

(1998) 06 KAR CK 0001

In the Karnataka High Court

Case No : Civil Revision Petition No. 1228 of 1994

The Special Land Acquisition Officer, Hidkal Dam Project,
Hidkal, Belgaum District

APPELLANT

Vs

Venkatesh Annaji Kulkarni

RESPONDENT

Date of Decision : 25-06-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Land Acquisition Act, 1894 — Section 18 (1), 18 (3), 18 (3) (b)

Citation : (1998) 5 KarLJ 679

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Huleppa Herur, Government Pleader, for the Appellant; Sri G. Balakrishnashastry, for the Respondent

Judgement

1. Heard the learned Government Pleader Sri Huleppa Herur on behalf of the revisionist-applicant.

2. This revision application arises from the order of Sri N.B. Kulkarni, learned Additional Civil Judge, Chikodi, allowing the present opposite party respondent's application u/s 18(3)(b) of the Land Acquisition Act as amended by Karnataka Act 68 of 1984.

3. The learned Government Pleader for the revisionist contended that the reference order directing the respondent to refer the application u/s 18(1) of the Act is without jurisdiction as the application for reference u/s 18(1) and (3) is barred by time. Learned Government Pleader further contended that there being two awards, the respondent-claimant should have filed two applications for reference and one was not maintainable. These contentions have also been raised before the learned Civil Judge who had rejected these contentions.

4. These contentions of the learned Government Counsel for the revisionist-petitioner have been hotly contested by Sri G. Balakrishna Shastry, learned

Counsel for the respondent.

5. I have applied my mind to the contentions of the learned Government Counsel for the State, i.e., Special Land Acquisition Officer. As regards the question of limitation whether the application is barred by time or not, it will be very appropriate to refer to the material section and in particular to Section 18 of the Land Acquisition Act.

"Section 18. Reference to Court.-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the other persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's awards;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2) or within six months from the date of the Collector's award whichever period shall first expire".

Proviso to the section has been amended by Karnataka Act No. 17 of 1961 and it provided that every application shall be made within 90 days from the date of service of notice from the Deputy Commissioner u/s 12(2). Sub-section (3) was also added to Section 18 by Karnataka Act No. 17 of 1961. It reads as under:--

"3(a) The Deputy Commissioner shall within 90 days from the date of receipt of the application under sub-section (1), make the reference:

3(b) Provided "that if the Deputy Commissioner does not make reference to the Court within a period of 90 days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make reference and the Court may direct the Deputy Commissioner to make reference within such time as the Court may fix".

A reading of this Section 18 per se reveals that an application u/s 18 had got to be made or moved within a period of 90 days from the date of communication of notice of the award u/s 12(2) of the Act and Section 12(2) provides that the Deputy Commissioner shall give immediate notice of the award or amendment thereof u/s 12(a) to the persons interested. Therefore, it is the date of service of notice of award will be the date from which 90 days period has to be counted and within 90 days of period the person aggrieved from the award or the claim is

entitled to move the Deputy Commissioner u/s 18(1). The law further provides that if from the date of receipt of application the Deputy Commissioner fails to refer or does not refer the case and objections to the same within ninety days period then from the date of expiry of 90 days period during which the Deputy Commissioner has to refer, the person aggrieved can move the Court itself u/s 18(3)(b) for a direction being issued to the Deputy Commissioner to make the reference and then Court may direct the Deputy Commissioner to make a reference within the time prescribed by the Court. So from the reading of the section firstly it is clear without any doubt that application u/s 18(1) is to be made within a period of 90 days from the date of communication of notice of award being given. The Act, no doubt, does not prescribe any specific period of limitation for moving the Court u/s 18(3)(b). Under such a situation when this Land Acquisition Act, Section 18(3)(b), does not prescribe any period of limitation for moving the Court, the residuary provision of the Limitation Act namely Article 137 of the schedule to the Limitation Act will apply which provides the period of three years for moving the application from the date the right to move that application arises or accrues. When I so opine, I find support for my view from the decision of this Court in Special Land Acquisition Officer Vs. Fakirappa Yallappa Pujari, , as well as of Hon'ble Supreme Court in the cases of The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, and The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, .

6. In the present case, the award is dated 30-11-1971 i.e., the order had been passed by the respondent vide LA.SR.30.A(VIII), dated 30-11-1971 and vide LAQ.SR. 30-A(XI), dated 23-8-1971. The applicants, moving application u/s 18, really had been informed at the instance of the respondent by letter dated 18-9-1973 about the said award and they were served with the notice under the provisions of Section 12(2) of the Act taken on that very date. The application u/s 18(1) had been moved on 3-10-1973. From the date of service of notice i.e., 18-9-1973 the application could be moved within 90 days i.e., by 17-12-1973. The application u/s 18(1) of the Land Acquisition Act was made on 3-10-1973 i.e., much within the time. Section 18(3)(a) provides that the Deputy Commissioner had to make reference within 90 days from the date of receipt of the application. The application as mentioned earlier was submitted on 3-10-1973. That 90 days period could have expired on 2-1-1974. The Deputy Commissioner failed to make the reference within the prescribed period of 90 days from 3-10-1973, then right did accrue to the applicant to move the application u/s 18(3) and it did in every case arise on 3-1-1974. The period available as mentioned earlier will be, would have been three years period within which he could move the application u/s 18(3)(b) vide Article 137 of the Schedule to the Limitation Act that prescribed three years period from the date the right to make application accrues. So this right accrued on 3-1-1974 and the period of limitation could have expired on 3-1-1977. In the present case, the application u/s 18(3)(b) appears to have been moved some times in 1974-75 as

the Land Acquisition Case in which order impugned is passed is LAC No. 23 of 1975.

7. Thus considered in my opinion, neither the application u/s 18(1) of the Act nor u/s 18(3)(b) of the Land Acquisition Act as amended by Karnataka Act 17 of 1961 can be said to be barred by limitation. Both the applications u/s 18(1) and 18(3)(b) were much within limitation. They were not barred by limitation. As such, it cannot be said that the order issuing directions directing the Deputy Commissioner to send the record and make a reference cannot be said to be without jurisdiction. As such, there is no force in the first contention of the learned Government Pleader.

8. Second contention that has been raised is that as there were two awards, two applications for reference should have been made. But one has been made. That application for reference u/s 18(1) has been made with reference to both the applications. Even the department made one notice to both the applications. Why the department did not issue two separate notices. No explanation has been given by the learned Government Pleader. Frivolous pleas raised by the State to deprive a person of due justice is not allowed. Constitution imposes an obligation that no person is to be deprived of a remedy on account of a disability, economic or otherwise. People in India are yet illiterate. The rules of procedures are meant to subserve the process course and object of justice and not to create obstructions and hurdles in the way of citizen getting justice. The imparting of justice to the citizen is the motto of the State as expressed in the preamble of the Constitution. So such an argument that because instead of two applications, one has been made does not appear proper for the State. Even if there is any irregularity, this Court cannot interfere u/s 115 of the Code of Civil Procedure with the order on a frivolous ground. Section 115 of the CPC clearly provides that even if an order of the Court may be shown to be suffering from jurisdictional error under either of the clauses (a), (b) and (c) of Section 115, but the Court shall not reverse the order until the revisionist-applicant proves and shows that if that order is allowed to stand and is not quashed, the injustice is going to be caused to the affected party, i.e., to the revisionist or any irreparable loss or injury is going to be caused to the person who has come up in revision. What loss is going to be caused to the State if just compensation is determined in both the cases on one application made in which parties are same and specially when the respondent itself had issued only one notice. The learned Government Pleader failed to show any irreparable loss or injury to the State.

9. In this view of the matter and particularly in view of the provisions of Section 115 of the CPC this Court refuses to entertain the second contention or plea raised by the learned Government Pleader as it is clearly frivolous. The ends of justice have to be served.

Thus considered in my opinion, the revision is without substance and without merits. It is hereby dismissed with costs fixed at Rs. 1,100/-payable by the revisionist-applicant to the respondent.