

Chanabasappa and Another Vs. the Special Land Acquisition Officer, U.K.P.

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Court : Karnataka Gulbarga

Decided On : Jul-26-2011

Judge : H.G. Ramesh

Appeal No. : C.R.P. No. 2028 of 2009

Appellant : Chanabasappa and Another

Respondent : The Special Land Acquisition Officer, U.K.P.

Advocate for Pet/Ap. : For the Petitioners: Umesh V. Mamadapur, Advocate. For the Respondent: Malikarjun Sahukar, HCGP.

Judgement :

RAMESH, J.

1. The question that requires to be determined in this Revision Petition is as to when the applications under sub-sections (1) and (3) of Section 28A of the Land Acquisition Act, 1894, are maintainable in law?

2. I have heard the Counsel for the parties and perused the impugned order. This Revision Petition is directed against the order dated 24.7.2009 passed by the Court of the II Additional Civil Judge (Sr.Dn.), Bijapur, (hereinafter referred to as 'the Reference Court') in LAC Misc.No. 27/2005. BY the impugned order, the Reference Court has dismissed the petitioner's application dated 04.06.2005 filed under Section 18(3)(b) of the Land Acquisition Act, 1894, as amended in

Karnataka (for short 'the Act'). The said application was filed to direct the respondent-L.A.O. to refer the matter to the Reference Court as sought by them in their application dated 17.02.2003 filed before the L.A.O. under Section 28A(3) of the Act.

3. The facts leading to filing of this Revision Petition are as follows:

The petitioners filed an application dated 20.5.2002 (Ex.P1), under Section 28A(1) of the Act for re-determination of the compensation payable to them in respect of the house acquired, on the basis of an award dated 02.02.2002 (Ex.P2) which was passed by the Lok-Adalath, Bijapur, in LAC No.697/1999, by consent of the parties therein. The said application was rejected by the respondent - L.A.O. as not maintainable as per the endorsement dated 21.11.2002 (Ex.P3). Hence, the petitioners filed an application (Ex.P4) under Section 28A(3) of the Act, before the L.A.O. on 17.02.2003 stating that their application dated 20.05.2002 (Ex.P1) filed under Section 28A(1) of the Act was rejected by him as per the endorsement dated 21.11.2002, and hence, the matter may be referred to the Reference Court for determination of the compensation payable. The said application was also rejected by the respondent-L.A.O. as not maintainable as per the endorsement (Ex.P5) dated 03.02.2003 (should be 23.02.2003). Thereafter, the petitioners filed an application dated 04.06.2005 under Section 18(3)(b) of the Act before the Reference Court in L.A.C. Misc. No. 27/2005 for a direction to the respondent-L.A.O. to refer the matter to the Reference Court as sought in their application dated 17.02.2003. The Reference Court dismissed the said application by its order dated 24.07.2009 which is impugned in this Revision Petition.

4. On the above facts, the question that needs to be examined is as to whether the Reference Court was right in not directing the respondent-L.A.O. to refer the matter to it for determination of the compensation payable to the petitioners? To examine the said question, it is relevant to refer to Section 28A of the Act, which reads as follows:

28A. 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 of compensation in excess of the amount awarded by the Collector

under Section 11, the 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 make 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 which 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.

(2) The Collector shall, on receipt of an application under sub-Section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-Section (2) may, by written application to the Collector, require that the 'matter referred by the Collector for the determination of the Court and provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

(underlining supplied)

As stated above, the application filed by the petitioners under Section 28A(1) of the Act was rejected by the I.A.O. as not maintainable. Obviously, no award was made by the I.A.O. under Section 28A(2) of the Act. In my opinion, in the absence of an award by the I.A.O. under Section 28A(2) of the Act determining the amount of compensation payable, an application under Section 28A(3) of the Act to refer the matter to the Court is not maintainable in law. This is evident by a plain reading of Section 28A(3) of the Act, there must be an award under Section 28A(2) of the Act, determining the amount of compensation payable. As no award was made under Section 28A(2) of the Act, the application dated 17.02.2003 (Ex.P4) filed

under Section 28A(3) of the Act before the respondent-I.A.O. was not maintainable in law. When the application itself was not maintainable in law, question of directing the I.A.O. to refer the matter to the Reference Court pursuant to such an application does not arise. Hence, the impugned order is perfectly in accordance with law.

5. The petitioner's application (Ex.P1) filed under Section 28A(1) of the Act before the I.A.O. was also not maintainable in law. A plain reading of Section 28A(1) of the Act referred to above would show, that existence of an award passed by a Court under Part III of the Act is a condition precedent, to apply under Section 28A(1) of the Act, for re-determination of the compensation by the I.A.O. and the application shall have to be filed within the period stated therein. In the present case, the award (Ex.P2) passed by the 'Lok-Adalath', by consent of the parties, cannot be said to be an 'Award' passed by a Court under Part-III of the Act. Hence, the petitioner's application dated 20.5.2002 (Ex.P1) filed before the I.A.O. under Section 28A(1) of the Act was not maintainable in law.

6. In view of the above, I find no legal infirmity in the order of the Reference Court in dismissing the petitioner's application dated 04.06.2005 filed under Section 18(3)(b) of the Act. The Revision Petition is accordingly dismissed.

Revision petition dismissed.

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