

(2018) 04 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No.102709 of 2018

**Gogga Sidramiah @APPELLANT@Hash The Special Land Acquisition
Officer And Ors**

Date of Decision : 12-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 95
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 33, 33(1), 64
Code of Civil Procedure, 1908 — Section 152
Provisions of National Highways Act, 1956 — Section 105, 105(1), 105(3), 106

Citation : (2018) 04 KAR CK 0012

Hon'ble Judges : KRISHNA S.DIXIT, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Petitioner, the erstwhile owner of the land measuring 5 Acres 16 Guntas in Sy.No.56/2 of Bevinahalli village, Koppal Taluk is before this Court

challenging the order dated 24.02.2018 made by respondent No.1-Special Land Acquisition Officer at Annexure â??Jâ?? whereby his request for

passing of a supplementary award is rejected.

2. The learned AGA Sri.Ravi Hosamani accepts notice for respondent No.1

3. The petitioner contends that the land in question was converted to industrial user from agricultural user vide conversion order dated 5.06.2010 made

by the jurisdictional Deputy Commissioner under the provisions of Section 95 of the Karnataka Land Revenue Act, 1964, preceding the initiation of

acquisition proceedings.

4. The petitionerâ??s land to the extent of 708 sq.mtr. came to be acquired for the benefit of respondent No.2 herein vide Preliminary Notification

dated 26.12.2014 followed by the award dated 14.06.2016, a copy of which is at Annexure 1.

5. The short grievance of the petitioner is that pursuant to the conversion of the land, the entries in the revenue records were mutated showing that the

land is converted for industrial user. However, the 1st respondent-Special Land Acquisition Officer by inadvertence has treated the acquired land as

being agricultural one and not the one converted to industrial user.

6. The petitioner by his representation dated 12.10.2016 requested the 1st respondent / SLAO to correct the mistake as to the nature of the land by

making a supplementary award showing the land in question to the extent of 708 sq.mtr. as converted into non-agricultural industrial purpose.

7. Mr.F.V.Patil, learned counsel for the petitioner, contends that the nature of the land has something to do with the quantum of the compensation

inasmuch as the market value of the converted land, especially the one converted for industrial purpose, will be far higher than that of an agricultural

land, all other conditions being same.

8. The 1st respondent had rejected the said application and that the rejection order was set aside by this Court in petitioner's Writ Petition

No.108856 of 2016 disposed of on 05.01.2018 remanding the matter for consideration afresh. After the remand, the matter was reconsidered by the

1st respondent and the request of the petitioner is rejected by the impugned order dated 24.05.2018.

9. The learned counsel for the petitioner Mr.F.V.Patil, submits that Section 33 of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the Act), vests power in the Land Acquisition Officer, by order to correct

any clerical or arithmetical mistakes in the award or errors arising therein and that the 1st respondent has wrongly exercised this statutory power in

rejecting the request of the petitioner for passing the supplementary award incorporating the rectification as to the nature of the land. A Sub-section

(1) of Section 33 of the Act reads as under:

33. Corrections to Awards by Collector. The Collector may at any time, but not later than six months from the date of award or where he has

been required under the provisions of this Act to make a reference to the Authority under Section 64, before making of such reference, by order,

correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.â??

Â (emphasis supplied)

10. The content and scope of this Sub-section match with that of Section 152 of the Civil Procedure Code, 1908. This Section reads:

â?? 152. Amendment of judgments, decrees or orders.â?"Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein

from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.â??

11. I have carefully analysed the structure and architecture of the above two provisions of law which are founded on twin principles that the Court

should not prejudice any party and that the Courts have the duty to see that the records are true and present the correct state of affairs. Sub-section

(1) of Section 33 of the Act uses the expressions â??Clerical or Arithmetical mistakesâ? and â??Errors arising thereinâ? (â??thereinâ?? means in the award).

12. An arithmetical mistake is a mistake in calculation, while the clerical mistake is a mistake of writing or typographical error by accidental slip or

omission. Such errors may be due to careless mistake or the ones made unintentionally or unknowingly. A matter, requiring elaborate arguments or

evidence on a question of facts or law, for the discovery of such errors cannot be categorized as errors arising out of in the award so as to invoke the

provisions of Section 33 of the Act.

13. Viewed from the above juridical angle, the request of the petitioner to mention in the award that the land in question is not an agricultural land and

that it is converted to industrial user does not fit into the expressions â??any clerical or arithmetic mistakesâ? or â??errors arising in the awardâ?

employed by Section 33 of the Act which approximates to Section 152 of the Civil Procedure Code, 1908 inasmuch as the same is going to be a factor

in assessing the market value of the property in question.

14. In other words, a very material fact as to the nature of land that is already acquired under law would get loaded to the award in question if the request of the petitioner is conceded to and this virtually amounts to a review of the award in question which the Collector or SLAO cannot do in the absence of enabling provision in the Act, since after passing of the award, the author i.e., SLAO becomes functus officio.

15. The other reason for declining the relief to the petitioner is that the provisions of Section 33 of the Act make it clear that for their invocability, the award in question should have been made under the provisions of this Act and not under any other Act. Admittedly, the award in question in this case has been rendered under the provisions of National Highways Act, 1956 which is apparent from the Acquisition Notification and the copy of the award produced by the petitioner himself. Therefore, no rectification could have been granted by the 1st respondent under the provisions of Section 33 of the Act.

16. The learned counsel for the petitioner Mr.F.V.Patil submits that the Highways Act should be treated as having been impliedly repealed by virtue of the provisions of Section 105 of the Act and more particularly, sub-sections (1) and (3) of Section 105 of the Act, which read as under:

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications. (1) Subject to sub-section (3), the provisions of

this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. (2) X X X

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this

Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second

and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth

Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to

compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(emphasis supplied)

17. I have carefully considered the provisions of Sections 105 and 106 of the Act.

My reading of the said Sections, keeping settled principles of interpretation of statutes discussed by Maxwell or G.P.Singh in their magnum opus, do not admit of Mr.Patil's argument of implied repeal at all.

Sub-section (1) of Section 105 of the Act only states that this Act shall not apply to the acquisition proceedings that are governed by the enactments

which the Parliament has loaded to the Fourth Schedule to this Act. Sub-section (3) of Section 105 of the Act is only an exception which gives power

to the Central Government to eclipse Subsection (1) of Section 105 of the Act. Mr.Patil later fairly concedes that there is no Notification issued under

this sub-section. Therefore, no request for quashing of the award in question by invoking the provisions of Section 105 of this Act can be entertained.

18. For the reasons stated above, this Writ Petition being devoid of merits, is dismissed. The dismissal of the Writ Petition shall not come in the way of

the petitioner pressing into service any claim before the appropriate authority on the ground of nature of land i.e., agricultural or non-agricultural.