
(2015) 02 KAR CK 0011

In the Karnataka High Court

Case No : MFA Nos. 30316, 31237/2012 [LAC], 30536, 30537, 30538, 30539
and 30540/2013 [LAC]

Abraham Alisab Kaladagi and Others

APPELLANT

Vs

The Slao and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1), 4(1)

Citation : (2015) 02 KAR CK 0011

Hon'ble Judges : L. Narayana Swamy and A.S. Pachhapure, JJ.

Bench : Division Bench

Advocate : Shivanand Pati, Advocate, for the Appellant; R.V. Nadagouda, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—While MFA 30316/2012 is for enhancement of compensation in LAC 37/2007, MFA 31237/2012 is filed by the Special Land Acquisition Officer challenging the compensation granted by the reference Court. The other appeals have been filed by the Special Land Acquisition Officer, KIADB challenging the market value assessed and granted to the respondents therein in respect of their lands acquired contending that it is in excess.

All these matters are taken up together for consideration as there are common questions of law and facts in all these appeals.

2. The land bearing RS No. 238/1 measuring 2 acres and 227 measuring 22 acres and 18 guntas in Aliyabad village was acquired by KIADB. A notification to that effect was issued under Section 28(1) of the Karnataka Industrial Area Development Act, 1966 and it was published in the official gazette dated 12.12.1997. Apart from the aforesaid two lands, a total area of 202 acres was acquired under the aforesaid notification. There were consent awards as regards the other lands and the market value with the consent of parties was fixed at Rs.

1,35,000/- per acre. As there was no consent by the owner in these matters, after enquiry an award came to be passed on 20.11.2006 determining the market value at Rs. 30,000/- per acre. But anyhow, the respondents sought for reference of the matter to the Civil Court seeking enhancement of compensation. The references were numbered as LAC No. 8,9,10,11,12 and 37/2007.

After recording the evidence, common judgment and award was passed and in LAC Nos. 8, 9, 10, 11 and 12/2009, the market value of acquired land in Sy. No. 227 was fixed at Rs. 6,53,400/-. So also, in LAC No. 37/2007 for the land bearing RS 238/1 measuring 2 acre, the market value was fixed at the same rate. The owner of land in Sy. No. 238/1 has filed MFA 30316/2012 seeking enhancement of the market value and the compensation whereas in other appeals, the Special Land Acquisition Officer, KIADB has challenged the market value fixed at Rs. 6,53,400/-.

3. We have heard Sri. Shivanand Patil, learned Counsel for the appellant in MFA 30316/2012, Sri. R.V. Nadagouda, learned Counsel for the appellants in other appeals and Sri. R.I. Biradar, learned Counsel for the other respondents.

4. The point that arises for our consideration is:

"Whether the market value fixed by the reference Court under the impugned judgment and award in these appeals needs any variation?"

5. Learned Counsel for the appellant in MFA 30316/2012 submits that the land acquired are within the limits of Bijapur Development Authority and under Exs. P21 to 27, this Court in respect of the notification issued under Section 4(1) dated 03.02.1994, wherein the land was acquired for formation of ring road around Bijapur, though the market value was fixed at Rs. 15,000/- per acre, the reference Court had assessed the market value at Rs. 12.50 per sq. ft. and there was no appeal by the respondents against the award. He submits that under Exs. P26 and 27 in LAC 180/1998 wherein the land was acquired for aforesaid purposes, out of the village "Mahal Bagayat", the compensation was enhanced to Rs. 90 per sq. ft. and when it was challenged before this Court, the appeal came to be dismissed and the cross appeal was allowed in part enhancing the market value at Rs. 100.50 per sq. ft. under the order dated 04.03.2004. Similarly, was the order in MFA 2338/2004. Hence, he would submit that as the land acquired is within the Bijapur Development Authority limits, the reference Court ought to have assessed the market value and by adding the escalation price, the assessment could have been made. It is also his submission that the land acquired has NA potentiality and it was being used for the purpose of quarry at the time of acquisition which is evident from the contents of award. He submits that this aspect of the matter is not looked into by the reference Court. It is also his submission that against the award in Ex. P27, an appeal was preferred and this Court has fixed the market value of the acquired land at Rs. 42 per sq. ft. which is an agricultural land, at Rs. 100.50 per sq. ft., in respect of non agricultural land and at Rs. 150 per sq. ft., in respect of plots. He would submit

that deducting the developmental charges, the compensation could have been fixed by the reference Court at Rs. 42 per sq. ft. in addition to the escalation price. According to him, if the market value is fixed at Rs. 42 sq. ft. the value of per acre would be Rs. 18,48,000/-. It is also his submission that Sy. No. 119 which is within "Mahal Bagayat" area of Bijapur City, the land bearing Sy. No. 238/1 is abutting the road in between Sy. No. 119 and 238/1. Therefore, he submits that the assessment made by reference Court is on the lower side and it needs enhancement.

6. On the other hand, Sri. R.V. Nadagouda, learned Counsel for Special Land Acquisition Officer submits that a consent award was passed with the owners of adjoining land for an area not less than 180 acres at Rs. 1,35,000/- per acre and he would submit that the assessment made by the reference Court at Rs. 6,53,400/- is on the higher side. He submits that the land bearing Sy. No. 119 is within the limits of Aliyabad village at a longer distance. Therefore, he would submit that the market value assessed in respect of Sy. No. 119/2B cannot be the market value for the acquired land. He submits that there was no conversion of land acquired to non agricultural use and there has to be deduction to an extent of 67% and if that is done, he submits that assessment made by reference Court is extremely on the higher side and it needs reduction.

7. Sri. R.I. Biradar, learned Counsel for other respondents supports the contention raised by Sri. R.V. Nadagouda, learned Counsel for Special Land Acquisition Officer.

8. We have gone through the oral and documentary evidence placed on record by the parties. It is not in dispute that the land bearing Sy. No. 238/1 and 227 are situated within the village limits of Aliyabad village. These villages are also within the limits of Bijapur Development Authority.

9. Ex. P21 is the copy of judgment and award in LAC Nos. 104 to 108/1998 dated 02.01.2004 passed by the II Addl. Civil Judge (Sr. Dn.) Bijapur, wherein the land bearing Sy. No. 150/A1 and many other lands were acquired under the notification dated 03.02.1994. The said lands were acquired for the purpose of construction of ring road from the northern side of Bijapur city to the Southern side which was to connect National High Way.

10. Ex. P22 pertains to LAC 106/1998. As could be seen from the award, the aforesaid lands were within the limits of Bijapur city and under "Mahal Bagayat" area. The market value was fixed by the reference Court at Rs. 5,45,000/-. In the appeals, which were taken to this Court, the market value was fixed at Rs. 100.50 per sq. ft. The copies of judgment have been produced at Exs. P24 and 27. Admittedly, these lands were in "Mahal Bagayat" area, Bijapur City, whereas the land bearing Sy. No. 238/1 and 227 were within the limits of Aliyabad village.

11. The Bijapur city was the capital of kingdom of Adil Shahi in 16th century. The entire town then was within the fort and the entire land outside this fort on all sides was called as "Mahal Bagayat". The word "Mahal" is to mean palace,

whereas the word "Bagayat" has been derived from the Urdu word "Bagat" is to mean "garden", "Bagayat" mean garden land. Therefore, the area within "Mahal Bagayat" is the outskirts in the Bijapur City and it is an agricultural land said to be the garden land connected to the fort. This "Mahal Bagayat" land is surrounded to an extent of 15 kms radius from the centre of Bijapur city. The village Aliyabad is not within these limits. The said village is beyond "Mahal Bagayat" area of Bijapur city.

12. Therefore, the principle made applicable to assess the market value of land in "Mahal Bagayat" area cannot fit into the assessment of land within Aliyabad village. Therefore, though the owner of land bearing Sy. Nos. 238/1 and 227 may take some benefit from the judgment, but the compensation awarded in respect of the lands acquired within the "Mahal Bagayat" area cannot be extended to the lands in Aliyabad village. So far as the distance between land in "Mahal Bagayat" area of Bijapur city and Aliyabad village, though PW2 states that it is only half-a-kilometer, the oral evidence cannot be accepted as the applicants could have made available the best evidence, particularly, the documentary evidence so far as the distance between the land acquired and the land in "Mahal Bagayat" area.

13. Ex. P14 is the sketch relating to "Mahal Bagayat" area of Bijapur city and the land bearing Sy. Nos. 227 and 238/1 appears to be at a long distance, the measurement of which cannot be seen from the said sketch as well. That apart, though there is a mention in the award that the land acquired was used for the purpose of quarry and though it has a NA potency, no documents have been produced by the owner to prove that the land was converted to non agricultural use. At the most, the NA potency of the land may be of some benefit to the owners to seek the increase in market value of the land. Despite the fact that the value of land was fixed at Rs. 42 per sq. ft. in respect of the land in "Mahal Bagayat" area by this Court under Exs. P24 to 27, as the land acquired under the notification for the industrial purpose is within the limits of Aliyabad village and as the land acquired of "Mahal Bagayat" area, wherein the compensation was granted by this Court in Exs. P24 to 27 was for the purpose of formation of ring road, the purpose of acquisition also makes some difference at the time of assessing the market value of the land.

14. Sri. R.V. Nadagouda, learned Counsel has also placed reliance on the decision of Apex Court reported in Chandrashekar (D) by L.Rs. and Others Vs. Land Acquisition Officer and Another, , wherein it was held by the Apex Court that development charges should be cumulatively upto 60% and it also held that it varies depending upon the land. Anyhow, this principle is not applicable to the facts as there is no positive evidence to prove the market value of agricultural land or any non agricultural land of Aliyabad village.

15. In fact, the claimants have not made available any evidence so far as the assessment of market value of land at Aliyabad village. When the claimants have not satisfied with the amount of compensation awarded by the land acquisition officer and seek reference to the Civil Court, the burden is upon them to

establish the market value and for which they have to place positive material in this regard.

16. Though this Court has fixed the market value of the land in "Mahal Bagayat" area at Rs. 100.50 per sq. ft. in respect of non agricultural land and still more for NA plots, the owner of land in Sy. No. 238/1 cannot seek benefit of assessing the market value on the basis of said judgment, for the reason that both the lands are located at different places within the limits of different village.

17. It is no doubt true that the claimants have made available some evidence to enhance the market value on the basis of NA potency and also the market value fixed by this Court in respect of "Mahal Bagayat" area. When the said benefit cannot be extended to the land situated in the limits of other village, at the most it can be said that the claimants are entitled to enhanced compensation as against the price fixed by the Special Land Acquisition Officer. But they cannot take the benefit to an extent of market value fixed in respect of the agricultural land situated in "Mahal Bagayat" area.

18. If we consider the rival contention raised by the learned Counsel for Special Land Acquisition Officer, it is relevant to note that more than 200 acres of land was acquired for the industrial purpose under the same notification and in respect of about 180 acre of land, there was consent award between the land acquisition officer and the owners of those lands. The market value with the consent of parties was fixed at Rs. 1,35,000/-. The price fixed with the consent of parties equally indicates that it may be the price of land acquired at that time. Furthermore, "Mahal Bagayat" area abutting Bijapur city is within the radius of 15 kms.

19. So far as Aliyabad village is concerned, though it is within the limits of Bijapur Development Authority, it is away from "Mahal Bagayat" land. The acquisition is of the year 1997. In the year 1992, both the lands "Mahal Bagayat" and Bhutnal village was acquired and the market value in respect of Bhutnal village land was not that much as that of the land acquired in respect of "Mahal Bagayat" area. So taking into consideration the aforesaid circumstances, though we feel the value of land acquired was more than that of the value fixed by the land acquisition officer, there is no positive material placed on record by the land acquisition officer, as well to prove that the assessment made by the reference Court has to be on the lower side.

20. The reference Court on the basis of material placed on record has come to the conclusion that the value of land has to be fixed at Rs. 6,53,400/-. Neither the appellants nor the respondents have made out any grounds either to reduce the market value assessed or to enhance the same. Considering the NA potency of land in Sy. No. 238/1 and the fact that it is within the limits of Bijapur Development Authority, we are of the opinion that none of the parties have made out any grounds to call for interference in the impugned judgment and award.

The appeals have no merit and they are dismissed, accordingly.

IA. 1/2014 filed for release of remaining compensation amount in MFA 31237/2012 does not survive for consideration, hence, disposed of.