

KACM700004072014



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND
PRINCIPAL J.M.F.C., TARIKERE**

***Present : SRI M.C. NANJE GOWDA, B.A.L., LL.M.,
SENIOR CIVIL JUDGE & PRL. JMFC.,
Tarikere.***

Dated this 14th day of January, 2022

L.A.C. NO.13/2014

Petitioner/s:

1. Shivananjaiah S/o
Nanjundaiah, major,
Agriculturist, R/o Vaddaradibba,
Rangenahalli Post, Lakkavalli
Hobli, Tarikere Taluk.
Chikkamagaluru District.
2. Smt. Jayamma W/o
Nanjundaiah, major, R/o
Vaddaradibba, Rangenahalli
Post, Lakkavalli Hobli, Tarikere
Taluk. Chikkamagaluru District.



LAC No.13/2014

[By Sri. C.H.P., Adv.]

Versus

Respondent/s: Assistant Commissioner/Land
Acquisition Officer, Upper
Bhadra Project, Tarikere.

(ADGP)

J U D G M E N T

This reference for enhancement of compensation has been arisen out of an application filed by the original petitioners - Shivananjaiah and another against the award dated **13.05.2010** before the respondent under **section 18(1) of the Land Acquisition Act 1894.**

2. The case of the petitioners in brief is that:

Petitioners are the owners of the property bearing Sy. No.120 measuring 3 acres situated at Shanthipura



LAC No.13/2014

Village, Lakkavalli Hobli, Tarikere Taluk. The respondent has acquired the said land for Upper Bhadra Project and awarded total compensation of **Rs.2,25,000/-**. But the said compensation is inadequate and meager. The compensation is not paid based on market value. The acquired land consist of 800 areca trees, bore-well and pump-set, farmhouse and the land was irrigated. Therefore, the petitioners are entitled for enhanced compensation.

3. After receipt of records, the notices of the reference were issued to both parties. The petitioners appeared through their advocates. But, the respondent also appeared and filed objection.

4. The petitioners in-spite of giving several opportunities have not chosen to lead evidence. The

**LAC No.13/2014**

petitioners were given time to lead evidence, on
15.11.2014, 31.01.2015, 21.02.2015, 28.03.2015,
25.04.2015, 20.06.2015, 22.08.2015, 03.10.2015,
19.12.2015, 23.01.2016, 05.03.2016, 16.04.2016,
25.06.2016, 27.08.2016, 05.11.2016, 21.01.2017,
04.03.2017, 03.06.2017, 16.09.2017, 04.11.2017,
18.11.2017, 06.01.2018, 03.03.2018, 04.04.2018,
06.06.2018, 07.07.2018, 01.09.2018, 06.10.2018,
09.11.2018, 15.11.2018, 23.11.2018, 30.11.2018,
07.12.2018, 14.12.2018, 05.01.2019, 25.01.2019,
15.02.2019, 22.02.2019, 05.04.2019, 01.06.2019,
25.07.2019, 08.08.2019, 12.09.2019, 16.10.2019,
02.11.2019, 30.11.2019, 01.02.2020, 29.02.2020,
18.03.2020, 15.06.2020, 04.07.2020, 08.07.2020,
07.07.2020, 07.08.2020, 10.09.2020, 19.09.2020 and
21.11.2020. Therefore, the matter was posted for



LAC No.13/2014

judgment. Even after posting the matter for judgment, the judgment was not passed on 05.12.2020 as there were other connected matters. But even after that the petitioners and their counsel did not come. Therefore, the judgment.

5. Even the respondent also has not chosen to examine any witness before or produce any document.

6. Heard.

7. Now, the points that arise for the consideration are:

- 1) Whether petitioners proved that the reference is in time?
- 2) Whether the petitioners/applicants are entitled for enhanced compensation?



LAC No.13/2014

3) What order?

8. My findings on the above points are as follows:

Point No.1 : In the Negative

Point No.2 : Does not arise for consideration

Point No.3 : As per final order.

REASONS

9. Point No. 1 :-According to the petitioners, they are the owners of the property bearing Sy. No.120 measuring 3 acres situated at Shanthipura Village, Lakkavalli Hobli, Tarikere Taluk. The respondent has acquired the same for Upper Bhadra Project and awarded total compensation of **Rs.2,25,000/-**. But the said compensation is inadequate and meager. The compensation is not paid based on market value. The petitioners have contended that they have grown 800



LAC No.13/2014

acre trees, dugged up a bore-well, put up the pump-set and farmhouse. They have also irrigated land through drip irrigation. Therefore, the petitioners are entitled for enhanced compensation.

10. The first and foremost objection of the respondent to this petition in the arguments is that the reference is not made within the statutory period prescribed under the land acquisition act. It has been referred after 90 days time prescribed under section 18(3) of land acquisition act. Therefore, the petition is barred by the limitation and hence the petition is not maintainable and liable to be dismissed. In this regard the counsel for the respondent has relied upon a decision reported in **AIR 2006 SC 24** rendered in case of



LAC No.13/2014

State of Karnataka Vs Laxuman and sought for dismissal of the application.

11. It appears there is some force in the contentions of the respondent. Because, it is not in dispute by the petitioner that the respondent has passed final award on **13.05.2010** and petitioners have filed the reference application before him on **"31.01.2014"**. It is pertinent to note that as per Sec.18 (1) of Land Acquisition Act any person interested in the award can request the Deputy Commissioner to make reference to the reference court about the claim for enhancement of compensation. But as per proviso to Sec.18(2), such application shall **be made within 90 days from the date of service of notice from the Deputy Commissioner under Sub-Section 2 of Sec.12.** Sec.18(3) (a) further

**LAC No.13/2014**

provides that the Deputy Commissioner shall within 90 days from the date of receipt of an application shall make reference to the court. Sec.18(3) (b) provides that if the Deputy Commissioner does not make a reference within a period of 90 days from the date of receipt of application, the applicant may apply to the court to direct the Deputy Commissioner to make reference and the court may direct the Deputy Commissioner to make reference within such time as court may fix.

12. As such, from a careful analysis of Sec.18 of the Land Acquisition Act 1894, it is very clear that the interested person in the award shall make an application **within 90 days** from the date of service of award notice under Sec.12 (2) before the Deputy



LAC No.13/2014

Commissioner to refer the matter to the reference court. But in the present case, the petitioners have given request/ application with the respondent - Land Acquisition Officer on **31.01.2014** for making reference. But it is pertinent to note that, admittedly the award has been passed on **13.05.2010** and 90 days time as provided under proviso to Sec.18(2) has been expired on 12.08.2010. This shows that the petitioners have filed application before the respondent for reference of the matter after expiry of 90 days time provided under Sec.18(2) of the Land Acquisition Act. It is pertinent to note that the word used under proviso to Sec.18(2) is **shall**. This disclose that making of such application within such time is mandatory. In this regard, decision relied upon the learned counsel for the respondent reported in **AIR 2006 Supreme Court, 24**



LAC No.13/2014

rendered in case of **State of Karnataka Vs Laxuman** is worth to be noted. In the said decision, it is held by the Hon'ble Supreme court that

“On a plain understanding of the scheme of Sec.18 of the Act as amended in Karnataka, it is apparent that a claimant has to make an application for reference within a period of 90 days of the service of notice under S.12(2) of the Act. The Section casts a duty on the concerned officer to make a reference within 90 days of the receipt of the application for reference. The mere inaction on the part of the officer does not affect or straightway extinguish, the right of the claimant applicant. The claimant is conferred the right to approach the Court but he has to do so, within three years of his having made an application for reference in view of the general law of limitation. It is in this context that it has been held that the time available to a claimant for approaching the Court for getting a reference made, is in all, three years, and 90 days from

**LAC No.13/2014**

the date of the accrual of the cause of action. That accrual is when he makes an application for reference within the time prescribed by S.18(2) of the Act. The controversy that is generated in these appeals is whether on the expiry of the said period of three years and 90 days, the right of the Deputy Commissioner to make a reference and that of the claimant to move the Court, get extinguished. It is to be remembered that the claimant had made his application for reference within the 90 days prescribed by the statute. Held,

Under the Karnataka scheme, the period for making an application for reference has been enhanced from six weeks to 90 days and the terminus a quo is the receipt of notice from the Collector under S.12(2) of the Act. The Section proceeds further and imposes a duty on the Deputy Commissioner to make the reference to the Court within 90 days from the date of receipt of the application under S.18(1) of the Act. Though it may not be conclusive what one has to notice is that expression used is 'shall' and not 'may'. The scheme does

**LAC No.13/2014**

contemplate a situation where the Deputy Commissioner, in spite of the peremptory nature of the duty cast on him, still fails to make the reference within the time stipulated by sub-sec.(3)(a) of S.18. The claimant is, therefore, given the right to approach the Court, namely, the Court that is to deal with the claim on the reference being made, to direct the Deputy Commissioner to make the reference within a time to be fixed by the Court. This right to apply to the Court which is to deal with the reference, is not available under the Central Act. In fact, if one were to go by the use of the expression 'shall', and the introduction of S.18(3)(b) and the right conferred thereunder, there is no difficulty even in taking the view that it is mandatory for the Deputy Commissioner to make the reference within 90 days of receipt of the application for reference. When he fails to perform the mandate of the statute, the provision gives the claimant a right to approach the Court which could compel the reference to be made by the Deputy Commissioner who had failed to perform his duty under S.18(3)(a) of the Act and in that

**LAC No.13/2014**

process, even award costs of the proceedings against the Deputy Commissioner, and in appropriate cases, to be recovered from him personally.

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 S.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 under S.18(1) of the Act stands extinguished on the

**LAC No.13/2014**

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 S.18 of the Act as adopted in Deputy Commissioner can make a reference even after the right in that behalf is lost to the claimant, would be incongruous. On the expiry of three years and 90 days from the date of an application for reference made within time under 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”.

13. It was argued by the learned counsel for petitioner that this court has got every powers to condone the delay by invoking the provisions of section



LAC No.13/2014

5 of limitation act and hence the petition is maintainable. But this contention of the petitioners is also not acceptable. Because, in the same decision referred supra, Hon'ble supreme court, has held that

“Section 5 of Limitation Act would not be available since the consequence of not enforcing the right to have a reference made on the scheme of S.18 of the Act as operating in Karnataka, is to put an end to the right to have a reference at all. Since in that sense it is an extinguishment of the right, the right cannot be revived by resorting to S.5 of the Limitation Act”.

As such, from the above provisions of law and decisions referred supra, it is very very clear that the petition filed by the petitioners after statutory period is barred by limitation and even section 5 of the limitation act cannot be invoked by this court. Therefore, under these circumstances, this reference



LAC No.13/2014

court has no other option except to reject the application/petition filed by the petitioners as not maintainable. **Accordingly, this court answers the Point No.1 in the Negative.**

14. Point No.2 :- This reference court while answering the point No.1 has come to the conclusion that that the petition is not maintainable as it is filed after 90 days from the date of final award dated **13.05.2010**. When the very petition filed by the petitioners itself is not maintainable, the question awarding enhanced compensation in this petition does not arise at all. **Hence, point No.2 does not arise for consideration.**



LAC No.13/2014

15. **Point No.3:** In view of the aforesaid reasons and findings, this court proceed to pass the following:

ORDER

The reference made by the respondent under Sec.18(3) of the Land Acquisition Act is hereby rejected.

However, the petitioners are at liberty to have remedy under Sec.28 (A) of the Land Acquisition Act 1894.

(Directly dictated to the stenographer, directly computerized by her, corrected and then pronounced by me in the open court on this the 14th day January, 2022.)

Sd/-
(M.C. NANJE GOWDA)
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.