(2015) 01 KAR CK 0528

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 24877/2011(MV)

Madundappa and Others APPELLANT

Vs

The Special Land Acquisition Officer, Upper Krishna Project RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0528

Hon'ble Judges : A.S. Bopanna, J;P.D. Waingankar, J

Bench : Division Bench

Advocate : Anil Kale, for the Appellant; Veena Hedge, Govt. Adv., Advocates for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna, J.

1. The appellants are before this Court seeking enhancement of market value/ compensation as against the sum awarded in LAC No. 731/2005. The appellants claim to be owners of the property bearing Sy. No. 105/1 measuring 5 acres 28 guntas of Tolamatti village, Bilagi Taluk. The said lands were included in the notification dated 18.5.2000 for the Upper Krishna Project. The appellants claiming to be dissatisfied with the award passed by the Land Acquisition Officer has sought for reference. Accordingly, the reference had been made and registered in LAC No. 731/2005. The reference Court while taking note of the contentions put forthwith has taken into consideration the number of fruit bearing trees grown in the said land and on excluding the same has thereafter arrived at the conclusion that in respect of remaining lands, the crop pattern as indicated is to be taken into consideration and the market value is to be fixed on working the same on capitalisation method. Thus the market value has been fixed in respect of the lands in question by taking into consideration the number of trees grown as also the crop pattern existing therein.

2. The learned counsel for the appellants while assailing the judgment and award

passed by the reference Court would contend that the reference Court was not justified in considering the extent of 4 acres 14 guntas to be double irrigated crops growing lands. The learned counsel would place reliance on the record of rights marked as Ex-P4 to contend that the crop pattern indicated therein ought to have been considered by the reference Court to arrive at the conclusion. In that regard, it is contended that the pomegranate is shown in 1 acre 37 guntas, mango in 2 acres, coconut in 1 acre and chikku in an acre. He therefore contends that the said crops should have been taken into consideration and the market value ought to have been worked out.

3. The learned Government Advocate would however on the other hand contend that as against the indication made in the RTC, there is no other evidence available to support the crop pattern indicated therein. It is contended that the existence of the number of fruit bearing trees of different types cannot be disputed, inasmuch as, the same has been noticed during the joint inspection and the number of trees has been referred to in the award passed by the Land Acquisition Officer. It is therefore contended, if the number of trees are taken into consideration, the entire extent cannot be taken as area wherein fruit bearing trees are grown. In that light, it is contended that the very consideration as made by the reference Court would indicate that in addition to taking number of trees, the reference Court has also taken into consideration the crop pattern and therefore, the judgment and award is justified.

4. In the light of the rival contentions, we have perused the judgment passed by the reference Court and also records from the reference court.

5. We have at the outset perused the record of rights at Ex-P4 on which much reliance had been placed by the learned counsel for the appellants. No-doubt in the said record of rights, the crop pattern has been shown indicating that pomegranate, coconut, chikku and mango are grown in the lands in question. Though such indication is made therein, there can be no dispute to the fact that the number of trees as noticed by the reference Court from the award existed in the land. In that light, if the crop pattern as indicated in record of rights is kept in perspective and if the number of trees that existed are taken into consideration, on taking note of the fact that 315 pomegranate trees had been taken into consideration and the potential to grow such crop by taking overall consideration, certainly it can be accepted that pomegranate was grown in an extent of 2 acres.

6. Further, taking into consideration that only 12 mango trees, 13 coconut trees and 6 sapota trees existed, we are unable to accept the entire extent as indicated in the record of rights in respect of coconut, mango and sapota grown area. Therefore, taking into consideration the number of trees, it can be safely assumed that the said trees in any event would occupy about 37 guntas of land, which is in addition to other crop growing lands. Therefore, in respect of the said extent of 37 guntas, instead of calculating on capitalisation method for fruit bearing trees, we find it safe to take into consideration number of trees grown in

the said area and thereafter grant compensation based on the tree basis. If in that light, the pomegranate grown area of two acres and the extent of 37 guntas are taken into consideration, for all other fruit growing trees, the remaining extent would be 3 acres.

7. From the evidence as noticed by the reference Court, to which we have also made our reference, in the absence of definite crop pattern therein, the reference Court was justified in taking double irrigated crop growing land as the basis for the purpose of calculating the market value based on the crop pattern. Having arrived at the said conclusion, we have to now arrive at a conclusion with regard to appropriate market value that is to be fixed in respect of each of these crop growing areas.

8. Insofar as pomegranate growing areas, in respect of similar lands, this Court has already fixed the market value at Rs. 5,75,000/- per acre. Hence, the same is to be adopted in the instant case for the extent of 2 acres where we have already held that it could be considered as pomegranate growing area. In respect of 3 acres which we have taken into consideration as double irrigated crop growing lands, since this Court in similar set of circumstances in MFA No. 23423/2009 has fixed value at Rs. 1,35,000/- per acre, the same would have to be awarded as against Rs. 1,07,600/- per acre awarded by the reference Court. Insofar as the mango trees, this Court has already fixed the value per tree at Rs. 17,000/- while considering similar set of circumstances in MFA No. 25135/12. Hence, for the 12 mango trees of the appellants herein, the value is fixed at Rs. 17,000/- per tree. In respect of coconut trees, this Court in similar set of circumstances has fixed the value at Rs. 3,750/- per tree. Hence, the appellants herein would be entitled to the value at Rs. 3,750/- per tree in respect of 13 coconut trees. In respect of Sapota and Ber trees, since there are limited number of trees, we maintain the compensation as awarded by the tribunal.

9. In the light of the above, the award passed by the reference Court stands modified in terms of the compensation we have indicated above. The appellants would be entitled to statutory benefits in respect of enhanced market value indicated above. In addition, the appellants would also be entitled to costs incurred in this appeal.

Since the delay of 580 days in filing the appeal was condoned subject to denial of interest, while paying the compensation, the respondents are entitled to deduct the interest for the period of 580 days.

Registry shall draw the award in terms of the compensation indicated above.