

(1994) 02 KAR CK 0009
In the Karnataka High Court
Case No : M.F.A. No's. 1767 and 1768 of 1989

Land Acquisition Officer

APPELLANT

Vs

Ramachander

RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Land Acquisition Act, 1894 — Section 28 A

Citation : (1994) ILR (Kar) 630 : (1994) 2 KarLJ 462

Hon'ble Judges : Vasanthakumar, J;Hakeem, J

Bench : Division Bench

Advocate : R.I. D'Sa, for the Appellant; S.N. Hatti and Lokesh Malavalli, for the Respondent

Final Decision : Allowed

Judgement

Vasanthakumar, J.—These Appeals arise out of awards passed by the Court of the Civil Judge, Bidar, in LA.C.Nos.562/1986 and L.A.C. 566/86.

2. The Point that arises for Consideration in these Appeals is whether the Court was justified in passing an award in respect of the references made u/s 28A of the Land Acquisition Act (hereinafter referred to as "the Act")?

3. Few facts to briefly state are:- Certain awards were passed pertaining to respective lands covered under different preliminary notifications, by the L.A.O. and on a reference made u/s 18 of the Act, the Reference Court enhanced the award amounts passed by the L.A.O. The details of the References are mentioned in Tabular statement:-

Case Nos LAC Court awarded Rs. per acre Sy.No. Date of award by Court Prl. Noti fication L.A.O's award P.A. Date of application u/s. 18 filed before L.A.O.

26/74 4.000/- 198 27.7.82 11.3.71 3000/- 4-3-85 in LAC.562/86 M.F. A. 1767/89

66/67 8/77 3.500/- 11,12 &14 19.4.83 20.9.73 733.64 7.3.85 in LAC. 564/86
54/81 89/81 3.500/- 478, 48 8.11.82 10.6.71 900 to 2000/- 27.2. 85 in
LAC. 566/86 MFA. 1768/89

In the instant cases, the Land Acquisition Officer passed an award determining the compensation in a sum of Rs. 4,000/- per acre covered under the preliminary notification dated 11.3.1971, and a sum of Rs. 3,500/- covered under the preliminary notification dated 10.6.1971. In these cases, from the records, it could be made out that the claimants/respondents have not made applications u/s 18 of the Act. They have invoked Section 28A of the Act to claim higher compensation as determined by the Court on earlier references in respect of the lands covered under the same preliminary, notifications. They have filed the applications u/s 28-A of the Act on different dates as noted in the above Tabular Statement,

4. Section 28-A of the Act reads as follows:-

"28-A Re-determination of the amount of compensation on the basis of the award of the Court. - 1 (a) 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 re-determined 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.

(2) The Collector shall, on receipt of an application under Sub-section (1), conduct an enquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under Sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18,"

Section 28-A contemplates application to be made before the Collector within the period of 3 months from the date of the awards passed respectively. Proviso to Section 28-A envisages the computation of the period to be reckoned for filing of the applications u/s 28-A. It is to be stated that Section 28-A was inserted to the

Parent Act by Section 19 of the Act 68/84. The Objects and the Reasons for insertion of Section 28A are:-

"Considering that the right of reference to the civil Court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent land owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re- determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference Court u/s 18 of the Act."

Admittedly, in these Cases the claimants did not make the applications within the period prescribed under the proviso to Section 28A of the Act. Prima facie, the applications are filed beyond the period prescribed, that is in the year 1985, in respect of the awards passed in the year 1982 and 1983. The L.A.O., while rejecting the applications filed by the claimants u/s 28-A of the Act has referred the matter to the Court under Sub-section (3) of Section 28-A of the Act, which it is to be stated, is not a proper approach. What is to be referred under Sub-section (3) of Section 28-A is an award i.e., passed u/s 28-A by the L.A.O., in respect of an application filed under Sub-section (1) of Section 28-A of the Act. While rejecting the applications filed u/s 28-A of the Act, the Land Acquisition Officer had no legal competence to refer the matter to the Court for further adjudication. Whatever may be the case, it is also not proper and legally permissible for the Court to treat those references by the L.A.O., in these cases as being the references under Sub-section (3) of Section 28-A of the Act. Further, the Court has also erred in exercising its inherent jurisdiction u/s 151 of C.P.C. What is to be seen is that there is no provision in the Act apart from Section 28-A for reopening of an award which has become final and conclusive. No doubt Section 28-A, provides for the re-determination of the amount of compensation, provided the conditions laid down therein are fulfilled. For such determination, the Forum is the Deputy Commissioner and the application has to be made before him within 30 days from the date of the award, and the right is restricted to persons who had not applied for reference u/s 18 of the Act. If these conditions are satisfied, the petitioners/claimants could avail of the remedy provided u/s 28-A of the Act. In that event Section 25 also would enure to their benefit. Any other view would lead to disastrous consequences not intended by the Legislature.

5. Now the only question that arises for consideration in these appeals is whether it is open for the authorities concerned to entertain application u/s 28A which is, ex facie, barred by period of limitation. No doubt, it is open for the Court to consider the plea of limitation even though it is a technical plea if the plea is well founded. But the question of the Court exercising its inherent jurisdiction or condoning the delay u/s 5 of the Limitation Act would not arise in the

circumstances of the case.

6. It is argued by Sri Hatti, learned Counsel for the respondents, that the Courts should adopt a liberal approach and should not be hypertechnical and should entertain time barred applications filed u/s 28A having in view objects of the Amendment of the Land Acquisition Act. It is to be stated that we are not in agreement with the above proposition. It is clear that the Reference Court in these cases has acted without jurisdiction, and further has not applied its mind to the ratio decided in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, In the light of the ratio decided by the Supreme Court, cited supra, we are of the view that the impugned awards in these Appeals passed by the Court have to be set-aside and the same are hereby set-aside. Accordingly, these Misc. First Appeals are allowed.