

(2013) 12 KAR CK 0128

In the Karnataka High Court

Case No : Writ Petition No's. 51316-318 of 2013 (LA-RES)

Rathnamma, Manjunath and Harish

APPELLANT

Vs

The Special Land Acquisition Officer and The Executive Engineer

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0128

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : A. Nagarajappa, for the Appellant; R.B. Satyanarayana Singh, High Court Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioners. The Government Pleader takes notice for the respondents.

2. The petitioners are before this Court in the following background:

The petitioners claim to be the legal heirs of one Omkarappa, who was the husband of the first petitioner and father of petitioners 2 and 3. Omkarappa is said to have died on 5.1.2000. It transpires that Basappa, the brother of Omkarappa had approached the Court of Civil Judge (Sr. Dn), Harihar, in LAC. No. 26/06 seeking enhancement of compensation. It is in that proceedings that the petitioners had sought to file an application seeking to come on record as the legal representatives of Omkarappa. The Court below proceeded to hold that the Court was rendered functus officio and that it has no jurisdiction to entertain the application filed by the legal representatives of the party who was not the original applicant or the claimant whose matter had been referred and unless there was reference of the same, the legal representatives being permitted to come on record was not permissible in law and the same was rejected. It is in this background that the petitioners are before this Court.

3. While it is the settled legal position that the civil Court to which a reference has been made would have no jurisdiction to consider the claim of a person who was not before the authority in the first instance. The present situation is where the person under whom the petitioners are claiming was very much a party before the Land Acquisition Officer. It is on his demise that they should have taken steps to pursue the matter in his stead. The failure on their part cannot be attributed to want of diligence or negligence. It was sheer ignorance and lack of awareness that has prevented them from proceeding with expedition. Therefore, it would be in the fitness of things, notwithstanding the settled legal position, that a party who was not party to the reference being heard by the civil Court will necessarily have to be diluted given the circumstance that the petitioners claim to be the legal representatives of the original claimant and that in the event that they are in a position to establish their bona fides it would be appropriate that their case for enhancement of compensation is considered. In this regard, this Court in a batch of writ petitions has taken a similar view in W.P. No. 11006-11007/13 and connected cases disposed of on 14.8.2013 (Smt. Lakkavva and others v. Executive Engineer, Bhadra Canal Division, Harihar Tq.) Therefore, the present petitions are summarily allowed. The petitioners shall approach the Court below and file necessary interlocutory application to recall the judgment in LAC. No. 26/06 for the limited purpose of considering the petitioners' applications for recalling the judgment to come on record, to set aside the abatement and for condonation of delay etc., The reference Court shall consider the said applications in accordance with law and as directed by this Court. The respondents shall be at liberty to address the bona fides of the petitioners claiming as legal representatives of the deceased Omkarappa. The reopening of the case by the reference Court shall only be for the purpose of considering the applications as aforesaid and the claim for enhancement of compensation insofar as Omkarappa's claim was concerned. The reference Court shall endeavour to dispose of the application with expedition. In any event, within the outer limit of four months" from the date of the aforesaid applications being filed by the petitioners.