

(2006) 09 KAR CK 0081

In the Karnataka High Court

Case No : Civil Revision Petition No. 3203 of 2003

U. Basappa

APPELLANT

Vs

The Assistant Commissioner and AO

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Karnataka Land Acquisition Act, 1961 — Section 12 (2), 18, 18 (1), 18 (3) (b)
Limitation Act, 1963 — Section 5

Citation : (2006) 4 KCCR 2454

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; Asha M. Kumbargerimath, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The Petitioner being aggrieved by the order dated 10th Septemeber 2003 in Misc. Case No. 200/2002 on the file of the learned Civil Judge (Senior Division) Kudligi, dismissing the petition filed by Petitioner u/s 18(3)(b) of the Karnataka Land Acquisition Act, has presented the instant revision petition.

2. The Petitioner claims to be the owner of land bearing Sy. No. 319-D measuring 03.74 acres situate at Torangal village, Sandur Taluk, Bellary District which was notified and acquired for the Vijayanagara Steel Project and an award was passed in LAC No. 24/75-76 on 13th July 1976. The Petitioner received the award amount under protest. The Petitioner being aggrieved by the award passed by the Land Acquisition Officer, on the ground that, the amount awarded is inadequate, filed the application u/s 18(1) of the Land Acquisition Act and requested the Land Acquisition Officer to refer the matter to the jurisdictional Reference Court for enhancement of compensation and the same was numbered as LAC No. 6/1984 on the file of the Civil Judge (Sr. Dvn.) Bellary. The said reference application filed by the Petitioner was dismissed by the Reference Court

by its order dated 19th October 1984. Assailing the correctness of the said order, Petitioner has filed the Civil Revision Petition before this Court in CRP. No. 238/1985. The revision petition filed by the Petitioner was also dismissed by this Court. Be that as it may.

3. The Petitioner has filed the petition u/s 18(3)(b) of the Land Acquisition Act and also filed the application u/s 5 of the Limitation Act seeking condonation of delay in filing the said application on the file of the Civil Judge (Sr. Dvn.) Kudligi and the same was numbered as Misc. Case No. 200/2002. The said matter had come up for consideration before the said Court on 10th September 2003 and the said Court, after hearing the learned Counsel appearing for the parties and on the basis of the pleadings of both parties, has raised two main points for its consideration. The said points are:

(i) Whether the petition filed u/s 18(3)(b) of the L.A. Act is maintainable?

(ii) Whether the Petitioner has made out good grounds to condone the delay in filing the above petition?

The Court below has answered both the points in negative and passed the final order, dismissing the petition filed by Petitioner u/s 18(3)(b) of the Land Acquisition Act, after consideration of oral and documentary evidence and the material available on file and also placing reliance on the judgment of this Court and the Apex Court. Assailing the correctness of the order passed by the Court below, the Petitioner herein has presented the instant revision petition.

4. The principal ground urged by the learned Counsel appearing for Petitioner in the instant revision petition is that, the Court below has committed a grave error in holding that, the petition filed u/s 18(3)(b) of the Land Acquisition Act is not maintainable on the ground that, the earlier application filed by the Petitioner was rejected. It is his case that, the Reference Court has taken a hyper technical view stating that the reference itself is bad in law as the same is made after a period of three years. Further, he vehemently submitted that, earlier rejection of reference on the ground that, it is bad in law does not disentitle the Petitioner to make an application for making valid reference along with an application for condonation of delay, as clearly held by this Court in a case reported in 2001 (1) LACC 208, 1999 (2) K.L.J.P.246 etc. When such being the position, the Court below ought to have allowed the petition filed by the Court below is erroneous and unsustainable in law and liable to be set aside.

5. I have heard learned Counsel appearing for Petitioner and learned Government Pleader appearing for respondent for considerable length of time. The Reference Court, after hearing the learned Counsel appearing for the parties and on the basis of the pleadings of both parties, has raised two points for consideration as to: (i) Whether the petition filed u/s 18(3)(b) of the Land Acquisition Act is maintainable? and ii) Whether the Petitioner has made out a good ground to condone the delay in filing the above petition?.s After considering the oral and documentary evidence and other relevant material available on file,

the Reference Court has recorded a clear finding by relying upon the judgment of this Court and the Apex Court, by answering both the points in the negative and observed that, as per the pleadings of the Petitioner, it is very much clear that the land in question was acquired in the year 1975 and notice u/s 12(2) of the Land Acquisition Act was served during 1976 and the same was received by the claimant - Petitioner herein on 12th March, 1976. The Petitioner has filed the application u/s 18(1) of the Land Acquisition Act in time but it appears, the said application has not been referred well in time and the same has been referred after lapse of eight years, however, the same was registered as LAC No. 6/1984 on the file of the Civil Judge (Senior Division) Bellary. Further, the Reference Court has clearly stated in its order that, on 18th October, 1984, the Reference Court rejected the application filed by Petitioner after considering the relevant material available on file and against the said order, Petitioner has filed the revision petition in CRP No. 238/1985 before this Court and the same was dismissed by this Court in the month of October 1985. The Reference Court has specifically recorded that, against the said order passed by this Court in the revision petition, Petitioner has not chosen to file any appeal by challenging the same and therefore, the same has reached finality. The Petitioner, after lapse of nearly ten years has filed the petition u/s 18(3)(b) of the Land Acquisition Act. The said petition has been considered in detail by the Reference Court and the Reference Court, after critical evaluation of the oral and documentary evidence available on file and the judgments relied upon by the learned Counsel for Petitioner and the learned Government Pleader appearing for respondent, recorded a specific finding that, the Petitioner has lost his remedy u/s 18(3)(b) knowing fully well that, he has lost in the earlier petition and the same has been upheld by this Court. Taking into consideration the totality of the case on hand, the Reference Court held that, it could not find any good reasons for consideration of the application filed by the Petitioner and the same cannot be sustained either on merits or on technical ground also. Hence, the Reference Court answered point No. 1 in the negative.

6. Regarding point No. 2, i.e., the application for condonation of delay in filing the Section 18(3)(b) petition, the Reference Court has specifically referred Article 137 of the Limitation Act as the same is applicable to Section 18(3)(b) petition and the said application has been filed beyond three years 90 days and that, Section 18 reference application filed by the father of the claimant was rejected by the transferor Court on the ground of limitation and thereafter, the matter was taken before the High Court and the same was confirmed by the High Court as referred above on the ground of limitation. But, since the Petitioner has not assailed the correctness of the said order, it has reached finality. If once the application filed by the Petitioner u/s 18(3)(b) cannot be sustained on the ground that, the same is filed beyond the period of limitation, that too, when the Petitioner - claimant has lost his right, the reasons explained in the affidavit for condonation of delay cannot be accepted. Further, the Reference Court has specifically referred that, after lapse of nearly ten years, the said petition is filed.

Hence, the question of condoning the delay does not arise especially when the main petition itself is not sustainable and rejected the petition filed by Petitioner. The said reasoning given by the Court below for dismissing the petition filed u/s 18(3)(b) and also the application filed u/s 5 of the Limitation Act is in strict complicity and consonance with the Land Acquisition Act as well as the Limitation Act. The Reference Court after thorough trial, by assigning cogent reasons with reference to material available on file and considering the contention urged by the Petitioner has passed the well considered order, dismissing the same. Therefore, interference by this Court in the said order is not justifiable nor I find any good grounds to entertain the revision petition at this belated stage. Hence, the revision petition filed by the Petitioner is liable to be rejected.

7. Yet another reason as to why the instant revision petition filed by Petitioner is liable to be rejected is, in view of the judgment of the Supreme Court reported in 2005 AIR SCW 5535 (State of Karnataka v. Laxuman) wherein the Supreme Court has declared that, the application filed beyond three years and nine months from the date of reference by the Deputy Commissioner cannot be revived and the claimants are not entitled to claim any enhancement by recourse to Section 18 of the Act. The Apex Court, reversed the judgment of this Court in CRP No. 3682/1995 disposed of on 11th September, 1998. While reversing the order of this Court in C.R.P. No. 3682/1995, the Supreme Court has overruled the judgment in AIR 1999 SCW Kar. page.128 and approved the judgment in AIR 1992 SCW Kar.P.97. At paragraph 15, it is held as follows:

15. Under the scheme of Section 18 of the Act as in Karnataka, thus the claimant loses his right to move the Court for reference on the expiry of three years and 90 days from the date of his making an application to the Deputy Commissioner u/s 18(1) of the Act within the period fixed by Section 18(2) of the Act.

Xxx xxx xxx Xxx xxx xxx Once the right of the claimant to enforce his claim itself is lost on the scheme of Section 18 of the Act, there is no question of the Deputy Commissioner who had violated the mandate of sub-section 3(a) of Section 18 of the Act, reviving the right of the claimant by making a reference at his sweet-will and pleasure, whatever be the inducement or occasion for doing so. On a harmonious understanding of the scheme of the Act in the light of the general principle that even though a right may not be extinguished, the remedy may become barred, it would be appropriate to hold that on the expiry of three years and 90 days from the date of an application for reference made within time u/s 18(1) of the Act, the remedy of the claimant to have a reference gets extinguished and the right to have an enhancement becomes unenforceable. The Deputy Commissioner would not be entitled to revive the claim which has thus become unenforceable due to lapse of time or non-diligence on the part of the claimant.

Further, the Supreme Court at paragraph 21 of the said judgment has held that Section 5 of the Limitation Act has no application to proceedings before the

Collector or Deputy Commissioner here, while entertaining an application for reference. The relevant portion of paragraph 21 at page 5548 reads thus:

21.xxx xxx xxx xxx Consistent with this position it has necessarily to be held that Section 5 of the Limitation Act would not be available since the consequence of not enforcing the right to have a reference made on the scheme of Section 18 of the Act as obtaining in Karnataka, is to put an end to the right to have a reference at all. Since in that sense it is an extinguishment of the right, the right cannot be revived by resorting to Section 5 of the Limitation act. We may incidentally notice that in Thakoredas (supra) this Court rejected the application u/s 18(3)(b) of the Act which was beyond time, though, of course, there was no specific discussion on this aspect.

Further, the Supreme Court in the said judgment has held that, when the claimant himself loses his right to move the Court for compelling a reference, it is not possible to hold that by invoking Section 5 of the Limitation Act before the Land Acquisition Court the claimant can get over the bar to the remedy created by Section 18 of the Act. Therefore, in that view of the matter, Section 5 of the Limitation Act would have no application while approaching the Court u/s 18(3) (b) of the Act and if the application is not within the time as indicated above, the same has only to be dismissed as was done in Thakoredas's case (supra).

8. Therefore, in view of the judgment of the Apex Court, as stated supra, I am of the considered view that, the right of the Deputy Commissioner to make the reference comes to an end soon after the expiry of three years and 90 days from the date of the application for reference seeking enhancement. Hence, the Petitioner cannot maintain the instant revision petition nor has he made out any good grounds to entertain the revision petition nor is he entitled to claim enhancement by recourse to Section 18(3)(b) of the Land Acquisition Act.

9. For the foregoing reasons, the revision petition filed by Petitioner is dismissed as devoid of merits.