

(2007) 03 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 3729 of 2007

Smt. Ningajamma

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-03-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18 (3) (b), 28 A, 28 A (3)

Citation : (2007) ILR (Kar) 2435 : (2007) 3 KCCR 1706

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : B.S. Nagaraj, for the Appellant; R. Sridhar Hiremath, A.G.A. for Respondent Nos. 1 to 3, for the Respondent

Judgement

Ajit J. Gunjal, J.—Mr. Sridhar Hiremath, learned Additional Government Advocate is directed to take notice for respondents 1 to 3.

2. Pursuant to preliminary and final notifications, the land of the petitioner is acquired for Electronic Warfare Range for Defence Department. Suffice it to say that under the general award, the Land Acquisition Officer determined the market value at Rs. 30,000/- per acre. Learned Civil Judge enhanced the same to Rs. 50,000/- per acre in the reference case. With regard to this, an application is made by the petitioner u/s 28A of the Act seeking redetermination. The said application was rejected. Hence, an application is made u/s 28A, Sub-section (3) of the Act seeking reference to the Civil Court. The grievance of the petitioner is that the said application, which is filed before the Deputy Commissioner, second respondent, is still pending and the matter is not as yet referred. Hence, the present petition seeking a direction to the second respondent to refer the matter to the Civil Court.

3. Section 28A of the Act was inserted by Act 68 of 1984. The core of Section 28A is in respect of redetermination of compensation on the basis of the award of the Reference Court. The scope of Section 28A of the Act is that any person who is aggrieved by the determination of the market value by the Land Acquisition

Officer but who has not sought reference u/s 18, can make an application under the provisions of Section 28A of the Act seeking redetermination of the compensation of conformity with the award passed by the Reference Court. Indeed, the said application for redetermination of the amount of compensation shall be made within a period of 3 months from the date of passing of the award by the Reference Court. The Land Acquisition Officer, thereafter, shall consider the said application by holding necessary enquiry after issuing notice to all the persons interested and after affording them reasonable opportunity of being heard and redetermine the compensation payable to the applicants. Sub-section (3) of Section 28A of the Act would deal with a situation where if such an application is rejected, the applicant shall make an application to the Deputy Commissioner requesting the matter to be referred to the Court for redetermination. The provisions of Sections 18 to 28 of the Act are also made applicable to an application filed u/s 28A, Sub-section (3) of the Act.

4. u/s 18 of the Act, a dissatisfied claimant can make an application seeking reference to the Court. By Karnataka Amendment, 18(3) has been added which would read as under:

18. (3)(a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under Sub-section (1), make a reference to the Court.

(b) If the Deputy Commissioner does not made a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix.

If the provisions of Section 18(3)(b) are made applicable to an application made u/s 28-A(3) to the second respondent, indeed, the only option which is open to the dissatisfied applicant is to file a petition before the Reference Court seeking a direction to the Land Acquisition Officer to refer the matter. Apparently, a writ petition under Article 226 of the Constitution of India cannot lie seeking to issue a writ of mandamus to the second respondent to refer the matter to the Reference Court. When there is an alternate and efficacious remedy for the redressal of the grievance of the petitioner u/s 18(3)(b) of the Act, I am of the view that the writ petition is not maintainable.

Consequently, petition stands rejected. It is open for the petitioner to make an application u/s 18(3)(b) of the Land Acquisition Act.

Mr. Sridhar Hiremath, learned Additional Government Advocate is permitted to file memo of appearance within four weeks.