

(1995) 02 KAR CK 0022
In the Karnataka High Court
Case No : M.F.A. No. 2401 of 1994

The Spl. Land Acquisition Officer, for Minor Irrigation Project,
Gulbarga

APPELLANT

Vs

Tukkareddy

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 15 (2), 18

Citation : AIR 1996 Kar 26 : (1995) ILR (Kar) 2073 : (1995) 3 KarLJ 531

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Ashok Nayak, Govt. Pleader, for the Appellant; S.P. Shankar, for the Respondent

Judgement

1. An inter-related though important facet of law touching the provisions of the Land Acquisition Act and the Limitation Act has come up for decision in this appeal. Briefly stated, the controversy centres around the question as to whether the State which is obliged to make a reference to the Court under S. 18 of the Land Acquisition Act in a case where an application for enhanced compensation has been filed, fails to do so for a considerable period of time, can thereafter object to the Court considering the reference on the ground that it is filed beyond the period of limitation. Though it would appear prima facie incongruous that the defaulting party namely the State should at all be permitted to object on the ground of limitation when that delay has occurred due to the default on the part of its own officers, and that, therefore, normally they should be estopped from canvassing any bar, the situation is far more complex because of certain provisions of law and several judicial decisions. At the same time, I need to take cognizance of the fact that the law must strictly stand clear of impediments, real or artificial, if a Court finds that they are impeding the paramount objective, namely that complete justice must be done to both parties. That a poor agriculturist whose only source of sustenance is being taken away because of the acquisition, even if it be for a public purpose, must get the full benefit of what

the law entitles him to, can never be disputed and the term "full entitlement" will have to be interpreted to mean even such higher amount as may be determined by a competent forum in a companion case at a later point of time. This is the essential spirit behind the promulgation of S. 28(A) of the Act whereunder a party is entitled to claim enhanced compensation at the hands of the Land Acquisition Officer himself and if this be the legislative intent, a Court would be obliged to ensure that the law is given effect to in full letter and spirit. Conversely, the Legislature has also provided for a prescribed timeframe within which claims will have to be adjudicated and for good reason. The Courts have interpreted at different times the provisions of the Limitation Act and it is true that after the efflux of a certain period of time due to non-action a claim would get extinguished, when it may be still enforced as the Limitation Act itself makes certain provisions for extension, is really the controversy in this appeal. A few facts and dates would, therefore, be relevant.

2. The State of Karnataka through the Special Land Acquisition Officer, Minor Irrigation Project, Gulbarga District has preferred this appeal which is directed against a judgment dt. 11-10-1993 in LAC No.31/ 1990. The applicant is one of the agriculturists whose agricultural land was acquired for an irrigation project. The land had measured approximately 7/ 1/2 acres and the Land Acquisition Officer had awarded Rs. 3,500/-per acre as the lands in question were dry lands. The notice under S. 12(2) of the Land Acquisition Act was served on 18-6-1984 and the application for filing a reference to the Court under S. 18(1) was filed on 6-7-1984. This application under normal circumstances would have been time-barred in September, 1987. It transpired that no reference was made to the Court and the claimant who is the present respondent to this appeal filed an application under S. 18(1) before the Civil Court in November, 1989, approximately 5 1/2 years after the award had been made. The learned trial Judge decided the reference on merits and came to the conclusion that a sum of Rs. 8,000/- per acre ought to be awarded because this Court while deciding MFA 1918/1991 awarded compensation at that rate. The copy of that judgment was produced before the learned trial Judge. It is true that the trial Court has observed after considering the fair computation that a figure of Rs. 7,000/- per acre is what the Court considers fair but in view of the judgment in MFA 1918/1991 which related to a neighbouring village but to the same project the learned trial Judge decided to award compensation at the rate of Rs. 8,000/- per acre. It is this decision that has been appealed against.

3. The learned Govt. Advocate has assailed the decision on two grounds. Firstly, he points out that a Division Bench of this Court in Special Land Acquisition Officer Vs. Gurappa Channabasappa Paramaj, has interpreted the relevant provisions and held that only a reference made within three years and ninety days from the date of application is within time and that consequently the learned trial Judge ought to have dismissed the present reference which has been made beyond that period of time. He points out that there was no application for condonation even if such an application had been made, that the

delay could not have been condoned. Under these circumstances it is his contention that the reference itself was stillborn and that this Court must accordingly quash the order passed by the trial Court. The learned Govt. Advocate has drawn my attention to the provisions of the Limitation Act and he has stated that all proceedings of this type must necessarily be time-bound and that if the legally prescribed period of time has elapsed, that the right to claim higher compensation stands extinguished. It is his grievance that the trial Court has completely overlooked this aspect of the law which is why interference is called for by this Court.

4. The learned Govt. Advocate, as a matter of propriety has drawn the Court's attention to the fact that under the provisions of O.41, R. 3A of the C.P.C. it is incumbent that an application for condonation of delay must accompany any reference that is filed beyond the period of limitation. It is his submission that even though applications have been filed by way of I. As, in the present proceeding, that these are not competent because this Court is only reviewing the action of the trial Court. What the learned Govt. Advocate submits is that where the Limitation Act prescribes a total legal bar, that unless that bar is removed at the very threshold namely prior to the commencement of the proceedings before the trial Court that it is impermissible for the Court to entertain the reference because of the legal impediment. In this regard, he has emphasised the fact that the bar to the maintainability of the proceeding before the trial Court would render that proceeding non est and it is, therefore, not to be treated on par with a mere irregularity which may be curable either at that or at a later stage. To this extent, he submitted that there is no warrant for this Court to consider the applications for condonation of delay even though they have been made before the Court. As an extension to this argument, the learned Govt. Advocate has relied on a Division Bench decision of this Court reported in AIR 1977 Kar 33, wherein, while considering the powers of the High Court in such appeals, it was held that even if the respondents were to succeed on the question of maintainability that as regards the aspect of quantum that the matter should be remanded to the trial Court for an appropriate decision. As regards this last submission, I need to record that the Division Bench judgment is distinguishable in so far as while deciding the aspect of quantum, this Court found that certain factual material which was essential for such determination was not on record and, therefore, remanded the matter as the same was considered very necessary for a fair determination. That position does not apply in the present case because the standard applied is a judgment of this Court in MFA 1918/91 and the only question is as to whether that judgment is relevant and has been correctly applied in the present proceeding.

5. I need to observe in passing that with the passage of time and with a lot of rethinking having been done in the matter of expeditious disposals, reduction of arrears and the consequent objective of timely justice, that it is necessary for the superior Courts to now refrain from remanding cases as far as possible barring those very few exceptions where there is virtually no other alternative possible.

The restraining of the litigation only further chokes up the trial Court and the reopening of a matter at such a later point of time seldom results in anything beneficial. Under these circumstances, I am firmly of the view that a remand is contra indicated in most cases and that no such remand is permissible in the present proceeding.

6. In response to the submissions canvassed by the learned Govt. Advocate, Mr. Shankar on behalf of the respondent has commenced his submissions with a reference to the well known decision of the Supreme Court in Collector, Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, wherein while considering Certain aspects relating to condonation of delay in Land Acquisition cases, the Court laid down the following guidelines.-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is, no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

Secondly, my attention was drawn to a passage that appears in paragraph 18 of the decision in Owners and Parties Interested in Owners and Parties interested in M.V. "ValiPero" Vs. Fernando Lopez and Others, , wherein the Supreme Court had occasion to observe as follows :--

"Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to

subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system."

Mr. Shankar thereafter submitted that it is now well settled law that the law of limitation is only a procedural law and in support of this proposition relied on the decision of the Supreme Court reported in C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, in the case of C. Beepathuma. What he really laid emphasis on, was the fact that the bar which is pleaded because of delay is one that is removable and that it is not to be construed as an absolute bar that would void a procedure. He submitted that whereas the earlier view was that in the absence of an application for condonation of delay as prescribed under O. 41, R. 3A, that the Court had no option except to dismiss the appeal, that the Division Bench of this Court in State of Karnataka Vs. Nagappa, laid down the proposition that a procedural requirement cannot impede access to justice. The Court on that occasion had relied on the following three decisions of the Supreme Court" wherein this principle had been progressively developed :--

(1) Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, , Kalipada Das alias Mahanto and Others Vs. Bimal Krishna Sen Gupta (Dead) by Lrs., Kali Pada Das's case.

That in sum and substance, learned counsel submitted that the development of legal thought has proceeded along the line that a Court will always construe procedural requirements as guidelines and accompaniments, that a Court should be slow in allowing them to fetter the path of justice. Mr. Shankar drew considerable support from a Division Bench judgment of this Court reported in Assistant Commissioner Vs. Bhima Shiddappa Naik, in the case of Asstt. Commissioner v. B. Siddappa Naik, wherein the Division Bench of this Court has laid down that the provisions of S. 5 of the Limitation Act are applicable in vesting the Court with the jurisdiction to consider and condone any delay in filing the reference application. It was further contended that in the present instance the objection is being pleaded by the very party through whose default and non-action the delay has occurred in so far as the respondent had filed his application for reference to the Court under S. 18(1) within the prescribed time and that the appellants having not made a reference to the Court, are totally precluded from even canvassing the issue of limitation. The learned Govt. Advocate was quick to respond and point out that this is not a debate with regard to the conduct of the parties, that he is arguing a pure point of law namely the question as to whether

the provisions of the Limitation Act are to be applied and if so, what is the effect.

7. Obviously, Mr. Shankar drew my attention to S. 18(3) of the Land Acquisition Act as amended in the State of Karnataka of which, S. 3(a) and (b) are reproduced below :--

"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 make a reference to the Court within a period of ninety days from the date of receipt of the application (he 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."

Learned counsel submitted that it is mandatory for the Deputy Commissioner to make a reference to the Court within ninety days from the date of receipt of the application. He submitted that this is a mandatory provision which uses the word "shall" and that, therefore, there is no option left, once such an application under S. 18(1) has been filed with the officer concerned except that the reference must be made within the prescribed period of time. The submission proceeded on the footing that if no such reference is made for any reason, that the officer is thereafter debarred from raising the limitation plea because the delay is only because of the default on the part of the officer.

8. The learned Govt. Advocate relied on the provisions of S. 18(3)(b) and he submitted that the Legislature has taken into account the possibility of default on the part of an officer for whatever reason which could even be due to oversight and if a period of 90 days have elapsed, that it is open to the party aggrieved to apply to the Court for a direction to the Deputy Commissioner to make a reference within a prescribed period of time and that the officer will thereafter have to comply. He submitted that S. 18(b) does not prescribe the time within which such an application is to be made to the Court, that the timeframe will have to be computed in keeping with the provisions of the Limitation Act as interpreted by this Court and he contended that such an application could only be made while the claim was alive. Under these circumstances, he submitted that if an application were to be made to the Court after that period has elapsed, that he was perfectly justified in pointing out the legal infirmity.

9. Since this is a situation that arises in several cases, it is necessary that this Court should resolve the issue and clarify the correct position in law. It is true that the Deputy Commissioner is obliged to make a reference within 90 days of the receipt of the application under S. 18(1) but this presupposes the fact that a proper application within the framework of S. 18(1) has been filed intimating very clearly that the applicant is aggrieved by the award and that he desires that the matter be re-examined through a reference to the Civil Court because he is claiming higher compensation. To my mind, since S. 18(3)(a) has provided for a time limit of 90 days for the making of this application and since it is desirable

that these proceedings which even otherwise linger for an abnormally longer period of time, that they must be expeditiously disposed of, the authority to whom the application under S. 18(a) is made must intimate to the applicant the date on which the reference has been made to the Court. It is an unsatisfactory state of affairs, particularly considering the situation in rural India where an illiterate farmer with hardly any capacity for legal assistance is the aggrieved party, that he is expected to be vigilant enough to compute the requisite time periods and to be aware of necessary procedures such as approaching the Court within the prescribed time etc. Though there is no specific provision in the Act to this effect, to my mind an obligation can certainly be read into the section on the part of the concerned authority to intimate to the applicant the fate of his application so that he can follow the same up before the Civil Court. To my mind, since S. 18(3)(b) does not prescribe the period within which the applicant can ask for a direction from the Court in cases where a reference is not made, that one will have to virtually construe a situation whereby the claim has been still kept alive until such an application is made. I do concede that one cannot read into S. 18(3)(b) that the claim shall be alive for an indefinite period of time.

10. In this regard, it would be useful to consider the provisions of S. 15(2) of the Limitation Act whereby the exclusion of time in certain cases is provided for. The provision reads as follows:--

15(1)

"15(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded."

11. It is clear from what is provided for in this section that where the institution of a Court proceedings is dependent on certain action on the part of a Govt. authority such as sanction, consent etc. that the period of time that elapses as a result of an application having been made for such sanction must be excluded while computing limitation. To my mind, the situation under the Land Acquisition Act which precludes a direct reference to the Civil Court and makes it mandatory for the applicant to first apply to the Land Acquisition Officer to make such a reference pre-supposes that this is a necessary precondition whereby it becomes absolutely necessary for the applicant to wait until the authority takes the necessary action. If the authority takes a long time to act, then that entire period will have to be excluded while computing the bar under the Limitation Act. If the authority does not act at all, then to my mind the entire period that has elapsed as a result of the default of the authority will on an analogy of the provisions of S. 15(2) of the Limitation Act necessarily have to be excluded while computing limitation. In the present case, where it is demonstrated that the application was filed in time, that it was because of the non-action on the part of the authority to make the reference to the Court, that the delay had occurred, that period would

have to be excluded and consequently, the present reference will have to be treated as having been in time. I need to add here that it is in order to avoid difficulties of this type arising that an obligation must be read into S. 18(3)(a) that the authority concerned must intimate to the applicant the fate of the application.

12. It is necessary to deal with the second objection raised by the learned Govt. Advocate cate regarding the quantum in this case. He submitted that it is well settled law that the decision of a Court in relation to identical lands covered by the same notification can be pressed into service by a Reference Court while enhancing compensation but he objects to what has been done in the present case because the lands involved in MFA 1918/91 were not covered by the same notification, they pertained to an adjoining village and, therefore, he submitted that the decision cannot be mechanically applied. Mr. Shankar met the argument by pointing out to me that it is in relation to the same irrigation tank and virtually the other side of it, that the lands involved in MFA 1918/91 were also dry lands acquired at the same point of time and that, therefore, the decision would apply, on all fours even if the notification was different. Normally, I would have straightway upheld the objection canvassed by the learned Govt. Advocate because one needs to be extremely cautious in land acquisition compensation cases and it is not permissible to mechanically apply one decision to another. However, the entire process of computing a fair compensation is by a process of comparison and by trying to find out the prices or compensations in relation to similarly situated lands in the proximity at more or less the same point of time. The claimants have deposed that the acquisition was at the same time for the same projects in the virtually Adjoining neighbouring village where the prices were identical and that the type of lands were also similar. It is for this reason that the learned trial Judge though on his own calculation arrived at a figure of Rs. 7000/- per acre applied the higher figure of Rs. 8000/- per acre which was the figure awarded by this Court. To my mind, the learned trial Judge was fully justified in having relied on the decision of the superior Court particularly in the aforesaid circumstances, Under these circumstances, to my mind, the order in question does not deserve any interference with.

13. Before parting with this case, I need to observe that while a Court must ensure that public funds are judiciously and correctly applied even in matters of the grant of compensation, that the Court has to also take into account the fact that where an agriculturist is permanently losing his lands as long as the quantum of compensation appears to be fair and reasonable having regard to the accepted principles and norms that it is inadvisable and improper that the State challenges those decisions because the claimants are hardly in a position to contest litigations before the High Court but more importantly because the compensation given to them gets unnecessarily, abnormally delayed. It would therefore be highly desirable that these cases be very carefully examined and only in those of the situations where the Land Acquisition Officer or a Reference Court have gone absolutely wrong, that the decisions to be challenged before the

higher forum.

14. I need to place on record the admirable assistance rendered to this Court by both the learned advocates who have done considerable research and who have argued the matter extremely well.

15. While the I.A.I. filed by the State for condonation of delay in presenting this appeal is allowed, the appeal itself in view of the fact that the order or the trial Court does not deserve any interference with, fails and stands disposed of. There shall be no order as to costs. It is however clarified, that for purposes of computation of interest, that the entire period of time over and above the period of three years and three months shall be excluded. IA's. III and IV do not survive and stand disposed of.

16. Order accordingly.