".

It is, therefore, clear that the redetermination of compensation shall be on the basis of the amount of compensation awarded by the Court u/s 18 and not on the basis of the judgment and decree made in the appeal u/s 54 of the Act even though the award merges with the judgment and decree of the Appellate Court. The contention of the petitioner that the judgment and decree of the Appellate Court shall have to be taken into account as the award merges with the judgment and decree is untenable in law.

7. Sri F.V. Patil in support of his contention that the petitioner is entitled to apply u/s 28-A of the Act on the award having been finally disposed of by the Court has relied on the decision of this Court in Smt. Iravva and Others Vs. The Assistant Commissioner, Dharward Division and LAO and Another, , wherein it was held that.-

"Where the Court allows the applicant any amount of compensation in excess of the amount awarded by the Collector under section. . . . presupposes a stage subsequent to the date on which the Collector has disposed of the matter and it clearly refers to the judicial forum namely the Court and it is clear that the legislature had in mind a situation whereby the award in question is enhanced".

8. The definition of "Court" as defined in the Act was not brought to the notice of this Court in the case of Iravva, supra and therefore, redetermination of compensation on the basis of the award of the Court is lost sight of in that decision. In view of the clear meaning of the "Court" as explained in Section 3(d) of the Act, I do not think that the Appellate Court is also included within the meaning of the "Court" to attract Section 28-A of the Act.

In D. Venkamma and Others Vs. Special Tehsildar (LA) Unit-IV, Janagareddigudem, W.G. District, Elugu, A.P., , the Supreme Court has held that.-

"The judgment and decree of the High Court enhancing the compensation u/s 23(1) does not provide a right or cause of action to make a written application u/s 28-A seeking redetermination of the compensation on the basis of the compensation awarded by the Court under reference u/s 18 of the Act".

9. The petitioner has contended that, he was not aware of the order dated October 10, 1995 made by the Land Acquisition Officer as he was not heard in the matter. He has specifically contended that, he was not given an opportunity of being heard. On the other hand, it is seen from the records that the petitioner was represented by his Counsel and he was heard. He applied for the copy on October 28, 1995 and the copy was supplied on November 6, 1995. The petitioner for the reasons best known to him has not only suppressed this material fact but has contended that he was constrained to file another application in the year 1996. The second application appears to have been made only with a view to avoid delay and laches on the part of the petitioner.

10. For the reasons aforesaid, this petition fails and accordingly dismissed. Rule discharged.

11. In the circumstances of the case, there is no order as to costs.

12. Sri B. Veerappa, the learned High Court Government Pleader, is permitted to file memo of appearance within four weeks.