

(2008) 06 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 8173, 8219, 8220 and 8396 of 2008

Sri Shankaragowda and Others

APPELLANT

Vs

Special Land Acquisition Officer, Upper Krishna Project

RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:

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

Citation : (2009) 6 KarLJ 57 : (2008) 4 KCCR 2519

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K.L. Sreenivas, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In all these Writ Petitions, as common questions arise for consideration, they are heard and disposed of by this common judgment. However, for the sake of convenience the facts pertaining to W.P. No. 8396/2008 are referred hereunder.

2. Learned Additional Government Advocate takes notice for respondent No. 1.

3. Petitioners have filed this writ petition seeking a direction to the Special Land Acquisition Officer, Upper Krishna Project, to award interest on the market value and also on the amount determined u/s 28(A) of the Land Acquisition Act (hereinafter referred to as "the Act", for short), from the date of taking possession of the lands.

4. Lands belonging to the petitioners were acquired by the State Government for the purpose of formation of M.B.C. Distribution Channel in the Upper Krishna Project. Notifications u/s 4(1) was published and gazetted on 22.3.1990 and the final declaration u/s 6(1) was gazetted on 2.5.1991. The Land Acquisition Officer passed an award on 7.2.1992 and possession of the lands are stated to have been taken on 19.2.1992.

5. It appears, petitioners did not file any application seeking reference u/s 18(1). However, another land owner whose lands were also acquired under the same notification, sought reference u/s 18(1) of the Act which was registered as LAC No. 502/1998 on the file of the Civil Judge (Sr. Dn.), Gulbarga. A judgment and award was passed on 30.10.2000 enhancing the market value payable from Rs. 2,400/- per acre to Rs. 18,000/- per acre. Petitioners availed the opportunity provided u/s 28(A) of the Act and sought re-determination of the compensation on the basis of the award passed by the Civil Court in LAC No. 502/1998. The Land Acquisition Officer on enquiry, found that the petitioners were entitled for enhancement of compensation on par with the judgment rendered in the LAC case and re-determined the compensation by passing an award dated 5.11.2001, granting compensation of Rs. 18,000/- per acre. However, in so far as the amount of interest on the enhanced amount was concerned, the same was ordered only from 20.2.2001 i.e., the date of filing of the application u/s 28(A) of the Act. Petitioners are aggrieved by this portion of the award passed by the Special Land Acquisition Officer in awarding interest only from 20.2.2001. They contend that they are entitled for award of interest with effect from the date of their dispossession.

6. Learned Counsel appearing for the petitioners placing reliance on Section 34 of the Act, contends that the Land Acquisition Officer was duty bound to award interest at the rate of 9% from the date of dispossession for the first year and at the rate of 15% for the subsequent years until the enhancement amount as re-determined u/s 28(A) was paid. He submits that the provisions of Section 34 are as much applicable to an award passed by the Land Acquisition Officer redetermining the compensation u/s 28(A) of the Act. Counsel further submits that the Land Acquisition Officer was not right nor justified in placing reliance on the decision of this Court in the case of Smt. Iravva and Others Vs. The Assistant Commissioner, Dharward Division and LAO and Another, wherein, in the facts and circumstances of the said case, this Court had directed payment of interest from the date of application filed u/s 28(A) and therefore, the same cannot be followed as a precedent ignoring the requirement of law u/s 34. He also draws the attention of the Court to Section 28 of the Act, which provides for payment of interest by the Reference Court on the enhanced compensation at the rate of 9% for the first year and 15% for the subsequent years from the date of taking possession.

7. Though the arguments of the learned Counsel is supported by the provisions contained under Sections 34 and 28 of the Act, in the instant case the petitioners cannot be permitted to raise such contention after a long lapse of nearly 7 1/2 years. They have accepted the award passed u/s 28(A) re-determining the compensation, without any demur. Sub-section (3) of Section 28(A) provides that any person who has not accepted the award passed under Sub-section (2), may make a written application to the Collector requiring him to refer the matter for the determination of the Court and the provisions of Sections 18 to 28 shall so far as may be, apply to such reference as they apply to a reference u/s 18. It is

thus clear from the above provision that if the petitioners were not satisfied with the award passed, they could have protested against the same and made an application calling upon the Land Acquisition Officer to refer the matter to the Civil Court for adjudication. The provisions of Section 18 are made applicable in this regard, which necessarily means that the application has to be made within 90 days from the date of service of notice from the Deputy Commissioner (the Land Acquisition Officer in the instant case).

8. The Karnataka Amendment to Section 18 of the Act has inserted a proviso to Sub-section (2) providing for a period of limitation of 90 days for making such an application u/s 18(1) of the Act. After such an application is made, the Deputy Commissioner is enjoined with a duty under Sub-section 3(a) of Section 18 of the Act to refer the matter to the Civil Court within 90 days from the date of receipt of such application. If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant is entitled to apply to the Court as per Sub-section 3(b) of Section 18 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.

9. Therefore, at the first instance, the petitioners were required to express their protest for the award passed if they were aggrieved and make a petition u/s 18(1) within 90 days from the date of receipt of notice of the award u/s 12(2) of the Act seeking reference of the matter for adjudication to the Civil Court. If the Deputy Commissioner failed to make reference within 90 days from the date of receipt of the application, the petitioners were required to move the Civil Court u/s 18(3)(b) seeking a direction to the Deputy Commissioner to make the reference.

10. It is well established by a catena of decisions of this Court that the petition to be filed u/s 18(3)(b) has to be made within a period of 3 years 90 days, as otherwise the remedy of the petitioners would be barred under Article 137 of the Limitation Act. This is the procedure which the petitioners had to follow if they were entitled for enhanced compensation or if they intended to get proper compensation adjudicated by the Civil Court. But, the petitioners having not availed the remedies provided u/s 18, have after 7 1/2 years approached this Court invoking the jurisdiction under Article 226 making a grievance about the grant of interest.

11. If this writ petition is entertained, it will result in rendering the provisions contained in Section 28(A)(3) and Section 18 of the Act ineffective. Petitioners cannot be allowed to bypass these statutory provisions and approach this Court under Article 226 to have adjudication of their claims under Article 226 and get enhanced compensation be it in the form of market value or higher interest or interest for the extended period.

12. Petitioners have also not explained the long and inordinate delay in

approaching this Court. When the remedies under the special statutes is barred, normally the same relief cannot be secured taking recourse under Article 226 of the Constitution.

For the aforementioned reasons, as there is no merit in the Writ Petitions, the same are dismissed.