

(2016) 10 KAR CK 0081
In the Karnataka High Court
Case No : M.F.A.No. 101345 of 2016

Mallayya Shivamurthyayya Hiremath	APPELLANT
Vs	
The Assistant Commissioner, Bagalkot	RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2017) ILRKarnataka 123

Hon'ble Judges : Ashok B. Hinchigeri and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Sri D.L.N. Rao, Senior Counsel for Sri Mrutyunjaya S Hallikeri, Advocate, for the Appellant in M.F.A. No. 100574/2016; Sri D.L.N. Rao, Senior Counsel for Sri Mrutyunjaya S Hallikeri, Advocate, for the Respondent 1 and 2 in M.F.A. No. 101345/2016; Smt. K.

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J—Both these appeals arise from the judgment and award, dated 06.02.2016 passed in LAC No.83/2009. M.F.A.No. 100574/2016 is filed by the land-losing claimants. M.F.A.No. 101345/2016 is filed by the beneficiary of acquisition.

2. Hie facts of the case in brief are that the appellants" land measuring 3 acres 14 guntas situated at Survey No. 127/2 of Shigikeri Village. Bagalkot Taluk was acquired for establishing 110 KV power grid. The preliminary notification and final notification were issued on 15.5.2006 and 26.2.2007 respectively. The Special Land Acquisition officer ("SLAO" for short) passed the award on 8.6.2007 determining the market value at Rs. 60,428/- per acre. The claimants sought the Enhancement of the compensation by seeking reference under section 18 of the Land Acquisition Act, 1894. The Reference Court enhanced the market value to Rs. 162/- per sq. ft.

3. Sri D.L.N. Rao, the Learned Senior Counsel appearing for Sri Mrutyunjaya S. Hallikeri for the appellants - claimants in LF.A.No. 100574/2016 submits that the

Reference Court has erred in giving the escalation at a flat rate; the escalation should be no.18 of the Hon"ble Supreme Court's judgment in the case of General Manager, Oil And Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel And Another (2008) 14 SCC 745. The said paragraph reads as follows:

"18. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs. 10/- per square metre):

Year

By flat rate increase method

By cumulative increase method

1987

(Base year)

10.00

10.00

1988

$10 + 1 = 11.00$

$10.00 + 1.00 = 11.00$

1989

$11 + 1 = 12.00$

$11.00 + 1.10 = 12.10$

1990

$12 + 1 = 13.00$

$12.10 + 1.21 = 13.31$

1991

$13 + 1 = 14.00$

$13.31 + 1.33 = 14.64$

1992

$$14 + 1 = 15.00$$

$$14.64 + 1.46 = 16.1$$

4. He sought to draw support from the Apex Court's judgment in the case of *Ashrafi And Others v. State Of Haryana And Others*, (2013) 5 SCC 527, wherein it is held that the annual escalation in land prices/market value should be on annual compounding/cumulative basis.

5. The Learned Senior Counsel submits that it is not in dispute that the lands in question are situated within the Municipal limits of Bagalkot. Therefore the Reference Court ought to have granted escalation at the rate of 15%. He would contend that in any case, it cannot be less than 12.5%. Relying on the Apex Court's judgment in the case of *Udho Dass v. State Of Haryana And Others* (2013) 12 SCC 51, he submits that the land in question has great potential and was urbanised with developments in real estate. A number of educational institutions and industrial and commercial establishments have come up in the vicinity of the land in question. Granting at least 2.5% escalation rate is warranted. He submits that though the land is compulsorily acquired in 2006, the appellants - claimants have received only the amounts awarded by the SLAO.

6. Per contra; Sri B.S. Kamate, the Learned Counsel appearing for the beneficiary - appellant in M.F.A.No. 101345/2016 submits that the awarding of the market value at the rate of Rs. 162/- per sq. ft. itself is on the higher side. He submits that the Reference Court has not given any evidentiary value to the sale deeds relied upon by the beneficiaries. According to him, the sale deeds constitute the primary evidence for the determination of the market value of the similarly situated land.

7. He submits that the consent award cannot serve as the foundation for the determination of the market value of the acquired land. In the reference proceedings, the determination of the market value must be on the basis of the comparable sale statistics. He submits that the consent award (Ex.P 16) is not binding upon the appellant in the case. He submits that the acquisition in the instant case is of the year 2006; on the other hand, the acquisition of the land covered by Ex.P.17 is of the year 1998.

8. Without looking into the comparable sale instances, Reference Court proceeded to determine the market value of the large tract of agricultural land on square foot basis, which is impermissible as per the Apex Court's judgment in the case of *Topanda Kundanmal v. State Through The Land Acquisition Officer, Jamnagar And Others* (1995) 5 SCC 336.

9. He submits that the lands in question had retained the agricultural character as on the date of the issuance of the preliminary notification. However, on being asked as to what was being grown on the agricultural land, he submits that nothing was being grown.

10. He submits that the Reference Court has erred by not effecting any deduction

towards the development charges in respect of the acquired lands, which are agricultural and situated in Shigikeri Villas

11. The learned Counsel relies on the Apex Court's judgment in the case of Subh Ram v. Haryana State (2009) - LAW (SC) 10-61, for advancing the submission that it is necessary to make an appropriate deduction towards the development cost. He submits that if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads, etc.) plus one-third (for expenditure of development) in all two thirds (67%), as development cost" from the value of the small plot.

12. He also relies on this Court's decision in the case of Assistant Commissioner And Land Acquisition Officer And Another v. Sham Rao ILR 2003 KAR 4350, to contend that the deduction of 53% towards the development charges is reasonable. He also relies on the unreported decision of the Hon''ble Supreme Court in the case of Nirmal Singh v. State Of Haryana Throuh Collector Civil Appeal no. 3982-3987/2011 and other connected matters and submits that 60% deduction on the market value of the acquired land towards the developmental expenses is allowable.

13. He also relies on the Apex Court's judgment in the case of State Of Karnataka And Others v. Shan Kara Textiles Mills Ltd. (1995) 1 SSC 295, for advancing the submission that just because the kind was not being used for any agricultural purpose, the land can not be treated as the non-agricultural land.

14. Smt. K. Vidyavathi, the Learned Additional Government Advocate makes submissions akin to those of Sri B.S. Kamate. She submits that the enquiries she has made with the concerned officers in the Bagalkot Taluk reveal that as per the notification containing the guidance value for the registration of properties in Bagalkot. the market value is Rs. 1,100/- per sq. mtr; if it is converted land. She submits that approximately the market value is currently Rs. 1 Crore 21 lakhs per acre in respect of the land situated in Shigikeri Village.

15. The submissions of the Learned Counsel have received our thoughtful consideration. The following questions fall for our consideration:

(i) Whether the Reference Court is justified in relying on the consent award in the determination of the market value? The allied question is whether some amounts ought to have been deducted towards the cost of development, etc.?

(ii) Whether the Reference Court is justified in giving the escalation at a flat rate?

(iii) What would be the fair and just market value of the land in question?

In re. Question No. (i):

16. It is trite that while determining the market value of the acquired and, the Court has to sit in the armchair of a prudent purchaser and impute the market value taking into account all the proven instances of comparable transactions.

The Court can not and should not eschew lie consent award from consideration. The question that the Court has to pose to itself is how much the Government or the appellant beneficiary would have offered to purchase the property in the open market.

17. From the point of view of the land-loser, what consideration has to weigh with the Reference Court or the Appellate Court while determining/revising the market value of the acquired land is laudably stated by the Apex Court in its judgment in the case of Nagpur Improvement Trust And Another v. Vithal Rao and Others AIR 1973 SC 689. Paragraph Nos. 26 and 27 of the said decision are extracted here in below:

"26. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation.....

It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

27. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14. "

18. The submission that the consent award cannot be relied upon for determining the market value is absolutely unacceptable. We do not see any legal impediment in taking the consent award as the basis for the determination of the market value, so long as the lands covered by the consent award and the lands which are the subject matter of the reference proceedings are proximate and they possess similar features.

19. The voluminous evidence led in by the claimants is clearly indicative of the urbanisation in and around the lands in question. The claimants' assertion that a large number of educational institutions, industrial and commercial establishments, etc. have come up in the vicinity of the lands in question is not seriously disputed by the authorities. It is also not in dispute that the lands in

question are situated within the Municipal limits of Bagalkote.

20. We are also not impressed of the submission that as the lands in question are not converted for the non-agricultural purpose, the fixation of the price as Rs. 162/- per sq. ft. is not warranted. In this context, it is immensely profitable to refer to the judgment of Apex Court in the case of National Fertilizers Limited v. Jagg A Singh (Deceased) Through Lrs. And Another (2012) 1 SSC 74, wherein it is held that the market value has to be determined on the basis of the potentiality for Urban Development and not on the basis of the revenue or agricultural classification of land. The Apex Court has this to say in para 28 of the said decision:

"28. Regarding quality of the land acquired in the present case, the learned counsel for the appellant submitted that the land in Karam Singh case was developed urban land meant for residential and commercial purpose, whereas the land acquired in the present case was low; waterlogged agricultural land. We, however, find from the evidence of Basant Singh Patwari, Land Acquisition, Industries Department, Government of Punjab, Chandigarh, examined as RW 1, that the level of the land, which was acquired in the present case, was that of the existing land of the township of NFL. The learned Additional District Judge in his order dated 29-4-1991 has in fact held, after considering all the oral and documentary evidence adduced by the parties, that the market value of the land acquired in the present case has to be determined on the basis of its potentiality for urban development and not on the basis of the revenue or agricultural classification of the land as done by the Collector because the land acquired in the present case had great potential value for urban purposes i. e. commercial, industrial and residential. "

21. Answering question No. 1 in the affirmative, we proceed to consider the allied question. Whether the Reference Court ought to have effected the deduction towards the cost of development?. This issue is no more res integra. It is covered by the Apex Court's judgment in the case of Subhash Chander and Others v. State Of Haryana & Another (2014) 13 SCC 193, wherein it has held that if the later award is based on the earlier award determining the market value, no education is required to be made. Paras 12 and 13 of the said decision are extracted herein below:

"12. In our view, since the learned Single Judge has fixed the base price in consonance with the compensation awarded for lands previously acquired in the years 1973 and 1977 and calculated the market value with an increase at the rate of 15% p.a. from 1973 till the issuance of respective Notifications dated 4-6-1980, 13-3-1981, 22-6-1982 and 5-7-1982 following the observation made by this Court in Krishi Utpadan Mandi Samiti v. Bipin Kumar, (2004) 2 SCC 283, in our considered opinion, ought not to have made any deduction towards the development costs.

13. In view of the above, while modifying the order passed by the learned Single

Judge, we direct the Reference Court to determine the market value of the lands acquired and rechristened as Sectors 3, 6, 7 and 9 at the rate of 58.45 for the lands acquired under 1980 notification, at Rs.66.21 for the lands acquired under 1981 notification and Rs. 76.21 per square yard for the lands acquired under 1982 notification without deducting 1/3rd of the price towards development costs.

22. Following the aforesaid decision of the Hon''ble Supreme Court we answer the allied question to the effect that when the price fixation takes place in consonance with the compensation awarded for land; acquired in the previous years, no deduction towards the development cost is permissible.

In re. Question No. (ii):

23. We are now left with the question of examining whether the awarding of escalation/increase at a flat rate is upholdable? This issue is also fully covered by the Apex Court in the case of General Manager, Oil And Natural Gas Corporation Limited (supra). It is held therein that in the matter of calculating the annual appreciation/escalation over the base level evidential transaction, the percentage is always with reference to the previous year's market value. Over the course of years, the rate of annual increase itself undergoes drastic changes on account of sudden spurt in prices. Therefore the application of flat rate may lead to anomalous results. It would be appropriate to calculate the increase cumulative and not to apply a flat rate. It appears the parties did not pointedly bring to the notice of the Reference Court the relevant portions of the said decision, which are extracted in paragraph No.3 supra and which deal with the issue of applying the escalation rate cumulatively. We answer the question No.2 in the negative. We hold that the annual appreciation/escalation can not be at flat rate; it has to be cumulative.

In re. Question No. (iii):

24. We find that granting the escalation/increase at the rate of 10% by the Reference Court is fair and proper. The same is keeping in view the development potentiality in and around Bagalkote. We are not persuaded either to raise the escalation rate or to reduce it.

25. Following the Apex Court's said decision, we are employing factor of escalation/increase cumulatively. The lands covered by Ex.P-17 were awarded the market value of Rs. 90/- per sq.ft. The preliminary notification in respect of those lands was issued in the year 1998. In the instant case, the preliminary notification is issued in 2006. Retaining the market value of the land as Rs. 90/- per sq.ft. and applying the escalation/increase principle with cumulative effect, the amounts towards the market value are re-workable as follows :

SI. No.

Year

Cumulative Increase at 10%

Amount(in rupees)

1

1998

90.00

2

1999

90+9

99.00

3

2000

99+9.90

108.90

4

2001

108.90+10.89

119.79

5

2002

119.79+11.97

131.76

6

2003

131.76+13.17

144.93

7

2004

144.93+14.49

159.42

8

2005

159.42+15.94

175.36

9

2006

175.36+17.53

192.89

Thus the amounts towards the market value aggregate to Rs. 192.89 per sq.ft.

26. In the result, we hold that the claimant appellants are entitled to the market value at the rate of Rs. 192.89/- per sq.ft. Needless to observe that they are also entitled to the proportionate increase in the additional market value, solatium, interest, besides the cost.

27. M.F.A. No. 100574/2016 is allowed in part. M.F.A. No. 101345/2016 is dismissed. The amounts deposited by the beneficiary appellant are ordered to be transferred to the Reference Court for being disbursed to the claimants in accordance with law.

28. M.F.A. No. 100574/2016 is allowed in part, M.F.A. No.