(2015) 03 KAR CK 0141

In the Karnataka High Court

Case No : M.F.A. No. 21965/2010

Karnataka Neeravari Nigam Ltd. APPELLANT

Vs

Shoukat and Others RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2015) 03 KAR CK 0141

Hon'ble Judges : P.S. Dinesh Kumar, J.;B.S. Patil, J.

Bench : Division Bench

Advocate : Ramesh N. Misale, for the Appellant; Mallikarjun S. Masali, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

B.S. Patil, J.—Karnataka Neeravari Nigam Limited, the beneficiary of acquisition of land belonging to the claimant-respondents has filed this appeal challenging the market value determined and the compensation awarded for the acquired land.

2. Facts leading to this appeal stated in brief are that agricultural land bearing Sy. No. 1060/2 situated at Kokatnur Village in Athani Taluk measuring 7 acres 23 guntas has been acquired for laying canal by issuing preliminary notification published in the Official Gazette on 09.09.2005. The Special Land Acquisition Officer passed award dated 06.08.2007 determining the market value of the acquired land at Rs. 35,853/- per acre treating the same as dry land. On reference to the Civil Court, claimant No. 1 examined himself as P.W. 1 and produced and marked Exs. P1 to P20. No evidence was adduced on behalf of the Special Land Acquisition Officer or for that matter, by the beneficiary - Karnataka Neeravari Nigam Limited. Based on the evidence on record, both oral and documentary, the Reference Court has determined the market value of the acquired land at Rs. 2,45,000/- per acre. It has awarded the same along with all statutory benefits admissible in terms of the provisions contained in the Land

Acquisition Act. Contending that the market value fixed is excessive, the present appeal is filed by the beneficiary.

3. We have heard the learned counsel for the appellant Sri Ramesh S. Misale. Learned counsel for the respondent - claimants is absent. Learned Government Pleader has assisted the Court.

4. Learned counsel appearing for the appellant contends that the Reference Court fell in error in treating the land in question as irrigated land capable of growing sugarcane. He further urges that the yield of sugarcane taken as 50 tonnes per acre is unsupportable from evidence and Ex. P16 - letter written by the Assistant Director of Agriculture, Athani, on 09.12.2005 could not have been relied upon by the Reference Court in the absence of the author of the same being examined.

5. In the light of the findings recorded by the Court below and in the wake of the contentions urged by the learned counsel for the appellant, points that arise for consideration in this appeal are:

"i) Whether the judgment and award passed by the Reference Court suffers from illegality and perversity in fixing the market value at Rs. 2,45,000/- warranting interference in exercise of the appellate powers of this Court?

ii) If so, what is the just and legal compensation to which the respondent - claimants are entitled?"

6. P.W. 1 - Shoukat Kashimsab Kadyagol, claimant No. 1 has stated in his evidence that the land in question is an irrigated land and he has been growing sugarcane. He has produced RTC extracts with effect from the year 2000-01 till 2005-06. Ex. P18 is the RTC extract for the year 2005-06 which is the relevant year required to be considered as the notification under Section 4(1) has been published in the Official Gazette on 09.09.2005. In the said RTC, in column No. 8, land is shown as irrigated land; nature of the crops grown are shown as sugarcane, turmeric and maize. It is thus clear that for the relevant year when the notification under Section 4(1) was issued, the land was an irrigated land and sugarcane crop was grown in the land. It is in this background, the Court below has rightly taken into consideration the oral evidence corroborated by the revenue records - Ex. P18 to come to the conclusion that the land was an irrigated land wherein sugarcane was grown. We do not find any illegality in the approach adopted by the Reference Court in treating the land as irrigated land wherein sugarcane crop was grown.

7. Coming to the yield of the sugarcane taken at 50 tonnes per acre, it is urged by the learned counsel for the appellant that in similar matters, this Court has taken the yield of sugarcane as 45 tonnes per acre. He urges that in fact, it is only in very fertile lands, the yield of sugarcane could be at 45 tonnes or slightly above the same. At any rate, it is his submission that the letter written by the Assistant Director of Agriculture could not have been blindly relied upon by the

Reference Court as the author of the said document was not examined. We see some force in this submission. However, we cannot lose sight of the fact that it was not difficult for the appellant who is the beneficiary of the acquisition to place on record the yield notification duly obtained from the concerned department to show the actual yield of sugarcane during the relevant year. In such circumstance, we find that it would be reasonable to hold, having regard to the oral and documentary evidence on record, that the average yield of sugarcane is 45 tonnes, instead of 50 tonnes as determined by the Reference Court. We say so because learned counsel for the appellant has rightly placed reliance on the judgment of the Apex Court in the case of Hirabai and Others Vs. L.A.O. Cum. Asst. Commnr., , wherein it has been laid down that reliance on such certificate issued by the Assistant Director of Agriculture without the author of the document being examined to determine the market value would not be safe. However, we are left with no other evidence other than the evidence of the claimant, inasmuch as neither the Land Acquisition Officer, nor the beneficiary - appellant, has placed any material on record in this regard. In such circumstances, keeping in mind the fact that the land is situated in Athani Taluk and the claimant has contended that close-by to his land an irrigation tank was located which was the source of water for his well and that the land was a fertile land capable of growing sugarcane and other irrigated crops, we are persuaded to take the yield of sugarcane per acre at 45 tonnes.

8. The value of the sugarcane, as arrived at by the Reference Court, during the relevant period is Rs. 980/- per tonne. For arriving at this rate, Reference Court has taken the price of sugarcane as prevalent in the year 2003-04 and also during the year 2004-05. During the year 2003-04, the price of sugarcane per tonne was Rs. 860/-, whereas for the year 2004-05, it was Rs. 1,100/-. The average price is worked out by aggregating the price of the two years and dividing it by two. We find that notification under Section 4(1) was issued in the month of September, 2005. The sugarcane season starts from September every year and cane would be ready for harvesting. There was absolutely no justification for the Court below to take the average of only 2003-04 and 2004-05 for determining the average sugarcane price per tonne. It should have taken into consideration price for the year 2005-06 as well. During the year 2005-06, the price per tonne of sugarcane was Rs. 1,250/-. In fact in this regard we called upon the counsel for the appellant to place on record some acceptable material regarding the price of sugarcane for the year 2005-06. Accordingly, he has placed before the Court in the form of details furnished by Sri Hiranyakeshi Co-operative Sugar Factory Limited, Sankeshwar, containing the sugarcane price. As the price as mentioned therein is not disputed, we are persuaded to accept the same to arrive at average price of the year.

9. If the price for 2003-04 (Rs. 860/- per tonne), for 2004-05 (Rs. 1,100/- per tonne) and 2005-06 (Rs. 1,250/- per tonne) is taken into consideration, the average price will come to Rs. 1,070/- per tonne. For 45 tonnes, the amount will work out Rs. 48,150/-. 50% has to be deducted towards cost of cultivation, in

which event, the amount will come to Rs. 24,075/-. If the same is multiplied by 10, the amount will come to Rs. 2,40,750/-. In our view, this is the correct market value to which the claimant is entitled in the instant case.

10. In the result and for the foregoing, this appeal is party allowed. The market value is reduced and fixed at Rs. 2,40,750/- per acre. So far as the award of statutory benefits are concerned, the judgment and award does not call for any interference. Hence, in all other respects, the judgment and award under challenge is left undisturbed. Appellant is entitled for proportionate costs.

