

(2013) 04 KAR CK 0093

In the Karnataka High Court

Case No : Miscellaneous Second Appeal No. 1050/2013 (LAC)

Ansarsab and Masaksab

APPELLANT

Vs

The Chief Engineer, The Executive Engineer, KNNL and The
Special Land Acquisition Officer, M and MIP

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 04 KAR CK 0093

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Judgement

Huluvadi G. Ramesh, J.—The delay of 293 days is condoned subject to the condition that appellants/claimants are not entitled for interest for the delay period in preferring this appeal. This appeal is arising out of the award passed by the first Appellate Court in LAC Appeal No. 4/2012 against the judgment and award of the Reference Court. In the appeal preferred by the State, the first Appellate Court reduced the compensation from Rs. 1,35,000/- per acre to Rs. 63,900/- per acre. Being aggrieved by the reduction of compensation awarded by the Reference Court by the first appellate Court, the claimants are before this Court.

2. The land bearing Sy. No. 54/3 measuring 01 acre 33 guntas of dry land and 01 guntas of P.K. land situated at Kallahipparga village is acquired for construction of Left Bank Canal of Gandorinala Irrigation Project by preliminary notification u/s 4(1) of Land Acquisition Act dated 21.04.2005 and after final notification, the Land Acquisition Officer awarded Rs. 29,000/- per acre as the market value. Being not satisfied, on such reference being made to Civil Court for determination of market value to the land acquired, the Civil Judge (Sr. Dn), Chittapur awarded Rs. 1,35,000/- per acre. Being aggrieved, on the appeal preferred by the Land Acquisition Officer, the first appellate Court reduced the compensation from Rs. 1,35,000/- per acre to Rs. 63,900/- per acre. Being not satisfied, the claimants are before this Court.

3. Heard.

4. According to learned counsel for the appellants, even for the acquisition of the land for the year 1996-1999 Rs. 1,18,000/- per acre has been awarded. Whereas the acquisition in the case on hand is of the year 2005. Accordingly, although Reference Court has taken that into consideration and has passed an award awarding Rs. 1,35,000/- per acre, without applying mind, the first appellate Court reduced the compensation to Rs. 63,900/- per acre which is illegal and also sought for enhancement of compensation taking the enhancement @ 10% per annum as per the decision of this Court in MFA No. 11868/2006.

5. Learned Government Pleader Sri. S.K. Babshetty and Sri. Gourish Kashampur submitted that the judgments referred by the appellants' counsel are in respect of property situated at Aland taluka, whereas in the case on hand, the properties are situated at Chittapur taluka which are dry lands and not fertile land as that of the land acquired at Aland taluka. Even the compensation awarded @ Rs. 1,80,000/- per acre is in respect of wet lands and there is a distance of 70 to 80 KMs from the land in question. Further, learned Govt. Pleader submitted that the market value has been calculated by the first Appellate Court based on the documents produced by the appellants themselves on the yield certificates and the market value cannot be called for in question in this second appeal.

6. Learned counsel appearing for the respondents has submitted that in Gulbarga area, the lands being dry lands, taking two crops into consideration per annum does not arise. The award passed by the Reference Court taking into consideration two crops per annum is on the higher side and there is no supporting evidence for the said award passed by the Reference Court. So far as the lands which are acquired for similar purpose during 1997 and 2000, this Court in respect of adjacent taluka awarded up to Rs. 1,10,000/- per acre. However, since the acquisition is of the year 2005, necessarily escalation of the land is consistent and necessarily it would fetch a reasonable rate. Though the index of sale of lands has not been produced, taking into consideration the acquisition of the land for Gandorinala Bank Canal is commenced from 2000, for those lands in the adjacent taluka the Reference Court has awarded Rs. 1,10,000/- per acre. Similarly, if escalation is given @ 5%, claimants would be entitled for Rs. 1,25,000/- per acre with additional benefits. The market value of the land would be taken @ Rs. 1,20,000/- per acre, as the acquisition is of the year 2005 in respect of the land in question with additional benefits and interest thereon. Further, the claimants are not entitled for interest for the delay period. Thus, in modification of the award passed by the first Appellate Court, the compensation of Rs. 63,900/- per acre has been enhanced to Rs. 1,25,000/- per acre with consequential benefits and interest excluding the interest for the delay period.

Appeal is allowed in part with costs.