

(1981) 07 KAR CK 0052

In the Karnataka High Court

Case No : Civil Revision Petition No. 695 of 1981

The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd.

APPELLANT

Vs

Lakshnavva and Another

RESPONDENT

Date of Decision : 29-07-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 18, 18 (1), 18 (3)
Limitation Act, 1963 — Section 137

Citation : AIR 1982 Kar 347 : (1982) ILR (Kar) 793 : (1982) 1 KarLJ 305

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : W.K. Sundaramurthy, for the Appellant; C.S. Kothavale, H.C.G.P., for the Respondent

Judgement

1. This civil revision petition u/s 115 of the Code of Civil Procedure, is preferred against the order dated 13-2-1981 passed by the learned Civil Judge, Ranebennur in Land Acquisition Case No. 7 of 1979 holding that the reference made by the Land Acquisition Officer is maintainable. The petitioner has raised an objection before the learned Civil Judge that the reference made by the Land Acquisition Officer is not valid because the same has been made after the expiry of 90 days from the date of the application filed by the claimant u/s 18 of the Land Acquisition Act, 1894 (Central Act No. I of 1894) as amended by the Karnataka Act No. 17 of 1961 (hereinafter referred to as "the Act") for making a reference to a Civil Court.

2. The contention is that, after the expiry of 90 days from the date of filing an application u/s 18 of the Act, the Land Acquisition Officer ceases to have power to make a reference and thus becomes a functus officio, therefore, the reference made by him after the expiry of the aforesaid period, is invalid. The learned Civil Judge has overruled this objection. The same contention is put forth in this revision petition also.

3.1. Sri W. K. Sundaramurthy, learned Counsel for the petitioner, submits that the power given to the Deputy Commissioner u/s 18(3) of the Act, is a statutory power which he has to exercise in accordance with the provisions contained in *the Act, therefore, he is required to exercise that power before the expiry of 90 days from the date of filing of the application u/s 18 of the Act, for making a reference and if he fails to exercise that power within that period, he will not have jurisdiction to make a reference after the expiry of 90 days as the power gets exhausted. In. other words, according to him, the Deputy Commissioner, becomes a functus officio.

3.2. Sri C. S. Kothavale, learned High Court Government Pleader, supports the aforesaid contention and further submits that the very object of introduction of Clause (a) of sub-section (3) of Section 18 of the Act, by the Karnataka Act No. 17 of 1961, is defeated if it is held that the power exists even after the expiry of 90 days to enable the Deputy Commissioner to make a reference. It is further submitted that Cls. (a) and (b) of sub-section (3) of Section 18 of the Act, are mutually exclusive.

3.3. On behalf of the claimant-respondent, it is submitted that the Deputy Commissioner does not cease to have power to make a reference even after the expiry of 90 days from the date of filing of the application u/s 18 of the Act, for making a reference, and it is not really the power that is enjoyed by the Deputy Commissioner; on the contrary it is a statutory obligation enjoined upon him to make a reference.

4. Thus, the question for consideration is whether the reference in question made by the Deputy Commissioner on the application filed under sub-section (1) of Section 18 of the Act, within the period allowed by subsection (2) thereof, for making a reference, can be held to be valid even though such reference is made after the expiry of 90 days from the date, of filing of such application.

5.1. The contention of the learned counsel for the petitioner is that it is the power that is enjoyed by the Deputy Commissioner u/s 18(3) of the Act, and if that power is not exercised within the period allowed by the statute, the same cannot at all be exercised thereafter. This contention cannot be accepted. It is not the power that is enjoyed by the Deputy Commissioner, but it is a statutory obligation. In the case of power, the authority is required to decide certain things but here in this case, the authority has no option or discretion whatsoever but to make a reference if an application under sub-section (1) of Section 18 of the Act, is filed within the period allowed by Section 18 of the Act, by any person interested in the property acquired and to whom the compensation in full or in part is payable and who has not accepted the award. Thus, the Deputy Commissioner is under a statutory obligation to make a reference to a Civil Court. The Act, merely directs that this statutory obligation should be performed within a period of 90 days. The statutory obligation does not come to an end as long as the right to seek the performance of that statutory obligation exists in a person interested and as such, he is entitled to seek a reference u/s 18 of the

Act. Thus, as long as the right to seek a reference to a Civil Court exists in a person interested in the land acquired, the statutory obligation of the Deputy Commissioner to make a reference continues. According to Article 137 of the Limitation Act, the party is entitled to make an application to a Civil Court within a period of 3 years after the expiry of 90 days from the date of filing an application u/s 18(1) of the Act, for a direction to the Deputy Commissioner to make a reference. In such an event, the Civil Court is required to give a direction to the Deputy Commissioner to make a reference if it is proved that a valid application for making a reference u/s 18 of the Act, is filed before the Deputy Commissioner within the period allowed by sub-section (2) of Section 18 of the Act. Thus, the right to seek a direction from the Court to the Deputy Commissioner to make a reference, in a person interested, who has made an application u/s 18(1) of the Act, within the period allowed by sub-section (2) thereof, before the Deputy Commissioner for making a reference, continues to exist till the expiry of three years from the 91st day of the filing of the application before the Deputy Commissioner for making a reference. Consequently, the corresponding statutory obligation of the Deputy Commissioner to make a reference to a Civil Court u/s 18 of the Act, must be held to continue as long as the right to seek a reference continues to exist in a person interested. Therefore, the contention of the petitioner that it is a power and not an obligation, cannot be accepted. That it is a statutory obligation, is also clear from the report of the Joint Select Committee. Subsection (3) of Section 18 of the Act came to be introduced pursuant to the Report of the Joint Select Committee. It is stated in sub para 2 of Para 14 of the report as follows:

"In some cases, the Deputy Commissioners do not make a reference even when an application has been made. We therefore, consider it necessary to make it obligatory on the Deputy Commissioner to make a reference within ninety days from the date of receipt of an application under sub-section (1) of Section 18. We are also of the opinion that provision should be made empowering the Court to require the Deputy Commissioner to make a reference. We have accordingly, inserted a new sub-section (3) in Section 18."

Of course, one of the rules of interpretation is that if a particular provision of a statute is clear and is unambiguous, the report of the Committee of Legislature recommending the introduction of such provision, in other words, the consideration stemming from legislative history need not be taken into consideration while interpreting such a provision so as to override the plain words of such a provision. In the instant case, even without reference to the aforesaid report of the Joint Select Committee, I have come to the conclusion that Section 18 of the Act, imposes an obligation on the Deputy Commissioner to make a reference to a Civil Court if there is a valid application made for that purpose. Thus, from the aforesaid report of the Joint Select Committee also it is clear that the legislature while introducing sub-section (3) thereof, has intended to make it obligatory on the Deputy Commissioner to make a reference.

5.2. Further, it is to be noticed that one of the objects of the Act is to provide for determination of the amount of compensation to be paid to a party or person whose immovable property is acquired. If an interpretation as has been put forth by the petitioner is to be accepted and it is held that a reference made by the Deputy Commissioner after the expiry of 90 days from the date of filing of valid application for making a reference, but before the expiry of 3 years from the date of expiry of the aforesaid period of 90 days is invalid even though the right to seek a reference by a party or a person interested is not lost, one of the important objects of the Act, i.e., to provide for determination of the compensation, will be defeated.

5.3. Further, there is no express provision in the Act to the effect that the Deputy Commissioner is not entitled or is disabled to make a reference after the expiry of 90 days. What all the provisions contained in Clause (a) of sub-section (3) of Section 18 of the Act, provide for is that the Deputy Commissioner shall within 90 days from the date of receipt of an application under sub-section (1) make a reference to the Court. Therefore, it cannot be held that the Deputy Commissioner ceases to have power to make a reference after the expiry of 90 days. If it is held that the Deputy Commissioner ceases to be under an obligation to make a reference after the expiry of 90 days, then it will not be possible for the Civil Court to give a direction to him to make a reference on an application made within a period of 3 years as it is pointed above. In this behalf, it is submitted by the learned counsel for the petitioner that by reason of Clause (b) of sub-sec. (3) of Section 18 of the Act, the Civil Court is empowered to direct the Deputy Commissioner to make a reference and by issue of such a direction, the power of the Deputy Commissioner to make a reference is resurrected. This will not be the correct reading of the provision. As long as the jurisdiction to give a direction to the Deputy Commissioner to make a reference exists in the Civil Court, the statutory obligation of the Deputy Commissioner to make a reference must be held to continue. In that event, only the two sub-clauses can be read together otherwise it will be defeating the very object of the Act. Clauses (a) and (b) of sub-section (3) of Section 18 of the Act, are not mutually exclusive as contended by the learned Government Pleader. In fact, the entire Section 18 of the Act, has to be read as a whole.

6.1. Sri Sundara Murthy, learned counsel for the petitioner, has placed reliance on a decision of the High Court of Madras reported in Kana Navanna Navanna Narayanappa Naidu Vs. Revenue Divisional Officer, Sivakasi, and also on a decision of the High Court of Kerala reported in Kochukunju Padmanabhan Vs. State of Kerala, In both these decisions, it has been held that the Deputy Commissioner is required to make a reference in accordance with the provisions contained in Section 18 of the Act, and he does not enjoy any power to make reference if an application to make a reference is made beyond the period of limitation. Thus, it is clear that in both these decisions, the Court is concerned with the question as to whether the Deputy Commissioner can make a reference on the application filed beyond the period of limitation. It is pointed out that the

obligation to make a reference by the Deputy Commissioner arises as soon as the application to make a reference is filed within the period of limitation. If no such application is filed within the period of limitation, the obligation to make a reference does not arise: therefore, in a case where an application is made for a reference after the period of 90 days u/s. 18 of the Act, the Deputy Commissioner cannot make a reference because there is no valid application filed before him for making a reference. Thus, the aforesaid two decisions are not on the point with which we are concerned in this case.

6.2. Similarly, a decision of the Supreme Court, reported in Mohammed Hasnuddin Vs. State of Maharashtra, which is relied upon by Sri Kothavale, learned High Court Government Pleader, is also not on the point. Therefore, it is not necessary to make a detailed reference to it.

6.3. Lastly, a reliance is placed on a passage from Maxwell on Interpretation of Statutes - Eleventh Edition - found at p. 12, which is as follows:

"It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express. "It is a wrong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do". "We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself". Words plainly should not be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context.

A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears consequently to have been unintentional."

The aforesaid rule stated by Maxwell does not apply to the present case because the interpretation that is placed on S. 18(3)(a) of the Act, is not by reading something more into the said provision than what it contains. Therefore, the aforesaid passage is not of any help to the petitioner.

6.4. For the reasons stated above, this civil revision petition fails and the same is dismissed.

7. Revision dismissed.