

**(2014) 12 KAR CK 0306**

**In the Karnataka High Court**

**Case No : Civil Revision Petition No. 216 of 2008**

B.P. Basavareddy and Others

APPELLANT

Vs

Land Acquisition Officer-cum-Assistant Commissioner,  
Chitradurga Sub-Division and Others

RESPONDENT

**Date of Decision : 01-12-2014**

**Acts Referred:**

Land Acquisition Act, 1894 — Section 12(2), 18, 18(1), 18(2), 18(2)(a) — Limitation Act, 1963 - Section 5

**Citation : (2015) 2 KCCR 1486**

**Hon'ble Judges : Aravind Kumar, J.**

**Bench : Single Bench**

**Advocate : B.M. Siddappa, for the Appellant**

**Final Decision : Dismissed**

## **Judgement**

Aravind Kumar, J.?Petitioners are challenging the order passed by the Civil Judge (Sr. Dn), Challakere in LAC No. 206/2002 dated 08.01.2008 whereunder reference made by the Special Land Acquisition Officer on 01.01.1992 has been rejected as barred by limitation. I have heard the arguments of Sri B.M. Siddappa, learned Advocate appearing for revision petitioners. Respondents are served and unrepresented. Since petitioners-1 to 3 are L.Rs. of deceased respondent No. 2 memo has been filed to treat the petitioners 1 to 3 as legal heirs of deceased respondent No. 2. Memo is placed on record and accordingly they are ordered to be treated as L.Rs. of respondent No. 2. Perused the judgment in question.

2. It is the contention of Sri Siddappa, learned Advocate appearing for revision petitioners that when there is no fault committed by the petitioners and when they were under the bona fide impression that based on their representation dated 03.09.1991 reference would be made and accordingly said reference was made by the Assistant Commissioner-cum-Land Acquisition Officer on 01.01.1992, no fault can be laid at the doors of revision petitioners and when

substantial justice is pitted against technicalities it has to yield to substantial justice and technicalities will have to take a back seat or recede to the background. As such, he contends that order passed by the reference Court be set aside and matter be remanded back to the reference Court for being adjudicated on merits. He would also submit that under similar circumstances in CRP No. 215/2008 and said revision petition came to be allowed by setting aside the order and remitted the matter back to the trial Court.

3. Having heard the learned Advocate appearing for revision petitioner, this Court is of the considered view that revision petition is liable to be dismissed without being admitted for following reasons:

In order to adjudicate the contentions raised by learned Counsel, it would be necessary to note the relevant dates and particulars which would have bearing on the issue and same are as under:

4. Reading of Section 18(3)(a) of the Land Acquisition Act, 1894 (as amended in State of Karnataka) (hereinafter referred to as the "Act" for brevity) would indicate that Deputy Commissioner shall within 90 days from the date of receipt of an application under sub-section (1) make a reference to the Court. If for any reason Deputy Commissioner does not make such reference to the Court, under clause (b) of sub-section (3) of Section 18, such land loser or claimant would get right or cause of action to seek for a direction to the Land Acquisition Officer by filing a petition before the Civil Court within three years from the said date namely, after expiry of 90 days. Unlike in the Central enactment where period fixed under Section 18(2)(a) and (b) of the Act being six weeks and six months, Karnataka amendment provides for 90 days and three years respectively.

5. If for any reason, Assistant Commissioner or Special Land Acquisition Officer as the case may be, does not act upon the representation of claimant/s to make a reference under clause (a) of sub-section (3) of Section 18 of the Act as noticed above, claimants would get right to seek for reference after completion of 90 days or lapse of 90 days and cause of action which arose on the 91st day would be alive and ticking till completion of three years. Thus, Section 18(3) of Land Acquisition Act (Karnataka Amendment) would clearly indicate that Karnataka Amendment has provided buffer Zone for the claimants namely, second alternate to approach the Civil Court namely in case of Special Land Acquisition Officer or Deputy Commissioner as the case may be does not perform his statutory duty in sending reference. Hon''ble Apex Court in the case of State of Karnataka Vs. Laxuman, has examined the very same provision and held that limitation of period of three years and 90 days would start from the date of accrual of cause of action and on expiry of three years and 90 days, prayer to approach the Court under Section 18(3)(b) of the Act gets extinguished. It has also been held that Deputy Commissioner has no power to revive a claim which has become unenforceable after expiry of 90 days and it has been held that delay cannot be condoned by invoking Section 5 of the Limitation Act. It has been held by the Apex Court in Laxuman''s case as under:

"19. Extinguishment of a right can be expressly provided for or it can arise by the implication from the statute. Section 18 of the Act as in Karnataka sets out a scheme. Having made an application for reference within time before the Deputy Commissioner, the claimant may lose his right by not enforcing the right available to him within the time prescribed by law. Section 18(3)(a) and Section 18(3)(b) read in harmony, casts an obligation on the claimant to enforce his claim within the period available for it. The scheme brings about a repose. It is based on a public policy that a right should not be allowed to remain a right indefinitely to be used against another at the will and pleasure of the holder of the right by approaching the Court whenever he chooses to do so. When the right of the Deputy Commissioner to make the reference on the application of the claimant under Section 18(1) of the Act stands extinguished on the expiry of 3 years and 90 days from the date of application for reference, and the right of the claimant to move the Court for compelling a reference also stands extinguished, the right itself loses its enforceability and thus comes to an end as a result. This is the scheme of Section 18 of the Act as adopted in the State of Karnataka. The High Court is, therefore, not correct in searching for a specific provision bringing about an extinguishment of the right to have a reference and on not finding it, postulating that the right would survive for ever.

20. Under the scheme of Section 18 of the Act as in Karnataka, thus the claimant loses his right to move the Court for reference on the expiry of three years and 90 days from the date of his making an application to the Deputy Commissioner under Section 18(1) of the Act within the period fixed by Section 18(2) of the Act. This position is now settled by the decision of this Court in *The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others* (supra). This loss of right to move the Court precludes him from seeking a remedy from the Court in terms of Section 18 of the Act. This loss of right in the claimant puts an end to the right of the claimant to seek an enhancement of compensation. To say that the Deputy Commissioner can make a reference even after the right in that behalf is lost to the claimant, would be incongruous. Once the right of the claimant to enforce his claim itself is lost on the scheme of Section 18 of the Act, there is no question of the Deputy Commissioner who had violated the mandate of sub-section 3(a) of Section 18 of the Act, reviving the right of the claimant by making a reference at his sweet-will and pleasure, whatever be the inducement or occasion for doing so. On a harmonious understanding of the scheme of the Act in the light of the general principle that even though a right may not be extinguished, the remedy may become barred, it would be appropriate to hold that on the expiry of three years and 90 days from the date of an application for reference made within time under Section 18(1) of the Act, the remedy of the claimant to have a reference gets extinguished and the right to have an enhancement becomes unenforceable; The Deputy Commissioner would not be entitled to revive a claim which has thus become unenforceable due to lapse of time or non-diligence on the part of the claimant."

6. Keeping the above principles laid down by the Hon''ble Apex Court in mind and

the dates above referred to, when facts on hand are examined it would not detain this Court too long to reject the present revision petition and uphold the order passed by the reference Court. Undisputedly, under Section 12(2) of the Act, award notice was served on the claimant on 06.07.1991. They submitted a representation on 03.09.1991 as required under Section 18(1) of the Act to the Assistant Commissioner - Land Acquisition Officer seeking reference and enhancement of compensation. The Assistant Commissioner - Land Acquisition Officer ought to have made a reference within 90 days from the date of receipt of said representation namely, on or before 02.12.1991. Undisputedly, in the instant case, it was not referred to Civil Court within 90 days but reference came to be made on 01.01.1992. Thus, it was beyond the period of 90 days. As such, reference was not in accordance with law.

7. As already noticed herein above, remedy which was available to the claimants under Section 18(3)(b) of the Act has not been availed by them for reasons best known namely, they have submitted representation on 03.09.1991 and on expiry of 90 days period (02.12.1991) they ought to have sought for a direction to the Special Land Acquisition Officer to refer their application for enhancement by filing a petition to the Civil Court to consider their claim for enhancement of compensation within 3 years from said date namely, on or before 01.12.1994. Undisputedly, no such exercise was undertaken by the claimants or otherwise they have not moved the Civil Court at all seeking for such direction. As such, only remedy which was available to them under Section 18(3) of the Act has not been availed by them. Undisputedly, after expiry of 90 days reference has been made to Civil Court by Land Acquisition Officer i.e., on 01.01.1992 which right had stood extinguished.

8. However, it requires to be noticed that there are instances where illiterate persons who are land losers and they being rustic villagers without possessing worldly knowledge or not being conversant with the Court craft are made to suffer on account of lethargic attitude of officials and this present case acts as a mirror to this proposition. Claimants who have lost their valuable lands and have also submitted their application seeking for reference within time i.e., on 03.09.1991 are now left in the lurch and having lost their valuable lands, are also without being awarded by adequate compensation and this situation has been brought about only on account of reference not being made by the concerned Assistant Commissioner or Land Acquisition Officer within time prescribed under the Land Acquisition (Karnataka Amendment) Act, which could have been avoided by making reference within the time allowed under Section 18(3)(a) of the Act. It is no doubt true that under Section 18(3)(b) land losers also have additional remedy. As already noticed herein above, this Court cannot lose sight of the fact that rustic villagers who are unaware of the legal aspects would be under the bona fide impression that their matters or claim is pending before the Court on account of reference being made and would be hoping to get suitable compensation from the State. Only when their claims are dismissed, they would wake up from their slumber or approach the learned Advocates for taking

remedial steps by which time much water would have flown down the bridge and as such, they would lose their valuable right to seek for compensation. Hence, it is high time that necessary instructions are issued to the concerned officials. Jurisdictional Land Acquisition Officers and Assistant Commissioners under the various enactments by the concerned so as to ensure that whenever application is submitted by the land losers or claimants it is referred to the jurisdictional Court on time for being adjudicated on merits namely, to adjudicate their claims for enhancement of compensation. For the reasons aforesaid, I proceed to pass the following:

#### ORDER

- (1) Revision petition is hereby dismissed subject to observations made herein above.
- (2) Order passed in by Civil Judge (Sr. Dn), dated Challakere in LAC No. 206/2002 08.01.2008 stands affirmed.
- (3) Registry is directed to send a copy of this order to the Secretary, Housing and Urban Development, Revenue Secretary and Law Secretary to take steps in the light of observation made herein above.