

(2002) 09 KAR CK 0015

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3212 of 1996

Executive Engineer Karnataka Housing Board

APPELLANT

Vs

Malleshappa (deceased) by L.Rs. and Another

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Citation : (2003) 2 KCCR 1170

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : Basavaraj and V. Sabarad, for the Appellant; S.P. Shankar, for Respondents 1 to 6 and Chandrashekhara Rodannavar, High Court Government Pleader for Respondent 7, for the Respondent

Judgement

M.F. Saldanha, J.—The Karnataka Housing Board (hereinafter referred to as the "K.H.B.") through its Executive Engineer Gulbarga has assailed the correctness of the decision in L.A.C. 1/85 decided on 2.4.1996 by the learned Additional Civil Judge, Gulbarga. The present Respondents had assailed the award of the Land Acquisition Officer who had fixed the market value at Rs. 13,000/- per acre. It may be relevant to point out that the claimants who are the original land owners had originally contended before the L.A.O. that they should be compensated at the rate of Rs. 18,000/- per acre. Approximately 12 acres and 35 guntas of land had been acquired and when they approached the Reference Court for a variety of reasons, the claimants had contended that they are entitled to a compensation at the rate of Rs. 12,000/- per square foot which was the unit on the basis of which the Reference Court had done the computation. Before proceeding further, we need to express our very strong disapproval for the manner in which the computation has been done. The Supreme Court has repeatedly frowned upon the practice of using unscientific units for computation in land acquisition cases and there are various dishonest reasons why these computations are done on a square foot basis and unless this Court firmly deprecates this practice and issues a warning to the Courts in question we will not be surprised if for some specious reasons we come across a case in which the calculation is done on a square inch

basis. The Land Acquisition Officer had done the computation on an acre basis and awarded the market value per acre, and this is the unit which the Reference Court ought to have stuck to. The claimants had contended that having regard to a variety of factors they would be entitled to a compensation of Rs. 12,000/- per square foot and the learned Judge after carefully evaluating various contentions and the materials placed before him, enhanced the compensation which finally worked out to Rs. 1,75,800/- per acre. It is against this order that the present appeal has been directed. The original claimants have preferred cross objections in MFA Cr. Ob. 179/2002 which we have disposed of through a separate order on the ground that this Court cannot entertain it since it is time barred.

2. As far as the present appeal is concerned, the Appellants have filed I.A.I/2002 whereby they have put forward the plea that certain additional evidence should be considered by this Court. According to the Appellants the acquired land has been sub divided into plots or sites and allotted to a large number of persons and that these persons had brought one very important factor to the notice of the Appellants which is most relevant for consideration of this appeal. They have produced before us certain documents viz., the plaint in O.S. No. 228/89 which was filed in the Court of the Principal Civil Judge, Gulbarga by the original land owner who incidently was an Advocates, against 102 persons. It is a suit for possession and mandatory injunction and the Plaintiff had contended that these persons are encroachers/tress-passers, that they have virtually tress-passed into the land and put up various structures, that in addition to this they contend that they are alleged to have entered into an agreement of sale which according to the Plaintiff was forged and consequently, the suit has been filed for two reliefs firstly, that the possession be restored to the Plaintiff and secondly that the Plaintiff be protected from any disturbances of the user of the property through a permanent injunction. The other important document which has been produced is a consent term which was filed before the Court whereby the suit in question has been compromised and the Appellants have produced these documents for two reasons. Firstly, what they pointed out is that the original plot of land measured approximately 25 acres, that one half of it is the subject matter of the present acquisition and the other half is the subject matter of the suit. The Agreement to Sell is dated 1981 which is approximately at the same point of time when the Section 4 Notification was issued and the amount that was ultimately agreed upon works out to Rs. 31,000/- per acre. Secondly, what the Appellants contend is that there could be no better comparison of the value than this transaction because it emanates out of a judicial proceeding and, it is a compromise order which was willingly and voluntarily entered into by both the parties and consequently, that the present claimants who are the recipients of the consideration in that arrangement cannot under any circumstances question the correctness of the figures involved.

3. The Appellants' Counsel submitted that this evidence is not only relevant but crucial to the decision of the present appeal. That admittedly, these are subsequent developments, of which the Appellants are not aware of during the

proceeding before the Reference Court or when the appeal was filed, that they are certified copies of Court documents and that consequently, this Court must permit these documents to be taken on record and to be referred to and relied upon.

4. Mr. S.P. Shankar, learned Counsel who represents the contesting Respondents submitted that it is a well settled and well defined principle of law, that the record cannot be enlarged or altered at the appellate stage, that even where the applications are made for additional evidence that the principles are not only well defined that they are very rigorous and that as a matter of principle and precedent Court should not permit the acceptance of this additional materials because otherwise, there would be no finality to such situation. As an illustration, he submitted that if the Appellants desire to introduce additional evidence the record will have to be remanded to the Reference Court, that his client would like to test the material in question from various angles and that his client would also have to be given an opportunity of producing whatever evidence on material that they have in order to meet this evidence or to refute it. We cannot fault any of the objections that have been put forward before us which are of the utmost importance, but at the same time we have over ruled them for only one reason, viz that this is an old case. The claimant has died. The beneficiaries are his family and we really do not have the heart to leave the litigation protracted under any circumstances. We have also pointed out to the Respondents learned Counsel that we will hear him on all the challenges that he desires to present to this material and take note of it without delaying the disposal of the appeal, further, by sending it to the Reference Court for academic purposes which we consider unnecessary. It is under these circumstances that we have allowed I.A.I. and taken on record the material in question.

5. We shall briefly deal with the preliminary objection canvassed by the Respondents Counsel.

6. On the basis of the material that has been produced before the Court now that Appellants learned Counsel submitted that the grounds on which the enhancement was undertaken by the Reference Court viz, the market value of two other plots of land admittedly small plots at or about the time of the acquisition and the approved market value as emerged from one of the other appeals from Gulbarga though it related to the year 1965 would be over shadowed by this material. Firstly, it is contended that the subject matter of the suit was the remainder of that very plot of land and in terms of proximity the Court could never expect any better parallel. Secondly, what is submitted is that despite the land owner having filed a suit that the record indicates that consent terms were filed before the Civil Court and the Appellants learned Counsel emphasizes very strongly the point that this demonstrates absolutely and totally two sided willingness as otherwise there was no need to compromise the suit. He further submits that there was no reason why any concession should have been made when the proceeding was before the Court, that if any wrong figures were

reflected the Court itself would not have approved of the consent terms, that neither of the parties had questioned these terms or challenged them and that consequently, this Court has to straightaway accept the figure indicated in these consent terms which has been 100% representative of the market value. These submissions appear to be almost unanswerable, until the Respondents learned Counsel pointed out to us, as is always the case, that there is entirely another dimension to this head of material.

7. First of all Respondents learned Counsel Mr. Shankar submitted that when compromise terms are filed in Court, by their very nature, it is almost a desperate act of exhaustion on the part of one or both the parties or an attempt to buy peace or a desire to put an end to the litigation all of which is reflected in the compromise. His submission is that the figure mentioned there is no reflection of the fair market value and in support of this he pointed out certain features of this case which in our considered view are of relevance. Firstly, what he points out is that the suit was filed in the year 1989 and that between the time when the suit was filed and the compromise arrived at on 17.8.1996 that the land owner who was an Advocate had passed away. Only his wife and minor children were in the picture and as per the recitals in the compromise terms themselves, on the intervention of various friends and professionals a serious attempt was made to assist the family to salvage whatever best could be done, but, according to the learned Counsel as often happens the family was hardly in a position to carry on any further long terms litigation. The important fact which he highlights emerges from the fact that the Plaintiff/land owner had contended that the Defendants are relying on an agreement of sale but that he had never executed such an agreement and the document was forged. The land owner having died, a great difficulty would have arisen while challenging the genuineness of these documents as the alleged author was no longer available and in this background, the death of the Plaintiff had created a serious handicap to the family. More important to this are the averments in the consent terms. He states that the Defendants were all encroachers who had forcibly occupied the lands and put up structures and Mr. Shankar submits that the mere possibility of getting as many as 102 persons to vacate and that too after demolishing their structures was such a herculean task that the Plaintiff was pushed into such a position that there was no option except to do a distress sale and accept the best of a bad bargain. Normally we would have had some hesitation in accepting all these arguments but we found that the learned Counsel is on very strong ground because everything he argued is reflected, in writing in the consent terms and it is on this basis that he advanced the submission that there is perfect justification in his putting forward the plea that the price which was ultimately accepted could only be read to be a fragment of the real value which the Plaintiff had to take as there was no other option. We have carefully perused the record. We find there is considerable justification in this challenge to this head of evidence. We are therefore left with the position, that whereas under normal circumstances we would have straightaway accepted this figure, that we would only have to treat

this as one of the guidelines for fixing the market value and that we would also have to evaluate certain other factors of consequence. The Reference Court has relied on certain approved figures which emerge from the appellate orders of this very Court in respect of the lands in that very acquisition or sale, more or less at the same time. On the other hand, the Respondents learned Counsel points out to us that in one of the recently decided cases relating to LAC 54/1988 this Court has dismissed the appeal and allowed the cross objections filed and the market value of the land was fixed at Rs. 1,75,176/- which is very close to the value fixed by the Reference Court. A strong plea was advanced before us that there could be no better parameter than this figure. Mr. Shankar advanced certain additional submissions in support of the plea that the fair market value would be even higher. His last part of the arguments cannot be considered because we have already refused to entertain the cross- objections.

8. The Respondents learned Counsel as indicated by us earlier, has assailed the comparative figures that have been relied on by the Reference Court and as far as LAC 54/88 is concerned what he points out is that those lands are situated more than 2 kms away and that there are a variety of reasons why that figure would have no application in the present case. His submission is that the Court must accept the figure reflected in the compromise petition which was crystallized into a decree and which has assumed finality. The additional reason for this is because according to him the compromise terms reflect the end result of negotiations and that the various pleas put forward by Mr. Shankar are only lame excuses for the purpose of getting away from the accepted figure and should be discarded.

9. We do need to record that this Court will have to take judicial notice of the factors pointed out by the Respondents learned Counsel and while we do concede that in relation to the figures reflected in the several other judicial proceedings the value of Rs. 31,000/- per acre as reflected in the compromise terms is abnormally low. We also take note of the factors placed before us and hold that for the reasons as set out Rs. 31,000/- per acre would not under any circumstances reflect the fair market value as invariably happens in such a situation, as by then the litigation itself was 7 years old and where the lands had effectively been lost to encroachers that the price that was realised could only be representative of 1/4th of the fair market value. It is under these circumstances that we would have normally computed what in our considered view would be the fair and correct figure of aggregate compensation because after considering the entire record we are not inclined to accept the valuation as done by the Reference Court.

10. There is only one reason why we have cut short this exercise, the reason is because when the present appeal was filed the then Division Bench directed the Appellants to deposit 75% of the compensation in the trial Court and permitted the claimants to withdraw the amount. The Appellants were aggrieved by this order and therefore filed a SLP before the Supreme Court and after notice was

issued the Supreme Court heard the parties and passed a speaking order. That order has been produced before us and we find that after hearing the learned Counsel and applying their minds to the facts of the case their Lordships still approved of the deposit of 75% and the Supreme Court also permitted the withdrawal of the full amount. In our considered view this would not have been done unless the Supreme Court was more than prima facie satisfied that the amount withdrawn was in consonance with the fair market value. The Appellants learned Counsel was quick to point out to us that the Supreme Court has directed that this withdrawal can only be done on furnishing adequate security which means that if the appeal were to be allowed and the final amount awarded to be lower than the amount withdrawn that the claimants would have to refund the excess amount. We do not dispute this position but we take note of the fact that security in such case is ordered out of abundant caution. The Courts do not in the first instance order a deposit unless the learned Judges have applied their mind and they are satisfied that the quantum of the deposit is representative more or less of what the fair compensation would be. Having regard to the time factor the Courts also permit withdrawal of the amount which is in anticipation of the fair market value for the Courts are more than fully aware of the practical difficulties of enforcing refunds. It is in this background that we notice that if we were to compute in keeping with the principles applicable and the record of this case starting with the figure reflected in the compromise terms what would be the fair amount of compensation payable to the claimants, that the figure which emerges tallies exactly with the figure of the quantum of money which has been withdrawn and which has been approved by the Supreme Court.

11. Though a strong plea was made both by the Appellants learned Counsel and the learned Counsel for the Respondents that this Court is not in the least bit bound by either the deposit or the withdrawal and that it is perfectly within the jurisdiction of this Court if the facts so justified and the law requires, to fix the quantum which should be much lesser than the amount deposited that the Court ought to do so and the Court ought to order a refund in the public interest. We do not dispute the correctness of this proposition and if the figure computed by us varied from the figure of the quantum of the deposit, we would certainly have ordered a refund. In the present case we have already held that the compromise terms do not reflect the fair market value that, that figure would have to be multiplied by atleast four times and that taking into account comparative figures, the ultimate quantum that this Court awards is 75% of the amount awarded by the Reference Court. Since that amount in question has been deposited and withdrawn, all that is required to be done is that the Reference Court shall do a computation for purposes of calculating as to what are the additional amounts in keeping with their order payable to the claimants. The Appellants shall deposit the balance amount with the Reference Court within an outer limit of four months from today and on receipt of the same, the reference Court to pay over the amount to the claimants.

12. There is however, one other aspect which we need to refer to. In so far as

the Appellants learned Counsel points out to us that it appears from the record that due to certain errors of computation the Board had deposited an excess amount with the Reference Court and that even though there was a direction from this Court to the Reference Court to take corrective action that it is not very clear as to whether that amount has been refunded or not. If the amount has not been refunded the Appellants shall give credit for the excess deposit. If the excess has been withdrawn by the claimants then, if there are additional amounts payable to them that amount shall be adjusted while making the payment and if for any reason, the ultimate working indicates that there is any amount refundable by the claimants they shall be obliged to refund the same to the Reference Court.

13. There was some debate before us with regard to the question as to whether any further amount should be deposited because the learned advocate for the Appellants submits that in this instance the Board had deposited 75% of the full amount which included all the additional heads. If this is the position then undoubtedly no further amount may be required to be deposited but our directions are subject to both the parties filing a correct computation before the Reference Court. The appeal succeeds to this extent and stands disposed of. No order as to costs.