

(2016) 12 KAR CK 0023

In the Karnataka High Court

Case No : Misc. Second Appeal No. 77 of 2012 (LAC)

Dastagir Sab

APPELLANT

Vs

Karnataka Neeravari Nigam Ltd.

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 23, Section 4

Citation : (2017) 1 AirKarR 380

Hon'ble Judges : Mrs. Rathnakala, J.

Bench : Single Bench

Advocate : Sri. P.N. Harish, Advocate, for the Appellant; Sri. Sharath Chandra, Advocate, for the Respondent No. 1; Sri. Vasanth V. Fernandes, HCGP, for the Respondent No. 2

Final Decision : Allowed

Judgement

Mrs. Rathnakala, J. - This Second Appeal is directed against the judgment of the District Court whereby the award passed by the Civil Judge was set aside and the award passed by the Land Acquisition Officer in a proceeding under the Land Acquisition Act, 1894 ("the Act" for short) was confirmed.

2. Briefly stated, the land measuring 2 acres 8 guntas in Sy. No. 119/P of Holalur Village belonging to the appellant was acquired for the purpose of "Upper Tunga Project" - the beneficiary. A preliminary notification under Section 4(1) of the Act was issued on 26.9.2001. Along with the said land, some other lands in the neighbourhood belonging to others were also acquired for the above purpose. The Special Land Acquisition Officer classified the lands as dry land and in a common award granted the compensation @ Rs.38,000/- per acre. The appellant/claimant received the compensation under protest and filed a petition under Section 18 of the Act, to refer his claim to the Civil Court for re-determination of the compensation amount, since the compensation awarded by the Land Acquisition Officer was on a lower side and the market value of the land, which was at Rs.3,00,000/- per acre at the time of the preliminary notification, was

overlooked. Accordingly, the matter was referred. The Karnataka Neeravari Nigama Limited, Upper Tunga Project, Holalur/the beneficiary participated in the enquiry. That apart, the owners of the neighbouring land, whose land was also acquired under the same notification, had also filed similar application under Section 18(1) of the Act. All the matters were clubbed and the appellant herein adduced evidence on his behalf and also on behalf of other claimants and produced 11 documents. Though no oral evidence was adduced on behalf of the respondents, three documents were marked for them. By a common judgment dated 10.10.2006, the learned Referral Court enhanced the compensation in respect of the land of the appellant herein holding that, he is entitled for compensation @ Rs.85,000/- per acre. As the Land Acquisition Officer had awarded compensation in respect of 31 guntas only and capitalized the value of the standing trees in respect of remaining 1 acre 17 guntas, the compensation was awarded in respect of said 1 acre 17 guntas left out by the L.A.O. Aggrieved by the said award, the beneficiary/first respondent herein challenged the award of the Referral Court before the District Court. The learned District Judge upheld the findings recorded by the L.A.O. that there is no necessity to award compensation to the lands where the trees are in existence. The learned District Judge found fault with the claim that except the sale deed, no other document was produced by the claimant in support of his claim for enhanced compensation. There was no documentary proof in respect of the price of the agricultural produce during the relevant time and the Yield Certificate of the price list issued by the APMC authorities. To hold that the award of the L.A.O. was inadequate, there was no documentary proof of the crops grown over the land at the relevant point of time. Ex.P1 was a registered sale deed dated 28.4.2003 pertaining to 5 guntas of land in the neighbourhood i.e., subsequent to the date of preliminary notification, which in the eyes of the District Judge, was inadequate to enhance the compensation, thus the enhanced amount awarded by the Referral Court was set aside.

3. Sri. P. N. Harish, learned Counsel appearing for the appellant submits, the lower appellate court grossly erred in not allowing the compensation in respect of 1 acre 17 guntas of land acquired by the L.A.O. Mere awarding value of the tree will not absolve the acquiring authority of its liability to compensate the loss caused to the owner from the acquisition of the land on which the trees were standing. It is to be noted that the beneficiary, without challenging the enhanced compensation awarded in respect of the other claims of the very same common award, chose to challenge the award pertaining to this appellant only. A beneficiary of the acquisition cannot maintain an appeal without the leave of the court. Ignoring the said fact, the lower appellate court considered the case of the beneficiary. In fact, there was a time gap of five years between the award passed by the Referral Court and the appeal preferred before the District Court. The lower appellate court failed to observe that the oral testimony of the appellant was not rebutted by the respondents by adducing evidence. Section 23 of the Act contemplates the factors for determination of the compensation. Accordingly, the

market value of the land has to be determined at the first instance and thereafter the damage sustained in respect of taking over of the crops and standing trees has to be determined. On behalf of the beneficiary, the Assistant Executive Engineer had preferred the appeal though he was not a party before the Referral Court and no leave was sought by him for filing the appeal. The exorbitant delay of 5 years in preferring the appeal was condoned without proper application of mind by the lower appellate court. In that view of the matter, the impugned order of the lower appellate court requires to be set aside and the judgment of the learned Civil Judge may be confirmed.

4. The objection of the beneficiary/first respondent is, the award passed by the Referral Court was hypothetical. It was the beneficiary, which is affected by enhancement of the compensation. Hence, the lower appellate court rightly considered the appeal after condoning the delay and the judgment of the lower appellate court does not warrant interference.

5. In the light of the above rival submissions, the sole point that arises for consideration is,

"Whether the lower appellate court was justified in reversing the enhanced compensation awarded by the Referral Court?"

6. As regard to the maintainability of the appeal by the beneficiary, the matter is not res integra anymore. The Constitution Bench of Apex Court set at naught the said legal contention in *U.P.Awas Evam Vikas Parishad v. Gyan Devi (dead)* by L.Rs. and another reported in (1995) 2 SCC 326 thereby declaring that:

"In case, the amount of compensation has been enhanced by the Court and no appeal is filed by the Government, the local authority if adversely affected by such enhancement may file an appeal with the leave of the Court."

Without raising the question of maintainability, for want of leave to appeal, for the first time the contention raised before this Court is not tenable. The appellant has participated in the appeal proceedings without murmur and now the said contention cannot be entertained. It is a fact that vide common preliminary notification dated 24.1.2002, the lands in Sy Nos.54, 59, 60 and 119 were also acquired and the L.A.O. fixed Rs.38,000/- per acre in respect of all the lands. The owners of those lands were also before the Referral Court claiming enhanced compensation. Totally 11 claimants had preferred application under Section 18 of the Act and the appellant herein had adduced evidence as PW-1 on behalf of himself and others. He had produced certified copy of a registered sale deed of April 2003 pertaining to the sale of a bit of land measuring 5 guntas in Sy.No.85/4 of the very same village and as on the said date, the market value of the land was shown as Rs.54,000/-. The Referral Court upheld the claim for enhanced compensation relying on the sole testimony of the appellant. The question here is, the beneficiary has not chosen to question the compensation awarded @ Rs.85,000/- per acre in respect of other claimants and chose to pick this appellant only, which is unexplained. The lower appellate court appears to

have lost sight of this factor that strikes the finding of the lower appellate court at its root.

7. Coming to the question of awarding Compensation in respect of 2 acres 8 guntas, L.A.O. without assigning any reason had re-corded that since compensation was computed in respect of the fruit yielding trees on the lam it was not required to compute the compensation for the land. While holding so, the L.A.O violated the mandate of Section 23 of the Act wherein it contemplates that.

"23. Matters to be considered in determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

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8. An identical question was addressed by the Apex Court in its judgment reported in (2010) 5 SCC 708 in the matter of Special Land Acquisition Officer v. Karigowda and others wherein it was held as under:

"46. The second circumstance specified in Section 23(1) to be considered by the Court in determining compensation is the damage sustained by the person on account of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof. Even from a reasonable practicable view it has to be understood that the compensation which is payable to the claimants is in relation to the acquired land, the standing crops or trees and what they earn from the agricultural crops or fruits or trees on the agricultural land. To extend the benefit for the purposes of compensation, considering that the fruits grown on the agricultural land would be converted into jam or any other eatable products will not be a relevant consideration within the scheme of the Act. The purpose is not to connect the acquisition to remote factors which may have some bearing or some connection with the agricultural activity being carried on, on the land in question. Such an approach by the Court is neither permissible nor prudent, as it would be opposed to the legislative intent contained under the provisions of Sections 23 and 24 of the Act".

9. The lower appellate court fell into gross error in undoing the enhanced compensation awarded by the Referral Court in respect of the land left out by the L.A.O. and it was sheer misconception on the part of the appellate court in interfering with the judgment of the Referral Court, which was legal and proper. In that view of the matter, the impugned judgment and decree is erroneous and cannot be sustained.

Accordingly, the appeal is allowed. The impugned judgment and decree dated 17.4.2012 passed in M.A.No.34/2011 on the file of the Principal District Judge, Shimoga, is hereby set aside.