

(2002) 06 KAR CK 0048

In the Karnataka High Court

Case No : Miscellaneous Second Appeal No. 1 of 1999

Chandrashekarayya Gurusiddayya Charumurti Hiremath

APPELLANT

Vs

The Special Land Acquisition Officer, Hidkal Dam Project,
Hidkal

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18 (1), 25, 31

Citation : (2002) ILR (Kar) 3592 : (2002) 4 KarLJ 441 : (2002) 3 KCCR 1832

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : R.G. Hegde, for the Appellant; A.R. Mensinakai, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

N.S. Veerabhadraiah, J.—This is the claimants miscellaneous second appeal being aggrieved by the dismissal of LAC Appeal No. 342 of 1989, dated 8-9-1998 on the file of the Prl. District Judge, Belgaum confirming the order in LAC Appeal No. 469 of 1983 on the file of the Additional Civil Judge, Chikkodi, dated 25-2-1987 rejecting the reference.

2. The brief facts are as follows:

The land of the claimant bearing Survey No. 57 of Majati village in Hukkeri Taluk measuring 9 acres 12 guntas was acquired u/s 4(1) of the Land Acquisition Act, 1894, for Hidkal Dam Project under a preliminary notification dated 29-12-1962 followed by a final notification dated 26-3-1964. The Special Land Acquisition Officer has awarded compensation at the rate of Rs. 2,000/- per acre for the Bhagayath land and Rs. 1,200/- per acre for the dry land and in all awarded compensation amounting of Rs. 16,020.65 including the statutory benefits. The claimant after receiving the compensation amount filed an application u/s 18(3) (b) of the Land Acquisition Act, to refer the matter to the Civil Court. On

reference, the Assistant Government Pleader appearing for the Land Acquisition Officer filed objections contending that the reference is "time barred". The petitioner got himself examined as P.W. 1, produced Exs. P. 1 to P. 4. The Reference Court formulated the following points for consideration:

- (1) Whether the reference is valid?
- (2) What is the market value of the land?
- (3) To what order?

On point No. (1), the Court held the reference is barred by limitation. However, proceeded to determine the market value of the land by considering the evidence and also following the capitalisation method and determined the market value of the Bhagayath land at Rs. 4,000/- per acre insofar as 3 acres of land and the market value of the remaining dry land at Rs. 1,100/- per acre. In view of the finding on point No. (1), the Reference Court rejected the appeal on the ground that it is barred by limitation. Being aggrieved by the rejection of the reference, the claimant preferred LAC Appeal No. 342 of 1989 before the District Judge, Belgaum. The learned District Judge, after hearing both the parties formulated the following points for consideration:

- (1) Whether the learned Civil Judge was justified in holding that the reference was time barred?
- (2) Whether the learned Civil Judge was justified in rejecting the reference of the claimant?
- (3) Whether the impugned order calls for my interference?
- (4) What order?

The learned District Judge held the reference is valid. Accordingly, modified the findings of the Reference Court. However, the learned District Judge dismissed the appeal on the ground that the claimant received the amount without protest. Being aggrieved by the judgment and decree of the learned District Judge, the appellant has come up with his appeal.

3. The learned Counsel Sri R.G. Hegde for the appellant/claimant contended that the very filing of application u/s 18 of the Land Acquisition Act, itself is for seeking enhancement of the compensation and therefore it amounts to receiving of the compensation amount under protest. Secondly, contended that the learned District Judge having come to the conclusion that the reference is not barred by time, he ought not to have dismissed the appeal without enhancing the compensation that has been determined by the Reference Court. Therefore, prays to allow the appeal by ordering payment of compensation determined by the Reference Court at Rs. 4,000/- for the Bhagayath land and Rs. 1,200/- for the dry land. It is also contended that the Reference Court erred in determining the value of the dry land at Rs. 1,100/- whereas the Land Acquisition Officer himself has awarded the compensation at Rs. 1,200/- per acre. Section 25 of the

Land Acquisition Act, prescribes that any Court shall not award less than the amount awarded earlier. There-fore, prayed to allow the appeal.

4. On the other hand, the learned Government Advocate Sri Mensinakai, relying on the provisions of Section 31 of the Act, contended that the amount was not received under protest. Therefore, the appellant is not entitled for any compensation amount.

5. In the light of the submission, the point for consideration that arise:

"Whether filing of an application u/s 18(1) of the Land Acquisition Act, amounts to receiving of the amount under protest. If so what orders?"

6. The findings of the learned District Judge holding that the reference is in time is not questioned by the Land Acquisition Officer. Now, the only question that has to be considered is "whether the claimant is precluded from claiming enhanced compensation on account of the fact that he received the amount without protest". Section 31 of the Land Acquisition Act thus reads:

"31. Payment of compensation or deposit of same in Court.--(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the collector may, with the sanction of the (appropriate Government) instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with

or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

This section prescribes the procedure that has to be followed by the Land Acquisition Officer while payment of compensation to the interested persons or deposit of the same amount in Court. The first proviso to Section 31 of the Act, makes clear that the interested person may receive such payment of compensation under protest as to the sufficiency of the amount. The second proviso provides even if a person who has received the amount otherwise than under protest shall be entitled to make an application u/s 18 of the Act, seeking enhancement. The third proviso is very specific that nothing shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto. On reading of Section 31 of the Land Acquisition Act, it is clear that the mode of protest is nowhere defined, therefore, if an application u/s 18 is filed, it is deemed to be for enhancement and the receiving of the amount is under protest. When the Act has not specifically stated the mode of protest, the Land Acquisition Act, being a beneficial legislation for the victims who have lost their lands for various public purposes, it is not permissible to construe the provisions in a very stringent and strict manner. Therefore, I am of the clear opinion, that when an application u/s 18 of the Land Acquisition Act is filed for enhancement, it is deemed to be that the interested person having dissatisfied with the quantum of compensation has filed the application for enhancement which amounts to receiving of the amount under protest. It is in that view of the matter, the interpretation by the learned District Judge that the appellant/claimant has not made any protest while receiving the amount is without any force.

7. The Reference Court has determined the compensation of 3 acres of Bhagayath land at the rate of Rs. 4,000/- per acre and also awarded compensation for the dry land. The determination of the market value is not challenged by the respondent-Land Acquisition Officer. Therefore, it has to be taken into consideration that the market value of the land of the Bhagayath land is at Rs. 4,000/- per acre, whereas, the market value of the dry land is at Rs. 1,200/- per acre. The Reference Court even without looking into the provisions of Section 25 of the Land Acquisition Act, has awarded less compensation than what was already awarded which is not sustainable. Therefore, the determination of the compensation at Rs. 1,100/- for the dry land is not sustainable and the same has to be determined at Rs. 1,200/- per acre as has been awarded by the Land Acquisition Officer.

8. For the foregoing reasons, the appeal is allowed determining the market value of Bhagayath land at Rs. 4,000/- per acre and Rs. 1,200/-per acre for the dry land. The claimant is entitled for all other statutory benefits as was prevailed in the old Act with interest at 6%. The appellant is entitled for the proportionate cost.