**(2013) 08 KAR CK 0008**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 11709 of 2012.

Karnataka Power Transmission Corporation Limited — APPELLANT

Vs

Nanjamma and Another — RESPONDENT

**Date of Decision :** 02-08-2013

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18(1), 18(3)(b), 4(1)

**Citation :** (2013) 6 KarLJ 352

**Hon'ble Judges :** B.S. Patil, J

**Bench :** Single Bench

**Advocate :** V.Y. Kumar, for the Appellant; Sriyuths S.B. Shahapur, Additional Government Advocate and N. Nanjundaswamy, for the Respondent

## Judgement

B.S. Patil, J.—This appeal is filed by the Karnataka Power Transmission Corporation Limited, represented by its Executive Engineer, TL and SS Division, Mysore, challenging the judgment and award dated 28-5-2012 passed in LAC No. 297 of 2008 by the learned IV Additional Senior Civil Judge and Judicial Magistrate First Class, Mysore. The land in question is situated in Vajamangala Village, Mysore Taluk and is acquired for the purpose of construction of 220 KV receiving station for Transmission of Power by KPTCL by issuing a preliminary notification dated 3-10-1996 u/s 4(1) of the Land Acquisition Act, 1894 (for short, ''the Act''). After the final notification was published, the Assistant Commissioner and the Special Land Acquisition Officer, Mysore Sub-Division, Mysore, passed an award dated 22-3-1999 determining the market value of the land at Rs. 1,25,000/- per acre.

2. The landowners sought for reference by filing a reference petition u/s 18(1) of the Act. The matter was referred to the Civil Court for determination of the correct market value. On an earlier occasion, the Reference Court vide its previous judgment and award dated 13-1-2011 fixed the market value at the rate of Rs. 10,61,000/- per acre for the acquired land and awarded all other statutory benefits permissible under the provisions of the Act. Aggrieved by the

said judgment and award, the appellant-KPTCL filed M.F.A. No. 3430 of 2011. This Court vide common judgment dated 24-10-2011 passed in M.F.A. No. 3429 of 2011 connected with M.F.A. Nos. 3428, 3430, 3431, 3433 and 3432 of 2011 allowed the appeals and remanded the matter for fresh consideration on the ground that there was no proper consideration by the Reference Court of the validity of the reference. The said question fell for consideration in view of the contentions raised by the Counsel for the appellant-KPTCL that though the award was passed in the year 1999, the reference had been made in the year 2004, nearly after lapse of five years, therefore, the reference made was barred by time. While remanding the matter, this Court made it clear that the Reference Court shall consider the case in accordance with law in the light of the judgment of the Apex Court rendered in the case of State of Karnataka Vs. Laxuman, .

3. After remand, the Reference Court has considered the matter afresh and has passed the impugned judgment and award granting the same compensation by determining the market value at Rs. 10,61,000/- per acre. An issue with regard to the fact whether the reference was within time has been framed and answered in favour of the claimants.

4. The Reference Court has recorded its findings in paragraph 11 of the judgment on point No. 1 holding that the oral and documentary evidence placed before it indicated that the claimants had submitted their applications u/s 18 of the Act seeking reference within the stipulated period, but the respondent-Land Acquisition Officer had failed to refer the matter to the Civil Court for enhancement of the compensation. This resulted in the claimants filing application/petition u/s 18(3)(b) of the Act before the Civil Court seeking a direction to the Land Acquisition Officer to make reference.

5. In the said case, the KPTCL-appellant herein appeared and the matter was referred to Lok Adalath as per the submissions made by the Counsel appearing for both parties. Before the Lok Adalath, an order was passed on 23-8-2008 based on a memo filed expressing consent to allow the petition. Accordingly, the petition was allowed which indicated that the respondents had given consent to allow the application/petition filed u/s 18(3)(b) of the Act by the claimants before the Civil Court. The Reference Court has referred to the documents placed before it and the evidence on record to come to the conclusion that in terms of the settlement between the claimants and the respondents, the application filed u/s 18(3)(b) of the Act by the claimants had been allowed by the Court directing the respondent-Land Acquisition Officer to refer the matter for enhancement of compensation by determining the correct market value. As such issue No. 1 was answered in favour of the claimants holding that the reference was not barred by time.

6. This findings on issue No. 1 cannot be said to be in any manner vitiated as the Court below has examined the same in great detail with reference to the records produced before it including the all important aspect forthcoming i.e., the consent expressed by the very respondent-appellant herein for allowing such

 

application filed u/s 18(3)(b) of the Act. Hence, the appellant herein is estopped from now contending that the order passed u/s 18(3)(b) of the Act was not legally sustainable and the reference itself was barred by time. The order passed by the Civil Court allowing the application filed u/s 18(3)(b) of the Act on the consent expressed by the Counsel for the beneficiary--KPTCL has attained finality. It is not open for the beneficiary now to contend that the reference is barred by time. It has to be stated here that if the reference petition u/s 18(1) of the Act had not been filed within time or if application u/s 18(3)(b) of the Act had not been presented within the prescribed period of limitation, the said question could have been agitated before passing any order on the application filed u/s 18(3)(b) of the Act. For this reason also, the appellant-KPTCL cannot be now permitted to reagitate the same.

7. Insofar as the merit of the matter is concerned regarding determination of the market value at Rs. 10,61,000/- per acre, I find from the discussion made on point Nos. 2 and 3 at paragraphs 12 to 15 of the impugned award that the market value is determined based on the awards passed by the Reference Court in respect of lands situated in Nandanahalli Village acquired for the purpose of MUDA in and about the same time. The said judgment/awards pertaining to the lands situated in Nandanahalli Village is passed in L.A.C. No. 472 of 2006 which is produced and marked as Ex. P. 1. The notification u/s 4(1) of the Act in respect of the lands in Nandanahalli Village was issued on 18-12-1996. Whereas, the notification u/s 4(1) of the Act in respect of the lands of the claimants situated in Vajamangala Village was issued on 3-10-1996. There is a gap of two months 15 days between the two notifications which may not, as rightly held by the Court below materially alter the position. However, what is not properly examined by the Reference Court is the distance between the two villages and the consequent disparity in the market value of the lands situated in the two villages. The Court below is only carried away by the very little gap in terms of time between the two notifications issued u/s 4(1) of the Act, in respect of lands situated in these two villages, but has not focused its attention on the distance between the lands acquired under the present notification issued u/s 4(1) of the Act and the lands acquired for the purpose of MUDA.

8. In the examination-in-chief, P.W. 1 has admitted that the distance between the lands acquired for MUDA and the lands of the claimants which are now acquired is about 2 kms. If that is so, whether this distance will have any bearing on the market value to be determined with reference to the lands acquired for MUDA has not been examined at all. I must hasten to add that mere distance of 2 kms. by itself may or may not be of much importance. What is necessary to be examined is the nature of development that had taken place in and around these places and whether there was any disparity in the value of the lands situated in Nandanahalli acquired for the purpose of MUDA and Vajamangala which are acquired by the appellant-KPTCL. This aspect of the matter has not been examined by the Reference Court while placing total reliance on the judgment and award passed in L.A.C. No. 472 of 2006 for fixing the same market value for

 

the acquired lands in the present case. This, in my considered view, has vitiated the approach adopted by the Reference Court. It is painful to again remand this matter back to the Reference Court as it will certainly subject the landowners to the ordeal of facing another round of litigation for getting the market value of the acquired land fixed. The acquisition is of the year 1996. Even after lapse of about 17 years, the landowners are not paid their dues in full and only a part of the amount was deposited in the course of previous round of litigation before this Court which has been withdrawn by the claimant. In order to mitigate the hardship that the claimants will suffer on account of this inevitable remand order for fixing of the market value of the land (which includes all the statutory amounts permissible and payable), I am persuaded to direct the appellants to deposit 60% of the amount of compensation awarded (including the amount which was already deposited to make it 60% in total) as per the impugned award within six weeks from the date of receipt of a copy of this judgment before the Reference Court. On such deposit, the claimants shall be permitted to withdraw the same without furnishing any security. The Reference Court shall reconsider the matter only with regard to the fixing of market value of the acquired lands after providing further opportunity, if any, to both parties to lead their evidence and dispose of the reference as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment. The appellant-KPTCL is entitled for refund of Court fee in terms of Section 64 of the Karnataka Court Fees and Suits Valuation Act, 1958. Accordingly, this appeal is allowed in part remanding the matter to the Reference Court.

Learned Additional Government Advocate is permitted to file memo of appearance within three weeks from today.