(1996) 03 KAR CK 0022

In the Karnataka High Court

Case No : M.F.A. No. 260 of 1992

Gundappa APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4 (1), 54 (1)

Citation : (1996) ILR (Kar) 1817 : (1996) 6 KarLJ 359

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Niranjan Kumar, for the Appellant; A.S. Mahesha, for the Respondent

Final Decision : Allowed

Judgement

Mohamad Anwar, J.—This appeal u/s 54(1) of the Land Acquisition Act (''the Act'' for short) is preferred by the appellant (claimant) from the judgment and award of the reference Court passed in L.A.C.No. 24/90 dated 8.4.1991 awarding compensation to him for his acquired land fixing the market value thereof at Rs. 5000/- per acre as against his claim to compensation at the rate of Rs. 25,000/- per acre. In this appeal he seeks enhancement of compensation for his acquired land restricting his claim to the market value thereof at Rs. 6000/- per acre.

2. Heard.

3. Admittedly, the appellant''s lands in Sy.No. 20 situate at Bethalkunda village of Basavakalyan Taluk in Bidar District, measuring 10 acres 6 guntas in total extent, had been acquired by the respondent pursuant to preliminary notification u/s 4(1) of the Act dated 18.6.1987 for the purpose of converting the same into a public tank. The concerned L.A.O. had passed his award dated 22.2.1980 granting compensation to appellant fixing the market value thereof at Rs. 3,500/- per acre. Aggrieved by the inadequacy of the said compensation, appellant made application u/s 18 of the Act before the L.A.O. claiming compensation at the rate of Rs. 25,000/- per acre and got the case referred to

the Court-below for adjudication of his claim to the enhanced compensation. In support of his case, his Power of Attorney holder deposed as P.W.1 during the trial in the Court-below and has produced Ex.P1 to P3 on record. Ex.P1 is the P.O.A. of the appellant executed in favour of P.W.1; Ex.P2 is the appellant''s application u/s 18 of the Act, and Ex.P3 is the certified copy of the judgment of the Court-below passed in L.A.C.No. 58/88 disposed of on its file on 22.9.1988 granting compensation to the claimants therein for similar lands in the same village acquired for the same purpose u/s 4 notification dated 8.12.1970. Ex.P3 discloses that the total extent of about 56 acres 27 guntas of land belonging to different claimants therein situated in the said village in Sy. Nos. 156, 149/2 and 3, 21/1, 21/4, 22/1 and 22/3 had been acquired by the government for the purpose of the said tank and that on a reference u/s 18 the Court-below had determined and fixed the market value for those acquired dry lands at Rs. 5000/- per acre and had accordingly granted compensation to the respective claimants.

4. It is not in dispute that the appellant''s acquired land, as held by the L.A.O and the Court-below, was the dry land and its market value was assessed by them as such. That this land was the dry land is not disputed either by the learned Counsel for appellant. The Court-below estimated the market value of the appellant''s acquired land also at Rs. 5000/- per acre on the basis of its earlier judgment at Ex.P3 and proceeded to determine the compensation payable to him.

5. It was contended by learned Counsel for appellant that the learned Civil Judge has erred in not considering the appreciation of the price of the acquired land since the earlier acquisition of the said similar lands under the said preliminary notification dated 8.12.1971, though a gap of about 15 years had elapsed since then. He contended that due allowance for appreciable increase in the price of the acquired land should have been given by the learned Civil Judge in view of the long gap of time between the acquisition of the said similar lands of other claimants under Ex.P3 and of the appellant''s said land. In support of this contention reliance was placed by him on a decision of Supreme Court in Ranjit Singh and others Vs. Union Territory of Chandigarh, , and on an unreported Division Bench decision of this Court in M.F.A. No. 1640 of 1993 DD on 9.11.1993.

6. The learned Government Advocate appearing for the State repelling the contention of appellant''s Counsel submitted that in the absence of any specific evidence on the escalation in the prices of lands, since the earlier notification dated 8.12.1971, it cannot be held that there had been any appreciable increase in the acquired land of the appellant as at the time of relevant Section 4(1) notification dated 18.6.1987.

7. In Ranjit Singh v. Union Territory of Chandigarh, the award for the land acquired therein was made by the courts below fixing its market value as the same which was determined for the similar land which had been acquired under a previous notification u/s 4(1) of the Act. On appeal, the Supreme Court has ruled that in assessment of the market value of the acquired land on the basis of

the market value of the similar land in the vicinity acquired in the past under the previous notification, due allowance in the increase in the price of the subsequently acquired land owing to passage of time has to be given. So enunciating the proposition, it granted about 9% increase in the market price of the land acquired under a subsequent preliminary notification in that case from the one which was acquired about one year prior thereto.

8. Mr. Niranjan Kumar, learned counsel for appellant also placed heavy reliance on an un-reported decision of the Division Bench of this Court in BABU RAO v. THE ASSISTANT COMMISSIONER AND LAND ACQUISITION OFFICER GULBARGA, MFA No. 164/93 dt. 9.11.93. In that case of Babu Rao, Section 4(1) notification for acquisition of the land was issued on 4.10.1979. The market value for that acquired land fixed by the reference Court was the same as was fixed in respect of other similar lands of the neighbourhood acquired under the preliminary notification dated 31.12.1983 for which awards had been already passed in concerned M.F.A.Nos. 1160/91 & 1918/91 disposed of by this Court. The land acquired in MFA No. 1640/93, pursuant to preliminary notification dated 4.10.1979 was about 4 years earlier to the lands acquired in M.F.A.Nos. 1160 and 1918/91. For the purpose of determination of the market value of that earlier acquired land on the basis of the market value of the subsequently acquired lands in M.F.A.Nos. 1160/91 &1918/91 this Court has held:

"..... the learned Advocate for the appellant, does not dispute the fact that the lands involved in these two appeals was acquired in pursuance of preliminary notification of December, 1982. As the preliminary notification in this case has been issued nearly three years prior to that date, it is obvious that some reduction will have to be given on account of the escalation of price which must have taken place during the period from 1979 to 1982. If we calculate the escalation at 5% per annum, the market value of the lands, in this case would come to about Rs. 6,800/- on or about the date of preliminary notification. We think that it would be just and reasonable to fix a round sum of Rs. 7,000/- per acre in this case."

9. From the aforecited decisions of the Supreme Court and of this Court, the legal principle which clearly emerges is that if in a given case the market value of the acquired land is required to be determined on the basis of the market value of the similar land in the neighbourhood acquired under a different preliminary notification then, necessarily to offset escalation in price of the land either way certain amount of reduction or appreciation in price thereof shall have to be given in that case with reference to the market value determined for the said similar acquired land in a disposed of case, the percentage of such reduction or appreciation, as the case may be, depending upon the length of period that has elapsed between the material dates of the relevant preliminary notifications. In the instant case, the basis for determination of market value of the appellant''s acquired land is the market value that had been determined and granted by the reference Court to the claimants under Ex.P-3 judgment for the similar lands in

the neighbourhood of the land in question, which were acquired pursuant to preliminary notification dated 8.12.1971. The appellant''s land herein is acquired in pursuance of preliminary notification dated 18.06.1987. Thus there has been a gap of about 15 years between the acquisition of the lands under Ex.P-3 judgment and the appellant''s land. Considering this long gap of time between the two acquisitions, the reasonable percentage of appreciation on the higher scale in price of the land in question vis-a-vis the market price of the lands acquired under Ex.P-3 over 15 years ago may be fixed at 3% per annum. If the market value of the appellant''s acquired land is determined on this basis, it comes to Rs. 7,215/- per acre as against Rs. 5,000/- per acre fixed by the Court below. But, the appellant has restricted his claim in this appeal to his acquired land at Rs. 6,000/- per acre only. Therefore, he is entitled to be granted compensation for the acquired land fixing the market value thereof at Rs. 6,000/- per acre. Accordingly, the appeal is entitled to succeed.

10. In the result, the appeal is allowed with costs. The appellant is entitled to and shall be paid the compensation for his acquired lands with the market value thereof fixed at Rs. 6,000/- per acre instead of Rs. 5,000/- per acre as determined by the Court below.

The impugned award of the Court below shall stand modified accordingly and it is confirmed in other respects.

The appellant''s Advocate fee is fixed at Rs. 1,000/-.

