

(1996) 08 KAR CK 0061

In the Karnataka High Court

Case No : Civil Revision Petition No. 44 of 1993 connected with Civil Revision
Petition Nos. 42 and 43 of 1993

P.M. Krishnaswamy Naik

APPELLANT

Vs

Assistant Commissioner and Land Acquisition Officer,
Chitradurga

RESPONDENT

Date of Decision : 21-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Land Acquisition Act, 1894 — Section 18

Citation : (1997) 1 KarLJ 565

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. The principal point canvassed by the petitioners' learned Advocate is that the three petitioners whose lands were acquired had disputed the extent of the area of land under acquisition and that when the matter came up for hearing before the reference Court, an application was made on behalf of the petitioners that the exact area that has been taken possession of from each of the petitioners should be redetermined. The Court granted the application and a surveyor was appointed and it turned out that the grievance of the petitioners was justified. In the first case, the area acquired was 18 guntas and not 13 guntas, in the second case the area acquired was 30 guntas and not 20 guntas and in the third case, the area acquired was 10 guntas and not 8 guntas. It is true that the figures are marginal but the petitioners' learned Advocate is fully justified when he points out to the Court that for a poor person whose land is being acquired, virtually every gunta or fraction thereof is of consequence because he is being deprived of the land and the rate of compensation is anything but generous. Learned Advocate therefore submits that when the surveyor's report was before the Court that it forms part of the record and that this material or evidence had to supersede the figures that were already on record. He has emphasised the fact that the surveyor was appointed by the Court after hearing the representative of the State, that the surveyor was a Government Officer and more importantly, that the report was taken on record and that the same was not disputed. In this

background, learned Advocate submitted that it was absolutely obligatory on the part of the learned Judge while considering the reference, to have taken into account the amended areas or the higher areas as indicated in the report and not the lower figures that had wrongly been notified by the Land Acquisition Officer. The issue with regard to rate of compensation payable to the petitioners was being determined by the reference Court but it would be too technical an approach to hold that the powers of the Court were circumscribed only to the extent of deciding the "rate" of compensation and nothing more than that. As far as this aspect of the matter goes, one needs to take cognizance of the fact that compensation is determined by multiplying the rate which the Court ultimately approves by the extent of the land and adding on the amounts which the law prescribes. While undertaking this exercise, it is implicit that if there is a material error that has taken place and which has been established to the satisfaction of the reference Court that it is within the powers of the learned Judge to take notice of this error and to take appropriate corrective action. It is unnecessary for the reference Court to technically remand the matter to the Land Acquisition Officer for this purpose because it is a question of simple mathematics. In the present instance, the reference Court overlooked this material and proceeded to award the compensation at an enhanced rate taking into account the originally notified areas. Subsequently, these three petitioners and one other person whose lands were also acquired on the same date filed review petitions and the solitary ground on which the learned trial Judge has dismissed the petitions is that they are outside the scope of review. Effectively, the learned Judge has held that it is only clerical or such other errors which he pointed out, that can be rectified and that if the petitioners" were aggrieved by the fact that the surveyor"s report which ought to have been relied on has been overlooked, that the only remedy lay in filing an appeal because it was beyond the scope of a reviewing Court to re-examine those aspects of the case. Petitioners" learned Advocate submits, and quite justifiably, that even conceding that the scope of review is limited and that it does not permit a re-argument of the case that it is permissible, in situations of the present type where something very material has been overlooked by the Court earlier, for the aggrieved party to point it out to that very Court within the shortest possible time and to request the Court to rectify the error. He therefore submits that the orders in question be set aside and that the lower Court be directed to redetermine the compensation on the basis of the enhanced area. The only objection that is pleaded with regard to the aforesaid procedure is that the stage at which they sought to have been done all this had passed, in so far as the petitioners were given notice and the procedure prescribed by the Land Acquisition Act was followed prior to the award being made and that once the award has been made, it is only the rate of compensation and nothing else which can be gone into by the reference Court. The argument proceeds on the footing that it would be tantamount to reopening the acquisition proceedings or in other words, going behind the award and that this is not permissible at the stage when a reference is made under Section 18 of the Land Acquisition Act. The usual argument is pressed into operation that the award has become final and that

after the reference Court has disposed of the proceeding, short of a regular appeal against that order, there can be no redetermination through a review petition.

2. It is undisputed in the present case that an error had taken place with regard to the measurements. This is completely established by the fact that the surveyor's report conclusively indicates the correct figures of the land that has been acquired and these figures are higher than the ones that were originally notified. It is also on record that the petitioners had protested with regard to this aspect of the matter during the acquisition proceedings. The ambit and scope and powers of the reference Court are relatively wide and a reference to Sections 18 and 21 of the Land Acquisition Act would indicate that various heads on the basis of which the claimant has made a grievance are required to be examined by that Court and, the only restriction that has been placed on the scope of these proceedings as contained in Section 21 is that the interest of the persons affected by the objections alone is required to be taken into consideration. Under these circumstances, it would not be proper to uphold the objection canvassed on behalf of the State that the reference Court was only permitted to go into the rate of compensation and nothing else. Also, with regard to the argument that the award has become final, the answer is that the reference Court is essentially required to redetermine all aspect of compensation which itself indicates that all aspects of the award are necessarily capable of review and therefore, no aspect of finality can be attributed to it.

3. As regards the ground on which the learned Judge has rejected the review applications namely that the scope of review is limited only to the correction of errors, to my mind, it is on the basis of that very principle that the review petitions ought to have been permitted and not dismissed. The petitioners' learned Advocate himself has pointed out to me that it was precisely such errors which were brought to the notice of the Court and nothing else. The petitioners' had not asked for consideration of any new points nor had they asked for the introduction of any additional material. They were only pointing out that the figures contained in the order passed by the Court were incorrect and that a rectification process was necessary. Under these circumstances, the lower Court was clearly in error in having rejected the review petitions. They ought to have been straight away allowed and the compensation redetermined on the basis of the figures as appeared in the surveyor's report.

4. Having regard to the aforesaid position, these petitions are entitled to succeed. The order passed by the lower Court is set-aside. The cases are remanded to the lower Court with a direction that the compensation amount be redetermined on the basis of the enhancement which the Court had earlier sanctioned but taking into account the correct figures of the land that has been acquired from the three petitioners which figures are reflected in the surveyor's report. For this purpose, the parties are directed to appear before the Trial Court on 1-10-1996. The Trial Court shall complete the process within a period of two

months from that date.

5. The petitions are accordingly allowed. No order as to costs.

6. It is clarified that the original judgment dated 24-1-1987 will accordingly have to be reviewed and modified along the lines indicated in this order.