

(2015) 01 KAR CK 0222

In the Karnataka High Court

Case No : MFA Nos. 31613, 31620, 31621, 31618, 31616, 31619, 31614, 31622, 31617 and 31615/2012 and 201116, 201117, 201121, 201122, 201123, 201125, 201124, 201120, 201119 and 201118/2014 and MFA Crob. No. 200042/2014 in MFA No. 31619/2012 (LAC)

Chief Engineer

APPELLANT

Vs

Tippanna

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0222

Hon'ble Judges : A.S. Pachhapure, J.; L. Narayana Swamy, J.

Bench : Division Bench

Advocate : Manvendra Reddy, Govt. Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

L. Narayana Swamy, J.—In the appeals filed by the beneficiary -Karnataka Neeravari Nigam Limited Sri Harshavardhan R. Malipatil, learned counsel is directed to take notice for claimants and learned Government Advocate is directed to take notice for the Special Land Acquisition Officer.

2. Appeals have been filed by the Government as well as the beneficiary - Karnataka Neeravari Nigam Limited, Gulbarga challenging the award passed by the Reference Court and Cross Objection has been filed by the claimant for enhancement of compensation.

3. The claimants being not satisfied with the award passed by the Special Land Acquisition Officer have taken the matter to the Reference Court - Senior Civil Judge at Afzalpur and the learned Reference Judge, by his order dated 08.02.2012, enhanced the compensation to Rs. 4,61,250/- per acre against which these appeals are filed by the Government as well as the beneficiary and Cross objection is filed by the claimant.

4. Government had issued a preliminary notification under Section 4(1) of the Karnataka Land Acquisition Act, 1894 (for short the "Act") on 09.03.2006 for acquisition of land for the purpose of construction of Bhima Lift Irrigation Project and called the land losers to file objections, if any. On consideration of the same, final notification was issued under Section 6(1) of the Act on 19.04.2007. The Special Land Acquisition Officer had fixed the compensation at Rs. 33,000/- per acre and the claimants have protested and requested to refer the matter to the Reference Court and the Reference Court has passed the impugned award by fixing the market value at Rs. 4,61,250/- per acre. For fixing the said amount the learned Reference Judge has referred and relied on Exs. P-17 and P-18, namely, the copy of the price list and the copy of the yield certificate respectively.

5. The appellant-SLAO is represented by learned Government Advocate. The learned Government Advocate submitted that the Reference Court has committed an error in referring and relying upon Exs. P-17 and P-18 for determining the market value. Ex. P-17 is copy of the price list and Ex. P-18 is copy of the yield certificate issued to that effect by the competent authority. Though the claimants have not satisfied and proved in respect of the value of the yield, the Reference Court has committed an error in fixing the market value at Rs. 2,450/- as the maximum price per quintal. It is the submission of the learned Government Advocate that the learned Reference Judge should have relied upon Exs. R3 to R32, viz. the records of right which disclose that the lands in question which have been acquired, are not wet irrigated lands and are dry lands. In order to fortify the same, the learned Government Advocate referred to the records of right in which it is recorded at the relevant column that claimants are growing dry crops like toor, groundnut and sunflower, which is contrary to the finding arrived at by the learned Reference Judge. It is further submitted that the Reference Court has committed an error in relying on Exs. P-13 and P-14, namely, certified copy of the judgments in MFA No. 5762 and 5763/2008 and certified copy of the judgment in MFA No. 11868/2006 which was exclusively in respect of irrigated lands of Gulbarga taluk and district in which crops grown were irrigated crops. Since the claimants have not proved the fact that the acquired lands were wet lands and sugar cane was grown in the said lands and in the absence of evidence and material, the Reference Court has committed an error in holding that the lands which were acquired were wet lands and sugar cane was grown in the said lands. Ex. P13 was exclusively limited for the lands acquired in Gulbarga taluk which were more potential lands than the lands in question. He also referred to the judgment of the Hon'ble Supreme Court in the case of Hirabai and Others Vs. L.A.O. Cum. Asst. Commnr., wherein by referring the 4(1) notification dated 08.06.1995 which was having a gap of 11 years; and by selecting 10% escalation, the market value was fixed at Rs. 1,58,760/-. Whereas in the instant case, the learned Reference Judge has awarded Rs. 4,61,250/- per acre which has no reference and basis. He further submits that though vast extent of land has been acquired and number of owners of the respective lands were available, the claimants have chosen to

examine only one witness i.e. PW-1 who had no knowledge about all the lands. Accordingly, learned Government Advocate prays to set aside the Reference Court's order and to award a just compensation as is referred in the Hirabai's case (supra).

6. In the appeals filed by the beneficiary -Karnataka Neeravari Nigam Limited, the learned counsel has taken grounds that the claimants have not proved the fact of irrigation. As per the report of the SLAO himself there was no existence of structure for preparation of jaggery. None of the claimants have produced any receipt for having transported or of selling jaggery to the merchants. The claimants state that the source of water for irrigation is Bori river. But the same cannot be accepted because the water in the said river will flow only for few months and it was not available for entire year, whereas to grow sugar cane it requires water throughout the year. By referring Ex. R2-the JMC report, he submits that in the report it is stated that all the officers visited the spot and reported that there was no structure to prove that the jaggery was prepared. Learned counsel also relied upon the Hirabai's case (supra) for the purpose of awarding compensation of lesser than what has been awarded by the Reference Court. He also referred to the judgment of Hon"ble Supreme Court in the case of Special Land Acquisition Officer Vs. Karigowda and Others, . By referring to paras-23 and 24 he submitted that end product cannot be taken for fixing the market value. Though these inbuilt defects were available, the Reference Judge committed an error in awarding compensation for which there was no basis.

7. The learned counsel for the claimants who have made a prayer for enhancement of compensation submits that higher price and yield is not properly assessed by the Reference Judge. The Reference Court has committed an error in taking minimum yield of jaggery, whereas it should have taken average i.e. 47.5 quintals. If the compensation is calculated by taking yield of jaggery as 47.5 quintals, the claimants would get more than what has been awarded by the learned Reference Judge. Rs. 200/- per quintal has been deducted from the net income towards production and preparation of jaggery, whereas the deduction should have been in the gross income. Learned counsel for the claimants referred to Ex. P15 the copy of the LAC No. 4/2006 which pertains to the notification of the year 1997 in which the compensation has been awarded at Rs. 2,40,000/- per acre and escalation of 10% is added, which comes to more than what has been awarded by the Reference Court. The learned Reference Judge has not considered Ex. P15. Hence, the submission is made to enhance the compensation. Learned counsel for the claimants also referred to MFA No. 30605/2008 in the case of Shanta Bai and others vs. SLAO, UKP and others in which this Court by its judgment dated 02.01.2013 awarded a compensation of Rs. 3,36,000/-per acre for the notification of the year 2003. If three years" escalation at 10% is added, it comes to Rs. 4,36,000/-. Accordingly, the learned counsel for the claimants pray for enhancement of compensation.

8. We have heard the learned counsel for the parties. The grounds urged by the

SLAO and the beneficiary is the dispute with regard to the character of the lands, namely that the claimants have not proved the source of irrigation. The claimants have made a prayer, without there being any evidence and materials, to prove the fact that the lands in question were irrigated for the purpose of growing sugar cane. The SLAO has committed an error in his report stating that he has seen the sugar cane grown in the lands in question and also that the lands in question are irrigated lands. However, there is no basis to prove the same. Lifting water from Bori river is also not proved either by producing water cess or electricity bill for having lifted water. The claimants' case that they were converting sugarcane into jaggery is also not proved. These aspects have been dealt with by the Reference Judge and have been rejected by assigning the reasons. For assigning reasons the Reference Judge referred to the report Ex. P-1 of the SLAO in which he has specifically referred in respect of particular land and survey numbers and stated that he has seen that the lands were irrigated, they were wet lands and sugar cane were grown in the said lands. When such is the case, the report made by the SLAO who is a competent authority himself, cannot be disputed and rightly not controverted by these appellants. The only defence taken by the appellants i.e. the SLAO and the beneficiary is that Exs. R.3 to R32, viz. the records of right which were produced and marked on behalf of the beneficiary and the Government, have not been looked into. In this regard, again Ex. P-1, the report made by the SLAO, would be relevant. A statutory authority under the Land Acquisition Act who has passed the award on the basis of the nature of land and source of irrigation, has to be believed unless there is contra evidence and materials. Records of right, namely, Exs. R3 to R32 have been produced, but none have been examined in support of their claim in respect of entries made at the relevant column. Merely showing the nature of crops like toor, jawar etc. in the records of right, cannot draw inference contrary to the finding of the statutory authority, namely, SLAO. Under these circumstances the grounds urged by the beneficiary as well as the Government has rightly been rejected, and therefore, we confirm the findings arrived at by the learned Reference Judge.

9. On behalf of the claimants, PW-1 has been examined and he has deposed in his evidence that the respective lands are irrigated lands and sugar cane was grown since last 10 years and before the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force, it was not compulsory and mandatory for the claimants to maintain the documents of the production of jaggery. In his deposition it has been stated that the jaggery was sold in open market. No cross-examination or suggestions have been made to deny the evidence of PW-1. Mere suggestions made by the beneficiary disputing the production of jaggery itself is of no evidence unless it is supported by a piece of material evidence. It is to be observed that the nature of crops grown is not the matter, it is the potentiality of the land and source of irrigation, which is required to be considered while awarding compensation. It is the selection to be made by the claimant or farmer

as to what type of crop is to be grown depending upon the market price.

10. On behalf of the beneficiary as well as the Government, Special Land Acquisition Officer has been examined and he has supported the findings made in the award. What has been awarded has been reiterated and no further contra suggestions have been made to dispute the claim of the claimants. No materials have been produced in order to disprove the claim made by the claimants.

11. By considering the evidence and materials placed on record, the Reference Judge has awarded compensation and while awarding compensation he has rightly referred the judgment in the cases of The Special Land Acquisition Officer Hidkal Dam. Vs. Sri. Vasant Dattatraya Patil and Others--> ; State of Gujarat and others Vs. Rama Rana and others, ; Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, ; and Krushi Utpadana Mandi Samithi vs. Mallik Sartaj Wali Khan and others reported in (2001) 10 SCC 660. The findings arrived at by the Reference Judge is by evaluating the materials and evidence adduced on behalf of both the parties and also in the light of the judgments referred supra. Hence, we hold that the learned Reference Judge has awarded compensation by application of mind and on the basis of the evidence and materials, answering the disputed facts. When the disputed facts have been answered by assigning reasons, it is not open for this Court to interfere in the said finding or judgement.

12. It is for this Court to find out whether the learned Judge has awarded a just compensation or not. The claimants have relied on Ex. P15 namely LAC No. 4/2006 pertaining to the notification of the year 1997 in which compensation of Rs. 2,40,000/- per acre has been awarded. The lands in question in LAC No. 4/2006 were situated in Gulbarga taluk and district and it was the black soil and was a fertile irrigation land. Another judgment referred to by the claimants i.e. MFA No. 30605/2008 pertains to UKP, in which the compensation awarded was Rs. 3,36,000/- per acre for the notification of the year 2003. When these two notifications which were the subject matter in the above judgments are taken into account, there has to be reconsideration. In this regard, we have decided to recalculate the compensation on the basis of Ex. P15 in LAC No. 4/2006 in which the compensation of Rs. 2,40,000/- per acre was awarded for the notification of the year 1997. For the gap of 9 years between 1997 notification and 2006 notification, escalation of 8% is to be considered. If it is calculated, it comes to Rs. 4,12,800/-. If escalation is taken at 10%, it comes to Rs. 4,56,000/-. If the judgment in MFA No. 30605/2008 is taken into account, the compensation comes to Rs. 4,16,000/-. In view of this dichotomy, we have decided to select it at 8%. Accordingly, the same is calculated for the purpose of awarding compensation. Hence, it is just and reasonable to award Rs. 4,15,000/- per acre along with statutory benefits. Accordingly, the same is awarded.

13. In the light of the above, the judgment and award passed by the Reference Court stands modified. The cross objections filed by the claimant for enhancement of compensation is dismissed. Appeals filed by the Government

and the beneficiary are partly allowed.

14. Ordered accordingly.