

(2014) 11 KAR CK 0310

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10367 of 2011 (LAC)

Eshwarappa

APPELLANT

Vs

The Chief Officer

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2014) 11 KAR CK 0310

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : S.V. Prakash, Advocate for the Appellant; Vishwanath R. Hegde, Advocate and Vasanth V. Fernandez, HCGP, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—This is claimant's appeal. The appellant's land measuring 2 acres, 15 guntas of land in survey No. 7/1, of Neerkodu Village, Avinahalli Hobli, Sagar Taluk was acquired for the purpose of construction of a bus stand. The land was notified under Section- 4(1) of the Land Acquisition Act and the final notification came to be issued on 18.03.1992. Being not satisfied with the award, the appellant sought for a reference under Section- 18 of the Land Acquisition Act.

2. Accordingly, the matter was referred to the Civil Judge, Senior Division, Sagar in LAC No. 3/2006. The Reference Court by its judgment and award dated 16.07.2011, determined the market value of the appellant's property at Rs. 11/- per sq.ft. Being not satisfied with the same, the present appeal is filed for enhancement.

3. Heard Shri S.V. Prakash, learned counsel appearing for the appellant and Mrs. Vishwanath R. Hegde, learned counsel for respondent No. 1 and the learned Government Advocate for respondent No. 2.

4. The main contention of the appellant's counsel is that the Reference Court without considering the evidence let-in by the parties erroneously determined the

market value of the land at Rs. 11/- per sq.ft. Therefore, he requests the Court to set aside the order and re-determine the value fixed by the Reference Court.

5. Shri Hegde, learned counsel appearing for the Municipality submits that the determination of the market value by the Reference Court is just and proper and does not call for interference.

6. Perused the order passed by the Reference Court. In para-21 of the judgment the relevant discussion is in regard to the compensation of the market value, which reads as hereunder:

"21. Therefore, the Land Acquisition Officer was not correct in applying capitalization method while determining the market value. It has come in evidence that the acquired land is situated in the heart of Sagar City. It is a developing area. The said acquired land could have been used for formation of sites. Therefore, fixed the market value at the rate of 28,800/- is on lower side. The Hon'ble Supreme Court rendered the judgment in 2010 SAR civil 693 on 11.8.2010. Therefore, the same proposition of law will apply to the facts of the present case also. In the result, it would be just, proper adoptive and reasonable to determine the market value of the acquired land at the rate of Rs. 11/- per square feet along with other statutory benefits. Accordingly, I answer point No. 1 under reference in the affirmative".

7. From the reading of para-21 no court can hold that the Reference Court has considered the evidence let-in by the parties. As a matter of fact, the claim as laid up by the appellants namely, Sri Eshwarappa and Sri Sadashiva, who were examined as PW-1 and PW-2 and relied upon Exhibits-P1 to P15 and by consent, Exhibit-R1 were produced. The guidance value fixed by the State of Karnataka for the purpose of registration at Sagar is found at Annexure-R1. Admittedly, the land in question is situated in Neerkodu Village, Avinahalli Hobli, Sagar taluk. It is an agricultural land. The contention of the appellant counsel is that though it is situated at Neerkodu Village, virtually the property is in town limits of Sagar Taluk. Therefore, it has to be considered as urban property and its potentiality was required to be looked into by the court below for the purpose of determination of the market value by applying the guidance value fixed by the state of Karnataka vide Annexure-R1.

8. Be that as it may, by looking into the judgment of the Reference Court, we are of the view that the Reference Court for the reasons best known to it has not considered the evidence let-in by the appellant. Without considering the oral evidence and documentary evidence let in by the claimant has erroneously come to the conclusion that the market value of the property as on the date of notification is at Rs. 11/- per sq.ft., which according to us is an illegality committed by the court below.

9. In the result, the appeal is allowed, the judgment and award passed by the Civil Judge, Senior Division, Sagar in LAC No. 3/2006 are hereby set-aside. Since the Tribunal has passed the judgment without application of mind., the matter is

remanded to the Reference Court for fresh consideration in accordance with law after giving reasonable opportunity to lead further evidence by both the parties.

In view of the allowing of the appeal, the appellant is entitled for the refund of full court fee.