

(2003) 06 KAR CK 0057

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2691 of 1997 and Cross Appeal No. 6 of 1998

Malleshappa (deceased) by L.Rs.

APPELLANT

Vs

Assistant Commissioner/Special L.A.O. and Another

RESPONDENT

Date of Decision : 09-06-2003

Acts Referred:

Citation : (2003) 4 KCCR 2484

Hon'ble Judges : Tirath S. Thakur, J; Mohan Shanthanagoudar, J

Bench : Division Bench

Advocate : S.P. Shankar, in MFA No. 2691 of 1997 and Niranjana, for Basavaprabhu S. Patil, for Cross Objector in Cross Appeal No. 6 of 1998, for the Appellant; Niranjana, for Basavaprabhu S. Patil in MFA No. 2691 of 1997, H.M. Manjunath, High Court Government Pleader in MFA No. 2691 of 1997 and S.P. Shankar in Cross Appeal No. 6 of 1998, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—This appeal and the accompanying cross objections arise out of an Order dated 5.7.1997 passed by the Prl. Civil Judge, (Sr. Dn.), Gulbarga, whereby LAC No. 315 of 1993 has been allowed in part and the land owners held entitled to compensation at the rate of Rs. 78,000/- per acre with consequential statutory benefits. While MFA No. 2691 of 1997 filed by the land owners prays for a suitable enhancement of the said amount, Cross Appeal No. 6 of 1998 seeks reduction of the said amount.

2. By a preliminary notification dated 8.3.1978, a large extent of land including an area measuring 7 acres and 2 guntas in survey No. 6/1 of Village Vakkalgera situate within the Corporation limits of the City of Gulbarga was notified for acquisition for purposes of formation of a residential layout. The Land Acquisition Officer made and published an Award by which he determined a sum of Rs. 4,000/- per acre as compensation payable to the land owners for the extent acquired from them. Dissatisfied with the said amount, the land owners sought a

reference to the Civil Court for determination of the just and fair compensation payable to them. This reference was registered as LAC No. 315 of 1993 and disposed of by the Reference Court in terms of the impugned Order enhancing the compensation to Rs. 78,000/- per acre with consequential statutory benefits. Both the parties are dissatisfied with the said amount as noticed earlier and have filed the present Cross appeals one seeking enhancement of the amount and the other seeking reduction of the same.

3. We have heard Mr. S.P. Shankar and Mr. Niranjana, appearing for Mr. Basavaprabhu S. Patil, Counsel for the Gulbarga Development Authority. We have also been taken through the record of the case and in particular the Judgment under appeal.

4. A reading of the Judgment under appeal would show that the Reference Court has while enhancing the compensation payable to the land owners placed reliance upon an earlier Order passed by the said Court by which a part of the land owned by the owners in survey No. 6 had been acquired for purposes of construction of APMC/Cotton market yard. In the reference arising out of the said acquisition, the Reference Court had determined the compensation payable to the land owners at Rs. 28,000/- per acre which was on appeal by the land owners in MFA No. 2113 and connected matters of 1988 disposed of on 1.12.1993 enhanced to Rs. 31,000/- per acre. Relying upon the said two decisions, the Reference Court came to the conclusion that the land owners were entitled to a similar amount of compensation by addition of suitable escalation in the price over what was awarded in connection with the earlier acquisitions. On the question of the escalation admissible to the land owners, the Reference Court was of the opinion that for a period of six years out of a total of twelve years which separated the two acquisitions, the land owners were entitled to escalation at the rate of 10% p.a. while for the remaining six years the escalation could be to the extent of 15% p.a. The Court accordingly added to the price determined for earlier acquisitions 150% of the said amount and awarded a sum of Rs. 78,000/- per acre as compensation.

5. The material on record before the Reference Court and so also before us does not indicate any basis other than the earlier acquisition by reference to which the compensation payable to the land owners could be determined and awarded to them. No instances of any sale transaction having taken place in respect of similar or comparable lands situate in the vicinity of the land in question were reduced before the Reference Court nor is there any other material on the basis whereof the Reference Court could have possibly arrived at a just and fair amount representing the true market value of the property at the relevant point of time. The only basis for determination of the amount of compensation payable to the land owners comprised the earlier acquisition of a portion of the very same survey number out of which the present acquisition was made. That acquisition was as seen earlier twelve years before the issue of the preliminary notification in the present case. The Reference Court was therefore justified in taking the

amount awarded in the said earlier acquisition as the threshold for purposes of determination of compensation payable to the land owners. To that extent there was no dispute between learned Counsel for the parties. The only question that was debated by them was as to what would be the most appropriate rate of escalation for purposes of loading the amount awarded to the land owners in the earlier acquisition made some twelve years before the preliminary notification was issued in the instant case. Decisions of this Court as also that of the Supreme Court were cited in support of the submission that the escalation could be anything between 3% to 10% p.a. Reliance was in this connection placed by learned Counsel appearing for the beneficiary/Cross Objector upon a Single Bench decision of this Court in *The Special LAO, Belgaum v. Malali* ILR 2003 Kar. 1235 in support of the submission that the rate of escalation would depend upon the nature of the land acquired, the purpose for which the same was being utilised and the time gap that separated the two acquisitions. It was submitted that since there was a long gap between the acquisitions made in the year 1966 and the acquisitions in the instant case, this Court could well follow the view taken by the Single Bench in *Gundappa Vs. State of Karnataka*, and award escalation at the rate of 3% p.a.

6. On behalf of the owners, Mr. Shankar argued that the escalation could go upto 12% if not more having regard to the fact that the price of the land in question had over a period of time increased on account of the all-round development in the town of Gulbarga. He urged that whatever be the rate of escalation awarded by the Court, the same ought to be compounded each year so that the resultant figure represents the true market value on the date of the issue of the preliminary notification.

7. The rate of escalation that is permissible has ranged between 3% to 10% in terms of the decisions of the Hon'ble Supreme Court and that of this Court. In *Gundappa's* case, the escalation awarded by the Court for a period of 15 years was limited to 3% p.a. only. The acquisition in that case however was for construction of an irrigation tank. The period over which the escalation had to be awarded and the purpose of the acquisition appears to have weighed with the Court in awarding a relatively lower rate of escalation. In the subsequent decisions of this Court and that of the Supreme Court, the escalation has been higher. In *The Special LAO, Belgaum v. Malali* ILR 2003 Kar. 1235 relied upon by learned Counsel for the beneficiary, the acquisition was for the construction of Hidkal Dam Project. The period for which the escalation was granted was however restricted to three years or so. Relying upon the decision of the Supreme Court in *The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib*, and an earlier Division Bench decision of this Court in MFA No. 4815 of 1996 disposed of on 11.2.1997, this Court awarded the escalation at the rate of 8% p.a. only. The decisions of the Supreme Court in *Ranjit Singh and others Vs. Union Territory of Chandigarh*, and *The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib*, however award escalation at the rate of 10% p.a. In the case of *Ranjit Singh*, the

acquisition was for development of Sector 41 to be included within the city of Chandigarh. The escalation awarded worked out to almost 10% p.a. over the compensation awarded to the land owners for a similar acquisition made earlier. So also in the case of Special LAO, Byda, Bagalkot v. Mohd. Hanif Sahib Bawa Sahib escalation was granted at the rate of 10% for the previously determined compensation. The acquisition in that case was also for the formation of a new township. What is discernible from these pronouncements of the Supreme Court and that of this Court is that in cases where acquisitions are made for irrigation projects and such other projects other than the extension of housing localities in the cities, the escalation is at a relatively lower rate. That position emerges from the decision of this Court in Malali's case and Gundappa's case referred to earlier. The other category of cases involving acquisitions for extension of the city limits and for housing layouts, the escalation awarded has been almost on a uniform basis at the rate of 10% p.a. In the instant case also, the acquisitions were made for the extension of Gulbarga township and formation of house sites on its periphery. We therefore see no reason why a uniform rate of 10% p.a. should not be awarded to the land owners towards escalation over the amount determined as compensation for the earlier acquisition made in the year 1966. This implies that the Reference Court was in error in holding that escalation could be granted at 2 different rates for two different periods namely 10% p.a. for the first six years and 15% p.a. for the remaining six years. In our view, the correct method is to award a uniform rate of 10% p.a. towards escalation for every year that separates the earlier acquisition from the acquisition in hand. Calculated thus, the land owners would be entitled to compensation at the rate of Rs. 31,000/- per acre previously awarded for the year 1966 acquisition plus the escalation for a period of 12 years at the rate of 10% p.a. i.e., 120% of Rs. 31,000/-. The total amount towards escalation thus works out to Rs. 37,200/- which when added to the threshold amount of Rs. 31,000/- would take the compensation payable to Rs. 68,200/- rounded off to Rs. 68,500/- per acre. The Reference Court was in error in having awarded a sum of Rs. 78,000/- per acre which error needs to be corrected in the present appeals. It follows that the claim of the land owners for higher amount of compensation on the basis of a higher percentage of escalation must stand rejected.

8. In the result, MFA No. 2691 of 1997 shall stand dismissed. Cross Appeal No. 6 of 1998 filed by the Beneficiary shall however stand allowed in part and to the extent that the land owners shall be entitled to compensation at the rate of Rs. 68,500/- per acre instead of Rs. 78,000/- per acre awarded by the Reference Court. The Order made by the Reference Court shall to that extent stand modified. Needless to say that the land owners shall be entitled to all the statutory benefits at the altered rate awarded by this Court. The parties to bear their own costs.