

(1989) 06 KAR CK 0016
In the Karnataka High Court
Case No : Misc. First Appeal No. 1394 of 1982

V.Lakkanna (since deceased by his L.Rs.) and others	APPELLANT
Vs	
Land Acquisition Officer and others	RESPONDENT

Date of Decision : 06-06-1989

Acts Referred:

Constitution of India, 1950 — Article 133, 134A
Land Acquisition Act, 1894 — Section 18, 3, 30, 31

Citation : AIR 1990 Kar 192

Hon'ble Judges : M. Ramakrishna, J;M. Rama Jois, J

Bench : Division Bench

Advocate : M.R. Narasimha Murthy, for the Appellant; G.P. Shivaprash, N.P. Moganna, Krishnappa Karandur, S. Srivasta, D. Vijayarangam, S.V. Subramaniam and P. Makhija Motilal, for the Respondent

Judgement

Rama Jois, J.—This appeal is present ed under S, 54(1) of the Land Acquisition Act against the judgment and award in land acquisition reference under S. 18 and S. 31(2) of the Land Acquisition Act (the Act for short).

2. The facts of the case in brief are as follow :

3 acres 9 guntas of land in Sy. No. 104 of Ulsoor village was purchased from the then Government of Mysore jointly by one Anjanappa and Puttanarasimhaiah Setty for a consideration of Rs. 15.000/- on 9-6-1947. Prior to the purchase of the said property, for the purpose of purchasing the land, the said two persons had borrowed two sums of money from the appellant on promissory note. The amounts of money borrowed was Rs. 5,500/-and Rs. 7,000/- respectively. After the said purchase, there was an agreement between the said two persons, appellant and a few others" on 4-8-1948. According to the said agreement, the land in question was to be converted into sites and sold subject to the condition that the profits realised from the said transaction should be distributed among them by making it into 19 parts and giving 51/2 part out of 19 parts to the appellant. But for some reason or the other, the agreement was not acted upon

in that, no sites were formed and sold for nearly more than 12 years. At this stage, the said land was sold by Anjanappa and Puttanarasimhaiah Setty in favour of respondent 3, by two separate sale deeds dt. 1-6-1959 and 23-11-1959 which have been marked as Exs. P-1 and P-2 respectively in the Court below. In the preamble portion of the said sale deeds, there is a reference to the agreement entered into between Anjanappa and Puttanarasimhaiah Setty on the one hand and the appellant on the other and also the entitlement of the appellant to receive some money under the agreement and the liability of Thammaiah to pay it though no such specific condition was incorporated as one of the conditions in the substantive part of the sale deeds. Even after 1959, for another 12 years nothing happened. At that stage, a preliminary notification under S. 4 of the Act was published on 12-5-1972 by the State Government proposing to acquire the said land. The final notification was also issued on 15-3-1973. In the proceedings for compensation, the appellant also appeared and claimed a portion of the compensation payable in respect of the lands acquired. Thammaiah, respondent-3 herein, however, claimed the entire compensation in respect of the land to be acquired. The Land Acquisition Officer determined compensation payable at the rate of Rs. 30/- per square yard. However, as regards apportionment of the compensation, he referred the matter to the Civil Judge under S. 31(2) of the Act. There was also a reference under S. 18 at the instance of the appellant as well as respondent-4 for enhancement of the compensation. Section 18 reference was allowed and the compensation was enhanced to Rs. 50/- per square yard. The appellant not having adduced any evidence for claiming higher rate than Rs. 50/- per square yard, is not and cannot be said to be aggrieved by the quantum of compensation awarded. As regards his claim for apportionment of some portion of the compensation amount, the Court below held that the appellant was not a person who had any interest in the land and therefore he was not entitled for compensation. Aggrieved by the said order, the appellant has filed this appeal.

3, The learned counsel for the appellant contended that the view taken by the Court below that only a person who had interest in the immovable property acquired under the Land Acquisition Act can participate in the proceedings and claim apportionment of the compensation to be determined by the Court, was erroneous. He submitted that even though a person may not have any interest in the property acquired, there would be cases in which the person would have interest in the compensation payable. In support of the above contention, the learned counsel relied on the judgment of the Supreme Court in *Sunder Lal Vs. Paramsukhdas*, . In that case, the High Court of Bombay had taken a view similar to the one taken by the Court below in that that a person having no interest in the property acquired was not entitled to be impleaded as a party in a reference under S. 18 of the Act. The Supreme Court analysing the provisions of S. 18 and the definition of the expression "person interested" given in S. 3(b) of the Act, held that the view taken by the Bombay High Court was not correct. The Supreme Court held that the definition was wide enough to include not only

persons who had interest in the immovable property acquired but also persons who had interest in the compensation payable for having acquired immovable property under the Act.

4. On the facts of the case, it is seen that one Paramsukadas had secured a money decree against the owner of land which was subject matter of acquisition and had secured an order of attachment of the compensation payable to the owner judgment debtor. The Supreme Court held that though Paramsukadas was not a person who had any interest in the immovable property which was the subject-matter of acquisition, he was certainly a person who was interested in the compensation payable in view of the order of attachment of the land, made by the Civil Court in execution of the decree which he had obtained against the owner of the land.

5. The learned counsel also relied upon the judgment of the Calcutta High Court in *Santi Devi and Another Vs. Province of West Bengal*, . In the said case, the Calcutta High Court held that a person having no interest in the property but who was entitled to compensation was entitled to participate in the proceedings for compensation. That was a case in which the person who claimed compensation was a person in possession of the land which was the subject-matter of acquisition. The Learned Counsel also relied on the judgment of the Lahore High Court in *Chuttan Lal v. Mulchand* AIR 1917 Lah 40. In that case, the Lahore High Court held that a person who had, entered into an agreement for purchasing the land which was the subject-matter of acquisition, was a person interested within the meaning of S. 3(b) of the Act, though he might not have actually acquired any interest in the immovable property as such.

6. Learned counsel for respondent-3, however, relied upon the judgment of this Court in *M. L. Narasimaiah v. Vastegowda*. (1974) 1 Kar LJ 469. In that case, a Division Bench of this Court held as follows: --

"Compensation has to be paid in respect of the interest of the claimant in the land acquired. The possible disputes in apportionment cases may arise as follows :--

(1) as between mortgagor and mortgagee which involves issues as in mortgage suit; (b) as between co-sharers which involves settlement of shares as in a partition suit; (c) as between disputants regarding title which involves issues as in a title suit (d) as between the holder of an order of attachment and the judgment-debtor who is the owner of the land; (e) as between a beneficial owner and benamidar; (f) as between owners of dominant tenement and servient tenement regarding easement rights; (g) as between landlord and tenant.

We can understand the claim of the appellants if it were their case that the first respondent was a benamidar and they were the beneficial owners or that the first respondent was a trustee for them. It is not their case that the sale transaction under Ext. P1 was a sham transaction and that no title was conveyed to the first respondent. Their claim is based on an agreement to share the

amount of compensation when the land is acquired. We asked Sri Papanna that if the land had not been acquired, whether the claimants could have claimed any interest in the land. The learned counsel conceded that before the acquisition, the appellant could not have claimed any interest in the land. In our judgment, the alleged agreement to share the amount of compensation, assuming the same is true, did not confer on the appellants any right in the land acquired. The alleged right is one that arose after the acquisition when all interests in the land ceased. A person who claims no interest in the land before the acquisition cannot seek a reference under S. 30 and a dispute concerning a right said to arise after acquisition cannot be adjudicated by the Court under S. 30. The learned Civil Judge ought to have disposed of the reference on this short ground instead of going into the genuineness and the validity of the agreement set up by the appellants. The remedy of the appellants was to institute a suit and obtain appropriate relief. Necessarily they would have had to pay the requisite Court fee on the amount claimed by them."

7. He submitted, relying on the above judgment, that only a person having an interest in the immovable properly was entitled to apportionment of compensation. It is true that the Division Bench has taken the view that only a person having an interest in the land acquired can claim compensation. But the decision of the Supreme Court in *Sunder Lal Vs. Paramsukhdas*, was not brought to the notice of the Division Bench. The Supreme Court in that case interpreted the expression "person interested" as defined in S. 3(b) of the Act and held that it had a wider meaning, in that not only the person who has got an interest in the immovable properly acquired but also a person who, though not having any interest in the immovable property acquired, has an interest to claim compensation, would have to be regarded as a person interested for the purpose of compensation proceedings. Therefore, the law laid down by the Division Bench to the extent it is inconsistent with the ratio of the decision of the Supreme Court cannot prevail. Therefore, the contention of the learned counsel for the appellant that the Court below was not right in holding that only a person who had an interest in the lands acquired alone can participate in the compensation proceedings has to be upheld. However, that answer does not in any way help the appellant, unless he also shows that he was a person who had an interest in the compensation payable in respect of the lands acquired.

8. The undisputed facts of the case which are relevant for deciding the aforesaid question are : that Anjanappa and Puttanarasimhaiah Setty purchased the land in question on 9-6-1947 from the State Government for a consideration of Rs. 15,000/-. The appellant had only lent Rs. 5,000/- and Rs. 7,000/- on two promissory notes. It is true that there was an agreement on 4-8-1948 which was marked as Ex. P-6 in the Court below. According to that agreement. The land had to be converted into sites and had to be sold to different individuals and the profit earned in the said business was to be divided into 19 pans and the appellant was entitled to 5 1/2 pans of the profit so earned. But that agreement was not implemented. On 23-11-1959 and on 1-6-1959 under two sale deeds,

Ex. P-1 and P-2 marked in the Court below, the said land was sold by Anjanappa and Puttanarasimhaiah Setty in favour of respondent-3. With these sale deeds, agreement Ex. P-6 entered into between the parties on 4-8-1949 came to an end. Subsequently, there was also a resolution passed in the meeting of all the persons who had entered into an agreement to form themselves into an association for the purpose of forming the sites and selling them to earn profit. By that resolution, which was marked as Ex. P-7 in the Court below, the agreement was superseded and the whole project was dropped. The only claim of the appellant thereafter was to get back the money which he had advanced.

9. Learned counsel for the appellant, however, pointed out that under Exs. P-1 and P-2 all the obligations of Anjanappa and Puttanarasimhaiah Setty under the agreement. Ex. P-6, were taken over by Thammaiah and therefore the appellant cannot be regarded as a person having interest in the compensation payable. If, as contended by the learned counsel for the appellant, the entire obligation of forming sites and selling them and distribution of profits arising therefrom cast on Anjanappa and Puttanarasimhaiah Setty under Ex.P-6 had been transferred to respondent 3, there would have been some force in the contention of the appellant that he had an interest in the amount of compensation payable in respect of the land acquired. Though the original sale deeds, Exs.P-1 and P-2 produced in the Court below are not found in the records of the lower Court, copies of the said exhibits were produced by the learned counsel for the appellant and the correctness of those copies is not controverted by respondent 3. Therefore, by consent of both the learned counsel, we have gone through those documents. After going through the documents, we are satisfied that the obligations of the parties under the agreement; Ex.P-6 were not cast on Thammaiah under the two sale deeds. On the other hand, as rightly pointed out by the Court below, all that was stated that too in the preamble to the sale deeds was that Thammaiah would have to pay the amount which was payable to the appellant. Therefore, it cannot be said that the appellant had acquired any right or interest in the compensation payable. If respondent 3 failed to pay the amount payable to the appellant, that gave entirely different cause of action for the appellant on the basis of which the appellant could have filed a suit for recovery of the amount and if necessary by impleading Anjanappa and Puttanarasimhaiah Setty also to whom the appellant had advanced some money before they purchased the property, also as defendant.

10. In the circumstances, we hold the appellant had neither interest in the property which was the subject-matter of acquisition nor he had any interest in the amount of compensation payable in respect of the land acquired.

11. In the result, we make the following:--

ORDER

The appeal is dismissed. However, having regard to the circumstances of the case, the parties are directed to bear their own costs.

12. Immediately after the pronouncement of the judgment, learned counsel for the appellant made an oral application under Art. 134-A of the Constitution for grant of certificate of fitness to appeal to the Supreme Court under Art. 133 of the Constitution. In our opinion, no substantial question of law which requires to be decided by the Supreme Court arises out of our order. The application is therefore rejected.

13. Appeal dismissed.