

(1977) 09 KAR CK 0008
In the Karnataka High Court
Case No : CRP. 858 of 1975

Chikkamuniramiah

APPELLANT

Vs

Deputy Commr. Bangalore Dist.

RESPONDENT

Date of Decision : 08-09-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 18(3)(B)

Citation : (1978) 1 KarLJ 181

Hon'ble Judges : Srinivasa Iyengar, J;Malimath, J

Judgement

Malimath, J.-This matter has come before us on a reference made by Justice Venkataswami because of the conflict in the decisions of this Court reported in *Muniswamappa v. Ramaiah*, (1973) 1 Mys. L.J. 65, and *Addl. Spl LAO v. Thakoredas*, (1976) 2 Kar. L.J. 285,

2. Land bearing survey No. 131 of Byappanahalli village in Bangalore South Taluk was acquired under the provisions of the Land Acquisition Act (hereinafter referred to as the Act). The petitioner made an application to the Court of the Civil Judge at Bangalore under Sec. 18(3)(b) of the Act for a direction to the Deputy Commissioner to make a reference to the Court, alleging that though he had made an application for such a reference under Sec. 18(1) of the Act, the Deputy Commissioner has failed to make a reference to the Court within the prescribed time. The learned Additional Civil Judge has by his order dated 16th December, 1974 in LACNo. 201 of 1973, dismissed the application of the petitioner, on the ground that he has failed to establish that he has filed an application under Sec. 18(1) of the Act within the prescribed time. It is the said order that is challenged by the petitioner in this civil revision petition filed under Sec. 115 of the Code of Civil Procedure.

3. Though in the order under revision it is not expressly stated that the application under Sec. 18(3)(b) of the Act is governed by Article 137 of the Limitation Act, 1973, the discussion in the order of the learned Civil Judge in paragraph 3 indicates that he was inclined to take the view that the provisions or

Article 137 of the Limitation Act are applicable to an application filed under Sec. 18(3)(b) of the Act. When this revision petition came up for hearing before Justice Venkataswami, it appears that the petitioner pressed into service the decision of Justice Venkataramiah reported in Addl. Special Land Acquisition Officer, Bangalore Development Authority v. Thakoredas, (1976) 2 Kar. L.J. 285, wherein the view taken by his Lordship is that the provisions of Art. 137 of the Limitation Act are not applicable to an application filed under Sec. 18(3)(b) of the Act, on the ground that the said article governs only applications made under the Code of Civil Procedure, 1908. It appears that on behalf of the respondents reliance was placed on the decision of Justice Datar, as he then was, reported in Muniswamappa v. Ramiah, (1973) 1 Mys. L.J. 65, in which the view taken on the basis of the concession made by the parties is that Art. 137 of the Limitation Act, 1963 governs applications made to the Court under Sec. 18(3)(b) of the Act. Justice Venkataramaiah has principally relied upon the decision of the Supreme Court reported in Athani Municipality v. Labour Court, Hubli, AIR. 1969 SC. 1335, for coming to the conclusion that Art. 137 of the Limitation Act is not applicable to applications made under Sec. 18(3)(b) of the Act. Relying upon the principle laid down in the said decision, Justice Venkataramaiah has taken the view that Art. 137 of the Limitation Act is confined in its application to applications made to the Court under the Code of Civil Procedure. It has become unnecessary for us to examine the question as to whether Art. 137 of the Limitation Act is confined in its application to applications filed under the Code of Civil Procedure having regard to the recent pronouncement of the Supreme Court in the case reported in Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma, AIR. 1977 SC. 262, Overruling the earlier decision of the Supreme Court in the Athani Municipality case, the Supreme Court has observed in paragraph 22 of the Judgment as follows:

"The conclusion we reach is that Art. 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a Civil Court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani Municipal Council case (AIR 1969 SC 1335) (supra) and hold that Art. 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure."

In view of this authoritative pronouncement of the Supreme Court it can no longer be contended that Art. 137 does not govern an application made under Sec. 18(3)(b) of the Act on the ground that though the said application is made to the Court it is not an application, made under any of the provisions of the Code of Civil Procedure. In view of the aforesaid pronouncement of the Supreme Court, the view taken by Justice Venkataramaiah in the case reported in 1976(2) Kar. L.J. 285 cannot be regarded as good law.

4. As the application made under Sec. 18(3)(b) of the Act is one made to the Court for its judicial decision regarding direction to be issued to the Deputy Commissioner for making a reference to the Court, the same is clearly governed

by Art. 137 of the Limitation Act.

5. So far as the merits of the case are concerned, we are satisfied that the learned Civil Judge has failed to give adequate opportunity to the petitioner of establishing the case put forward by him before the Court. The learned Civil Judge has observed that the petitioner has failed to produce convincing material to establish that he did make an application to the Deputy Commissioner under Sec. 18(1) of the Act, within the prescribed time. It is obvious that if the petitioner failed to make an application under Sec. 18(1) of the Act, he will not be entitled to invoke the provisions of S. 18(3)(b) of the Act. On a perusal of the order sheet of the Court below, we notice that the learned Civil Judge at one stage felt that the production of the records pertaining to the acquisition of the land in question is necessary for a fair and satisfactory disposal of the application made by the petitioner. It is for that purpose that the learned Civil Judge called upon the respondent to produce the concerned records before the Court. The Government pleader, as is clear from the order sheet, took time on several occasions for production of the relevant records. It appears that the Government Pleader submitted to the Court on several occasions that he has not been able to get the records as the same have been produced before the Court of the District Judge in regard to other connected proceedings. Ultimately, when the records were not produced by the respondent, the learned Civil Judge thought it fit to dispose of the entire matter without the relevant records being before him. The Petitioner appears to be a poor villager who is not sufficiently literate. He has stated in his statement that he has filed the application in Dec, 1961. But, on a perusal of the copy of the award and the award register, which were placed before us during the course of arguments by Sri Annadanayya Puranik, learned High Court Govt Pleader, it is clear that no award was in fact made in December, 1961. In these circumstances, for the purpose of just and proper disposal of the matter, the learned Civil Judge should have caused the relevant records pertaining to the acquisition of the land in question produced, examined the same and decided the matter. We do not find any good reasons for the learned Civil Judge not getting the records produced, when he himself had on earlier occasions, thought that the production of the records is necessary and gave time to the Govt Pleader to produce the same. It appears to us that the procedure followed by the learned Civil Judge is irregular which has resulted in failure of justice.

6. For the reasons stated above, this revision petition is allowed. The order of the learned Civil Judge in LAC. No. 201 of 1973 dated 16-12-1974 is hereby set aside and the case is remitted to the Court of first instance for fresh disposal, with a direction to the said Court to give an opportunity to both parties of producing evidence in support of their respective contentions and to dispose of the matter after getting produced the relevant records pertaining to the acquisition of the land in question as expeditiously as possible. No costs.