(2015) 01 KAR CK 0024

In the Karnataka High Court

Case No : M.F.A. No. 21289 of 2010 (LAC)

Baskarsab Rajesab Thattimani APPELLANT

Vs

The Special Land Acquisition Officer and Assistant Commissioner and Others RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0024

Hon'ble Judges : A.S. Bopanna and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : F.V. Patil, Advocate, for the Appellant; Veena Hegde, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The appellant is before this Court seeking enhancement of the market value as against the sum awarded in LAC No. 6/2001.

2. The land bearing Sy. No. 188/4+5A of Gopanakoppa village measuring 4 acres 1 gunta belonging to the appellant was acquired for the benefit of the respondents for setting up the electrical grid. The notification is dated 14.5.1992. As against the award passed by the Land Acquisition Officer, the appellant had sought for reference seeking enhancement of the market value. Accordingly, the same had been referred and registered in LAC No. 6/2001. At the first instance, the Reference Court had enhanced the market value to Rs. 9,000/- per gunta. The appellant as well as the respondents were before this Court in MFA No. 5944/2008 and MFA. Crob. No. 701/2008. This Court having set-aside the judgment passed by the Reference Court had remitted the matter for reconsideration. The Reference Court on reconsideration has fixed the market value at Rs. 80,000/- per acre with statutory benefits. The appellant land-loser claiming to be aggrieved is before this Court in this appeal.

3. Heard the learned counsel for the parties and perused the judgment passed by

the Reference Court and also the records secured therefrom.

4. The manner in which the consideration for the purpose of arriving at the appropriate market value in respect of the land is to be made is not in dispute and the decision referred before the Reference Court would indicate that the sale deed in respect of smaller properties as an exemplar can be taken into consideration while considering the market value in respect of the acquired properties. In the instant case, from the perusal of the judgment passed by the Reference Court, it is seen that the document produced at Ex-P11 viz., the sale deed in respect of similar extent of land in Sy. No. 199 stated to be in vicinity has been relied upon by the Reference Court, considering that under the said document, the property had been sold at Rs. 60,000/- per acre, the Reference Court has thereafter enhanced the market value to Rs. 80,000/- per acre in the instant case taking note of the potential of the said land for future development.

5. The learned counsel for the appellant would however contend that the Reference Court was not justified in discarding the document at Ex-P13. It is the case of the learned counsel that under the said document, an extent measuring 60ft x 80ft in plot No. 2 of Sy. No. 172 which is also adjacent to the land which had been acquired was sold for the sum of Rs. 1,50,000/-. It is contended that though the said document is in respect of smaller bits of land, the said document should have been taken into consideration and the appropriate market value ought to have been determined after providing appropriate deduction. It is therefore contended that when the property which was acquired was in the midst of the developed area, such appropriate consideration should have been made and thereafter the market value should have been fixed.

6. The learned counsel for the respondents would however seek to sustain the judgment passed by the Reference Court.

7. It is contended that though the law is well settled that the document relating to smaller extent can be taken into consideration by providing appropriate deduction, in the instant case, the document relied upon by the claimant themselves at Ex-P11 in respect of similarly existing agricultural land, had been relied upon and since the transaction therein was during the same year when the acquisition was made and a similar extent had been sold under the said document, the same has been taken into consideration and compensation has been granted keeping in view the potential of the land and therefore no further enhancement is called for.

8. It is his further case that when the land in question has been acquired for setting up the power grid, in all such instances, it would be away from the human habitation and developed area and therefore the market value as determined is justified.

9. In the light of the rival contentions, apart from the contentions put forth by the learned counsel for the appellant that the Reference Court ought not to have taken note of the fact that there was a farm house and a poultry farm on the

said land and should not have considered as agricultural potential property, even to consider as to whether in the present circumstance, keeping in view the location of the lands regarding which sale deeds at Ex-P11 and P13 have been relied upon by the appellant, any other consideration is necessary, the document at Ex-P7 would be appropriate to be noticed. From the said document which indicates the location of the area, the document at Ex-P13 relating to Sy. No. 172 and the document at Ex-P11 relating to Sy. No. 199 are referred.

10. In that light, it is contended by the learned counsel for the appellant that the plot sold in Sy. No. 172 is also closer to property bearing Sy. No. 188 belonging to the appellant which has been acquired by the respondents. It is therefore contended that the sale deed at Ex-P13 should have been considered as the appropriate exemplar for the purpose of considering the market value after providing appropriate deduction towards development charges.

11. In order to appreciate the said contention, a detail perusal of Ex-P7 would disclose that the property bearing Sy. No. 172 and property bearing Sy. No. 188 are divided apart by a road and before Sy. No. 172 there are certain other lands regarding which the survey numbers has been indicated. On the other hand, property bearing Sy. No. 199 is on the same side after the road, near to property bearing Sy. No. 188. Further more, the legal position is not in dispute that only when there is no other property document or exemplar sale deed of a similar nature, it would be open for the Court to rely upon the sale deed of a smaller extent of property as exemplar and thereafter arrive at the market value by taking into consideration the value for which such smaller extent of property is sold and on providing appropriate deductions towards development charges. In the instant case, the very document relied upon by the appellant at Ex-P11 is a sale deed which is produced as exemplar in respect of similarly situated land as that of the acquired land. The extent of the land acquired is 4 acres 1 gunta while the land sold under sale deed at Ex-P11 is also of the similar extent and period of transaction is also the same. Further more, as already noticed, both the said lands are situated on the same side of the road and in such circumstance, the document at Ex-P11 cannot be ignored and reliance cannot be placed on Ex-P13. Hence, to the said extent, the Reference Court was justified in reckoning the document at Ex-P11 for consideration to arrive at the market value.

12. Having arrived at the said conclusion, the question for our further consideration is as to whether the Reference Court having taken note of the document at Ex-P11 and the value for which the property had been sold in the said document at Rs. 60,000/- per acre was thereafter justified in enhancing the market value only by adding another Rs. 20,000/- to the said value and fixing the market value at Rs. 80,000/- per acre. In that regard, though the learned counsel for the respondents seek to contend that even the enhancement as has been made by the Reference Court is also without reasons, we are of the opinion that the enhancement as made is on the lower side. In addition to the documents which were available before the Reference Court, the appellant has

produced before this Court a notification dated 6.4.1965 to contend that the property in issue is within the urban agglomeration and the local planning area for Hubli-Dharwad. In the said notification the land which has been acquired and the adjacent lands which are on the same side of the road is indicated as the periphery of the urban agglomeration viz., the planning area.

13. If this aspect of the matter is kept in view, though agricultural land being in the urban agglomeration, the future potential of the said land cannot be lost sight. Though the property in Sy. No. 199 which is sold under Ex-P11 was sold as an agricultural property in the year 1992 for Rs. 60,000/- per acre, the manner there has been development of the land in the urban agglomeration subsequent thereto cannot be lost sight by this Court. If this aspect of the matter is kept in view and if the document at Ex-P7 is noticed, the property belonging to the appellant in Sy. No. 188 which has been acquired for the benefit of the respondents is abutting the road and when the development was taking place all around, even if at that point in time, the appellant was running a poultry farm and had a farm house in the said area, the potential for developing the same as a layout or using for any other non-agricultural activity cannot be ruled out. Infact the witness examined as PW-2 has stated with regard to the development in the surrounding lands.

14. Therefore, while determining the market value, not just the value that can be fixed at the point of the acquisition is to be taken, but the future better use to which the said property could have been put by the land owner if it was not acquired also would have to be kept in view. Hence, if these aspects of the matter are kept in perspective and the location of the property in Sy. No. 199 sold under Ex-P11 is also taken into consideration and in that light, the nearness of the property bearing No. 188(acquired land) to the road and the better use to which it could have been put to is taken into consideration and also taking note of the value that would be indicated in the sale deed as against the prevailing market value, it would be just and proper to hold that the market value in the instant case in respect of the land which has been acquired keeping in view the development that has taken place subsequent to the year of the acquisition, the market value of Rs. 1,20,000/- per acre would be justified.

15. In that view, we modify the judgment and award passed by the Reference Court to hold that the appellant is entitled to the market value at the rate of Rs. 1,20,000/- per acre with all statutory benefits and proportionate costs incurred in this appeal. The modified award be drawn in that regard.

The appeal is disposed of in the above terms.