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Court : Karnataka

Decided On : Nov-16-2011

Judge : Jawad Rahim

Appeal No. : C.R.P. No. 163 of 2011

Appellant : Muniyappa and Others

Respondent : The Special Land Acquisition Officer for Railways and Karnataka Industrial Areas Development Board, Bangalore and Another

Advocate for Pet/Ap. : For the Petitioners: A.V. Gangadharappa, AVG Associates, Advocates. For the Respondents: R1 and R2 - P.V. Chandrashekar, Advocate.

Judgement :

(Prayer: This CRP filed under Sec.115 of CPC, filed against the Judgment and orders dated 16.03.2011 passed in LAC.136/2004 on the file of the II-ADDL. City Civil and Sessions Judge, ?Bangalore, Rejecting the petition filed U/SEC.18(3)(b) and U/SEC 28(3) of land Acquisition Act.)

1. Legal heirs of Narasappa and one Muniyappa whose lands were compulsorily acquired are in revision against dismissal of the petition under Section 28-A of the Land Acquisition Act (hereinafter referred to as the Act, for brevity) by order dated

16.2.2011 in LAC.136/02.

2. Heard.

3. The contextual facts are:

a) By preliminary notification dated 13.9.1972, land bearing Survey No.88/25 measuring 2 acres of Nallakadirenahalli village, Yeshwanthpur Hobli, Bangalore North Taluk, was proposed for acquisition. The process of acquisition resulted in final notification dated 26.5.1973 and award came to be passed on 30.1.1980, copy of which was served on 22.11.1980. Possession was taken on 3.9.1973.

b) In this manner, land owners-Muniyappa and Narasappa were deprived of the land under compulsory acquisition process.

c) Against the award dated 30.1.1980, they sought enhancement and requested the Land Acquisition Officer (LAO) to refer the dispute to the court for adjudication under Section 18(b) of the Act. It is not known what was the result of such proceedings.

d) In subsequent events, it so happened that similarly placed land owners had sought enhancement of compensation which was considered by the reference court and it was enhanced from Rs.14,000/- per acre to more than Rs.1,50,000/-.

e) By this time, Narasappa died and his L.Rs. were brought on record. Along with Muniyappa they filed an application under Section 28-A of the terms of the award passed by the court in LAC.150/81. The LAO received the application dated 22.7.2000, but rejected it. Thereafter applicants filed reminders, but he did not act on it. Thus, they filed W.P.30166-02 (LA-KIADB) for a mandamus to the LAO to consider their application. Accepting their plea, the writ court directed the 1st respondent-LAO to consider and pass appropriate orders on the application filed by the petitioner vide Annexure-C and reminders (Annexure-D). Thereafter also the LAO was in inertia for some time and passed order on 16.2.2004 rejecting the application filed by them under Section 28-A of the Act.

f) On such rejection which amounts to declining re-determination of compensation as required under Section 28-A of the Act, they filed an application on 19.3.2004 requesting him to refer it to the court for determination. That application has not been considered by him and he was again in inertia. They thus filed a petition before the civil court under Section 28-A (3) read with Section 18(3) of the Act to direct the respondent to make reference for re-termination of compensation in respect of 2 acres in Survey No.88/25 measuring 2 acres of Nallakadirenahalli village.

g) It met serious resistance by the state through the LAO questioning the locus of the applicants. In that, more than one ground was urged to defeat the action at the threshold. The first contention on behalf of the State was, applicants having failed to avail the benefit of Section 18 of the Act and having failed in their attempt to get the amount of compensation re-determined by the court, the benefit of the provision of Section 28-A was not available. In other words, the stand of the Government was, benefit of Section 28-A of the Act is available only to those persons who had not invoked Section 18 seeking re-determination of compensation by the Court. The second ground was, even if it is presumed that the applicants could seek relief under Section 28-A of the Act, the petition was not maintainable as they had approached the LAO who had rejected their application for reference. The third ground was, the lands of the applicants were not similarly placed or the character of the lands was not as involved in LAC.150/81. The potential value of the applicants' land and scope for its exploitation was minimal compared to the land which was the subject matter of application in LAC.150/81/ Lastly, it was urged the applicants could not re-agitate the issue under Section 28-A of the Act which was a benevolent provision only for those who had not approached the LAO seeking reference to court for determination of compensation.

h) Undoubtedly the issue regarding limitation was also raised to show that the lands were acquired in the year 1972-73 and at this belated stage, re-determination will amount to re-opening the settled position of the parties.

i) The learned trial judge accepted all the contentions of the State and has rejected the application of the land owners. Assailing it, they are in this revision.

4. Sri A.V. Gangadharappa, apart from referring to what transpired from the time of acquisition, has brought in one more aspect, i.e. when the application was filed initially by the applicants seeking a direction to the LAO to submit reference, the State through LAO had filed an application under Order VII Rule 11, C.P.C. seeking rejection of the petition as barred by law. That application was rejected by the trial court vide order dated 5.6.2007 against which they were in revision before this court under Section 115, C.P.C. in CRP.509/07 which attempt of the State failed as this court, considering all issues so urged against maintainability, dismissed the revision and held the application to be maintainable. It is submitted, against the order of this court dated 27.9.2007, the state was before the apex court in SLP.3472/08. Leave is obtained and the matter is said to be listed for hearing.

5. No doubt the position as on date shows State has gained access to the apex court after obtaining leave, but no relief for grant of interim order to stay the proceedings before the trial court is sought. Consequently the trial court proceeded further and the impugned order has been passed.

6. The questions that need consideration in this revision are:

1) Whether Section 28-A of the Act bars relief to persons who had applied for reference to court for determination under the Act?

2) Whether there is any bar under Section 18 of the Act precluding persons whose reference is pending in civil court for determination to seek benefit under Section 28-A of the Act?

7. I am persuaded to accept the contention of Sri Gandadharappa that the Government has shown undesirable litigious conduct in the present litigation. It must be noticed that grounds urged against availability of relief under Section 28-A of the Act has been considered by this court in CRP.509/07, negating the objections raised by States and accepting land owners' plea that they are entitled

to relief. The opinion formed by this court is not only independent but gains support from the decisions of the apex court in the case of:

a) SMT. BHAGTI (DECEASED) THROUGH HER L.Rs. JAGADISH RAM SHARMA .v. STATE OF HARYANA (AIT 1997 SC 1793),

b) STATE OF KARNATAKA . v. LAXUMAN ([2005] 8 SCC 709) AND

c) UNION OF INDIA AND ANOTHER . v. HANSOLIDEVI and OTHERS ([2002] 7 SCC 273.

8. The language under Section 28-A of the Act is thus:

“28-A. RE-determination of the amount of compensation on the basis of the award of the Court - (1) Where in an award under this Part, the Court allows to the applicant any amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.”

9. The contention on behalf of the state that the provision is available only to those who had not filed an application under Section 18 of the Act, needs to be rejected summarily for the reason, Section 28-A does not restrict the relief grantable under it to persons who had filed the application under Section 18 of the Act, or persons whose applications are pending under Section 18 of the Act or persons whose applications are rejected under Section 18 of the Act. From the phraseology of the provision of Section 28-A, particularly the sentence ‘....persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and

who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court' makes it clear that the Legislature has used the word 'notwithstanding' to include all those who had not filed the application under Section 18 and also persons who had filed the application. It does not exclude a person who had filed such application.

10. Undoubtedly, the relief grantable as engrafted under Section 28-A of the Act is to ensure parity and equity in the matter of award of compensation. In other words, the provision is intended to avoid inconsistencies in the award, that is, fixation of quantum of compensation differently in respect of similarly located lands covered under the same notification. All that the Collector has to do is to re-determine the award passed considering award in respect of other lands covered under the same notification which has already stood the test of determination by the civil court. The intention is quite obvious - to ensure the same standard of grant of compensation based on judicial determination of the award done by court. Thus, the intention is to avoid dissimilarity or adjudication of the same issues in respect of each claim. It compels the Deputy Collector/LAO to re-determine the award based on adjudication of the civil court in any one of the references or more, arising out of the same notification.

11. When that is the laudable object, it stands to no reason to again bring in discrimination between a person who has applied under Section 18 of the Act and a person who has not done so. The object, as stated above, is to ensure equality in determination of the amount in respect of similarly located lands which would be the basis for awarding compensation to others also.

12. If we accept the contention of the State that it non-suits persons who had already applied under Section 18, the very object of Section 28-A of the Act would be rendered nugatory. I am, therefore, compelled to observe all contentions of the state against maintainability of applications are worthy only of rejection.

13. It is regrettable to note despite this court taking the view that the application was maintainable by order dated 27.9.2007 in CRO No.509/08, the State is still, with disdainful conduct, re-agitating it upto the apex court. It will not be out of place to mention the concern expressed by the apex court taking note of the pleas on compulsorily acquisition of land. In SUNDAR vs UNION OF INDIA reported in (2001) 7 SCC 211, the apex court acquisition in paragraph 22 of its judgment, which reads thus:

“Compulsory nature is acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling, normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the court fixes as per the provisions of the Act. The solatium envisaged in sub-section (2) “in consideration of the compulsory nature of the acquisition” is thus not the same as damages on account of the disinclination to part with the land acquired.”

Having referred to the consequences of compulsory acquisition Apex Court held property right needs to be protected. The right recognized by the Apex Court is to get the compensation at the earliest and also it entitles solatium and interest as provided under the Act.

That answers all questions as to what should be approach of the collector and the courts in the matter of determination of compensation while dealing with applications filed by land owners whose lands are compulsorily acquired under the Acquisition Act.

14. The trial court, in the instant case, has lost sight of all these aspects in dealing with the case on hand. It is noticed the trial court has transgressed its limit. But all

that it had to do was to examine the right of the applicants and issue a direction or reject it if it was not permissible in law. But the trial court has proceeded further to decide the issue on merit as if it was deciding the quantum itself. On this ground also, the impugned order is unsustainable.

15. In the result, the petitioners succeed in their legal pursuit. The impugned order is set aside. LAC.136/04 is restored with a direction to pass orders in terms of Section 28-A of the Act to direct the LAO to submit reference and on such submission, determine compensation based on the award passed in LAC.150/81 as permissible under Section 28-A of the Act.

16. Since sufficient time has been lost, the trial court shall dispose of the petition as expeditiously as possible. Taking note of the long-drawn proceedings, sufferance of the order by the Government which it has re-agitated on the same issues, I am compelled to direct the state to pay cost. In the circumstances, a sum of Rs.5,000/- shall be the cost payable by the state instrumentality i.e. Karnataka Industrial Area Development Board to the petitioners. If the State feels, it can recover the same from the officer(s) concerned. Since acquisition of land is for the benefit of KIADB, for all intent and purpose, state shall mean KIADB.

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