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Court : Karnataka

Decided On : Feb-13-2013

Judge : Ram Mohan Reddy

Appeal No. : Writ Petition No. 42264 of 2012(LA-RES)

Appellant : Narasappa

Respondent : State of Karnataka, Represented by Its Principal Secretary Revenue Department and Another

Judgement :

(This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 8.2.2012 passed by the learned principal senior civil judge, Shimoga in L.A. Misc. 62/2007 in so far as dismissing the reference application filed u/s 18 of the Land Acquisition Act vide Annexure-E and quash the order dated 30.9.2006 issued by second respondent in Misc. No.37/2006-07 vide Annexure-C.)

1. Petitioner's immovable property when acquired under an agreement followed by the petitioner executing Form-D under Rule 10-B of the Land Acquisition Rules and having agreed to part with the property for a public purpose, led to issue of an award notice dt.15.5.2006 under Subsection (2) of Section 12 of the Land

Acquisition Act, 1894, for short 'Act' Annexure-A. It appears that the petitioner filed an application dt. 19.9.2006 Annexure-B to the Special Land Acquisition Officer to refer the dispute over enhancement of compensation under Section 18 to the Civil Court. That application was rejected by endorsement dt. 30.9.2006 Annexure-C stating that the award having emanated from out of the agreement between the parties was disentitled to a reference under Section 18 of the Act.

2. The petition Annexure-D invoking Section 18(3)(b) of the Act was registered as LA (Mis) No.62/2007 before the Prl. Civil Judge (Sr.Dn), Shimoga to call for the records and examine the legality and propriety of the order of the Deputy Commissioner and to set-aside the order and permit the petitioner to proceed for enhancement of compensation, as also to direct the respondent to refer the matter to the civil Court for proper adjudication. The petition was accompanied by an IA under Section 5 of the Limitation Act to condone the delay in filing an application under Section 18 of the LA Act, before the Deputy Commissioner. That IA was not ordered by the Civil Court, however the petition when rejected by order dt. 8.2.2012 Annexure-E is called in question in this petition.

3. It is no doubt true, neither the Deputy Commissioner nor the Civil Court decided the case of the petitioner on 'whether the representation filed before the Deputy Commissioner for reference under Section 18 was in time or not ?'. Suffice it to state that in the light of paragraph 8 of the petition under Section 18(3)(b), Annexure-D, disentitles the petitioner to the relief of seeking a reference for enhancement of compensation as it reads thus:

"8. It is submitted that the award notice is dated 24.5.2006. Petitioner has filed the Sec.18 application on 19.9.2006. Due to lack of knowledge and bonafide reasons, the petitioner could not file the application within 3 months before the respondent. Hence, an application for condonation of delay is filed herewith along with this petition."

4. Petitioner having not filed the application before the Deputy Commissioner for enhancement of compensation, within the time stipulated by law under Section 18, remedy of the petitioner to have a reference stands extinguished and the right to have enhancement becomes unenforceable. In the light of the authoritative

pronouncement of the larger Bench of the Supreme Court in *State of Karnataka and others -v- Luxuman and others*¹, the Apex Court observed that 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 under Section 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, sequentially 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. It was further held that in that context the claimant loses his right to move the Court for making a reference and therefore, it is not possible to hold that invoking Section 5 of the Limitation Act before the Land Acquisition Court 2006(1) KLJ 129 (SC) the claimant can get over the bar to the remedy created by Section 18 of the Act and that Section 5 of the Limitation Act would have no application while approaching the Court under Section 18(3)(b) of the Act, if the application is not within the time, the same has to be dismissed.

5. Though the Deputy Commissioner and the Civil Court did not advert to this position in law, nevertheless stumbled upon the correct decision.

Petitioner disentitled to any relief, the petition is accordingly rejected.

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