

(2003) 07 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No's. 26272 and 28689 of 2001 and 35958 to 35979 of 2002

Smt. Narasamma

APPELLANT

Vs

The Karnataka Industrial Area Development Board and
Others

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 3 (c), 30, 31
Specific Relief Act, 1963 — Section 21

Citation : (2003) 6 KarLJ 299 : (2003) 4 KCCR 2926

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : C.V. Nagesh and K. Suman, in W.P. Nos. 35958 to 35979 of 2002 and S. Channarayana Reddy, in W.P. No. 26272 of 2001 and M.R. Shailendra, in W.P. No. 28689 of 2001, for the Appellant; Ashok B. Hinchegeri, for Respondent Nos. 1 and 2 in W.P. No. 26272 of 2001 and for Respondent 1 to 3 in W.P. No. 28689 of 2001 and Basavaraj V. Sabarad and Gowhar Unnisa, Nos. 2 and 3 in W.P. Nos. 35958 to 35979 of 2002 and P.T. Hebbar, 3 in W.P. No. 26272 of 2001 and Y.K. Narayana Sharma, Nos. 4 to 11 in W.P. No. 28689 of 2001, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—The petitioners in all these writ petitions are claiming to be the holders of an agreement executed by the landowners agreeing to sell certain lands in their favour for consideration. Before the performance of the contract as per the above said agreement by either of the parties, the lands in question were acquired by the State Government under the provisions of the Karnataka Industrial Area Development Act. In view of this acquisition of the lands there cannot be any specific performance of the contract by the landowner even assuming that the petitioners were to file suits for specific performance of the contract.

2. The Land Acquisition Officer, on the basis of the preliminary notification issued under the above said enactment has passed an award determining the market value of the lands in question. Subsequent to the passing of the award, the petitioners have made application for reference u/s 30 read with Section 31 of the Land Acquisition Act to the Civil Court claiming that they are also entitled for compensation as they have paid part of the consideration under the agreements of sale. Since no orders have been passed on their applications, the petitioners are before this Court seeking for a direction to the Land Acquisition Officer to refer the dispute u/s 30 of the Act.

3. Sri Sharma, learned Counsel appearing for certain owners submitted that the petitioners who claim to have derived right under the agreements of sale, have lost their right to execute and therefore, they have no right to ask for reference u/s 30 of the Act. He further submits that since the petitioners have not filed any suits for recovery of money, they are not entitled for any compensation from out of the compensation awarded in favour of the landowners. Sri Hinchegeri, learned Counsel appearing for the Board submitted that as there are innumerable claims by the land-grabbers, agreement holders and power of attorney holders, the Land Acquisition Officer was instructed not to refer the matter to the Civil Court on the applications filed or to be filed seeking for a reference u/s 30 of the Act.

4. When a land is acquired for a public purpose, the Deputy Commissioner who is appointed as the Land Acquisition Officer u/s 3(c) of the Land Acquisition Act is required to determine the market value. If any person who is interested in the land is aggrieved of the said market value, he may make necessary application to the Land Acquisition Officer seeking for a reference u/s 18 of the Act. Section 30 of the Land Acquisition Act provides for reference to the Civil Court, if there is any dispute regarding payment of compensation. In the instant case, the petitioners being agreement holders are not entitled for reference u/s 18 of the Act, as they have not acquired any title to the property. But, at the same time, the petitioners are entitled for compensation if they cannot seek for performance of the contract consequent on the acquisition of the land. Under such a situation Section 21 of the Specific Relief Act provides for the agreement holders to claim damages/compensation. Supreme Court in the case of Jagdish Singh Vs. Natthu Singh, has held as follows:

"But in Indian Law the contract, for no fault of the plaintiff, becomes impossible of performance. Section 21 enables award of compensation in lieu and substitution of specific performance".

Supreme Court in another case Sunil Kumar Jain Vs. Kishan and others, has observed as follows:

"However, if the petitioner has got any claim u/s 30 of the Land Acquisition Act, it is open to him to take such action as open to him under law".

From these decisions and also in view of Section 21 of the Specific Relief Act, the

agreement holders are entitled for compensation as they are not in a position to file a suit for specific performance of the contract since the very land has vested with the State Government.

5. It is submitted that the petitioners cannot maintain an application u/s 30 of the Land Acquisition Act seeking for a reference, as they have not filed suits for recovery of damages or compensation when they cannot file suit for specific performance of the contract. Under the common law, if a person has got more than one remedy, it is open for him to avail any one of the remedies available to him. But, availing of one remedy may impliedly bar the other remedy or remedies. The petitioners have two remedies. One is to file application for reference u/s 30 of the Land Acquisition Act, another is to file suit for recovery of compensation or damages. In the instant case, the petitioners have filed application seeking for reference. On reference, it is for them to establish their right to claim compensation or damages. Therefore, I am of the considered view that the petitioners are entitled to maintain an application u/s 30 of the Act even though they have not filed a separate suit for recovery of money by way of damages for compensation.

6. It is nextly contended that the claim of the petitioners are all barred by time and therefore, there is no reason for the Land Acquisition Officer to refer the same to the Civil Court. Whether the claim of the petitioner is barred by time is a matter to be decided by the Civil Court and not a matter that can be considered by the Special Land Acquisition Officer on an application for reference u/s 30 of the Act. Therefore, I hold that the petitioners are entitled for a direction as prayed for in all these writ petitions.

7. The circular issued by the Special Deputy Commissioner of KIADB, Bangalore directing the Land Acquisition Officer not to refer the dispute to Civil Court on the application filed for reference u/s 30 of the Land Acquisition Act has virtually come in the way of discharging the statutory duty conferred on the Deputy Commissioner, who is appointed as the Special Land Acquisition Officer u/s 3(c) of the Land Acquisition Act. Therefore, ignoring the said circular, the Land Acquisition Officer is directed to refer the same to the Civil Court u/s 30 read with Section 30 of the Act. In the result, I pass the following order:

(a) Writ petitions are allowed.

(b) A direction is issued to the Special Land Acquisition Officer to refer the application filed by the petitioners for reference u/s 30 read with Section 31 to the Civil Court.

(c) The Civil Court, on reference shall consider all the contentions raised by the parties and pass appropriate orders thereafter.