
(1973) 11 KAR CK 0011
In the Karnataka High Court
Case No : M.F.As. 167, 168 and 169 of 1973

M.S. Ramaiah and Others

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 09-11-1973

Acts Referred:

Citation : AIR 1974 Kar 122

Hon'ble Judges : Govinda Bhat, C.J

Bench : Single Bench

Advocate : B. Gopalaiah, for the Appellant; N. Venkatachala, 2nd Addl. Govt. Advocate, for the Respondent

Judgement

Govinda Bhat, C.J.—The appellants in the above appeals were the claimants in L.A. Misc. No. 612/67, 371/68 and 610/67 on the file of the Court of the Civil Judge, Bangalore District, which were references made u/s 18 of the Land Acquisition Act (hereinafter called "the Act") for determination of the amount of compensation for the land acquired from the claimants. When the said reference came up for hearing on 3-6-1971 before the learned Civil Judge, the counsel for the claimants sought for an adjournment of the case, which was however rejected on the ground that the cases were pending for over four years and that on earlier occasions adjournment had been granted and yet the claimants had not taken necessary steps. In the absence of evidence adduced by the claimants to show that the amount awarded by the Land Acquisition Officer in the Award made by him u/s 11 of the Act, is inadequate, the learned Civil Judge disposed of the reference by an order dated 3-6-1971 which reads thus:

Since there is no evidence to displace the correctness of the awards, the claims of the petitioners are dismissed. The awards are confirmed.

Thereafter the claimants filed applications under Rule 9 of Order IX of the Civil P.C. for setting aside the aforesaid order. When the applications came up for hearing, it was contended on behalf of the Land Acquisition Officer that the order

fell under Rule 3 of Order XVII of the Civil P.C. and the remedy of the claimants is to prefer appeals. The learned Civil Judge rejected that contention and held that the order was made under Rule 3. He however, held that there was no sufficient cause for non-appearance of the claimants when the cases came up for hearing and therefore dismissed the applications. Aggrieved by the said order the claimants have preferred the above appeals.

2. The cases before the Civil Judge are references made by the Land Acquisition Officer u/s 18 of the Act for determination of the amount of compensation payable for the lands acquired as the claimants did not accept the awards made u/s 11 of the Act. An Award made u/s 11 by the Land Acquisition Officer is in the nature of an offer to the claimants and therefore, unless the award is accepted by the claimants, the same is not binding. Where the claimant does not accept the award and seeks a reference u/s 18, the Land Acquisition Officer is bound to make a reference to the Court for determination of the amount of compensation for the lands acquired. When such a reference is made to the Court, it is the duty; of the Court under the Act to determine the amount of compensation payable for the land or lands acquired. The Court has no jurisdiction to refuse to determine the amount of compensation even where the claimant remains absent or where he is present, fails to adduce evidence. The award of the Court in a reference u/s 18 must be in the form provided u/s 26 of the Act. Section 26 reads thus:

26. Form of Awards.--

(1) Every award under this part shall be in writing signed by Judge, and shall specify the amount awarded under clause first of sub-section (1) of S. 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts.

(2) Every such award 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 Civil Procedure Code, 1908 (V of 1908) and the provisions of the said Code relating to execution shall, so far as may, apply to the execution of such award.

(Proviso omitted as unnecessary).

It is plain from Section 26 that the award which the Court passes must be in the form of a judgment containing the statement of the grounds for the award. Where the claimant remains absent or does not produce evidence, it is not open to the Court to dispose of the reference stating that the claim of the claimant is dismissed or that the reference is rejected. The Court has to pass an award in the manner provided u/s 26. For making such an award, the Court has necessarily to rely on the materials contained in the award of the Land Acquisition Officer u/s 11 and the evidence of the Land Acquisition Officer, if any, tendered before the Court. Ordinarily the burden is on the claimant to show that

the compensation offered by the Land Acquisition Officer is inadequate and therefore he has to lead evidence in support of the claim for enhancement of compensation. But there may be cases where on the face of the award made u/s 11 the amount offered by the Land Acquisition Officer can be held to be arbitrary. If on the basis of the data furnished in the award of the Land Acquisition Officer, the Court finds that the market value of the land has not been determined in accordance with settled principles of valuation, the Court has to determine the compensation in accordance with such principles on the basis of the data available on record. Therefore, the Court has to apply its mind and make an award and cannot blindly confirm the award of the Land Acquisition Officer.

3. The order of the Civil Judge dated 3-6-71 disposing of the references, does not show that the learned Civil Judge had applied his mind and determined the amount of compensation for the lands acquired. Prima facie, the order does not conform to the requirements of Section 26 of the Act. The remedy of the appellants is to appeal against the said order. The applications under Rule 9 of Order IX of the Code are wholly misconceived. As stated earlier, a reference u/s 18 cannot be dismissed for default under Rule 8 of Order IX of the Code. Consequently, Rule 9 of Order IX can have no application. This legal position when put to the learned Counsel for the parties was not contested before me.

4. The learned Civil Judge was right in dismissing the application under Rule 9 of Order IX although the reasons given by him are not valid. For the reasons stated above, these appeals fail and are dismissed but without costs.