

(1972) 10 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 836 of 1972

Muniswamappa

APPELLANT

Vs

Ramiah and Another

RESPONDENT

Date of Decision : 19-10-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18 (3)
Limitation Act, 1963 — Section 137

Citation : AIR 1973 Kar 161 : AIR 1972 Kar 161 : (1973) 1 MysLJ 65

Hon'ble Judges : H.B. Datar, J

Bench : Single Bench

Advocate : M. Gopalakrishna Setty, for the Appellant; M.N. Farukhi and Annadanayya Puranik, H.C. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.B. Datar, J.—The short question that arises in this revision petition is as to whether the application filed before the Court below for a direction to make a reference was within the period of limitation. It arises in this way:

The land Survey number 16/6 of Byyappanahalli was acquired and an award passed on the 5th of February 1964 and this was approved by the Deputy Commissioner on the 24th of July 1964. It is not disputed that one Ramaiah who was the petitioner before the Court below was one of the persons interested in the award. He did not file an application until the year 1970, and therefore, the petitioner in this revision petition has contended that the application filed for making a reference under the provisions of the Land Acquisition Act, 1961 (hereinafter called the Act) was barred by limitation. The learned trial Judge overruling that objection has issued a direction to the Land Acquisition Officer to make a reference.

2. In this revision petition it is strenuously urged that the view taken by the Court below that the application was within limitation was clearly untenable. Under Article 137 of the Limitation Act, the application for reference has to be

filed within three years from the time when the right to apply accrues and the question is when the right to make an application accrues. For the purpose of appreciating this contention, it would be necessary to briefly refer to the provisions of the Act. After the award is passed, under the provisions of Section 18 of the Act, any person who has not accepted the award may, by written application to the Deputy Commissioner require the matter be referred to the Court for determination by the Court as regards the compensation payable. This application has to be filed according to the provisions of Sub-section (2) of Section 18 within 90 days from the date of the service of notice from the Deputy Commissioner under Sub-section (2) of Section 12 of the Act. It is further provided under Sub-section (3) of Section 18 of the Act that the Deputy Commissioner shall within ninety days from the date of receipt of an application under Sub-section (1) make a reference to the Court. If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant is entitled to apply to the Court to direct the Deputy Commissioner to make a reference. Thus under the Act statutorily a time limit of 90 days is fixed for the purpose to make the application to the Deputy Commissioner. Further a period of 90 days is fixed within which the Deputy Commissioner has to make a reference to the Court. If the Deputy Commissioner does not make a reference within a period of 90 days from the receipt of the application then the applicant gets a cause of action to make the application to the Court. It is not disputed by the learned advocates appearing for the parties in the present case that what is applicable is Article 137 of the Limitation Act of 1963. The said Article reads as follows:--

"Part II.- Other Applications

137. Any other application for which no period of limitation Is provided elsewhere in this Division

Three years

When the right to apply accrues."

Art. 137 entitles a person to make an application within a period of three years when the right to apply accrues. In my view, a right to make an application under Clause (b) of Sub-section (3) of Section 18 accrues when the Deputy Commissioner does not make a reference within ninety days. Since statutorily the period of ninety days is fixed for the Deputy Commissioner to make a reference, if he does not make it then the application must be filed within three years from the time of the expiry of the period of ninety days specified under Sub-section (3)(a) of Section 18 of the Act. It would be wrong to hold that the period of limitation starts only from the time the Deputy Commissioner passes an order and refuses to make a reference and intimates such refusal to the party. Since under the Act the Deputy Commissioner is obliged to determine within 90 days and if he fails to determine it, the party is given a right under Clause (3) of Section 18 of the Act, the question of communicating the refusal to the party

does not arise. If the reference is not made within ninety days, the cause of action accrues to the party to go to the Deputy Commissioner to make a reference. In the present case the application was filed nearly after six years and the only explanation given, by the party is that he did not make the application, as he was not intimated of the result of his application made under Sub-section (3)(a) of Section 18 of the Act. In my view, it is not necessary to communicate the refusal, as the refusal has to be assumed, if no reference is made within ninety days and the party has got a period of three years to make an application thereafter. As the learned Judge has acted with material irregularity in the exercise of jurisdiction in holding that the application is in time, his decision becomes unsustainable.

3. Accordingly, this revision petition is allowed, the order passed by the Principal Civil Judge Bangalore District, Bangalore in L. A. C. No. 288 of 1970 is set aside and the application filed for reference is dismissed. In the circumstances of the case, parties will bear their own costs.