

(2013) 04 KAR CK 0150

In the Karnataka High Court

Case No : Writ Petition No. 14062 of 2013 (LA-BDA)

Mrs. Zainabi

APPELLANT

Vs

The Special Land Acquisition Officer and Bangalore
Development Authority

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Land Acquisition Act, 1894 — Section 18, 28A, 28A(1), 3(d)

Citation : AIR 2013 Kar 188 : (2013) ILR (Kar) 4764 : (2013) 3 KCCR 2302

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

**Advocate : B.G. Nanjundaradhya, for the Appellant; B.B. Patil and Assts.,
Advocates for R1 and R2, for the Respondent**

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this Writ Petition, petitioner is calling in question the order dated 14th May 2010 produced at Annexure-K and the order dated 15th June 2012 produced at Annexure-M passed by the Special Land Acquisition Officer, Bangalore Development Authority, Bangalore/respondent No. 1 herein. By the said orders, the Special Land Acquisition Officer has held that the application filed by the petitioner u/s 28A of the Land Acquisition Act, 1894 ("the Act", for short) was liable to be dismissed as it was not presented within the prescribed period of limitation of ninety days. Accordingly, the application has been dismissed. Few facts necessary for the disposal of this case stated in nutshell are:

Land of the petitioner bearing Sy. No. 87/3 measuring 1 acre 34 guntas situated at Alahalli Village, Uttarahalli Hobli, Bangalore South Taluk, has been acquired by the State for the purpose of the BDA. Preliminary Notification dated 17.11.1988 was published in the Gazette on 05.01.1989. It was followed by a final declaration dated 27.07.1991. The Special Land Acquisition Officer passed an award dated 11.05.1993 fixing the market value of the acquired land at Rs.

90,000/- per acre. Petitioner did not make any application u/s 18 of the Land Acquisition Act seeking reference of her case to the Civil Court for enhancement of the market value. However, at the instance of the neighbouring land owner of Sy. No. 79 of the same village whose land was also acquired under the same preliminary notification, his matter was referred to the Civil Court and the Civil Court in LAC No. 139/1995 passed a judgment and award dated 12.12.2002 enhancing the market value of the acquired land from Rs. 90,000/- to Rs. 3,80,000/- per acre payable along with all statutory benefits.

2. Admittedly, petitioner herein did not file any application within 90 days from the date of the said judgment and award of the Reference Court seeking redetermination of compensation as provided u/s 28A of the Act. She chose to make such an application only on 13.09.2004 enclosing a copy of the judgment and award passed in LAC No. 139/1995. It is also useful to note here that in MFA No. 1996/2003 filed by the State against the judgment and award passed in LAC No. 139/1995, this Court while dismissing the appeal filed by the State allowed the Cross Objection No. 215/2006 preferred by the land owners enhancing the market value payable from Rs. 3,80,000/- to Rs. 5,44,500/- per acre in respect of the neighboring land comprised in Sy. No. 79 of the same village.

3. The petitioner having learnt about the same applied for certified copy of the judgment in MFA No. 1996/2003 on 12.01.2009 and obtained the same on 16.01.2009. Thereafter, petitioner filed a fresh petition u/s 28A of the Act on 19.01.2009 along with the certified copy of the judgment dated 13.11.2008 passed by this Court in MFA No. 1996/2003 and Cross Objection No. 215/2006, before the 1st respondent seeking redetermination of compensation on par with the determination made in respect of the adjoining land comprised in Sy. No. 79 of the same village.

4. Petitioner approached this Court in W.P. No. 34557/2009 making a grievance against the Special Land Acquisition Officer in not considering the petition filed u/s 28A of the Act. This Court vide order dated 17.12.2009 issued a direction to the Special Land Acquisition Officer to pass necessary orders on the application filed u/s 28A keeping in mind the judgment of the Division Bench rendered in MFA No. 1996/2003 and connected matters.

5. Thereafter, the Special Land Acquisition Officer has passed the impugned order at Annexure-K and has issued another endorsement vide Annexure-M informing the petitioner that her application could not be considered as the same was barred by time. Aggrieved by the same, the present writ petition is filed.

6. I have heard Sri. Nanjundaradhya, learned Counsel for petitioner and Sri. B.B. Patil, learned Standing Counsel for respondents 1 and 2.

7. The main contention urged by the learned Counsel for petitioner is that period of three months within which an application is required to be made under the proviso to Section 28A of the Act has to be computed, in the instant case, from the date of the judgment and decree passed by this Court in MFA No. 1996/2003

disposed of on 13.11.2008. If so computed, the application filed by the petitioner on 19.01.2009 u/s 28A of the Act seeking redetermination would be well within the period of 90 days and therefore, the impugned endorsements issued by the Special Land Acquisition Officer are unsustainable in law.

8. In support of his contention, learned Counsel for petitioner relies on the judgments of the Apex Court in the case of Union of India and another Vs. Pradeep Kumari and others, ; Union of India (UOI) and Another Vs. Hansoli Devi and Others, ; V. Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and Another, .

9. Learned Counsel appearing for the respondent strongly resisted the contentions urged by the petitioner. It is his submission that period of 90 days within which an application u/s 28A of the Act has to be filed commences from the date of the judgment and award passed by the Reference Court and for this purpose, the date on which the award was pronounced and the time required for obtaining the copy of the award shall be excluded as is made clear in the proviso to Section 28A(1) of the Act. He further points out that reference made to the expression "Court" in Section 28A of the Act is to the "Reference Court" and not the Appellate Court. In this regard, he invites the attention of the Court to the definition of the expression "Court" u/s 3(d) of the Act. He has also brought to the notice of the Court the judgment of the Apex Court in the case of Union of India (UOI) Vs. Munshi Ram (Dead) by LRs. and Others,

10. On careful consideration of the contentions urged by the learned counsel for both parties, it is clear from the provisions contained u/s 28A of the Act that an application has to be filed by the claimant seeking redetermination of compensation within a period of three months from the date of the judgment and award passed by the "Court" wherein the amount of compensation payable has been enhanced at the instance of the person who had sought for reference.

11. It is useful to refer to Section 28A of the Act which reads as under:-

28A. Re-determination of the amount of compensation on the basis of the award of the Court.-(1) 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 inquiry 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.

12. The expression "Court" as referred to in sub-section (1) of Section 28A has to be understood keeping in mind the definition of the expression "Court" as contained in Section 3(d) of the Act. Section 3(d) defines the expression "Court" to mean "a principal Civil Court of original jurisdiction, unless, the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act".

13. For the State of Karnataka by a State Amendment, the expression "Court" is defined as under:-

3(d) - the expression "Court" means a principal Civil Court of original jurisdiction, and includes any other Civil Court empowered by the State Government by a notification in the Official Gazette, to perform the functions of the Court under this Act, within the pecuniary and local limits of its jurisdiction.

14. It is thus clear from the definition of the expression "Court" that it means a principal Civil Court of original jurisdiction which also includes any other Civil Court empowered by the State Government to perform the functions of such Court under the Act. In the State of Karnataka, the Court of Civil Judge (Senior Division) is the Court empowered to perform such duties and functions of the Reference Court and it is this Court which determines the market value payable for the acquired land on reference made by the Land Acquisition Officer.

15. u/s 54 of the Act as amended by the Karnataka State Amendment, an appeal is provided from the judgment and decree passed by the Reference Court in any proceedings under the provisions of this Act to the Court authorized to hear appeals from the decision of that Court and from any decree of the High Court passed on such appeal as aforesaid, an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908.

16. It is thus clear that in terms of the provisions contained u/s 54 as amended by the Karnataka State Amendment read with the provisions of the CPC and the Karnataka Civil Courts Act, an appeal against the judgment and award passed by the Reference Court lies to a Single Judge or to the Division Bench of this Court as the case may be depending upon the value of the subject matter of the appeal

and against the judgment rendered by this Court, the matter can as well be taken to the Apex Court.

17. If the expression "Court" as used in Section 28A is to be interpreted to mean not only the Reference Court but also the Appellate Court which passes the judgment on appeal from the judgment and award passed by the Reference Court, then, it would mean that a person can file an application u/s 28A within 90 days from the date of the judgment and decree to be passed by the Appellate Court also. In fact, this is the endeavour that is sought to be made by the learned counsel for the petitioner.

18. On careful consideration of the provisions of the Act, I am of the view that the expression "Court" means a principal Civil Court of original jurisdiction or what can be called as the reference Court. The argument advanced by the learned counsel for the petitioner that the expression "Court" will include within its scope and ambit the Appellate Court as well cannot be accepted. The judgments on which the learned counsel for the petitioner has placed reliance do not come to his aid. Infact, the Constitution Bench of the Apex Court in the case of Union of India (UOI) and Another Vs. Hansoli Devi and Others, while dealing with the principles of interpretation of statutes has stated the cardinal principle of construction of statute by observing that when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The Apex Court has pointed out in the said judgment that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning which would adhere to the purpose of the statute. In the instant case, the principle as laid down in the aforesaid judgment is very much applicable as a guide for interpreting the provisions contained u/s 28A particularly the expression "Court" used therein. If any other interpretation is adopted, then it will result in anomalies in as much as a person who has sought reference by filing an application u/s 18(1) and has got higher compensation determined by the Civil Court will not be entitled for further enhancement even if his neighbour who had preferred a Miscellaneous First Appeal gets enhanced amount by the judgment of the Appellate Court unless he had also filed an appeal. Whereas, a person who has not at all sought any references can straight away apply u/s 28A within 90 days from the date of the Appellate judgment and get enhanced amount as determined by the Appellate Court. The object and purpose behind introduction of Section 28A can not be stretched to such an extent to confer the benefits of the judgment rendered by the Appellate Court. If that was the intention of the Legislature, then, the definition clause in Section 3(d) defining the term "Court" would have contained reference to the judgment and decree to be rendered by the Appellate Court as well. Therefore, I do not find any illegality or error committed by the Special Land Acquisition Officer in rejecting the

application filed u/s 28A of the Act by the petitioner. The petition, therefore, being devoid of merits is dismissed.