

(2011) 11 KAR CK 0250

In the Karnataka High Court

Case No : Review Petition No. 461 of 2010 in MFA No.576 of 2003, C/w, RP 501 of 2010 in MFA No. 824 of 2003, RP 462 of 2010 in MFA No. 583 of 2003, RP 460 of 2010 in MFA No. 580 of 2003, RP 459 of 2010 in MFA No. 584 of 2003, RP 458 of 2010 in MFA No. 575 of 2003,

M.N. Gurumurthy Reddy @ M.N. Gurumurthy APPELLANT
Vs

Land Acquisition Officer Bangalore Development Authority T. RESPONDENT
Chowdaiah Road, Bangalore 560020, The Commissioner
Bangalore Development Authority T. Chowdaiah Road,
Bangalore 560020 and etc. etc.

Date of Decision : 17-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0250

Hon'ble Judges : Vikramajit Sen, Acting C.J.;A.S. Bopanna, J

Bench : Division Bench

Advocate : S.P. Shankar for Sri B.V. Krishna, for the Appellant; D.N. Nanjunda Reddy for Sri Marigowda, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, Ag. CJ.

1. These Orders will dispose of several petitions seeking the Review of Judgment dated 17th March, 2006, passed by the Division Bench presided over by H.L. Dattu (as His Lordship then was) accompanied by Justice A.S. Bopanna. These Review Petitions are accompanied by applications of even number seeking condonation of delay in excess of 1000 days.

2. The facts germane for the decision, succinctly stated, are that Preliminary Notifications were issued by the Government of Karnataka between 17.09.1992 to 17.06.1993 pertaining to the acquisition of several lands for the creation of the outer Ring Road, Bengaluru. After preliminary enquiry, these lands were acquired by issuance of Final Notifications, Possession appears to have been taken over 14 years ago on 16.01.1997. Awards dated 27.06.1997 were duly

published. In circa 1999 References were made to the Civil Court for determining the market value of the lands. These 17 land acquisition cases (LACs) were clubbed together. Reliance has specifically been made to Ext.P-5 in those proceedings, which in fact is the Award of the Reference Court in LAC No.43/1999, fixing the market value of the land at Rs. 100 per square feet. This determination, assailed in MFA No.2020/2001, has not been followed in the batch of 17 LACs, with which we are presently concerned, instead the market value has been fixed at Rs. 4.62 lakhs per acre. In so far as the Review Petitions before us are concerned in circa 2003, the Bangalore Development Authority preferred Appeals seeking a reduction of the determination of market value of Rs. 4.62 lakhs per acre, in which the respondents/erstwhile lands owners filed Cross Objections praying for adjudication of the market value of these lands at Rs. 6.00 lakhs per acre.

3. Our attention has been drawn to an Order of the learned single Judge dated 06.02.2006 to the effect that the appeals before him should be posted before the Division Bench hearing MFA No.2020/2001, which also pertained to the same notification of acquisition. It is the contention of the Review Petitioners that despite directions to the contrary, the present Appeals together with Cross-objections came to be listed before a Division Bench, before which MFA No.2020/2001 was not pending. The said Bench presided over by Hon'ble Mr. Justice H.L. Dattu (as His Lordship then was), on 17.03.2006, accepted a motion, nomenclatured as a "Memo on behalf of the appellant", disposed of the 17 appeals by declaring the market value of the subject land at Rs. 6.00 lakhs per acre, as per the Cross objections filed by the respondents.

4. It has been underscored by learned Senior Counsel for the BDA that in the months of July/August 2006 all the present petitioners withdrew the compensation at the rate of Rs. 6.00 lakhs per acre. The acceptance of this compensation came in the wake of the decision in MFA Nos. 2020, 2022 and 2027 of 2001 dated 01.06.2006, wherein the market value was fixed at a much higher rate. It is indeed remarkable that the BDA did not think it necessary to file appeals against this computation by Order dated 01.06.2006. We only hope that this was not because of the influence wielded by those three appellants. We hope that this inaction possibly was because, as contended by the learned Senior Counsel for the respondents, buildings were existing on those three sites, thereby justifying their market value at Rs. 100 per square feet. To complete the narration, the Division Bench in a subsequent appeal in MFA No. 6781/2006 by order dated 28.08.2007 had reduced the compensation from Rs. 100 /- per square feet to Rs. 75/- per square feet.

5. Over one year had elapsed from the date on which the present petitioners had accepted compensation at the rate of Rs. 6.00 lakhs per acre and their lodging of a complaint to the Karnataka State Bar Council by letter dated 17.09.2007 to the effect that their Counsel had unauthorisedly consented to the "memo". We have perused this document and it is true that it does not bear the signatures of the

petitioners before us. However, it would be legally fatal to overlook the fact that the memo unilaterally prepared by the respondents, merely sought the disposal of the Appeals by allowing the Cross-Objections in toto viz., accepting the petitioner's prayer for an enhancement of compensation to Rs. 6.00 lakhs per acre. It is a misnomer therefore, that the learned Advocate for the petitioners, had without obtaining instructions, conceded to the adjudication by the Division Bench of the market value of the land at Rs. 6.00 lakhs per acre. It is not in controversy that the Cross Objections bear the signatures of the Petitioners. The said amount was also realised by the Petitioners by filing execution petitions.

6. It appears to us that the complaint to the Karnataka State Bar Council was only a mala fide springboard for approaching the Hon'ble Supreme Court as late as in October, 2007. The SLP came to be disposed of with a direction that petitioners should seek their remedy before the High Court of Karnataka. This remedial action was taken in the form of "Recall Applications", which appear to have been instituted on 17.04.2008. In order to overcome the objections raised by the State/respondents, that the Recall Applications were essentially in the nature of Review Petitions, which required payment of substantial Court Fees, the present Review Petitions came to be filed on 01st December, 2010 after affixing the requisite Court Fees. Inasmuch as it is the order dated 17th March, 2006, that we are called upon to review, there is a delay of 1691 days which requires to be condoned. Keeping the substance of the matter in view, benefit may be given to the Petitioners by treating the Review Applications as having been filed on 17.04.2008, but even doing so, there is still a delay of 961 days. The Misc. Civil Application Nos.21809/10, 23215/10, 21823/10, 21808/10, 21807/10, 21806/10, 23235/10, 21824/10, 23240/10, 23241/10, 23239/10, 23221/10, 23238/10, 23204/10, 23217/10, 23219/10, 23218/10, 21811/10, 8287/11, 8288/11, 637/11 and 638/2011 respectively praying for condonation of delay in filing the Review Petitions have to be decided in the backdrop of the above sequence of evidence.

7. We think that the applications are devoid of merit. We conclude thus because in the period July/August 2006 all the petitioners had withdrawn the compensation allowed to them as per their own Cross-Objections at the rate of Rs. 6.00 lakhs per acre without even a semblance of demur, that too by instituting execution petition for recovery. It is therefore, sequentially and logically incredible that the petitioners had not accorded their consent to the disposal of their Appeals by order dated 17.03.2006 keeping the factum of withdrawal of the receipt of compensation by them six months later. It is indeed significant that the withdrawal of compensation has occurred after June, 2006 when the market value of three other acquired properties was fixed at Rs. 100 per square feet. It seems plain to us that the petitioners accepted the reality of a difference between their acquired lands and the built-up property of the three other sites. The present Review Applications are obviously founded on finality being accorded to the determination of the market value of one other property by reduction from Rs. 100/- per square feet to Rs. 75/- per square feet. Prior

thereto it was still speculative what the Court would adjudge as the compensation. A difference in factual matrix cannot justify the filing of Review Petitions, that to more than one year after the acceptance of compensation at the rate demanded by the petitioners themselves in their Cross-Objections. It is our considered opinion, therefore, that sufficient cause has not been shown warranting the condonation of delay. Despite this unequivocal conclusion, with a view of imparting finality to the controversy, we prefer to consider the Review Petition on their merits, assuming that the delay in their filing has been sufficiently accounted for.

8. Sri. S.P. Shankar, learned senior counsel for the Review Petitioners, has argued the matter in great detail, as already been stated above, has relied on several pronouncements of the Hon'ble Supreme Court of India. In *Commissioner of Income Tax, Bombay Vs. C Parakh and Co. (India) Ltd.*, , the ratio is to the effect that where an assessee, so far as the Income Tax Act is concerned, is not bound to adhere to the deductions claimed by him erroneously. The unfounded attempt is to equate Cross Objections with the claim of deductions in Income Tax returns. Mr. Shankar, next relied on *Mahender Pal and Others Vs. State of Haryana and Others*, wherein their Lordships have prescribed that the Land Acquisition Act mandates the fixation of compensation by the Court itself. This exercise would entail a jural comparison between sale price of similar lands. Keeping in view the several pronouncements of the Apex Court to the effect that admissions or positions adopted in pleadings are the best and most definitive modes of proof, Mahender Pal is not relevant to the case in hand. We may once again reiterate that the Review Petitioners had filed Cross-Objections contesting the Appeals filed by the Respondents against the Reference Court determination of compensation at Rs. 4.62 lakhs per acre, by claiming Rs. 6.00 lakhs per acre instead. We find no observations in Mahender Pal necessitating the Court into embarking on a facile exercise of determining the market value of lands when the concerned land owners themselves have assessed it at a particular rate. The pleading of the lands owners are the most reliable basis of evidence on the controversy, which the Court should accept.

9. We also find no relevance in citing *Chandrashekhar and Others Vs. Additional Special Land Acquisition Officer*, . Mr. Shankar, learned Senior Counsel, had drawn our attention to para 12 thereof, in which their Lordships had castigated the High Court for not assessing the fair and reasonable compensation for uprooted agriculturists, instead of disposing of the lis on punctilio and technicalities of insufficient Court Fee, having been affixed. In the case on hand, the Court has granted compensation at the rate claimed by the land owners themselves and therefore, is beyond censure.

10. The directives contained in *Satish and Others Vs. State of U.P. and Others*, are that the State can exercise its power of eminent domain provided it is not merely a form of appropriation, but rather earnestly fulfils public interest and the payment of reasonable compensation. For the reasons already mentioned above,

the decision in Special Land Acquisition Officer Vs. Karigowda and Others, is of no assistance to the petitioners. Their Lordships had spelt out itemised factor, which must be fulfilled in arriving at a fair market value for land acquired by the State. Our short answer is that since the price stated by the landowners themselves has been adopted, the Court has comprehensively answered all these factors. Union of India vs. Bal Ram and another (2010) 5 SCC 747 militates against the case sought to be proffered in the Appeal of the petitioners. Their Lordships had cautioned that the Court would be justified in dealing with land in a particular case by way of extrapolation of a conclusion arrived at in respect of similar lands in the vicinity.

11. It appears to us that the decisions relied on by Mr. Nanjunda Reddy, learned Senior Counsel, appearing for the respondents are extremely apt and relevant. In State of Gujarat, etc. Vs. Daya Shamji Bhai, etc., their Lordships have opined that the claimants are disentitled to seek a reference to the Civil Court where they have agreed to accept compensation determined by the Land Acquisition Officer together with an additional 25% thereof. In filing Cross Objections themselves, this is exactly what has transpired. Similarly, in State of Karnataka and Another Vs. Sangappa Dyavappa Biradar and Others, their Lordships have opined that a reference to a Civil Court is possible only where it is clear that the awardees have not accepted the quantum of the Award and once parties agree to the compensation payable and have invited a consent award it is binding.

In Des Raj (Deceased) through L.Rs. and Others Vs. Union of India (UOI) and Another, their Lordships have held that an application seeking Review of a determination of compensation merely on the ground that certain other similarly placed persons have been given a higher rate of compensation is not well founded. This is all the more apposite, in the present case. Hence, the Review Applications have been filed after inordinate delay.

12. For these manifold reasons, we find that the applications and Review Petitions are meritless. We cannot lose sight of the fact that several hours of Court's time have been exhausted in a futile exercise. That apart the conduct of the petitioners amounts to abuse of process of law inasmuch as the petitioners having sought Rupees Six Lakhs per acre as market value in the cross objection, having recovered the same through execution have foisted the complaint before the Bar Council against the Advocates who appeared in the Appeal in a malafide manner only to serve their selfish design. Thereafter they have approached the Hon'ble Supreme Court in the year 2008 against the order dated 17.03.2006 and have withdrawn the same to approach this Court. Such attempts to unsettle the settled issues by taking the legal process for granted should be discouraged and be dealt with a heavy hand which should act as a deterrent.

The Review Petitions are therefore dismissed with costs of Rs. 30,000/- (Rupees Thirty Thousand) for each of the petitioners payable to the Prime Minister's Relief Fund within 60 days from today.