

(2014) 12 KAR CK 0172

In the Karnataka High Court

Case No : Writ Petition Nos. 12509-12513/2014 (LA-RES)

Mahadevanaika

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28(3), 28A

Citation : (2015) 4 KarLJ 87

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Kavitha H.C., Advocate for the Appellant; B. Pramod, CGC and S.V. Giri Kumar, AGA, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners are before this Court seeking for a direction to the first respondent to award the benefits as has been awarded in terms of the compromise decree dated 19.11.2011 in LAC No. 25/2010 and be granted to the petitioners. The petitioners are also assailing the order dated 26.07.2013 passed in LAC No. 27/2010, the order dated 27.06.2013 in LAC No. 29/2010, the order dated 26.07.2013 in LAC No. 29/2010 impugned at Annexures-M, N and P.

2. The petitioners herein were the owners of the property bearing Sy. No. 33/120, 33/143 and 33/102 to the different extents mentioned in the petition, situate in Kuppe Kolagatta village, Bilikere Hobli, Hunsur Taluk. The said lands were acquired by the respondents for establishment of the Electronic War Fare Range by the Department of Defence, Government of India and the possession was taken on 14.06.1993. A general award dated 14.06.1993 was passed determining the market value at Rs. 30,000/- per acre in respect of dry as well as the garden lands. The petitioners no doubt did not seek to assail the said award at that point. However, one other land loser named Sri Jayanna Naika filed his protest petition as contemplated under Section 18 of the LA Act and the matter was referred to the Reference Court in LAC No. 22/1994. The Reference Court by its judgment dated 17.11.1998 enhanced the market value of the lands

to Rs. 50,000 per acre. The petitioners taking benefit of such award and the provisions as contained in Section 28A of the Land Acquisition Act made claim petitions before the Land Acquisition Officer seeking grant of similar compensation that had been granted and enhanced by the Reference Court. During the pendency of the said proceedings, the said Sri Jayanna Naika who had filed an appeal in MFA No. 1021/1999 had succeeded in securing further enhancement of the compensation at Rs. 1,00,000/- per acre in respect of the garden land and Rs. 50,000/- per acre in respect of dry land. In that view, the petitioner once again made an application before the Land Acquisition Officer before whom the proceedings initially made under Section 28A of the LA Act was pending. The claim of the petitioners to determine compensation to the extent as had been done in the appeal in MFA No. 1021/1999 has not been accepted by the Land Acquisition Officer and by the order dated 06.07.2002, the same had been rejected. The said order is available at Annexure-A to the petition.

3. The petitioners instead of assailing the said order had filed an application by referring to Section 28(3) of the LA Act seeking reference to the Civil Court for redetermination of the compensation. The said applications have been dismissed by the orders impugned at Annexures-M, N and P. The redetermination has been rejected on the ground that the delay is beyond the permitted period of three years and 90 days from the date of the award. It is in that view, the petitioners are before this Court.

4. Having referred to the sequence of events, what is necessary to be determined in the instant petitions is as to whether the proceedings as had been initiated by the petitioners seeking reference to the Reference Court for redetermination of the compensation in terms of the compensation that had been enhanced in MFA No. 1021/1999 was necessary at all? If the said proceedings was not necessary, the ultimate rejection of the request on the ground of delay would not arise.

5. If that be so, the question for consideration also would be with regard to the manner in which the consideration of the applications of the petitioners filed under Section 28A of the Act should have been done by the Land Acquisition Officer. In this regard, the perusal of the order dated 06.07.2002 (Annexure-A) passed by the Land Acquisition Officer would disclose that while coming to the conclusion that the redetermination under Section 28A could be made only keeping in view the first award, has referred to the decision of the Hon'ble Supreme Court in the case of Union of India and another Vs. Pradeep Kumari and others, . The decision rendered therein is clear on the aspect that the first of the award passed by the Reference Court would be the award which would have to be kept in view for the purpose of entertaining an application seeking redetermination of the compensation as contemplated under Section 28A of the Act. The said decision however does not indicate that if the same award was carried forward in appeal and thereafter if further enhancement is made, such determination by the higher Court should be treated as a different award.

6. If this aspect of the matter is kept in view, in the instant facts, the petitioners were claiming compensation based on the award passed in LAC No. 22/1994 by the Reference Court on 17.11.1998. The application under Section 28A was filed within the time as provided. During the pendency of the same, the judgment passed in LAC No. 22/1994 had been carried in appeal before this Court in MFA No. 1021/1999 by the same Sri. Jayanna Naika. It is in that appeal, the further enhancement of compensation was made and the market value was determined at Rs. 1,00,000/- per acre for garden lands and Rs. 50,000/- for dry lands. As on the date when the judgment was passed in the appeal i.e., 23.02.2000, the initial application filed by the petitioners herein under Section 28A before the Land Acquisition Officer was still pending. If that be the position, when there is no dispute to the fact that an appeal filed before the appellate forum is only a continuation of the original proceedings and in that circumstance, when the value of the land as determined by the Reference Court had been enhanced by the appellate Court, the Land Acquisition Officer should have in fact reckoned the amount that had been determined in the appeal and such amount should have been made applicable to the case of the petitioners for determining the compensation. If this aspect is kept in view, the reference to the Civil Court once again as sought by the petitioners was wholly unnecessary. Therefore, the orders impugned herein are of no consequence at all.

7. Having arrived at the said conclusion, the relief as sought by the petitioners requires to be modified in the instant petitions, though the order dated 06.07.2002 has not been assailed herein, Therefore, since the orders at Annexures-M, N and P would not arise for consideration herein to determine its correctness since the said proceedings itself was unnecessary the order dated 06.07.2002 which is not as per law will call for interference. In that light, if the order dated 06.07.2002 is perused, for the reasons indicated above, the Land Acquisition Officer was not justified in rejecting the request to apply the quantum of compensation as determined in MFA Nos. 1021/1999 dated 23.02.2000 to the lands of the petitioners for determination of the correct market value. Hence, the appropriate course is to quash the portion of the order dated 06.07.2002 wherein the enhanced compensation awarded in LAC No. 22/1994 is rejected. To that extent, the substitution of the amount as awarded under the judgment dated 23.02.2000 in MFA No. 1021/1999 shall be awarded by the Land Acquisition Officer and thereafter taking note of the nature of the land to which the petitioners are making claim, determine the compensation on ascertaining as to whether such lands are garden lands or dry lands and apply the compensation determined in MFA No. 1021/1999.

8. For the said purpose, the matter stands remitted to the first respondent who shall take note of this order and apply the judgment passed in MFA No. 1021/1999 dated 23.02.2000 to the case of the petitioners and order for payment of enhanced compensation.

In terms of the above, the petitions stand disposed of.