(2015) 01 KAR CK 0493

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2018 of 2007 (LAC)

Advamma APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 54(1)

Citation : (2015) 2 AKR 666 : (2015) 4 KCCR 3249

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Nalina K.S.K. Venkata Reddy, for the Appellant; Vasanth V. Feranands, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—Present appeal is filed under Section 54(1) of Land Acquisition Act, 1894 challenging the judgment and award dated 23.11.2005 passed by the Court of the Principal Civil Judge, (Sr.Dn.), Hassan in LAC No. 217/2001. According to the appellant/claimant, the Government has acquired non-agricultural land of the claimant measuring 8 guntas in Sy. No. 319/1 of Malali Village Sakaleshpur Taluk for the purpose of formation of a bye-pass road which forms part and parcel of National Highway 48. The primary notification came to be issued on 14.8.1997 and final notification on 19.11.1998. General award was passed by the LAO determining the market value at Rs. 25/- per sq.ft. Being aggrieved by the market value fixed by the LAO, the claimant had sought a reference under Section 18 of Land Acquisition Act seeking enhancement of compensation. On considering the entire records, the Reference Court enhanced the compensation from Rs. 25/- to Rs. 26/- per sq.ft. in LAC 217/2001. The claimant is aggrieved by the award passed by the Reference Court on the ground that enhancement so made is grossly inadequate and that it has not taken into consideration the potentiality of the land acquired, Hence, the present appeal is filed.

2. The learned counsel for the appellant has relied upon the decision of this Court in MFA 10332/2007 and connected matters disposed of on 6.8.2010. wherein the market value of certain agricultural lands acquired under the same notifications by the same LAO has been enhanced to Rs. 5,76,000/- from Rs. 1,089,000/-per acre. He has further argued that the decision of this Court in the said case is relied upon to demonstrate that the agricultural lands acquired in Malali village were potential lands. There is strong force in the submission of the learned counsel for the appellant.

3. Heard the learned counsel for the parties.

4. After perusing the records, it is evident that though Malali is a village, it is situated in the periphery of Sakleshpura town. Hemavathi river bifurcates Malali village and Sakaleshpur town. Ex. P-1 is the certified copy of the sale deed relating to a vacant site measuring 30x30 sq.ft. situated in Sakaleshpur Town in the vicinity of the acquired land. Consideration mentioned in the said sale-deed is Rs. 37.78/- per sq.ft. Admittedly, Ex. P-1 is prior to date of preliminary notification issued to acquire 8 guntas of land in Sy. No. 319/1. The map produced by the claimant discloses that Hemavathi river is running between Sakaleshpur and Malali village. On perusing Ex. P-1, it is evident that Malali Village is not included in the periphery of growing Sakaleshpur Town. PW-15 has deposed that acquired land measuring 8 guntas also comes within the jurisdiction of Sakaleshpur town. No document is produced to the effect that Malali village comes within Sakaleshpur Town limits. Though evidence of PW-15 has not been relied in its entirety by the Reference Court it can be taken to the limited extent that the land in question is not situated far away from Sakaleshpur Town, but in the immediate vicinity of the Sakaleshpur Town.

5. The learned Judge has chosen to enhance the market value to Rs. 26/- per sq.ft. since the claimant has restricted his plea to Rs. 26/- per sq.ft. Just because the claimant has restricted his claim to Rs. 26/- per sq.ft., the reference court is not bound to accept the same and decide and fix the market value to Rs. 26/- per sq.ft. Reference Court has considered the increase in the market value @ 5% p.a. This is very much on the lower side.

6. What is held by this Court in the case of Spl. L.A.O. Vs. Irasangavva, (1986) ILR (Kar) 1353 is that the market value of the neighboring land has to be taken into consideration to fix the market value in order to achieve uniformity and certainty. Land acquired under Ex. P-1 is almost similar to land in Sy. No. 319/1. Nothing has been culled out from the mouth of PW-15 that 8 guntas of land acquired is distinct in all respects from that of the land covered under Ex. P-1.

7. The decision rendered by this Court in MFA10332/2007 and connected matters would give an indication that the agricultural lands acquired in Malali Village for the same purpose had more potentiality. Therefore, this Court has enhanced the market value to Rs. 5,76,000/- from Rs. 1,09,000/- per acre.

8. Though claimant is not entitled for similar market value as found in Ex. P-1,

the claimant is entitled for market value higher than the one fixed by the reference Court. What exactly is held in the decision of the Hon''ble Supreme Court in the case of Chaturbhuj Pande and Others Vs. Collector, Raigarh, AIR 1969 SC 255 : (1968) 1 SCR 412 is that not only some guess work is required, but also valuation has to be done on the basis of broad preponderance of probabilities.

9. In the case of Mrs. Saradamani Kandappan Vs. Mrs. S. Rajalakshmi and Others, AIR 2011 SC 3234 : (2011) 8 JT 129 : (2011) 4 RCR(Civil) 130 : (2011) 12 SCC 18 : (2011) 8 SCR 874 , several earlier decisions of the Hon''ble Apex Court, more particularly one rendered in the case of K.S. Vidyanadam and Others Vs. Vairavan, AIR 1997 SC 1751 : (1997) 1 CTC 628 : (1997) 2 JT 375 : (1997) 1 SCALE 739 : (1997) 3 SCC 1 : (1997) AIRSCW 956 : (1997) 2 Supreme 597 , it is reiterated as follows:

"In the case of urban properties in India, it is well known that their prices have been going up sharply over the last few decades particularly after 1973 ...we cannot be oblivious to the reality and the reality is constant and continuous rise in the values of urban properties fuelled by large scale migration of people from rural areas to urban centres and by inflation."

Keeping in mind the above principle found in paragraph 27 of the said decision, we will have to consider the claim for enhancement of compensation.

10. Though the acquired property is situated in Malalli village, it is not far away from Sakaleshpur town. The acquired land is just in the vicinity of Sakaleshpur town which is also a growing town. If the agricultural land is situated in a village far away from the main road or away from the mainstream, it would be something different. Taking into consideration the escalation of prices of immovable properties in and around Sakaleshpur town during the relevant period, it would be reasonable to asses the market value at Rs. 30/- per sq.ft. instead of Rs. 26/- per sq.ft. as determined by the reference court. Taking into consideration that Malali Village is in the periphery of Sakaleshpur Town and that it has all potentiality of an urban region, it is just and proper to enhance the compensation from Rs. 26/- per sq.ft. to Rs. 30/- per sq.ft. and this would be just compensation in terms of Section 18 of Land Acquisition Act.

ORDER

The judgment and award passed by the Reference Court in LAC No. *217/2001 is modified. The compensation of Rs. 26/- per sq.ft. as awarded by the reference Court is enhanced to Rs. 30/- (thirty) per sq.ft. and further the claimant is entitled to all statutory benefits under section 23(1A), 23(2) and 28 of Land Acquisition Act.

The appeal is allowed with proportionate costs.