

(2016) 12 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 109532 of 2015

Sannabasappa Angadi

APPELLANT

Vs

Deputy Commissioner, District Administrative Bhavana,
Koppal

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 28A

Citation : (2017) 2 KantLJ 112

Hon'ble Judges : G. Narendar, J.

Bench : Single Bench

Advocate : Sri. M.S. Hallikeri, Advocate, for the Petitioner; Vidyavathi K. AGA, for the Respondent

Final Decision : Disposed Off

Judgement

G. Narendar, J.—Heard the learned Counsel for the petitioner and the learned Additional Government Advocate.

2. The learned Additional Government Advocate accepts notice on behalf of both the respondents.

3. The writ petition lies in a narrow compass. The petitioner is before this Court being aggrieved by the order of the Assistant Commissioner and Special Land Acquisition Officer, Koppal District, Koppal.

4. The brief facts are that the land of the petitioner measuring 31 guntas comprised in S. No. 4 of Budshetnal Village of Koppal Taluk was notified for acquisition for the purpose of construction of Budshetnal Tank vide notification dated 18-10-1979 and final notification dated 23-10-1980.

5. Thereafter an award came to be passed and upon request of the claimant therein, the matter was referred to the Reference Court in LAC No. 27 of 1985. The Reference Court granted an enhanced compensation at the rate of Rs.

8,550/- per acre along with statutory benefit.

6. It is the case of the petitioner that the father of the petitioner upon coming to know of the enhanced compensation, made an application under Section 28-A of the Land Acquisition Act, 1894 claiming for an award in parity with the enhanced sum awarded by the Reference Court. The said application came to be made on 8-12-1994 and it is this application which came to be disposed of by the second respondent vide his order dated 26-8-2014 i.e., after a lapse of nearly 21 years. The second respondent was pleased to reject the application preferred under the provisions of Section 28-A of the Act on the short premise that the application is preferred beyond the permitted period of 90 days.

7. The learned Counsel petitioner would submit that prima facie the impugned order and the reasonings are unsustainable. He would assail the impugned order on the ground that the second respondent erred in construing the permissible period as 90 days. He would draw the attention of this Court to the proviso and submit that the period provided under the Act is three months and not 90 days. He would submit that in the period the application was made, i.e., the total number of days in the permitted period of three months is 91 days as the month of October has 31 days in the calendar.

8. He would further contend that the second respondent has erred in calculating the number of days to be deducted. He would submit that the proviso to Section 28-A clearly stipulates that the date on which the award was pronounced and, time requisite for obtaining a copy of the award shall be excluded for calculating the period of three months.

9. In the instant case on hand it is seen that the award was passed on 2-9-1994 and the application for issuance of certified copy was made on 13-9-1994 and the certified copy was issued on 19-9-1994. As per the proviso, the date of the award i.e., 2-9-1994 and the date of the application and the intervening period till the date of issuance of certified copy i.e., 19-9-1994 has to be deducted for the purposes of calculating the three months period. Even as per the impugned order the second respondent has reasoned that there is a delay of 7 days. The second respondent has calculated the delay at 97 days. Even assuming that the application under Section 28-A of the Act has been preferred on the 97th day, the number of days to be excluded while calculating the delay is 8 days. In the event 8 days being deducted, the application is filed well-within the time as stipulated to the proviso to Section 28-A.

10. Even otherwise the second respondent erred in construing that the period of three months amounts to 90 days. As rightly pointed out by the learned Counsel for the petitioner, in view of the month of October having 31 days, the total number of days within which the petitioner was required to file the application was on or before the end of 91st day.

11. Accordingly, the petition is required to be allowed and is accordingly, allowed. The impugned order at Annexure-G is set aside. It is ordered that the application

under Section 28-A of the Act is well-within the time. The matter is remitted back to the second respondent for consideration afresh and for disposal on merits. Keeping in view the long pendency of the matter the second respondent is directed to consider and pass orders afresh on the said application within a period of three months from the date of receipt of the copy of this order. Petitioner to forward a certified copy of this order to the 2nd respondent by way of RPAD to expedite consideration.

12. Writ petition is disposed of accordingly.