

(2014) 11 KAR CK 0030
In the Karnataka High Court
Case No : Misc. First Appeal No. 3516/2008 [LAC]

Kamala Bai

APPELLANT

Vs

The Special Land Acquisition Officer cum Assistant
Commissioner

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0030

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : M.L. Wante, Advocate for V.M. Sheelvant, Advocate for the Appellant; C.S. Patil, AGA, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—This appeal is filed praying for enhancement of compensation in respect of acquired lands bearing Survey Nos. 229/1+2, 230, 233, 285 and 287 of Chittakula village. The said lands were acquired under Preliminary Notification dated 18.2.1993 for the purpose of rehabilitating the displaced persons of Sea Bird Naval Base Project. The lands are situated at Chittakula Village, Karwar District. The lands in question are situated about 6 kms. away from Karwar City and 2 kms. away from NH 17 towards Goa State. The Land Acquisition Officer, passed the award on 13.1.1995 awarding compensation of Rs. 5,500/- per gunta. The Reference Court enhanced the compensation to Rs. 15,000/- per gunta by the judgment and award dated 24.11.2007. Being dissatisfied, this appeal is filed by the claimants praying for enhancement of compensation.

2. The claimants have relied upon certain documents before the Reference Court at the time of seeking enhancement.

3. Ex.P7 is the copy of the award passed by the Special Land Acquisition Officer in LAQ. 141/94-95 dated 6.12.1996. The lands bearing survey numbers 853, 856/3 and 857 measuring 2 acres 9 guntas situated at Baada-1 village was acquired for construction of KEB office Staff Quarters under Preliminary

Notification dated 30.3.1995 wherein the market value was fixed at Rs. 25,000/- per gunta. Those lands are situated within 3 kms from Karwar bus stand and they were situated between Kaiga main road surrounded by a residential locality. Taking into consideration the aforementioned facts that the land involved in Ex.P7 is within the residential locality which is fully developed, the Land Acquisition Officer has awarded compensation of Rs. 25,000/- per gunta. The same cannot be made applicable to this matter in as much as this land is situated about 6 kms. away from Karwar town and no development as on the date of acquisition had taken place.

4. Ex.P8 relied upon by the claimants is the judgment passed in LAC No. 53/1991, wherein the compensation of Rs. 15,000/- was awarded in respect of the lands acquired under Preliminary Notification dated 13.8.1987. Those lands are also situated by the side of the road, abutting the road between Karwar Town and Karwar Railway Station. Lands in that matter were situated on both sides of the said road were acquired for various public purposes such as APMC, ITI College, Housing Board and etc., The Kaikini road or Kaiga road or Railway Station road is highly developed upto 5 kms. and many big shops, nationalised Banks, telephone office, income tax office, and many institutions including temples like Ram temple and Raghavendra Swamy temple are situated on either side of the said road. Hence, the court below has rightly not taken the document as the basis for coming to the said conclusion.

5. The claimants relied upon the judgment of this court in MFA No. 2582/2001 and connected matters disposed off on 14.2.2006, wherein the lands involved in that notification were acquired on 25.6.1986 in order to establish Studio and office building of All India Radio at Karwar. These lands also come within the Town Municipal limits and those lands were surrounded by buildings and residential houses were situated. In this view of the matter, taking into consideration of all these aspects, this court has awarded compensation of Rs. 25,000/- per gunta. In the manner on hand; the land in question are not within the municipal limits and not surrounded by any residential locality much less commercial area. Therefore, the dictum in the said judgment cannot be made as a basis to decide the present matter.

6. Ex.P4 to P6 are another set of documents which are relied upon by the claimants in the matter on hand. Ex.P4 is the copy of the judgment passed in LAC No. 59/1991 wherein the lands of Binaga village were acquired for the purpose of Sea Bird Naval Base Project on 19.9.1986. This LAO had fixed the market value of the acquired lands at Rs. 5,000/- per gunta, which was enhanced to Rs. 11,500/- per gunta.

6.1 Ex.P6 is the copy of the judgment passed in LAC No. 11/1993 wherein certain lands of the villages between Binaga and Ankola were acquired under Preliminary Notification dated 19.9.1986. The Reference Court and this Court fixed compensation at Rs. 11,500/- per gunta.

6.2 The land involved in acquisition matters under Ex.P.4 to Ex. P.6 are situated at Kaiga village which is about 5 kms. away from Karwar, whereas the lands in question mentioned supra are near the National Highway No. 17 and are 6 KMs away from Karwar. Comparing both the matters, on facts the Reference Court has correctly come to the conclusion that it would safe to rely upon Ex.P4 to P6 and as much as the lands in both the matters have similarities.

7. As aforementioned, this court had awarded compensation of Rs. 11,500/- per acre in respect of Binaga lands which were acquired for Sea Bird Naval Base Project under preliminary notification dated 25.6.1986 vide Ex.P.4 to Ex.P.6. In the instant case, the Preliminary notification is issued on 18.2.1993 which means the lands in question are acquired after about 6 1/2 years. The court below adding 5% of the market value per year under the head of "escalation" and awarded compensation of Rs. 15,000/- per gunta.

8. Learned Advocate for the claimants submits that the Reference Court ought to have taken 10% towards escalation and not 5%.

9. Generally, this court will be taking 5 to 10% escalation depending upon the facts and circumstances of each case. Since the lands in question are situated in a distant area, which was undeveloped and as the lands in question are just two Kilometers away from National Highway, we propose to take the escalation at 8% p.a. instead of 10%. If 8% escalation is taken into consideration, these lands which are having similar characteristics of Binaga lands which were acquired as on 19.9.1986, would get compensation of Rs. 17,480/- per gunta.

10. As aforementioned, we have taken into consideration 6 1/2 years escalation together. So also we have taken 8% escalation per year for the period of 6 1/2 years.

11. Learned Advocate for the claimants vehemently stresses that Ex.P2 sale deed of site situated at Chittakula village should be taken as the basis for awarding of compensation in this case. Even if Ex.P2 is taken into consideration, no major change in compensation may occur. The sale deed pertaining to Chittakula village was pertaining to six guntas of land only. Such smaller bit of land was sold for Rs. 1,20,000/- as on 13.1.1994 i.e., about 10 months subsequent to the Preliminary Notification on hand. If 10% is deducted towards escalation and certain percentage is deducted keeping in mind smaller extent, almost the same amount of compensation may have to be awarded to the claimants keeping in mind that Rs. 1,20,000/- was the sale consideration in respect of similar bit of land.

12. Hence, having regard to the totality of the facts and circumstances of the case, the claimant is entitled for compensation of Rs. 17,500/- per gunta.

13. Accordingly, the following order is made:

The Appeal is allowed in part. Consequently, the compensation is enhanced from Rs. 15,000/- to Rs. 17,500/- per gunta. It is needles to observe the claimants

are entitled to all the statutory benefits as per the Land Acquisition Act with proportionate cost of this appeal.