

(2007) 09 KAR CK 0008

In the Karnataka High Court

Case No : Civil Revision Petition No. 509 of 2007

The Special Land Acquisition Officer, Railways and Karnataka
Industrial Areas Development Board and The Secretary,
Karnataka Industrial Areas Development Board

APPELLANT

Vs

Sri Muniyappa and P.N. Narasappa (since deceased by his
L.Rs. Smt. Kempamma and Others)

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 28 A, 28 A (2), 28 A (3)

Citation : (2008) ILR (Kar) 419 : (2008) 3 KarLJ 699

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

**Advocate : G.S. Vinaya Kumar, for the Appellant; A.V. Gangadharappa, for R1,
for the Respondent**

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The Special Land Acquisition Officer of Karnataka Industrial Area Development Board, Bangalore, ("KIADB" for short) and its Secretary are before this Court challenging the order on I.A. No. 2 in LAC. No 136/2004 on the file of the XXIII Additional City Civil and Sessions Judge, Bangalore, dated 5.6.2007 whereby the application filed by them under Order 7 Rule 11 read with Section 151 of the CPC to dismiss the application of the claimants seeking a direction to the Land Acquisition Officer to make a reference has been dismissed by the Civil Court.

2. The land in question in this revision petition is Sy. No. 88/25 measuring 2 acres situated at Nallakadirenahalli village, Yeshwanthapur Hobli Bangalore North Taluk. A preliminary notification was issued u/s 28(1) of the Karnataka Industrial Areas Development Act for acquisition of the aforesaid land along with several other survey numbers for formation of an industrial area under the Act. The said notification was followed by a final notification u/s 28(4) of the Karnataka

Industrial Areas Development Act dated 26.5.1973. Thereafter, the acquisition proceedings have been concluded and the lands were vested with the State Government and thereafter with the Kiadb. The owners of the land in question were Muniyappa-the first respondent and P.N. Narasappa, the predecessor in title of respondent Nos. 2(a) to 2(h) ("claimants" for short). An award was passed on 30.1.1980. Admittedly, the claimants filed an application u/s 18(1) of the Land Acquisition Act ("Act" for short) for reference of the matter for determination of the Court. However, the Land Acquisition Officer did not refer the matter for determination as provided u/s 18(2) of the Act, nor the claimants sought reference u/s 18(3)(b) of the Act.

3. In respect of the land belonging to one B.N. Kempaiah, which was acquired under the same notification, similar award was passed by the acquiring authority. On reference, the Civil Court passed an award on 12.4.2000 in LAC No. 150/1981 enhancing the compensation. Thereafter, the claimants herein made an application u/s 28(A) of the Act to the Land Acquisition Officer for re-determination of the compensation amount on the basis of the compensation awarded by the Court. Since the Land Acquisition Officer did not pass any order on the said application, the claimants filed writ petitions before this Court in Writ Petition Nos. 30166 -30167/2002 seeking a mandamus directing the Land Acquisition Officer to re-determine the compensation u/s 28-A of the Act, in accordance with their application. This Court by the order dated 19.11.2003 directed the Land Acquisition Officer to consider the application of the claimants and pass appropriate orders thereon in accordance with law. Thereafter, the Land Acquisition Officer has passed Annexure "C" order on 16.2.2004 in case No. LAC (KIADB) 4-34/73-74 rejecting the application u/s 28-A(2) of the Act. Therefore, the claimants filed an application before the Land Acquisition Officer under Section. 28A(3) read with Section 18(3) of the Act seeking reference of the matter for determination of the Court. Since the Land Acquisition Officer did not make the reference, the claimants filed the application u/s 28-A(3) read with Section 18(3) of the Act seeking a direction to the Land Acquisition Officer to make reference for re-determination of the compensation. The said case is numbered as LAC. 136/2004. In the said case, petitioners filed LA. No. 2 under Order 7 Rule 11 read with Section 151 of the CPC for dismissal of the application. As stated above, the Civil Court has rejected the said application by the impugned order. Feeling aggrieved by the same, petitioners are before this Court challenging the said order.

4. Learned Counsel for the petitioners firstly argues that a reference u/s 28A(3) of the Act was not maintainable because the Land Acquisition Officer has not passed any award u/s 28-A(2) of the Act. Since there is no award passed by the Land Acquisition Officer u/s 28-A(2) of the Act, question of filing an application u/s 28-A(3) of the Act does not arise. Secondly, he submits that the application filed by the claimants u/s 28-A(3) of the Act. is barred by time. Thirdly, he submits that since the claimants had filed an application seeking reference u/s 18(3) of the Act, they cannot maintain an application u/s 28-A of the Act.

5. On the other hand, learned Counsel for the claimants/respondents submits that the application filed by the petitioners for re-determination of compensation u/s 28-A of the Act was rejected by the Land Acquisition Officer. An order of rejection of the application also amounts to an award. Therefore, claimants are entitled to file an application u/s 28-A(3) of the Act. In so far as the limitation is concerned, learned Counsel submits that the order of the Civil Court in LAC No. 150/1981 enhancing the compensation in respect of land acquired under the same notification is dated 12.4.2000 and the claimants had filed the application for obtaining the certified copy of the order on 4.3.2000 and the same was received on 26.5.2000. The claimants have filed an application u/s 28-A of the Act on 22.7.2000. Therefore, the application u/s 28-A of the Act was well within time. In so far as the third contention is concerned, learned Counsel for the claimants argues that even if the claimants had filed an application seeking reference u/s 18(3) of the Act, that will not preclude them from filing an application u/s 28-A(3) of the Act. It is submitted that the Land Acquisition Officer has passed any order on the application filed by the claimants u/s 18(3) of the Act. The claimants have also not pursued the same. Thus, the application has not fructified into a reference.

6. I have carefully considered the arguments made by the learned Counsel at the bar and perused the materials placed on record,

7. Section 28-A of the Ad provides for re-determination of the compensation on the basis of the award of the Court. Sub-section (2) of Section 28-A of the Act states that the Deputy Commissioner on receipt of an application under Sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants. Sub-section (3) of Section 28-A of the Act says that any person who has not accepted the award under Sub-section (2), may by written application to the Deputy Commissioner, require that the matter be referred by the Deputy Commissioner for the determination of the Court and the provisions of Sections 18 to 28 shall so far as may be applied to such references as they apply to a reference u/s 18 of the Act, Thus, an award under Sub-section (2) of Section 28-A of the Act is necessary to make an application to the Court under Sub-section (3) of Section 28-A of the Act. In the present case, application of the claimants was rejected by the Land Acquisition Officer on 16.2.2004 under Sub-section (2) of Section 28-A of the Act. Even an order of rejection of an application for re-determination of compensation amounts to an award, and the person aggrieved by such an order has the right to approach the Land Acquisition Officer to have the matter referred to the Civil Court. If the Land Acquisition Officer fails to refer the matter for determination of the Court, the claimants are entitled to make an application before the Court u/s 28-A(3) of the Act seeking a direction to the Land Acquisition Officer to make reference for re-determination of the compensation. In this connection, it is relevant to refer the decision of the Kerala High Court in the case of Savithry Amma v. State of Kerala 1990 (2) KIT 365, wherein it is held

that order refusing to re-determine the compensation payable to the affected party on the basis of the amount of compensation awarded by the Court will also be an award within the meaning of Sub-sections (2) and (3). It has been further held as under:

The order refusing to re-determine the compensation payable to the affected party on the basis of the amount of compensation awarded by the Court will also be an award within the meaning of Sub-sections 2 and 3. The order refusing to re-determine the compensation by the Land Acquisition Officer is also an award within the meaning of Sub-section 2 of Section 28A and if that be so, the person who is aggrieved by such an order has also the right to approach the Land Acquisition Officer to have the matter referred to the Civil Court and on such application being made, the Land Acquisition Officer is bound to refer the same to the Civil Court for disposal in accordance with law.

8. In the present case, admittedly, the Land Acquisition Officer has rejected the application filed by the claimants for redetermination of compensation on 16.2.2004 and an order of rejection also amounts to an award. Therefore, the application filed by the claimants u/s 28-A(3) of the Act is maintainable. There is no merit in the first contention of the petitioners and it is accordingly rejected.

9. Coming to the second contention of the learned Counsel for the petitioners, the award in LAC No. 150/1981 was passed on 12.4.2000. Claimants have applied for the certified copy of the order on 4.5.2000 and received the same on 26.5.2000. Section 28-A(1) of the Act allows three months time from the date of the award of the Court to seek re-determination of compensation. Proviso to Section 28-A(1) of the Act states that in computing the period of three months within which an application to the Deputy Commissioner shall be made under Sub-section (1) of Section 28-A of the Act, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded. If the time spent for obtaining certified copy of the award is excluded, the application is in time. Therefore, there is no merit in the second contention of the petitioners also and it is accordingly rejected.

10. Now let me consider the third contention of the learned Counsel for the petitioners. As noticed above, the award passed by the Land Acquisition Officer in respect of the land in question is dated 30.1.1980. Admittedly, the claimants had made an application u/s 18(1) of the Act for reference of the matter for determination of the Court. The Land Acquisition Officer did not refer the matter for determination to the Court as prescribed in Sub-section (3)(a) of Section 18 of the Act. Even the claimants did not pursue the said application. The claimants filed an application u/s 28-A of the Act for re-determination of the compensation on the basis of an award of the Court in LAC No. 150/1981 dated 12.4.2000. The said application was dismissed on 16.2.2004. Therefore, the claimants filed an application u/s 28-A(3) of the Act seeking a direction to the Land Acquisition Officer to refer the matter for re-determination of the Court in LAC No. 136/2004. The contention of the petitioner is that the claimants having made an

application u/s 18 of the Act for referring the matter to the Court for determination of compensation are barred from making an application u/s 28-A of the Act. Special emphasis is laid on the language employed in Section 28-A of the Act and particularly, the expression "had not made an application to the Deputy Commissioner u/s 18". In this connection reliance is placed on the decision of the Apex Court in the case of Bhagti (Smt) (Deceased) through her Lrs. Jagdish Ram Sharma Vs. State of Haryana, and State of Karnataka Vs. Laxuman, . Learned Counsel for the claimants contends that despite the application filed by the claimants u/s 18 of the Act, the application filed by the claimants u/s 28-A of the Act is maintainable. In support of his contention, he has relied on the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Union of India (UOI) and Another Vs. Hansoli Devi and Others, .

11. Section 28-A of the Act was inserted by way of amendment by Act 68 of 1984, which has come into force w.e.f. 24.9 1984, The said Section provides for reconsideration in certain circumstances of the award of the Deputy Commissioner in the light of the award of the Court in other cases. In Smt. Bhagtt's case (supra), a two Judge Bench of the Supreme Court has held that only those claimants who had failed to apply for reference u/s 18 of the Act are conferred with the right to apply for redetermination u/s 28-A(1) of the Act. Subsequently, similar matters were referred to Constitution Bench of the Apex Court and the matter was decided in Hansoli Devi's case (supra). The questions referred to the Constitution Bench are as under:

1. (a) Whether dismissal of an application seeking reference u/s 18 on the ground of delay amounts to "not filing an application" within the meaning of Section 28A of the Land Acquisition Act, 1894?

(b) Whether a person whose application u/s 18 of the Land Acquisition Act, 1894 is dismissed on the ground of delay or any other technical ground is entitled to maintain an application: u/s 28-A of the Land Acquisition Act?

2. Whether a person who has received the compensation without protest pursuant to the award of the Land Acquisition Collector and has not filed an application seeking reference u/s 18 is "a person aggrieved" within the meaning of Section 28-A?

While dealing with the aforesaid questions, the Apex Court held that the object of Section 28-A of the Act was to confer a right of making reference, who might have not made a reference earlier u/s 18, Therefore, ordinarily when a person makes a reference u/s 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Act when some other person makes a reference and the reference is answered. It has been further held that Section 28-A of the Act being a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression had not made an application for reference u/s 18" in Section 28-A of the Act. The Court has further held that

the application made u/s 28-A of the Act should be an effective application, which had been entertained by making a reference and the reference was answered. The Court has held that where an application not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application. It has been held thus:

But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector u/s 18" in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference u/s 18 and that reference is entertained and answered. In other words, it may not be permissible for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari case, the three learned Judges, while enumerating the conditions to be satisfied, where after an application u/s 28-A can be moved, had categorically stated (SCC p.743, para 10) "the person moving the application did not make an application to the Collector u/s 18", The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application u/s 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application u/s 28-A cannot be denied.

12. The decision in Laxuman's case (supra) is not applicable to the facts of this case because the point for consideration in that case was the period of limitation for seeking reference to a Civil Court u/s 18(3)(b) of the Land Acquisition Act.

13. Admittedly, the claimants had made an application under Section. 18(1) of the Act. However, the Land Acquisition Officer did not refer the matter for determination of compensation to the Court u/s 18(3)(a) of the Act. Even the claimants did not take steps to get the matter referred to Court u/s 18(3)(b) of the Act In other words, the claimants did not make an effective application u/s 18 of the Act. An effective application is the one, which had been entertained by making the reference and the reference was answered. Mere filing of an application will not amount to an effective representation as held in Hansoli Devi's case (supra). Thus, if the claimants have not made an effective application u/s 18(2) of the Act, they are not precluded in making an application u/s 28-A of the Act seeking re-determination of compensation. Therefore, the application filed by the claimants u/s 28-A(3) read with Section 18(3)(b) of the Act is maintainable.

14. Having given my anxious consideration to the arguments of the learned Counsel made at the bar, I am of the view that there is no merit in this revision petition. In the result, revision petition fails and it is accordingly dismissed. No

costs.