

(1998) 08 KAR CK 0045

In the Karnataka High Court

Case No : Civil Revision Petition No. 3008 of 1994 connected with Civil Revision Petition No. 3009 of 1994

Sampanna Gurusiddappa Maribasannavar

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 137

Land Acquisition Act, 1894 — Section 12 (2), 18 (1), 18 (3) (b)

Citation : (1999) 2 KarLJ 246

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri M.B. Nargund, for the Appellant; Sri M.H. Ibrahim, High Court Govt. Pleader, for the Respondent

Judgement

1. These revision petitions arise from the order dated 7-6-1994 passed by the Additional Civil Judge, Chikkodi, (N.B. Kulkarni) rejecting the revision petitioners application u/s 18(3)(b) of the Land Acquisition Act on the ground that application u/s 18(1) of the Act had not been moved within 90 days and so the respondent i.e., the Special Land Acquisition Officer had no jurisdiction to refer the original application. As such the application u/s 18(3)(b) was not maintainable.

2. I have heard the learned Counsels for the parties. It has been contended by the learned Counsel for the revision petitioners that 90 days period from the date of communication of award u/s 12(2) is available to the person aggrieved, to move the application u/s 18(1) of the Act. That in the present case, notice of award dated 18-6-1988 had been served u/s 12(2) on the petitioners on 26-9-1989. The application u/s 18(1) was moved on 21-12-1989. Thereafter, the Deputy Commissioner i.e., the competent authority did not refer the matter and allowed 90 days time to expire. It has been contended that from the date of expiry of that period of 90 days u/s 18(3)(a), the application dated 18-7-1992 moved u/s 18(3)(b) was well within time. The learned Counsel contended that

the learned Civil Judge illegally refused to exercise jurisdiction vested u/s 18 on an erroneous view of law to the effect that u/s 18(1) application was barred by time as well as in holding that u/s 18(1) of the Land Acquisition Act, as application was not made within time, there was no obligation as well as there was no jurisdiction in the Land Acquisition Officer to refer the case or to make reference.

3. The contentions have been opposed on behalf of the respondents by the learned Government Pleader.

4. In my opinion, there is some substance in the contention of the learned Counsel for the revision petitioners. Section 12 of the Act is a mandatory provision which makes it obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives. In the present case, notice has been issued and served on 26-9-1989.

5. Section 18 of the Land Acquisition Act as amended by the State of Karnataka has introduced and added, the proviso to Section 18(2) which reads and provides that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner u/s 12(2) of the Act. It may be pointed out that Section 12(2) as amended by the Karnataka Act provides that Deputy Commissioner shall give immediate notice of his award or amendment thereof made u/s 12-A to the persons interested. There is a wide change and variation in Section 12(2) of the original Central Act, and that under the Karnataka Amendment Act. A reading of Section 12(2) as original in the Central Act makes it mandatory to issue notice on such persons interested as are not present personally or by their representative when the award is made. But Section 12(2) does not use the expression such persons interested as are not present. It clearly provides that notice has to be issued to all the persons interested. So this provision u/s 18(2) read with Section 12(2) of the Karnataka Act, the limitation for filing application u/s 18(2) has to be counted from the date of service of the notice u/s 12(2) of the Act. Notice in this case had been served on 26-9-1989. The period of 90 days therefore for moving application under proviso to Section 18(2) would have expired on 26-12-1989. As appears from the order itself, Section 18(1) application was moved by the present revision petitioners on 21-12-1989. So this application u/s 18(1) was well within the period of 90 days from the date of service of the aforesaid notice. As such, it was obligatory u/s 18(3)(a) on the Deputy Commissioner or the competent authority to have made the reference to Civil Court. But, the authority failed to perform the obligation imposed u/s 18(3)(a) of the Act. Therefore, under Article 137 of Schedule to Limitation Act within the period of 3 years from the date of expiry of 90 days period from 21-12-1989, the application, u/s 18(3)(b) could be made. That it could be made by or before 20-3-1993. In the present case, application u/s 18(3)(b) was made on 18-7-1992 well within the period of 3 years from 21-12-1989. That is from the date of expiry of 90 days period during which it

was obligatory on the Deputy Commissioner or the competent authority to refer the matter to the Civil Court. Thus, in my opinion, application u/s 18(2) as well as 18(3)(b) were well within limitation. The Court below, by taking a wrong decision to the effect that there was no jurisdiction on the Deputy Commissioner to make reference, as 18(1) application was time barred, appears to have illegally refused to exercise jurisdiction vested u/s 18(3)(b), when he rejected 18(3) application and refused to decide the reference on merits. The order impugned definitely have got the tendency of causing injustice to the revision petitioners, who are not satisfied by the award of the Special Land Acquisition Officer. Thus, considered in my opinion, the revision petitions have got merit. The revision petitions as such have to be allowed and are accordingly allowed. The order dated 7-6-1994 passed by the learned Additional Civil Judge, Chikkodi, in LAC Nos. 162 of 1994 and 163 of 1994 are hereby set aside by this Court in exercise of powers u/s 115. The Court below is directed as well to decide the reference on merits after calling the records from the office of the Special Land Acquisition Officer. Revisions are allowed with costs.