

(1998) 08 KAR CK 0047

In the Karnataka High Court

Case No : Civil Revision Petition No. 860 of 1994

Sannegowda

APPELLANT

Vs

The Special Land Acquisition Officer, Mandya

RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Constitution of India, 1950 — Article 39A

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

Citation : (1999) 2 KarLJ 231

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Mahantesh S. Hosmath, for the Appellant; Sri M.H. Ibrahim, High Court Government Pleader, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioner Sri Srinivas holding brief for Sri Mahantesh S. Hosmath and Sri M.H. Ibrahim, learned Government Pleader.
2. This revision arises from the order dated 13-12-1993 passed by the learned Civil Judge, Mandya, dismissing the revision petitioner's application u/s 18(3) of the Land Acquisition Act as has been barred by time.
3. The facts of the case in the nutshell are that, in land acquisition proceedings, award was given by the Special Land Acquisition Officer, which award is dated 1-10-1990. Revision petitioner was paid the compensation to the tune of Rs. 9,222/- as per voucher dated 14-10-1992. The voucher was passed for payment on 14-10-1992. The revision petitioner after receipt of the amount filed a protest note with prayer that the amount assessed is too low and unsatisfactory and the matter should be referred to the Civil Court for decision u/s 18. This way he made prayer for reference being made u/s 18 before the Special Land Acquisition Officer thereafter the petition before Civil Court on 18-1-1993. As appears from the proceedings dated 19-1-1993 that, on 18-1-1993 reference petition u/s 18(3) (b) of the Land Acquisition Act as amended by Karnataka Act, was made by the revision petitioner. This application was rejected taking the view that the

petitioner has failed to prove that he had filed the protest application within 90 days of such award notice.

4. It has been contended on behalf of the revision petitioner in this revision that limitation for filing the revision u/s 18 arises only on the service of notice u/s 12 of award being given which has not been served on the revision petitioner. He only got the information and voucher for money being realised and this voucher was dated 14-10-1992. It is only after receipt of voucher, he withdrew the money under protest and filed this application on 23-10-1992. So this application is within time. It has further been stated that for moving the Civil Court, period of three years is applicable as per Article 137 of the Limitation Act as there is no other provision under Land Acquisition Act prescribing the period of limitation. He submitted that the application which had been moved on 18-1-1993 which is well within three years period from the date of award, which award is dated 1-10-1990 and therefore, the Civil Judge illegally refused to exercise the jurisdiction vested in him by rejecting the Section 18(3)(b) application. Learned Counsel contended what was material was that in spite of protest, the Special Land Acquisition Officer refused to refer the matter and allowed 90 days time to lapse and then cause for applying Section 18(3) application did arise. Learned Counsel contended really application has been within time, atleast within 390 days from the date of award. He further contended that it is and has been the duty of the Special Land Acquisition Officer who was possessing the records to have shown that notice u/s 12 of the Act has been served and it has been served on what date. This having not been brought on record before the Civil Judge, the learned Civil Judge ought not to have rejected the petitioner's application.

5. Learned Government Counsel contended that as application u/s 18(1) was not within time from the date of award, as no date of knowledge has been indicated, there was justification for the Land Acquisition Officer not to have referred it and when he was justified, the application u/s 18(3) could not be maintained.

6. I have applied my mind to the contentions made by the learned Counsels for the parties.

7. It has to be taken note of keeping in view the scheme of the Constitution, the preamble of the Constitution as well as provisions of Article 39A of the Constitution that no person should be deprived of the course of justice as Constitution assures justice, socio-economic and political. When land is acquired and taken away, justice demands that he should be compensated and if remedies are provided, he should not be deprived thereof simply on account of his illiteracy or poverty. We have to keep in mind that India does not live in cities like Bombay, Bangalore, Calcutta, Madras, Delhi etc. It lives in villages where ignorance is yet prevalent. State must take note that it should not take undue advantage of illiteracy of our people living in villages. Its approach should be justice oriented. If the Land Acquisition Officer has to take the plea that the reference was time-barred and it had the records with itself, it had has been bound to prove and show that notice u/s 12(2) had been issued and served and

protest application u/s 18(1) was barred by time and it should have produced the record before the Civil Court and Civil Court should have examined it whether any notice was at all served u/s 12(1) and if the Land Acquisition Officer does not take that plea clarity of fact and does not place the record, in such a case before Court then if the applicant states that he has not been served with the notice, the basic principle of law is that the documents throwing light on the question involved before the Court if it is in possession of a party to the case which have not been produced by that party, presumption should be raised against that party and application should have been taken to be within time or if the Civil Court was doubtful, it could have summoned the record. Nothing appears to have been done. It appears that the learned Civil Judge flouted the basic principles of law that no person should be denied of course of justice on account of his or her economic, social or educational disability. The documents produced before me clearly reveal that in every case, the petitioner did come to know about the award on 14-10-1992 as no other date has been proved nor it has been proved that notice u/s 12(2) was served on earlier date. In this view of the matter, the application or protest note as per Ex. P. 2 and Ex. P. 3 which was made on 23-10-1992 was well within 90 days, atleast from the date of knowledge and when the Special Land Acquisition Officer did not refer the matter in pursuance of application or protest note dated 23-10-1992 and allowed three months time to expire, thereafter right and cause accrued to the present revision petitioner to move the application u/s 18(3)(b) of the Land Acquisition Act. The Land Acquisition Act as amended by Karnataka Act No. 17 of 1961 does not prescribe any period of limitation for moving the application u/s 18(3)(b). Section 18(3) was introduced by Karnataka Act. There is no provision indicating the period of limitation for moving an application u/s 18(3)(b). In absence of any such prescribed period of limitation for moving application u/s 18(3), as held by the Supreme Court in very many cases, Article 137 of the Limitation Act will apply which provides for three years period from the date when the right to apply accrues. As such, three years period was available to the revision petitioner to move the application u/s 18(3)(b) application. The application had been moved on 18-1-1993 which is well within time.

8. Thus considered in my opinion, the learned Civil Judge committed jurisdictional error in rejecting the application u/s 18(3)(b) of the Act. The order if it is not being set aside, it has every tendency of causing irreparable loss and injury to the petitioner and as such, it-deserves to be set aside.

9. Thus considered, revision has got merits and has to be allowed and is hereby allowed setting aside the order impugned dated 13-12-1993 passed by the Principal Civil Judge, Mandya. The learned Civil Judge is directed to entertain the application and to issue direction to the Special Land Acquisition Officer to refer the case finally for decision of the case, may it be that because of illiteracy the proper grounds might not have been framed. If necessary, the applicant may be permitted to modify and give in detail the objections against the award and it should be decided on merits.

10. Revision is allowed. Costs of this revision has to be borne by the parties themselves.