(2015) 11 KAR CK 0195

In the Karnataka High Court

Case No : M.F.A. No. 10820/2008

Malleshaiah APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:
Land Acquisition Act, 1894 — Section 18(1), 28A, 4(1), 54

Citation : (2015) 11 KAR CK 0195

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

Bench : Single Bench

Advocate : G.V. Narasimhamurthy, for the Appellant; E.R. Diwakar, AGA, for the Respondent

Final Decision : Partly Allowed

Judgement

B.S. Patil, J.—This Miscellaneous First Appeal is filed under Section 54 of the Land Acquisition Act challenging the judgment and award dated 20.09.2005 passed by the Reference Court in LAC No. 11/2000.

2. Lands comprised in Sy. Nos. 590, 596 & 600 situated at Handanakere village, Kasaba Hobli, Hassan Taluk, totally measuring 6 acres 7 guntas were acquired by preliminary notification issued on 02.02.1995 for the purpose of Yagachi Reservoir Project. The Special Land Acquisition Officer passed an award determining the market value at Rs. 17,000/- per acre. On reference, the learned Civil Judge has fixed the market value at Rs. 42,000/- per acre and has awarded interest and other statutory sums payable. This appeal is filed seeking enhancement contending inter alia that the court below has not adopted the recognized methods of valuation for determining the market value of the acquired land.

3. I have heard the learned Counsel for the appellant and the learned Additional Government Advocate.

4. The records of the case having been called for are received. Learned Counsel

for both parties have taken me through the evidence on record, both oral and documentary. The only point that arises for consideration is

"whether the claimant appellant is entitled for enhancement of compensation as prayed for by him?"

5. As can be seen from the findings recorded by the Reference Court, it has proceeded to assess the market value of the acquired lands based on the certified copy of the judgment passed in LAC No. 68-77/2000 passed by the Additional Civil Judge (Sr.Dn.), Hassan. In the said case, for the acquired land as per the preliminary notification dated 24.06.1994, the Land Acquisition Officer had fixed ex-gratia amount for dry land by arriving at the value of the lands at Rs. 41,520/- per acre based on the sales statistics from the year 1990 to 1993 and on the strength of the same, the learned Additional Civil Judge (Sr.Dn.) in LAC No. 68-77/2000 had made the calculation. By adding the statutory benefits which would be equivalent to the market value. Ex-gratia had been awarded by the Land Acquisition Officer in a sum of Rs. 1,10,000/- per acre by excluding the right of the claimants to seek reference or for re-determination under Sections 18(1) and 28A. Thus, the Reference Court, in the instant case, placing reliance ion the said method adopted in LAC No. 68-77/2000 has determined the market value of the acquired land at Rs. 42,000/- per acre.

6. In paragraph 19 of the impugned judgment under challenge, the Reference Court has observed that petitioners had not placed any legally admissible evidence, and therefore, the only course open was to decide the case on the basis of the judgment given by the learned Additional Civil Judge (Sr.Dn.), Hassan (in LAC Nos. 68-77/2000). The court below has further observed in the said paragraph that though the Land Acquisition Officer had awarded Rs. 1,10,000/- per acre as ex-gratia in respect of other lands, but in respect of the lands in question, he had arrived at Rs. 17,000/- per acre without any basis and therefore, it was just and reasonable to award Rs. 42,000/- per acre for dry land instead of Rs. 17,000/-.

7. Learned Counsel appearing for the appellants submits that Exs.P-1 & P-2 are the registered sale deeds whereunder as per the sale deed dated 02.12.1996 (Ex. P-1) and the sale deed dated 01.02.1995 (Ex. P-2), an extent of 6 acres and 1 acre, respectively, was sold for Rs. 18,000/- and Rs. 1,00,000/-; these documents have been overlooked by the court below while determining the market value. He has also contended that even the capitalization method has not been adopted based on the yield and the price of other crops grown in the land.

8. I find from the documents produced and marked in evidence in this case, that Exs.P-1 & P-2 have been produced and marked by the claimants in LAC No. 1/2000. In the evidence of the claimants in the present case i.e., LAC No. 11/2000, he has not spoken anything about Exs.P-1 & P-2. There is no reference to the location, situation and comparability of the lands comprised in Exs.P-1 & P-2 with reference to the acquired land and in the absence of the same, it is

difficult to accept Exs.P-1 & P-2 and make them as basis for determining the market value in respect of the acquired land.

9. It is no doubt true that the acquired lands are situated in the same village. It is also true that the land comprised in Ex. P-2 was sold prior to the preliminary notification in the instant case. Had this document been marked in evidence of the claimant in the present case and its comparable nature with regard to the soil, texture being spoken to in the evidence, certainly the court below would have made it as basis while determining the market value. Though the sale deeds are placed on record and marked in the connected case, there is no evidence regarding the comparability of these lands with the acquired lands.

10. The findings recorded by the Reference Court are based on the calculation made by the Land Acquisition Officer in respect of other cases for which preliminary notification was issued in the year 1995, whereunder he had passed an award granting ex-gratia amount of Rs. 1,10,000/- per acre inclusive of statutory benefits payable and excluding the right of reference of the claimants. This method followed by the Land Acquisition Officer was accepted by the Reference Court in another batch of cases in LAC Nos. 68-77/2000 to determine the market value at Rs. 41,520/- per acre and it is because of the said reason the Reference Court has persuaded itself to determine the market value at Rs. 42,000/-.

11. As rightly submitted by the Counsel for the appellant, this method does not disclose any sound principle for determining the market value. The market value has to be determined with reference to the value fetched in the open market for sale of comparable lands during the period when Section 4(1) notification had been published or on the basis of capitalization method based on the yield fetched by the agriculturist. None of these methods are followed. The safest and sound method, however, is with regard to the sale transaction of comparable lands if the same is available and produced and marked in evidence. In the instant case, the sale deeds pertaining the lands situated in the same village have been produced in the connected case. The certified copy of the same are also placed on record by additional evidence before this court. In the absence of evidence to show the comparable nature of lands comprised in these sale deeds with the lands acquired, it is not safe to proceed on that basis to determine the market value.

12. As the claimant has not been paid compensation by adopting recognized methods of calculation, the judgment and award passed by the Reference Court cannot be sustained. The matter deserves to be remanded for fresh consideration in accordance with law reserving liberty to the claimant to adduce evidence with regard to the comparable nature of lands involved in Exs.P-1 &P-2.

13. Accordingly, this appeal is allowed in part. The impugned judgment and award are set aside. The matter is remitted for fresh consideration in accordance with law. Liberty is reserved to the claimants to produce and mark the certified

copies of the sale deeds, particularly Ex. P-2 which is prior in point of time to the date of preliminary notification issued in this case and to lead any other evidence.

14. Having regard to the fact that lands were acquired long ago during 1995, the Reference Court is directed to dispose of the case within six months from the date of receipt of a copy of this judgment. The appellant is held entitled for refund of full court fee paid on the memorandum of appeal as per Section 66 of the Karnataka Court Fees and Suits Valuation Act, 1958. The lower court records shall be immediately dispatched to the Reference Court. In terms of the order dated 05.12.2014 passed in this appeal while condoning the delay in filing the appeal, the claimant shall not be entitled for interest for 1071 days, in case they succeed before the court below in securing enhancement of compensation over and above Rs. 42,000/- per acre.

