

(2007) 03 KAR CK 0027

In the Karnataka High Court

Case No : Civil Revision Petition No. 788 of 2006

Usmansab

APPELLANT

Vs

The Land Acquisition Officer Cum Assistant Commissioner
and The Superintending Archaeological Serve of India,
Branch Officer, Archaeological Department

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

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

Citation : (2007) ILR (Kar) 1559 : (2007) 3 KCCR 1928

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Chandrashekar P. Patil, for the Appellant; B.V. Muralidhara, AGA for R1, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—This revision petition by the owner of the property is directed against the order dated 02.09.2006 passed by the Court of the Civil Judge (Sr.Dn.), Koppal dismissing the application filed by the petitioner u/s 18(3)(b) of the Land Acquisition Act, 1894 as amended in Karnataka ("the Act") in Civil Misc. No. 110/2006 on the ground that it was filed beyond the period of limitation.

2. I have heard Sri. Chandrashekar P Patil, learned Counsel for the petitioner and Sri. B.V. Muralidhara, learned Additional Government Advocate for the Land Acquisition Officer - respondent No. 1 and perused the order impugned herein.

3. Facts: The petitioner was the owner of a certain house in Itagi Village, Yelburga Taluk, Koppal District. The State Government published a preliminary notification dated 30.6.1977 u/s 4(1) of the Act followed by a final notification to acquire the aforesaid property of the petitioner along with certain other properties for preservation of a monument of National Importance namely the Mahadeva Temple of Itagi Village. The final notification was followed by an award determining the compensation to be paid to the petitioner. Subsequently, the

L.A.O issued a notice dated 14.10.1982 u/s 12(2) of the Act which was served on the petitioner on 24.10.1982. Aggrieved by the award, the petitioner filed an application before the Land Acquisition Officer u/s 18(1) of the Act on 02.11.1982 seeking reference to the Civil Court for determination of compensation in respect of his property. It is the case of the petitioner that the L.A.O failed to refer the matter to the Civil Court. Hence, the petitioner applied to the Civil Court on 14.03.2006 in Civil Misc.No. 110/2006 u/s 18(3)(b) of the Act for a direction to the L.A.O to refer the matter to the Court for determination of compensation. The Civil Court, by the order impugned herein, has dismissed the said application as barred by limitation. Hence, this revision petition.

4. Sri. Chandrashekar P. Patil, learned Counsel appearing for the petitioner, in support of the petition, relied on a judgment of this Court in *The Spl. Land Acquisition Officer, for Minor Irrigation Project, Gulbarga Vs. Tukkarreddy*, and also Section 15(2) of the Limitation Act, 1963 referred to therein.

5. Sri. B.V. Muralidhara, learned Additional Government Advocate contended that the question raised by the petitioner is answered against him by the Supreme Court in *State of Karnataka v. Laxuman* 2005 AIR SCW 5535. It is relevant to refer to paras 14 & 15 therein which read as follows:

14. Extinguishment of a right can be expressly provided for or it can arise by the implication from the statute. Section 18 of the Act as in Karnataka sets out a scheme. Having made an application for reference within time before the Deputy Commissioner, the claimant may lose his right by not enforcing the right available to him within the time prescribed by law. Section 18(3)(a) and Section 18(3)(b) read in harmony, casts an obligation on the claimant to enforce his claim within the period available for it. The scheme brings about a repose. It is based on a public policy that a right should not be allowed to remain a right indefinitely to be used against another at the will and pleasure of the holder of the right by approaching the court whenever he chooses to do so. When the right of the Deputy Commissioner to make the reference on the application of the claimant u/s 18(1) of the Act stands extinguished on the expiry of 3 years and 90 days from the date of application for reference, and the right of the claimant to move the Court for compelling a reference also stands extinguished, the right itself loses its enforceability and thus comes to an end as a result This is the scheme of Section 18 of the Act as adopted in the State of Karnataka. The High Court, is therefore, not correct in searching for a specific provision bringing about an extinguishment of the right to have a reference and on not finding it, postulating that the right would survive for ever.

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. This position is now settled by the decision of this Court in *The Addl. Spl. Land Acquisition Officer, Bangalore v. Thakoredas*, Major and Ors. (supra). This loss of

right to move the court precludes him from seeking a remedy from the court in terms of Section 18 of the Act. This loss of right in the claimant puts an end to the right of the claimant to seek an enhancement of compensation. To say that the Deputy Commissioner can make a reference even after the right in that behalf is lost to the claimant, would be incongruous. 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 a claim which has thus become unenforceable due to lapse of time or non-diligence on the part of the claimant.

(Underlining supplied)

6. As held by the Supreme Court in Laxuman's case supra, under the scheme of the Act, the claimant loses his right to move the Court for reference u/s 18(3)(b) of the Act on the expiry of three years and 90 days from the date of his making an application u/s 18(1) of the Act to the Deputy Commissioner/Land Acquisition Officer, such application having been filed within the period fixed u/s 18(2) of the Act. The judgment of this Court in The Spl. Land Acquisition Officer, for Minor Irrigation Project, Gulbarga Vs. Tukkarreddy, relied on by the learned Counsel for the petitioner cannot be said to lay down the correct law as it stands impliedly overruled by the Supreme Court in Laxuman's case referred to above. It is relevant to state that in Laxuman's case, the Supreme Court has considered the very question of limitation relating to filing of application u/s 18(3)(b) of the Act which had fallen for consideration before this Court in Tukkarreddy's case.

7. Coming back to the facts of the present case, the application u/s 18(1) of the Act was filed by the petitioner before the Land Acquisition Officer on 02.11.1982 seeking reference to the Civil Court for determination of compensation in respect of the acquired property and the application u/s 18(3)(b) of the Act was filed by him before the Civil Court on 14.03.2006 i.e. after 23 years of his making the application before the Land Acquisition Officer u/s 18(1) of the Act. Hence, in the light of the law laid down by the Supreme Court in Laxuman's case, the application of the petitioner u/s 18(3)(b) of the Act was obviously filed after expiry of the period allowed by law.

8. Since the application under Section 18(3)(b) of the Act was filed by the petitioner after expiry of the period of 3 years and 90 days from the date of his making an application u/s 18(1) of the Act, the court below is right in dismissing

the said application. As the order impugned herein is in conformity with the law laid down by the Supreme Court in Laxuman's case supra, I find no ground to warrant interference. Accordingly, the revision petition fails and is hereby dismissed.