(1980) 07 KAR CK 0042

In the Karnataka High Court

Case No : M.F.As. No''s. 277 and 444 to 460 of 1970

H. Naravanaish APPELLANT

Vs

Land Acquisition Officer and Others RESPONDENT

Date of Decision : 03-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 11, 13
Land Acquisition Act, 1894 — Section 23, 3 (3)

Citation : AIR 1981 Kar 26 : (1980) 2 KarLJ 441

Hon'ble Judges : G.N. Sabhahit, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : S. Rangaraj, for the Appellant; K. Gopalkrishna, for the Respondent

Judgement

1. These appeals are directed against the common judgment and awards dated 27th August, 1969 passed by the III Additional Civil Judge, Bangalore, in LAC Nos. 33, 35, 36, 37,38, 39, 42 and 43 of 1968 on his file, awarding compensation at the rate of Rs. 4/- per square yard for the lands acquired. These lands were acquired for formation of Binnamangala Lay Out, II Stage, by preliminary notification dated 21st July, 1960. The Land Acquisition Officer awarded compensation at the rate of Rs. 8,000/- per acre for garden lands facing rail road, Rs. 7,000/-per acre for garden lands interior, Rs. 6,500/- per acre for dry lands and Rs. 500/- per acre for Kharab lands which were raised as stated above, to Rs. 4/- per square yard by the learned Civil Judge. Aggrieved by the said common judgment and awards, the claimants came up in the above appeals before this Court.

2. This Court, once before, decided these appeals by its judgment and awards dated 21st June, 1975 against which the Trust Board went up in appeal to the Supreme Court of India and the Supreme Court of India, by its judgment and order dated 16th August, 1976 passed in CA Nos. 644 to 650 of 1974 (1) allowed the appeal and remanded these cases back to this Court with the following

observations:

...The result is that we allow these appeals and set aside the judgment and order of the Karnatka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification u/s 16 of the Bangalore Act. It will also decide the question, after affording parties opportunities to lead necessary evidence, whether the judgment, sought to be offered as additional evidence could be admitted....

3. After the records were received, parties were given several opportunities to adduce additional evidence if they so desired. No additional evidence is adduced apart from an application for adducing additional evidence submitted by the claimants. Objections are no doubt filed to this application to admit any additional evidence under Order 41 Rule 27 Code of Civil Procedure.

4. Shri S. Rangaraj, the learned Advocate appearing for the claimants in MFA Nos. 444 to 450 of 1970, vehemently argued that the comspensation awarded by the learned Civil Judge at the rate of Rs. 4/- per square yard is on the lower side. He submitted that the compensation should be based, at any rate, on the amount of market value fixed for similar lands, covered under the award passed in MFA No. 140 and connected matters of 1969 at the rate of Rs. 25,000/ by this Court. It is for that purpose that he has given an application to admit the said awards into evidence. He further submitted that in view of Sub-section (3) of Section 3 of the Act to further amend the Land Acquisition Act, 1894, viz., Act No. 10 of 1968, the claimants should also be paid interest at 6 per cent per annum from the date of expiry of three years from the date of the preliminary notification till the date of tender of payment of compensation awarded by the Collector.

5. As against this, Shri K. Gopalakrishna, the learned Advocate appearing for the Trust Board, submitted that the said Sub-section (3) of Section 3 of Act No. 10 of 1968 would not be applicable to acquisitions by the Trust Board. He further submitted that the nature and the characteristics of the lands acquired for Binnamangala Lay Out, I Stage and the awards made thereunder, would not be a proper guide for determining the market value for the purpose of compensation in the present cases.

6. The points, therefore, that arise for our consideration in these appeals are:

(1) Whether the additional evidence sought to be introduced into

evidence should be admitted into evidence?

(2) What is the proper market value for the purpose of compensation on the facts of the present cases? and

(3) Whether the provision of Sub-section (3) of Section 3 of Act No. 10 of 1968 is applicable to the facts of the present cases?

7. The Supreme Court of India has thus laid down in the judgment in these

cases. "We do not think it necessary to take so restrictive a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such judgments, after going through the evidence even when good grounds are made out for their admission."

8. In Khaja Fiazuddin v. State of A.P. CA 176/62 decided on 10th April, 1963, a Bench of three judges of the Supreme Court of India, held that such judgments would be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date.

9. It is seen that the award in question was passed after the trial Court delivered its judgment. That being so, it was not possible for the claimants to produce the award before the trial Court. It is a subsequent event which has relevance for determination of the market value in these cases. For, even the Land Acquisition Officer has admitted that Binna-mangala Lay Out, II Stage, is adjacent to Binnatnangala Lay Out, I Stage and he has himself taken into consideration the award made by him for I Stage while fixing the market value for the II Stage That shows how relevant the said award is for the purpose of fixing the market value in these cases. In our considered view, the said award is necessary for doing substantial justice between the parties and we admit the same into evidence.

10. The preliminary notification in the said award is dated 11th November, 1959 and the preliminary notification in the present acquisition is dated 21st July, 1960. Therefore, the market value fixed is within the realm of reasonable proximity. Hence, we deem it just and proper to admit the said award into evidence. It shall now be marked as ''Exhibit P. 14''.

11. On considering the oral and documentary evidence in that case, this Court has fixed the market value in the said award at Rs. 25,000/- per acre. That award, however, as stated above, is based on the preliminary notification dated 11th November, 1959, whereas the present acquisition are pursuant to the preliminary notification dated 21st July, 1960. Therefore, there is nearly a difference of one year between the two preliminary notifications.

12. This Court has taken judicial notice that the market value has been appreciating gradually from the year 1960 in and around Bangalore City and this Court has found it proper to take such appreciation at 10 per cent per annum and in similar circumstances from the year 1960-61, this Court has allowed 10 per cent per annum appreciation which, in our considered view, is proper and we respectfully agree with the said observation of this Court. Reasons are not far to seek. In these areas, the potential has been fast increasing from year to year and the money value is fast decreasing. Hence, the appreciation taken at 10 per cent per annum, in our considered view, is quite modest and reasonable. We take the same. Adding 10 per cent per annum to the market value fixed in the previous award, we get the market value at Rs. 27,500/- per acre for these lands as against Rs. 30,000/- claimed by the claimants.

13. The conclusion that we have arrived at finds support from Ext. P-2, which is a document evidencing a sale of similar land in the vicinity on 25th January. 1959 at the rate of Rs. 5 per square yard. The value per acre would work out to Rs 24,200/-.

14. The preliminary notification in the instant cases is dated 21st July, 1960, which is nearly one and a half years subsequent to the sale deed. Adding 15 per cent per annum to the said value per acre, we get, as on the date of the preliminary notification, Rs. 27,800/-. Therefore, the proposed market value that we have fixed at Rs. 27,560/-would find support even independently of the award from the bona fide sale transaction evidenced by Exhibit P-2. The land covered under Exhibit P-2 is certainly more than the lands covered under Exhibit P. 12. Therefore, we deem it just and proper to compare the value of it on the basis of Exhibit P-2 and for reason discussed above, having regard to the sale transaction as well as the award made by this Court for comparable lands, we are satisfied that Rs. 27,500/- per acre would be the just and proper market value for the purpose of compensation on the facts of these cases. We fix it accordingly.

15. We shall next revert to the question of additional interest. The learned Advocate appearing for the claimants invited our attention to Sub-section (3) of Section 3 of Act No. 10 of 1968 which reads:

Where acquisition of any particular land covered by a notification under Sub-section (1) of Section 3 of the principal Act, or the Amended Act before the commencement of the Act is or has been made in pursuance of any declaration u/s 6 of the principal Act or the amended Act, whether made before or after the expiry of three years firm the date of publication of such notification, there shall be paid simple interest, calculated at six per cent per annum on the market value of such land, as determined u/s 23 of the principal Act or the amended Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Deputy Commissioner for the acquisition of such lands.

16. The learned Advocate, representing the Trust Board, however, submitted that these provision would not be applicable for the acquisition done under the City of Bangalore Improvement Act, 1945, especially in view of the provisions of Section 19 of the said Act.

17. The Supreme Court of India has explained in the very decision, remanding the cases Land Acquisition Officer CITB v. Narayanaiah K. (1976) 2 KLJ 189 SC, that the provisions in the Land Acquisition Act which are not inconsistent with the provisions of the City of Bangalore Improvement Act, 1945, would be applicable for any acquisition for purposes of that Act.

18. Section 27 of the City of Bangalore Improvement Act, 1945, reads:

Provision applicable to the acquisition of land otherwise than by agreement.--The acquisition otherwise than by agreement of land within or without the City under this Act shall be regulated by the provisions, so far as they are applicable, of the Mysore Land Acquisition Act, 1894 and by the following further provisions, namely:

19. Explaining the terms ''so far as they are applicable'' the Supreme Court of India in the aforesaid case has observed that the meaning of the words ''so far as they are applicable'' used in Section 27 of the Bangalore Act cannot be construed to exclude the application of any general provisions of the Land Acquisition Act. They amount to laying down the principle that what is not either expressly or by necessary implication excluded must be applied. Therefore, we have to see whether there is any provision in the City of Bangalore Improvement Act, 1945, excluding expressly or by necessary implication the applicability of Sub-section (3) of Section 3 of the Act No. 10 of 1968.

20. It is in this connection that the learned Advocate appearing for the Bangalore Development Authority inviting our attention to Section 19 of the aforesaid Act which reads:

Board to execute the scheme within seven years.--Where within a period of seven years from the date of the publication in the Mysore Gazette of the declaration under Clause (b) of Sub-section (1) of Section 18, the Board fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 27 shall become inoperative.

21. We are unable to appreciate how this general provision providing for a different context exclude the awaiting of timeliest commonplace under Sub-section (3) of Section 3 of Act No. 10 of 1968 In fact, it was brought to our notice that earlier to the moment of 1967 if ere was no time limit in the Old Mysore Land Acquisition Act for issuing the final notification but least some period fixed in the City of Bangalore Improvement Act, 1945.

22. The question before us is not whether the scheme has lapsed or is likely to lapse The simple question before us is whether there is delay of more than three years in issuing the final notification after the preliminary notification and the interest, as stipulated, should be given or not.

23. There is nothing in the City of Bangalore Improvement Act, 1945, which expressly or by necessary implication excludes, such awarding of interest. On the other hand, all the provisions are made applicable, as stated above, unless they are specifically excluded On the other hand it is seen by reading Sub-section (2) of Section 27 of the City of Bangalore Improvement Act, 1945 that the publication of a declaration u/s 18 shall be deemed to be the publication of a declaration u/s 6 of the Mysore Land Acquisition Act, 1894.

24. That being so, the first ingredient of Sub-section (3) of Section 3 of Act No, 10 of 1968 is satisfied. The only other ingredient contemplated under that sub-section is that the final notification should have been issued beyond three years

and in the instant cases the preliminary notification was issued on 21st July 1960 and the final notification is dated 17th February, 1967. Therefore, it is obvious that the sub-section applies to the facts of these cases and the claimants are entitled to interest as contemplated in Sub-section (3) of Section 3 of Act No. 10 of 1968.

25. In the result, therefore, the appeals arc partly alluded We fix the market value for purposes of compensation in these case at Rs. 27,500/- per acre. We further direct that the claimants shall get the usual statutory solarium and interest at 6 per cent per annum on the enhanced amount of compensation from the date of taking possession till payment. The claimants shall also be paid interest under Sub-section (3) of Section 3 of Act No. 10 of 1968 at 6 per cent per annum on the market value fixed from 21st July, 1963 till the date of tender of payment of compensation awarded by the Collector in these cases for the acquisition of these lands. No costs of these appeals.

