

(2013) 09 KAR CK 0320

In the Karnataka High Court

Case No : Writ Petition No. 81608 of 2012 and etc. (LA-RES)

Sidramappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : AIR 2014 Kar 100 : (2014) ILR (Kar) 1 : (2014) 3 KCCR 2003

Hon'ble Judges : K. Bhakthavatsala, J;B.V. Pinto, J;B.S. Indrakala, J

Bench : Full Bench

Advocate : Sanjeev Kumar C. Patil, for the Appellant; Shivakumar Tengli, Addl. GA for R-1 to 3 and Sri. Manvendra Reddy, GA for R-4, for the Respondent

Judgement

Dr. K. Bhakthavatsala, J.—In view of the Order dated 17.1.2013 made by Learned Single Judge in WP Nos. 81608/2012 & 81701 to 81748/2012 (LA-Res), Hon"ble Chief Justice, by Order dated 6.9.2013, has constituted this Full Bench for answering the Reference.

2. In para-8 of the Order dated 17.1.2013, Learned Single Judge has observed as under:

8. A Full Bench of this Court in Narasimhasetty (Deceased) By L.Rs Vs. Padmasetty, after taking note of the decision of the Apex Court in Shri Bhagwan and Another Vs. Ram Chand and Another, and in Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, has held that if a learned Single Judge of a High Court hearing the matter feels that the earlier judgment of a Division Bench of the Court requires reconsideration in the absence of any statutory provision empowering him to refer the same to a larger Bench, he can place the relevant papers before the Hon"ble Chief Justice to enable him to constitute a larger Bench to examine the question. Therefore, I direct the Registry to place the matter before the Hon"ble Chief Justice for appropriate orders for assigning it to a larger Bench.

(S. Abdul Nazeer)

Judge

3. Learned Single Judge has not mentioned the provision under which he has made the Reference. However, we presume that the Reference has been made to Full Bench u/s 7 of the Karnataka High Court Act, 1961 (in short, "the High Court Act").

4. Learned Counsel for the petitioners submits that the petitioners have sought for quashing an Endorsement dated 18.8.2011 at Annexure-X rejecting the request of the petitioners to award interest at the rate of 15% per annum, u/s 34 of the Land Acquisition Act, 1894 (in short, "the Act") from 22.9.2008 to 15.11.2010 and that he did not place reliance on the decision in Krishnabai & Others vs. Special Land Acquisition Officer (CLAIMS), Krishnabai and Others Vs. Special Land Acquisition Officer (Claims), Upper Krishna Project and Another, . He further submits that there is no question involved in the case calling for decision by Full Bench and the Reference is bad in law.

5. Learned Addl. Govt. Advocate for respondents 1 to 3 and Sri. Manvendra Reddy for respondent No. 4/Railways contended that in view of the consent award passed by Special Land Acquisition Officer (SLO), the petitioners are not entitled to seek interest from the date of taking possession of the land and until payment. It is also contended that in view of the urgency for laying railway line from Raichur to Gadwal, lands (which were acquired u/s 4(1) Notification dated 7.8.2007 and final notification made u/s 6(1) dated 29.7.2008) were taken possession on 25.10.2008. On 24.9.2009, the Deputy Commissioner, Raichur held a meeting with the petitioners. On 17.11.2009, the Deputy Commissioner, Raichur, sent a proposal for consent award to the Government. On 12.7.2010, the Government approved the consent award. On 23.10.2010, SLO passed a consent award u/s 11(2) of the Act. On 2.11.2010, the respondent No. 4/Railways, who is beneficiary of acquisition of land, deposited the compensation amount with the Deputy Commissioner, Raichur. On 11.11.2010, the Special Land Acquisition Officer issued notice u/s 12(2) of the Act to the petitioners for receiving compensation amount. It is contended that there was no delay in passing the consent award and payment of compensation as per the consent award and therefore the petitioners are not entitled for interest as claimed in the Writ Petitions. It is further contended that in the decision in State of Karnataka and Another Vs. Sangappa Dyavappa Biradar and Others, , it has been held that when consent awards are passed, statements were also made by the respective villagers declaring that they would not approach any Court for enhancement of the compensation for any other reason, the applications in terms S. 18 of the Act before the Special Land Acquisition Officer seeking reference to the Civil Court for determination of quantum of compensation, were not maintainable and in view of the above-said decision of the Apex Court, the decision of the Division Bench in the case of Krishnabai, is per incuriam and the order of the Learned Single Judge for referring the matter to Full Bench is unnecessary. They have cited decisions on the point that since the petitioners have accepted the consent

award, they are not entitled for interest on the compensation amount u/s 34 of the Act.

6. It is useful to refer to Section 7 of the High Court Act, which reads as under:

7. Reference to Full Bench- (1) Where in any proceeding pending before it, any question of law or usage having the force of law arises, a Bench consisting of not less than two Judges of the High Court may, if it thinks fit, and shall, if it differs from the view taken by a similar Bench of the High Court on the said question, refer to a Full Bench of the High Court the question of law or usage having the force of law.

(2) The decision of the majority of Judges comprising a Full Bench of the High Court shall be the decision of the High Court.

7. As required u/s 7 of the High Court Act, Learned Single Judge has not formulated a specific question to answer by the Full Bench. However, from para-7 of the Order of Learned Single Judge dated 17.1.2013, we presume that Learned Single Judge has doubted the correctness of the law laid down by the Division Bench in Krishnabai's case, (Supra).

8. We have perused the decision rendered in Krishnabai's case (Supra). The said decision came to be rendered on 2.7.2009 in RP No. 2517/2009 filed in WA No. 3855/2005 and connected matters. In the said decision, the Division Bench of this Court has held as under:

6.....The Article 14 of the Constitution mandates equality before law and equal treatment in law, merely because the petitioners had opted for consent award is not a ground to deny the just compensation in accordance with law. The terms of the consent given if any cannot be enforced against the petitioners to estop them from seeking the legal compensation. When the property of a person is acquired under the Act, it is the statutory right of such person to get compensation including solatium as per the provisions of the Act. The State should uniformly grant the compensation including solatium with interest thereon in accordance with law under the L.A. Act to all the persons whose properties are acquired without hostile discrimination. The fundamental right under Article-14 is inalienable and cannot be waived. In that view, the petitioners cannot be discriminated and denied compensation in law.

9. Learned Single Judge has referred to the decision rendered in State of Karnataka and Another vs. Sangappa Dyavappa Biradar and Others (Supra), which is directly on the point that in the case of passing consent award, the owner of the land acquired is estopped and precluded from maintaining an application for Reference u/s 18 of the Act and also trite that by reason of such agreement, the right to receive amount by way of solatium or interest etc., can be waived. It is useful to excerpt paragraph-15 of the order of the Apex Court made in Sangappa's case, which reads as under:

15. The Respondents having accepted the award without any demur were

estopped and precluded from maintaining an application for reference in terms of Section 18 of the Act. It is also trite that by reason of such agreement, the right to receive amount by way of solatium or interest etc., can be waived.

10. The decision reported in Sangappa's case is applicable on all the fours to the case on hand as the award was passed by consent. In para-5 of the order of Learned Single Judge, he has observed that "the question for consideration is having received the compensation in terms of the consent award, whether they can seek interest contrary to the terms of the said award?" In para-7 of the order of Learned Single Judge, he has observed that-

I am of the view that once a consent award has been passed u/s 11(2) of the Act, question of seeking any amount over and above the amount settled in the consent award does not arise. The view expressed by the Division Bench requires re-consideration by a Larger Bench.

In view of the above observation, we presume that the question of law for reference appears to be "whether the decision of the Division Bench rendered in KRISHNABAI & OTHERS, (Supra) has laid down the correct law?" In our view, in view of the decision rendered by the Apex Court in Sangappa's case (Supra) such a question does not survive for consideration.

11. For referring the matter to Full Bench, Learned Single Judge has relied upon a decision Narasimhasetty (Deceased) By L.Rs Vs. Padmasetty, . In that case, Second Appeal was placed before the Full Bench under the orders of the then Hon'ble Chief Justice, since Learned Single Judge, before whom the Appeal was placed for hearing, doubted the correctness of the law laid by the Division Benches of this Court in the case of Kareem Baig Vs. Dr. Mohammad Khizar Hussain, , Gururao Vs. Subba Rao, and Azmathulla Khan Vs. Thankamma Mathews, . In the said decisions, it has been held that once the remedy by way of suit for specific performance of a contract for sale of an immovable property becomes barred by limitation as provided under the Limitation Act, then, even the statutory right of the transferee, as given u/s 53A of the Transfer of Property Act, 1882, to defend the possession over the property taken or continued under the said contract as granted is lost, destroyed or gets extinguished. In that case, as there was no direct decision of the Apex Court on the point in question, Learned Single Judge made the Reference. But, in the instant case, Learned Single Judge himself has referred to the decision of the Apex Court reported in State of Karnataka and Another Vs. Sangappa Dyavappa Biradar and Others, , which is directly on the point. Now, we proceed to refer to Article 141 of the Constitution of India. Ours is a Unified judiciary. According to Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The expression "all courts" means Courts other than the Supreme Court. The decision of the Supreme Court is binding on all the High Courts. In other words, the High Courts cannot hold the law laid down by the Apex Court is not binding on the ground that relevant provisions were not brought to the notice of the Supreme Court, or the Supreme Court laid

down the legal position without considering all the points, and hence its decision. The decision of the Apex Court binds as much the pending cases as the future ones. Even the directions issued by the Apex Court in a decision constitute binding law under Article 141 (relied on *Vishaka and others Vs. State of Rajasthan and Others*,). In the academic interest, it is pertinent to state that the Supreme Court is not bound by its own decisions and may overrule its previous decisions (relied on *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*,). It is also pertinent to state that the Apex Court may overrule the previous decisions either by expressly saying so or impliedly by not following them in a subsequent case (relied on *C.N. Rudramurthy Vs. K. Barkathulla Khan and Others*,). Thus, in view of Article 141 of Constitution of India, when there is a decision of the Apex Court directly applicable on the all fours to the case on hand, the Learned Single Judge could have decided the Writ Petitions following the decision of the Apex Court, holding that the decision of the Division Bench is contrary to the law laid down under Article 141 of the Constitution of India. Therefore, we can hold that the order of Reference is unnecessary. However, we answer the Reference, holding that in view of the decision of the Apex Court rendered in the case of *State of Karnataka and another vs. Sangappa Dyavappa Biradar and Others* (Supra), the law laid down by the Division Bench of this Court rendered in *Krishnabai's case*, supra, is not correct. Accordingly, the Reference is answered. The Petitions can be decided by Learned Single Judge in the light of the law laid down by the Apex Court.

Let the papers of the present Petitions be placed before the Hon"ble Chief Justice for appropriate orders.