

(1990) 01 KAR CK 0060
In the Karnataka High Court
Case No : C.R.P. No. 5998 of 1989

H.G. Shivanandappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-01-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 11, 31, 31, 53

Citation : (1990) ILR (Kar) 2252

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : U.P. Mallaya, for the Appellant; T.S. Mohammed Ali, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—The respondent has entered appearance through the learned Government Pleader Sri T.S. Mohammed Ali.

2. As this petition can be disposed of on a short ground, it is admitted and heard for final disposal.

3. This Civil Revision Petition is preferred against the order dated 30-8-1989 passed by the learned Civil Judge, Sagar in Ex. Nil of 1988 arising out of L.A.C. No. 8 to 11/78-79.

4. The case of the petitioner is that he owned a plot of land measuring 4 acres 23 guntas comprised in S.No. 11 of Chikkakoralahalli village. The said land was acquired by the State Government to expand the existing lake known as Anjanapura lake in Shikaripura Taluk. Pursuant to the acquisition, the Land Acquisition Officer, passed an award in L.A.C.Nos.8 to 11/78-79 determining a compensation of Rs. 20,052/- towards the value of the land, well etc. Notice of passing of the award was also issued to the petitioner. The further case of the petitioner is that as the amount was not deposited in the Civil Court as required

u/s 31 of the Land Acquisition Act, 1894 (for short the "Act"), he issued a legal notice dated 11-4-1988 demanding payment. As no reply was received by him from the respondent, he filed an Execution Petition for directing the respondent to deposit the award amount in LAC Nos. 8 to 11/78-79 before the Civil Court.

5. The learned Civil Judge has rejected the execution petition on the ground that the award passed by the Land Acquisition Officer is not a decree; that it is the award passed by the Court under Part III of the Act that is deemed to be a decree and not an award passed under Part II of the Act, therefore the execution petition is not maintainable. Accordingly the learned Civil Judge has dismissed the execution as not maintainable.

6. The learned Counsel for the petitioner relying upon the provisions contained in Sections 3(d), 31 and 53 of the Act contends that pursuant to the award, the Collector is required to deposit the award amount before the Civil Court under civil deposit and as he has not done, the petitioner is entitled to execute the award and compel the respondent to deposit the same in the Civil Court u/s 31 of the Act.

7. It is not possible to agree with the contention of the learned Counsel for the petitioner. Clause (d) of Section 3 of the Act only defines the expression "Court". According to that the expression, "Court" means a Principal Civil Court of Original Jurisdiction, unless the appropriate Government has appointed a special Judicial Officer within any specified local limits to perform the functions of the Court under the Act. Section 31 provides for depositing of the amount by the Collector, on making an award u/s 11 of the Act, before the Civil Court if the person in whose favour the award is passed refuses to receive the amount or there is any dispute relating to apportionment of, or title to receive, the compensation amount.

8. Section 53 provides as to applicability of the provisions of the CPC to the proceedings under the Act. It reads thus:

"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC 1908 shall apply to all proceedings before the Court under this Act."

9. On the basis of the above provision, it is contended that as the application for execution is filed before the Civil Court and as the provisions of the C.P. Code apply to the proceedings before the Civil Court, the execution petition filed by the petitioner is maintainable. It is not possible to accept this proposition. There is no doubt that the provisions of the C.P. Code are attracted to a proceeding before a Civil Court under the Act; but that question will arise only if the proceeding initiated by the petitioner is permissible, or in other words maintainable in law. Here is a case in which the award passed by the Land Acquisition Officer is not a decree. It is passed under Part II of the Act. It is not passed under Part III of the Act so as to construe it as a "decree". Section 26(2) of the Act specifically provides that every award passed under Sub-section (1) of

Section 26 of the Act shall be deemed to be a "decree and the statement of the grounds of every such award a Judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9) respectively of the C.P. Code. It also further provides that the provisions of the C.P. Code relating to execution shall, so far as may be, apply to the execution of such award. However, execution can be issued on any such award against the Government or any Officer thereof unless it remains unsatisfied for a period of 90 days from the date of such award. The Act does not provide that the award passed under Part II of the Act shall be deemed to be a "decree" within the meaning of Section 2 Clause (2) of the C.P. Code. The Act also does not provide that the provisions of the C.P. Code relating to execution shall, so far as may be, apply to the execution of the award passed under Part II of the Act. It is relevant to notice that under Part II of the Act, the award is passed by the Deputy Commissioner who is neither a "Court" nor a "Judge", whereas the award under Part III of the Act is passed by the "Court" named under the Act. Therefore, a specific provision is made under Sub-section (2) of Section 26 of the Act to deem such an award to be a "decree" and the statement of the grounds of every such award a "Judgment" within the meaning of the C.P. Code. Therefore, it is not possible to accept the contention of the learned Counsel for the petitioner that the execution petition filed by the petitioner to execute the award passed under Part II of the Act is maintainable. The contention is, accordingly, rejected.

10. It is next contended that as the petitioner had issued a notice calling upon the respondent to deposit the award amount before the Civil Court and as no reply was received by him from the respondent, he is entitled to execute the award in a Civil Court and compel the respondent to deposit the same. Civil Court can compel the respondent only if the award passed by the Land Acquisition Officer can be construed as a decree or order within the meaning of the C.P. Code. As I have already pointed out, it cannot be construed as a "decree". On the same grounds it cannot also be construed as an "Order" within the meaning of the C.P. Code.

11. The learned Counsel for the petitioner placed reliance on the two decisions of this Court in KUSUMA-BAI AND ORS. v. SPL.L.A.O. UPPER KRISHNA PROJECT AND ANR. ILR 1978 (Kar) 1649 and S. BASAVARAJ v. STATE OF KARNATAKA AND ANR. ILR 1978 (Kar) 1657. Those decisions are to the effect that the amount awarded by the Land Acquisition Officer shall have to be deposited before the Civil Court if the claimants refuse to receive the compensation amount or there is dispute regarding the title to the property acquired or apportionment of the amount awarded in civil deposit and not in revenue deposit, it is not possible to appreciate how the aforesaid decisions can be of any assistance to the petitioner to support his proposition that the award passed by the Land Acquisition Officer can be executed as a decree.

12. The learned Counsel for the petitioner placed reliance on the two decisions of the Supreme Court in The Kerala State Electricity Board, Trivandrum Vs. T.P.

Kunhaliumma, and Maganlal Vs. Jaiswal Industries, Neemach and Others, In Kunhaliumma's case , the Supreme Court has not considered the question that has arisen in the case on hand. Learned Counsel for the petitioner however placed reliance on para of that Decision. In para 20, the Supreme Court has held that the District Judge while passing an award under the Telegraph Act is a "Court". In the instant case, it is not the case of the petitioner that the Land Acquisition Officer is a "Court" nor the proposition laid down in that Decision can be extended to construe the award passed under Part II of the Act as a decree. The contention of the learned Counsel for the petitioner that as under the award passed by the Land Acquisition Officer, compensation is awarded to the petitioner and as such, a right is vested in the petitioner to receive the amount and that as the award has become final, the only course open to the petitioner is to file an execution petition, to execute the award. It is not possible to accept this proposition. The amount of compensation awarded under the award passed under Part II of the Act as per Section 31 of the Act has to be tendered to the persons entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies as mentioned in Sub-section (2) thereof. If one or more of the contingencies mentioned in Sub-section (2) of Section 31 of the Act happens or happen, the amount of compensation has to be deposited in the Court to which a reference u/s 13 of the Act would be submitted. In case the amount of compensation is not deposited in the Court or tendered for payment where Sub-section (2) of Section 31 of the Act is not attracted, it is open to the person entitled to compensation to seek appropriate direction under Article 226 or 227 of the Constitution and not by way of an execution petition.

13. It may also be pointed out that the decision in Maganlal's case is also not on the point. Learned Counsel placed reliance on one of the propositions laid down in that Decision that whenever a jurisdiction is conferred upon an established Court without providing the method and manner of exercising that jurisdiction, it is regulated by the practice and procedure of that Court. This proposition has no relevance to the question involved in the instant case.

14. For the reasons stated above, the C.R.P. is dismissed.

15. However, it is made clear that if the respondent has deposited the amount u/s 31 of the Land Acquisition Act before the Civil Court, it is open to the petitioner to approach the Civil Court for withdrawing the same in terms of the award by filing an appropriate application which shall be considered by the Court in accordance with law.