

(2015) 01 KAR CK 0059
In the Karnataka High Court
Case No : M.F.A. No. 22104 of 2011 (LAC)

Bharamappa

APPELLANT

Vs

The Special Land Acquisition Officer M.P. and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0059

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

Bench : Division Bench

Advocate : Jagadish Patil, Advocate, for the Appellant; Veena Hegde, HCGP, for the Respondent

Judgement

A.S. Bopanna, J.—The appellant herein is before this Court assailing the Judgment and award passed in LAC No. 61/2007(Old No. 511/2003). As against the market value of Rs. 50,000/- fixed by the Land Acquisition Officer, the Reference Court has enhanced the same to Rs. 52,500/-. The appellant-landloser claiming to be dissatisfied is before this Court seeking further enhancement of the market value.

2. The land bearing Sy. No. 111/2A+2B/1 measuring 3 acres 7 guntas in Hulageri village, Badami Taluk was acquired for the benefit of Karnataka Power Transmission Corporation Limited ("KPTCL" for short). The appellant claiming to be aggrieved by the market value fixed by the Land Acquisition Officer had sought for reference. In the proceedings before the Reference Court, the claimant in connected LAC examined herself as PW-1 and relied upon the documents at Exs-P1 to P13. The respondents relied on Ex-D1 being the award passed in another LAC No. 66/2007. The Reference Court on taking note of the market value that had been determined under Ex-D1 at Rs. 52,500/- has awarded the same in the instant case.

3. The learned counsel for the appellant while assailing the conclusion reached by the Reference Court would contend that the Reference Court was not justified in

not relying upon the sale deeds which had been produced by the appellant seeking similar market value by taking note of the sale transactions therein. It is contended that the land in question is near to the land which had been acquired in Simikeri village for establishing the rehabilitation centre. In that view, it is contended that the market value that had been taken into consideration in respect of such land should have been accepted for the lands which is the subject matter herein.

4. The learned counsel for the respondents would further seek to sustain the judgment and award passed by the Reference Court.

5. In the light of the rival contentions, we have perused the judgment passed by the Reference Court. The documents that had been relied on by the appellant has infact been analysed by the Reference Court on taking note of the fact that the documents therein relate to the properties which were acquired in Simikeri village for establishment of the rehabilitation center. Therefore, the Reference Court was of the opinion that the same cannot be relied upon. In the absence of any other documents, the Reference Court has relied upon the award passed in LAC No. 66/2007 which pertains to Hulageri village and the market value determined therein has been granted in the instant case.

6. At the outset, a perusal of the judgment dated 25.8.2010 passed in LAC No. 66/2007(Old No. 646/2003) would indicate that the Reference Court in that case had taken into consideration the groundnut crop that was being grown in the said land and based on the capitalisation method in respect of agricultural crops had arrived at the conclusion that the market value could be fixed at Rs. 52,500/- per acre. Though in the said case, the market value had been determined in respect of the property which was situate in Hulageri village, Badami Taluk, the very basis on which the market value had been determined was in respect of agricultural land which was being used for the said purpose and compensation had been claimed on capitalisation method. If that aspect of the matter is kept in view, in the instant case, the basis of the claim as seen from the reference application filed under Section 18, which is marked at Ex-P1 and evidence tendered through PW-1 and PW-2 would indicate that the appellant was seeking compensation in respect of his lands by contending that the same has non-agricultural potential since it is closer to the National Highway and also to the developed area in the adjoining village. It is in that view, the appellant has relied on the documents at Exs-P4 to P13. Thus having noticed the document Ex-D1 on which the Reference Court had placed reliance and on concluding that the Reference Court was not justified in taking the same as the basis when such determination was on capitalisation method, the only other documents that are available for consideration are the documents produced and relied upon by the appellant at Exhs-P4 to P13.

7. In the light of the contentions that is put forth before us, a close perusal of the said documents would indicate that the appellant claimant has not relied upon any document indicating comparable sale statistics or in any other manner to

indicate non-agricultural potential of lands situate in Hulageri village.

8. The learned counsel for the appellant no-doubt refers to the award passed by the Land Acquisition Officer dated 31.10.2002 to contend that the Land Acquisition Officer himself has referred to the fact that Simikeri village is situate about 1 1/2 kmts from Hulageri village and on that basis had taken into consideration the guidance value of agricultural property situated both in Simikeri village as well as Hulageri village and thereafter awarded the market value on the average of the said guidance value. Though such reliance has been placed, the appellant by producing the documents relating to Hulageri village before the court below has not sought for enhancement based on the said documents and but has relied only on documents of Simikeri village. When in the reference proceedings, such consideration is to be made, the evidence that is tendered therein would become relevant. Though PW-1 in the affidavit evidence stated with regard to the lands in Simikeri village being adjacent to the lands in Hulageri village, as rightly noticed by the Reference Court, she had in her cross-examination admitted the distance between the said two villages to be nearly 7 kmts. The topography of the land in any event cannot be in dispute.

9. Though the learned counsel for the appellant in the instant appeal has produced the village map alongwith an application for production of additional documents and would contend that the distance between the acquired land and the border of Simikeri village is shown as 1002 mts, that in itself cannot be conclusive, inasmuch as, the relevant consideration for the purpose of determining the market value would be based on the documents that have been relied in respect of the property in Simikeri village and the property that has been acquired and not by taking note of the distance from the periphery of the village. That is more so in a circumstance when the appellant has relied on certain documents before the Reference Court to make it comparable document to consider for enhancement of the market value. Therefore in that circumstance, when the evidence tendered by PW-1, PW-2 and the documents relied upon in that context are taken into consideration, the distance as stated by PW-1 herself would become relevant. In the rural setup, when the distance is stated more than 7 kmts and it is also contended on behalf of the defendants that there is jungle and certain hillocks in between, it requires consideration by way of evidence. Hence, on discarding the document at Ex-D1, it would not be safe for this Court to rely on the documents which have been tendered as evidence by the appellant before the Reference Court.

10. In such circumstance, in normal circumstance, it would have been appropriate for this Court to reject the claim as put forth by the appellant. However, taking note of the fact that the appellant who is landloser is seeking for just compensation in respect of the land and at the first instance when it is seen that he has relied on the documents relating to Simikeri village without relying upon any comparable documents relating to Hulageri village itself and further when by the additional documents, a village map is also been produced before

this Court, an appropriate opportunity is required to be granted to the appellant to tender such evidence which would be reliable relating to Hulageri village itself or to tender further evidence to indicate comparable nature of the documents relating to Simikeri village and the land which has been acquired with more clarity in the evidence. Therefore in the peculiar circumstances herein, we find it appropriate to set-aside the judgment and award passed by the Reference Court impugned herein and remand the matter to the Reference Court to reconsider the same by providing opportunity to the appellant to tender further evidence in the matter.

11. In that view, the judgment and award dated 16.12.2010 is set-aside. The matter is remitted to the Reference Court to restore LAC No. 61/2007(Old No. 511/2003) on file, provide opportunity to the claimant to tender further evidence in the matter and thereafter pass fresh judgment and award in accordance with law. All contentions are left open. In view of the remand, the appellant is entitled to refund of the full Court fee paid on this appeal before this Court.

12. The parties shall now appear before the Reference Court without further notice therefrom, on 23.2.2015 as the first date of appearance. The Reference Court shall thereafter dispose of the matter in expeditious manner and in accordance with law.

13. Since the third respondent has been impleaded to this appeal, the learned counsel for the claimant shall with the leave of the Reference Court implead the third respondent herein as respondent to the reference petition.

The Lower Court records be sent back to the Reference Court forthwith.