

(2003) 02 KAR CK 0110

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 1745 and 1990 of 1995

A.S. Mushtaq Ali deceased by L.Rs.

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1)

Citation : (2003) 3 KCCR 1590

Hon'ble Judges : M.S. Rajendra Prasad, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : L. Umakanthan and T.H. Narayana, in MFA No. 1990 of 1995 and Chandrashekar Rodnavar, High Court Government Pleader in MFA No. 1745 of 1995, for the Appellant; Chandrashekar Rodnavar, High Court Government Pleader in MFA No. 1990 of 1995 and L. Umakanthan in MFA No. 1745 of 1995, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—We have heard the learned Counsel representing both the parties Viz., the claimants as also the State in these two appeals on merits. An area of approximately 14 Acres 05 Guntas was acquired for purposes of construction of the Dyavasandra tank and the possession of the land seems to have been taken over in the year 1978 even though the Section 4(1) notification was issued on 21.3.1992 and the final notification was published on 30.9.1992. The Land Acquisition Officer had awarded compensation at the rate of Rs. 58,000/- per acre and the claimants desired that the case be referred to the Civil Court for an enhancement. The learned Judge who presided over the reference Court has carefully taken note of the material produced before him particularly two factors, which emerged from the evidence of none other than the Revenue Officer who had acted as Commissioner who confirmed the fact that the lands in question were bhagayat lands, that they were perennially irrigated, that there was a well that had been constructed by the claimants along with a pump-house which yielded copious supply of water and that as a result of this availability, the

evidence indicated that not one but two crops were regularly raised and that the yield value from the lands had been rising over the last 3 years when the valuation was done. All of this is important evidence and after taking it into consideration the reference Court enhanced the compensation to Rs. 1,05,000/- per acre apart from which the well which was originally valued at Rs. 18,700/- and in respect of which there was evidence that a loan had been taken from the bank, was revalued at Rs. 75,000/-.

2. The claimant had contended before the reference Court that having regard to the quality of the Lands and the yield etc. that he should be awarded compensation at the rate of Rs. 1,40,327/-. The 2nd contention raised was that since the possession had been taken over several years earlier to the acquisition notifications, that the claimant should be awarded crop compensation at the market rate for all the years in question. The learned Judge who presided over the reference Court has awarded compensation for the past years at the rate of Rs. 50,000/-. The claimants have filed the first of these two appeals claiming enhancement, whereas the State has filed the 2nd of the two appeals contending that the enhancement by the reference Court was unjustified and that it should be substantially reduced. We have heard both the appeals together, we have considered the submissions canvassed by the learned Counsel both on facts and in law and we have also done a very careful review of the record and we propose to dispose off both the appeals through a common order. While the claimants' learned Counsel submitted that the reference Court has accepted the figures that have been culled out by the SLAO for purposes of assessing the crop yield etc., his contention is that the Court has committed a substantial error in so far as the SLAO has awarded Rs. 58,000/- per acre on the basis of a computation which took into account one crop per year. The learned Counsel submits that the only corrective action that this Court must apply is that the order of the reference Court will have to be modified by doubling this figure because there is overwhelming evidence on record that the land was yielding two crops per year and that the yield was rising and not diminishing. The learned Government Advocate on the other hand, has submitted that even if there was a 2nd crop that the Court must take judicial notice of the fact that the inputs as far as the 2 crops are concerned would be substantially higher and secondly, that the Court must also take cognizance of the fact that the yield from the 2nd crop would be at least 40% to 50% lower than the yield from the first crop. His submission therefore is that even assuming the reference Court were to correctly enhance the SLAO's award that at the very highest, an enhancement of 40% to 50% was permissible which would bring the per acre figure to Rs. 87,000/- per acre and that the award of Rs. 1,05,000/- per acre is unjustified.

3. As far as the rival submissions are concerned, we shall deal with them comprehensively after taking into consideration the other head of dispute, Viz., valuation of the well. Appellants' learned Counsel submitted that where documentary evidence has been produced to the effect that a sum of Rs. 1,26,00/- has been borrowed from the bank for the construction of the well and

the installation of the pump set, that this was the barest minimum figure that the Court ought to have awarded. An interesting submission was canvassed by the learned Government Advocate who drew our attention to the decision of the Supreme Court reported in O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others, , wherein the Supreme Court has pointed out that if the Court is taking into consideration the irrigation factor or in other words the Court is taking into consideration the fact that by virtue of the availability of abundant and perennial water source that the lands will have to be categorised as wet lands or Bhagayat lands and is therefore awarding a substantially higher compensation, that it would not be correct to further award compensation against the cost of construction of the well, because that component has already been taken into consideration by the Court while stepping up the compensation. The decision of the Supreme Court is binding on us and we are obliged to apply the principle enunciated in this decision. What we need to take into account is that effectively the Supreme Court has laid down that the Court should visualise the situation wherein the land value is stepped up by virtue of the availability of well water and that the same factor is again evaluated under a separate head by awarding compensation for the well itself. Effectively the Supreme Court had deprecated the duality but the Supreme Court has very clearly taken note of the fact that the Court cannot ignore this factor but will have to absorb it while stepping up the compensation. That is precisely the formula which we propose to adopt in this appeal.

4. While the learned Government Advocate also vehemently submitted that the award of Rs. 50,000/- per year against compensation for the earlier years by virtue of the crop loss is unjustified, in our considered view if the State desires to indulge in the luxury of taking possession of the lands long before the acquisition notifications were issued and a loss has occurred to the citizen by virtue of the possession having been taken away, then the least that the Court is required to do is to fix a reasonable compensation against the crop loss which is the real loss. The Land Acquisition Officer had evaluated the yield at Rs. 58,000/- per year and in our considered view, the award of Rs. 50,000/- for the year is, very modest and is fully justified and accordingly we refuse to interfere with this head.

5. As far as the aggregate compensation is concerned, we accept the argument canvassed by the learned Government Advocate that the award of Rs. 75,000/- under a separate head as compensation for the well will not be permissible having regard to the Supreme Court Judgment and consequently, this head of Rs. 75,000/- is set aside. At the same time, we have taken note of the fact that effectively the Supreme Court's decision prescribes that the Court would have to take cognizance of this factor and will have to ensure that the parties compensated for it. While the Court is evaluating the land value itself and the higher value that it would fetch by virtue of the existence of the well and taking this factor into account we enhance the compensation awarded by the reference Court from Rs. 1,05,000/- to Rs. 1,10,000/- per acre. In our considered view, the claimants will be more than fully compensated having regard to the other

benefits that would accrue to them.

6. In the result, both the appeals succeed partially. We direct the State to deposit the balance of compensation amount with the reference Court within a period of 12 weeks from today. On receipt of the amount the reference Court to forthwith release the same to the claimants. The appeals to stand disposed off. Parties to bear their own costs.

7. We clarify that the claimants would be entitled to the proportionate statutory benefits that the law envisages. We find from the order sheet that the amount which had been deposited in the trial Court appears to have been invested. Irrespective of whether it has been invested or not, since the appeals have now been disposed off the trial Court to recall the amount if it has been invested or, if it has not been invested in any event to release the same to the claimants forthwith.