
(2006) 01 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 25456 of 2004

Ranoji Rao

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 28 A, 4
Limitation Act, 1963 — Section 5

Citation : (2006) 4 CivCC 175 : (2006) ILR (Kar) 1151 : (2006) 2 KarLJ 299

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : M. Muniraju, for Mylaraiah Associates, for the Appellant; T.A. Ramachandraiah, GP, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—By the impugned order dated 30.10.2003 at Annexure-B, the application filed by the Petitioner u/s 28-A of the Land Acquisition Act ("Act" for short) is dismissed by the 2nd respondent on the ground that the same is filed beyond 90 days from the date of award dated 5.9.2001 passed in LAC. Nos. 4/91, 1.3/91, 14/91, 30/91.

2. L.A.C. Nos. 4/91, 13/91, 14/91, 30/91 were disposed of by the Jurisdictional Civil Court and the award was passed in favour of the claimants therein on 5.9.2001. After obtaining the certified copy of the award passed in the said L.A.C., cases, the petitioner herein who was similarly placed as that of the claimants in the aforesaid L.A.C. cases filed application u/s 28-A of the Act on 26.6.2002 claiming similar compensation as ordered in the aforesaid Land Acquisition Cases. It is not in dispute that said application is filed by the petitioner after a lapse of 83 days of the time of limitation prescribed under the provisions of the Act.

Learned Counsel for the petitioner submits that Section 28-A of Land Acquisition Act being a beneficial provision, the Land Acquisition Officer should have

accepted the application filed u/s 28-A of the Act, by condoning delay. The said submission is opposed by Learned Government Pleader. Thus the only question that arises for consideration in this writ petition is:

Whether delay in filing an application u/s 28-A of the Land Acquisition Act can be condoned or not?

To determine the aforesaid question it is just and necessary to extract the relevant portion of the provisions of Section 28-A of the Act.

28-A. 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 (!) 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.

3. The bare reading of the aforesaid proviso makes it clear that the prescribed time limit for filing an application u/s 28-A of the Act is three months from the date of award of the Court. It is further clarified in the said proviso that the time requisite for obtaining a copy of the award shall be excluded. Thus, the aforesaid provision casts legal obligation on the claimant to enforce his claim within the period available for it. It is based on a public policy that a right should not be allowed to remain a right indefinitely to be used against another at the will and pleasure of the holder of such right by approaching the Court whenever he chooses to do so. When the right of the party stands extinguished on the expiry of 90 days from the date of award, after excluding the time taken for obtaining certified copy of the award, there is no question of reviving the right of the claimant by permitting him to file application for reference at his sweet will and pleasure, whatever be the inducement or occasion for doing so. In this connection, it is beneficial to refer to the Judgment of the Apex Court in the case of State of Andhra Pradesh and Another Vs. Marri Venkaiah and Others, wherein it is held as under:

In our view, with regard to first contention that Section 28-A is beneficial provision, there cannot be any dispute. However, the advantage of the benefit, which is conferred, is required to be taken within the stipulated time. A landowner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not

finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within prescribed time. He must at least be vigilant in making efforts to find out whether other landowner has filed any reference application and if so what is the result. If that is not done then law cannot help him.

By perusing the aforesaid observations and the letter and spirit of Section. 28-A of the Act, it would be amply clear that the limitation of three months to file application u/s 28-A of the Act for re-determination of compensation starts running from the date of passing of award by Reference Court and not from the date of acquisition of knowledge of passing of award. For compiling limitation of three months prescribed u/s 28-A of Land Acquisition Act, only the requisite time taken for obtaining certified copy of the Award of the Civil Court or Appellate Courts has to be excluded. In the present case, the petitioner has filed application u/s 28-A of the Act after the long lapse of period of limitation. The contention of the petitioner that he was un-well during relevant period and that therefore, he could not file application u/s 28-A of the Act within three months cannot be accepted inasmuch as, the provisions of Section 5 of the Limitation Act may not be applicable to the proceedings u/s 28-A of the Act, in the light of observation made by the Apex Court in the Judgment referred supra. The Land Acquisition Officer would not be entitled to revive a claim which has thus become unenforceable due to lapse of time or non-diligence on the part of the claimant. Section 5 of the Limitation Act would not be available in such cases, in as much as the consequence of not enforcing the right to have a reference made, is to put an end to the right to have a reference at all. The right, which has extinguished cannot be revived by resorting to Section 5 of the Limitation Act. The Legislature has made it clear in Section 28(A) of the Act that only the copying days shall be excluded which means, the time spent by the claimant under any other circumstances cannot be taken into consideration at all for the purpose of computing the period of limitation. If such belated applications are entertained, there may not be any finality to the award of payment of compensation in the land acquisition matters.

4. It is relevant to note the following observations made by the Apex Court while dealing with Section 18 of the Land Acquisition Act (Karnataka Amendment), vis-a-vis Section 5 of Limitation Act in the case of State of Karnataka Vs. Laxuman, which read thus:

Then the question is, whether in the context of Section 18 of the Karnataka Amendment, the decision of this Court in Thakoredas case and our discussion as above, Section 5 of the Limitation Act could be invoked or would apply to an application u/s 18(3)(b) of the Act. This Court has held that Section 5 of the Limitation Act has no application to the proceedings before the Collector or Deputy Commissioner here, while entertaining an application for reference. We see no reason not to accept that position.

(emphasis supplied by me)

The aforesaid observations of the Apex Court further makes it clear that the provision of Section 5 of the Limitation Act has no application for the proceedings before the Collector/Deputy Commissioner while entertaining the application for reference. In view of the above, I do not find any ground to entertain this writ petition and consequently, the writ petition is liable to be dismissed.

Writ petition is accordingly dismissed.