(2015) 03 KAR CK 0248

In the Karnataka High Court

Case No : M.S.A. No. 660/2011 (LAC)

Executive Engineer and Others APPELLANT

Vs

Channabasappa RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28(A), 28(A)(3), 28A, 28A(1)

Citation : (2015) 03 KAR CK 0248

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Archana P. Tiwari, G.A., for the Appellant; Ameet Kumar Deshpande, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—This appeal is preferred by the State calling in question the judgment and award passed in LACA No. 104/2007 on the file of the I Addl. District Judge, Gulbarga dated 22.4.2010 in enhancing the compensation, fixing the market value of the land at Rs. 27,500/- per acre and granting interest and other emoluments under the Land Acquisition Act.

2. The first contention of the learned counsel appearing for the appellant - State is that the appeal before the First Appellate Court itself was not maintainable u/s. 28A of the Act, as the claimant looses his rights to seek the enhanced compensation as the Land Acquisition Officer has paid the money as sought for by the claimant, and the claimant has no grouse against the same. Secondly, it is contended that the First Appellate Court was not justified in considering the judgment rendered in MFA No. 3720/1996 by this Court for allowing the appeal, as u/s. 4(1) Notification is pertaining to the lands involved in the said MFA was of the year 1991-92. So far as the present case is concerned, the Notification u/s. 4(1) was of the year 1984-85. Further, added to that, the Trial Court has wrongly concluded the de-escalation at 5% instead of 8%. If 8% de-escalation is ordered, the Trial Court could have fixed the market value at Rs. 21,840/-. But the

Reference Court has already awarded Rs. 25,000/- per acre. Therefore, the First Appellate Court could have simply confirmed the order of the Trial Court without disturbing the award passed at the rate of Rs. 25,000/- per acre. Therefore, fixing the market value at Rs. 27,500/- is against to all the principles. Therefore, the said judgment is liable to be set aside.

3. I have heard the arguments of the learned counsel appearing for the parties and perused the records.

4. The undisputed facts are that:

"The land bearing survey No. 51/2 measuring 21 acres 35 guntas situated at Minajgi Village, Taluk and District: Gulbarga, was acquired for the purpose of construction of Hagargundagi Tank, under preliminary Notification dated 7.11.1985. The Land Acquisition Officer has passed an award dated 4.4.1987 fixing the compensation at Rs. 2,800/- per acre. The respondent/claimant being dis-satisfied with the award of the Land Acquisition Officer, made Reference u/s. 28(A) of the Land Acquisition Act, and on the basis of the judgment passed in LAC No. 532/1991-92 to enhance the market value for a sum of Rs. 12,000/- per acre. The LAO considered the said judgment and by an award dated 4.7.1996, enhanced the compensation to Rs. 12,000/- per acre as against Rs. 2,800/- ordered earlier. Again, the claimant/respondent being dis-satisfied with the market value fixed by the Land Acquisition Officer, filed a protest petition u/s. 28(A)(3) of the Land Acquisition Act and sought for Reference to the Civil Court. The said Reference was made to the III Addl. Civil Judge (Senior Division), Gulbarga in turn after hearing the matter, the learned Judge, enhanced the compensation amount and fixed the market value at Rs. 25,000/- per acre vide judgment dated 21.4.2007. Being aggrieved by the said award passed by the Reference Court, the respondent approached the First Appellate Court, the I Addl. District Judge, Gulbarga. After hearing the parties, considering the judgment of this Court in MFA No. 3724/1996, the Court enhanced the amount and fixed the market value at Rs. 27,500/- per acre after considering the de-escalation at the rate of 5%." 5. On the above said facts, the legal question raised is:

"Whether, the Appellate Courts or the Reference Courts could entertain the application or the protest petition filed by the claimant?." 6. The First Appellate Court in fact has given its finding in detail with regard to Section 28A(3) of the Act, whether, the land owner can file a Reference Petition to the Court for fixing the market value at the enhanced rate.

7. On perusal of the factual aspects, it reveals that, at no stage, the land owner has accepted the compensation. But throughout he has been protesting the award passed by the Land Acquisition Officer and also re-fixing of the market value and also even the award passed by the Reference Court. It shows that at no point of time, till the First Appellate Court fixed the market value, he was satisfied with the award passed either by the LAO or by the Reference Court. Of

course, if the Market Value is fixed as per Section 18 of the Land Acquisition Act, if that order is satisfied by the claimant, then he has no right to file any application for reference, if he accepts the same. Whether it is accepted or not is the question, which the Court has to consider.

8. In this background, the learned counsel appearing for the respondent/claimant has relied upon a decision of the Hon''ble Apex Court reported in V. Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and Another, , wherein the Hon''ble Apex Court, for re-determination of the compensation under Section 28A(3) has observed thus -

"A person who is not satisfied with an award u/s. 28A(2) of the Land Acquisition Act can make an application to collector u/s. 28A(3) of the Land Acquisition Act for making a Reference to the Court as defined u/s. 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made u/s. 28A(2) read with Section 28A(1), the applicant becomes entitled to receive compensation at par with other land owners. There is nothing in the plain language of Section 28A(3) of the Land Acquisition Act, from which it can be inferred that a person who has accepted the award u/s. 28A(2), is precluded from making an application to the collector with a request to refer the matter to the Court. Of course, the Court to which Reference is made u/s. 28A(3) of the Act, will have to bear in mind that a person who has not sought reference u/s. 18 cannot get compensation higher than the one payable to those who had sought reference under that Section." Therefore, the judgment makes it amply clear that if other persons who have sought reference u/s. 18 of the Act, whether in the same Notification or by means of other Notifications, but the Notifications though different, were issued for the same purpose, with the same object of acquiring the land, then if the reference is made already u/s. 18 of the Act, if any compensation is fixed so far as the other land owners are concerned, then the person who is aggrieved is not debarred from questioning the same from seeking reference to the Court or by means of filing an application for fixation of the market value legally which is reasonable and justifiable.

9. If the above said principle is applied to the present set of facts and circumstances of the case, the First Appellate Court has relied upon the judgment of this Court passed in MFA No. 3720/1996, wherein this Court had an occasion to consider the lands of the owners which were acquired for the same purpose i.e., for the purpose of construction of Hagargundagi Tank. Though in the said judgment, the Notification was of the year 1991-92, the Court has fixed the market value at Rs. 30,000/-. The Notification in so far as this case is concerned, it is of the year 1984-85 and it is for the same purpose. Therefore, considering the fixation of the Market Value in the above said MFA and by giving de-escalation to the amount fixed by the Court, the Market Value has to be arrived at.

10. The learned counsel for the respondent/claimant is right in contending that the other land owners, who have challenged the said order by way of reference u/

s. 18 of the Act and ultimately it reached to this Court in MFA No. 3720/1996, they have got the award fixing the Market Value of the land at the rate of Rs. 42,000/- per acre and such parties have claimed only Rs. 30,000/-, it was restricted to Rs. 30,000/- only. Therefore, he contends that even in this case also, after de-escalation, the claimant is not claiming more than the amount what has been fixed in the said MFA No. 3720/1996. Therefore, in view of the above said decision, the petitioner shall also be entitled to the same compensation as got by other land owners, whose lands were acquired for the same purpose though under different Notifications subject to de-escalation. Therefore, for all practical purposes, Rs. 42,000/- fixed by this Court as Market Value in MFA No. 3720/1996 after de-escalation at the rate of 5%, it will come round to Rs. 28,000/-, but restricted his claim to Rs. 27,500/-, as claimed by the petitioner and it was fixed at Rs. 27,500/- by the Appellate Court in LACA No. 104/2007. Therefore, I do not find any strong reasons to interfere with such an order and the appeal filed u/s. 28A(3) of the Act is very well maintainable as if, it should be treated as a Reference u/s. 18 of the Act itself.

11. The second question raised by the learned counsel is that the Notifications are of different years, therefore, de-escalation should have been taken as 8% instead of 5% as taken by the Trial Court, though the Appellate Court has stated at paragraph 27 that the bench mark value is available for the year 1991-92 and it is observed that the Market Value will have to be reckoned by reducing 5% of the bench mark value every year.

12. The learned counsel in this regard has relied upon a decision of this Court reported in MFA No. 1314/2006 dated 21.10.2006, wherein this Court has observed that the reverse deduction shall be at the rate of 5% for every year. Therefore, in this particular case also, reverse deduction was done at the rate of 5% and not at 8%.

13. The learned High Court Government Pleader did not bring it to my notice about any of the rulings of the Hon''ble Apex Court or of this Court in this regard showing that the reverse deduction shall be made at the rate of 8% only. Therefore, in my opinion, without there being any basis, that ground is not tenable and acceptable.

14. In view of the above said facts and circumstances of the case, I do not find any strong reasons to interfere with the judgment passed by the First Appellate Court. Hence, this appeal deserves to be dismissed.

Accordingly, the appeal is dismissed.

