
(2005) 07 KAR CK 0012

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 7586 and 7587 of 2002

Kallappa

APPELLANT

Vs

The Special Land Acquisition Officer, K.I.A.D.B.

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Constitution of India, 1950 — Article 141

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

Citation : (2005) 3 KCCR 2235

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

Bench : Single Bench

Advocate : S.P. Kulkarni and S.Y. Shivalli, for the Appellant; V. Bychappa, High Court Government Pleader, for the Respondent

Judgement

N.K. Patil, J.—These two appeals by the Appellants herein, arise out of the common judgment and award passed by the II Additional Civil Judge, (Senior Division), Dharwad in LAC No. 58 of 1993 and LAC No. 57 of 1993, respectively dated 1st February, 2002, on the ground that, the amount awarded by the Reference Court is inadequate.

2. Land bearing R.S. No. 112/1-B/2 measuring 01 acre 03 guntas (in LAC No. 58 of 1993) and R.S. No. 112/1-A/2 measuring 01 acre 05 guntas situate at Sattur Village, Dharwad Taluk have been notified and acquired by Government for the purpose of "development of industries" vide its preliminary Notification issued u/s 4(1) of the Land Acquisition Act on 4th March, 1975. The Land Acquisition Officer, taking into account all the relevant factors for consideration has fixed the market value of the acquired lands at the rate of Rs. 14,375/- per acre. Being not satisfied with the award passed by the Land Acquisition Officer, the claimants-Appellants herein filed the application for Reference u/s 18(1) of the Land Acquisition Act and requested the Land Acquisition Officer to refer the matter to the jurisdictional Civil Court for determination of higher compensation. The Reference Court, in turn, after thorough evaluation of the oral and documentary

evidence and relying upon Ex.P8 - certified copy of the Division Bench judgment passed by this Court in M.F.A. No. 2033 of 1991 and connected matters disposed of on 11th February, 1994, has re-determined the market value, modifying the judgment and award passed by the Land Acquisition Officer from Rs. 14,375/- per acre to a sum of Rs. 45,000/- per acre with all statutory benefits. Being further aggrieved by the judgment and award passed by the Reference Court on the ground that, the same is inadequate, the claimants-Appellants herein felt necessitated to present the instant appeals for enhancement of compensation.

3. The principal submission canvassed by learned Counsel appearing for Appellants, Sri S.P. Kulkarni, is that, the judgment and award passed by the Reference Court is arbitrary, erroneous and is very much on the lower side. To substantiate the said submission, he has taken the through the judgment and award passed by Reference Court and pointed out at paragraph 16, internal page numbers 16 and 17, wherein the claimants-Appellants herein have placed reliance on Ex.P7 - the certified copy of the Division Bench judgment of this Court in M.F.A. No. 331 of 1991 and connected matters disposed of on 4th March, 1994 and Ex.P8 - certified copy of the Division Bench judgment of this Court in M.F.A. No. 2033 of 1991 and connected matters disposed of on 11th February, 1994 and submitted that, the Reference Court has discussed the matter in detail with regard to both exhibits namely Exs. P7 and P8 and has erred in applying the judgment of this Court produced at Ex.P8 instead of applying the judgment of this Court produced at Ex.P7. He submitted that, the Reference Court has relied upon Ex.P8 and come to the instant conclusion on the ground that, the preliminary notification issued in respect of lands in Ex.P8 is on 18th June, 1970, wherein the market value is fixed at Rs. 35,000/- per acre and the preliminary notification issued in respect of the lands of claimants-Respondents is on 4th March, 1975 and there is a difference of five years between the two notifications. Learned Counsel appearing for Appellants further drew my attention to internal page 18 of the judgment of the Reference Court and submitted that, the Reference Court has clearly and rightly observed that, in Ex.P7-M.F.A. No. 331 of 1991 disposed of on 4th March, 1994, the preliminary notification issued is on 18th June, 1970 wherein the market value of acquired lands therein is determined at the rate of Rs. 35,000/- per acre and the notification in respect of the lands acquired in the instant case is on 4th March, 1975 and there is a gap of five years between two notifications. If yearly escalation of 10% is given for a period of five years, the market value comes to Rs. 52,500/-. But, while determining the market value, the Reference Court has taken into consideration Ex.P8 - judgment in M.F.A. No. 2033 of 1991 disposed of on 11th February, 1994 on the ground that, the market value determined by this Court relates to a preliminary notification which is just one month after the preliminary notification issued in the instant case and also in view of the reason that, the lands are located side by side. The said conclusion reached by Reference Court is not at all justifiable and beyond the jurisdiction of the Court to make a reference that "the judgment of the High Court cannot be relevant to

determine the market value in these cases". Further, he has taken me through the reliance placed by the Reference Court for determining the market value and pointed out that, the same is without proper application of mind in as much as the Reference Court has proceeded on the basis that, the land notified and acquired in Ex.P8 - M.F.A. No. 2033 of 1991 disposed of on 11th February, 1994 pertains to Rayapur Village, Dharwad Taluk and in the present case, the lands notified and acquired pertain to Sattur village and acquired for the same purpose. It has observed that, Rayapur village and Sattur village are situated side by side and as the lands are acquired for industrial purpose, they have got the same nature and value. The lands in Ex.P8 - M.F.A. No. 2033 of 1991 are acquired vide preliminary notification published in the Karnataka Gazette on 3rd April, 1975 whereas in the present cases, the preliminary notification is issued on 4th March, 1975, that is one month prior to preliminary notification in Ex.P8 - M.F.A. No. 2033 of 1991. Therefore, the Reference Court has observed that, the judgment of this Court in Ex.P8 - M.F.A. 2033 of 1991 will be a guiding factor to determine the market value in the instant case, ignoring the very fact, as held by the Apex Court and this Court in series of matters that, when there are two judgments rendered by benches consisting of equal number of judges, the judgment latter in time would prevail. The Reference Court, on the other hand has proceeded on the basis that, between the latter judgment i.e., M.F.A. No. 331 of 1991 disposed of on 4th March, 1994, where notification is dated 18th June, 1970 and the present case, where notification is dated 4th March, 1975, there is gap of five years between the said two notifications and therefore, the said judgment in MFA No. 331 of 1991 may not be relevant to determine the market value in the instant case, completely overlooking the decision of the Apex Court and this Court that, when there are two judgments consisting of equal number of judges, the latter judgment would prevail. Therefore, he submitted that, the judgment and award passed by Reference Court is liable to be modified. To substantiate the said submission, he placed reliance on the Full Bench decision of this Court, in the case of Karnataka State Road Transport Corporation, Bangalore v. R. Maheshwari and Ors. reported in AIR 2003 Kar 456 wherein it is held that, it is precedent under Article 141 of the Constitution of India that, when two judgments rendered by benches consisting of equal number of judges, the judgment latter in time would prevail. If the ratio of law laid down by the Full Bench decision of this Court is taken into consideration, the judgment and award passed by Reference Court is liable to be modified.

4. Learned Government Pleader appearing for Respondents contended and substantiated that, the judgment and award passed by Reference Court is just and proper and no error as such has been committed by Reference Court. To substantiate the said stand, he has taken me through paragraph 17, internal page 18 of the judgment of the Reference Court, wherein the Reference Court has observed that, the lands in M.F.A. No. 2033 of 1991 are acquired vide preliminary notification published in the Karnataka Gazette on 3rd April, 1975 whereas in the present cases, the preliminary notification is issued on 4th March,

1975, that is, one month prior to issuance of preliminary notification in Ex.P8 - M.F.A. No. 2033 of 1991 and therefore, the judgment of this Court in Ex.P8 - M.F.A. 2033 of 1991 will be a guiding factor to determine the market value in the instant case and submitted that, both the notification are issued for the same purpose within a span of one month in the year 1975. He further submitted that, the Reference Court has rightly followed Ex.P8 - the judgment of the Division Bench of this Court in M.F.A. No. 2033 of 1991 and determined the market value of at the rate of Rs. 45,000/- per acre and the same is just and reasonable and no error or illegality as such has been committed by the Reference Court.

5. I have heard learned Counsel appearing for Appellants and learned Counsel for Respondents for considerable length of time. After careful evaluation of the material available on record, after careful perusal of the judgment and award passed by Reference Court and the rival contentions urged by the learned Counsel for Appellants and learned Counsel for Respondent s, the points that arise for consideration in the instant appeals are twofold. Namely,

(i) Whether the market value fixed by the Reference Court at the rate of Rs. 45,000/- per acre is just and reasonable?

(ii) Whether the Appellants - claimants herein are entitled to enhancement of compensation awarded by Reference Court ?

Re. Points 1 and 2:

After careful perusal of the judgment and award passed by the Reference Court, after re-appreciation of the oral and documentary evidence and after careful perusal of the judgment and award passed by this Court in M.F.A. No. 331 of 1991 and connected matters (Special Land Acquisition Officer, Karnataka Industrial Areas Development Board, Dharwad v. Sri Hanumatha Rao Narayana Rao Desai and Ors.), it is manifest on the face of the judgment and award that, the Reference Court has committed an error of law much less material irregularity. It is significant to note that, the Reference Court has overlooked to go to the depth of the judgment and award passed by the Division Bench of this Court in two separate Miscellaneous Appeals namely Exs. P7 and P8. So far as P7 - judgment in M.F.A. No. 331 of 1991 and connected matters disposed of 4th March, 1994 is concerned, the lands involved in those series of matters are situate at Sattur village, Dharwad Taluk and have been notified and acquired for "formation of industrial area (layout) in the year 1970 whereas the lands in question also pertain to Sattur village and are also notified and acquired for formation of industries. So far as the lands acquired in Ex.P8 - M.F.A. No. 2033 of 1991 and connected matters is concerned, the lands therein are situate at Rayapur village at a distance of two and a half to three kmts. from the industrial area of Lakkammanahalli and 3/4 km. from Rayapur village. The Reference Court, at one stage has rightly considered and referred in paragraph 16 of its judgment that, the Division Bench of this Court has fixed the market value at the rate of Rs. 35,000/- per acre with all statutory benefits and has also opined that,

as per the town ship map of Hubli-Dharwad, it shows that, Rayapur and Sattur villages are adjoining to each other and the preliminary notification for acquisition of lands pertaining to Sattur village in M.F.A. No. 331 of 1991 is dated 18th June, 1970, wherein the market value is determined as at Rs. 35,000/- per acre and if yearly escalation at 10% is given for a period of five years, the market value comes to Rs. 52,500/- which will be more than the amount awarded in Ex.P8 - M.F.A. No. 2033 of 1991. Therefore, between two judgments of the High Court of Karnataka namely Ex.P7 - M.F.A. No. 331 of 1991 and Ex.P8 - M.F.A. No. 2033 of 1991, the Reference Court has erred in opining that, the judgment of this Court in M.F.A. No. 2033 of 1991 can be followed because the rate determined by this Court relates to a preliminary notification which is just one month after the preliminary notification issued in the present cases and further erred in coming to the conclusion of determining the market value at Rs. 45,000/- per acre. The said reasoning given by the Reference Court cannot be accepted and it has committed an error in following the judgment of this Court in Ex.P8 - M.F.A. No. 2033 of 1991, wherein the lands involved pertain to Rayapur Village. It is pertinent to note here that, in the instant case, having regard to the nature of land, soil, potentiality, distance of lands notified and acquired under two notifications, the Reference Court has utterly failed to apply the judgment of the Division Bench in M.F.A. No. 331 of 1991, wherein the lands notified and acquired belong to Sattur Village in as much as the lands notified and acquired in the instant case also pertains to the same village, i.e., Sattur Village. In view of the well settled law laid down by the Division Bench of this Court as early as in the year 1977, the Reference Court ought to have taken into consideration the judgment and award passed by this Court in M.F.A. No. 331 of 1991, where the lands pertaining to the same village, i.e., Sattur village are notified and acquired. The notification issued in the said M.F.A. No. 331 of 1991 is on 18th June, 1970 and the notification issued in the instant case is on 4th March, 1975. The market value fixed for lands acquired under notification dated 18th June, 1970 was Rs. 35,000/-. There is nearly a gap of five years between the two preliminary notifications. Therefore, if yearly escalation of 10% is given for five years, then, the market value of the acquired lands comes to Rs. 52,500/- per acre. In my view the said amount would be just and reasonable having regard to the facts and circumstances of the case, as stated above. Therefore, I am of the considered view that, the judgment and award passed by the Reference Court is liable to be modified by enhancing the compensation from a sum of Rs. 45,000/- per acre to a sum of Rs. 52,500/- per acre with all statutory benefits.

6. Yet another reason as to why the judgment and award passed by the Reference Court is liable to be modified is, in view of the Full Bench decision of this Court as referred above, i.e., in the case of Karnataka State Road Transport Corporation, Bangalore v. R. Maheshwari and Ors. reported in AIR 2003 Kar 456, wherein it is held that, it is a precedent under Article 141 of the Constitution of India, when two judgments rendered by benches consisting of equal number of judges, the judgment latter in time would prevail. In the instant case also, the

judgment and award passed by the Division Bench of this Court in M.F.A. No. 331 of 1991 and connected matters dated 4th March, 1994, which is latter in time, would prevail upon the judgment and award passed by this Court in M.F.A. No. 2033 of 1991 disposed of on 11th February, 1994 since the judgment in M.F.A. No. 331 of 1991 is passed on a subsequent date. Therefore, on this ground also, the judgment and award passed by the Reference Court is liable to be modified and accordingly, it is modified as stated supra.

7. Having regard to the facts and circumstances of the case, as stated above, and taking into consideration the totality of the case on hand, these two appeals filed by the Appellants are partly allowed. The judgment and award passed by the Reference Court is modified, enhancing the compensation fixed by the Reference Court from Rs. 45,000/- per acre to a sum of Rs. 52,500/- per acre with all statutory benefits.

8. For the foregoing reasons, the appeals filed by Appellants partly succeed and stand disposed of.