

(2006) 09 KAR CK 0044

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7471 of 2002

Murudeshwara Ceramics Ltd.

APPELLANT

Vs

Sri Shankar Venkatesh Kulkarni (since deceased by LRs. A. Shrinath Shankar Kulkarni and Smt. B. Geetabai Kulkarni) and The Special Land Acquisition Officer, Karnataka Industrial Areas Development Board

RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 29 (1), 29 (2)
Land Acquisition (Mysore Extension and Amendment) Act, 1961 — Section 21, 23, 24, 4 (1)

Citation : (2007) 2 KCCR 857

Hon'ble Judges : V. Gopala Gowda, J; C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : A.G. Holla Sr, for K. Shashikiran Shetty, for the Appellant; C.B. Srinivasan and Amarkumar for Lawyers INC For R1(a)(b) and P.N. Chandrashekhar, For R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

1. These two Appeals are directed against the common judgment passed by the Civil Judge (Sr. Dn.), Hubli in LAC No. 102 and 103/86 dated 31/8/2002 filed by the beneficiary -appellant questioning the quantum of the market value determined at Rs. 5000/- per guntas for the acquired lands with other statutory benefits contending that the same is on the higher side, prayed to set aside the same and to award just compensation.

2. Brief facts are stated for the purpose of appreciating the rival legal contentions urged in these appeals, The KIADB, the third respondent hereinafter called the Board, got the land of the respondents acquired 8 acres 6 guntas in Sy. No. 55 of claimant in LAC No. 102/86 and 2 acres 18 guntas in Sy. No. 53, 9 acres 28 guntas in Sy. No. 54 and 5 acres 27 guntas in Sy. No. 61, totally 17 acres 33 guntas of Krishnapur village of the claimant in LAC No. 103/86 by publishing

notification in the Karnataka Gazette u/s 29(1) of the Karnataka Industrial Area Development Board Act of 1966 (hereinafter called as "KIADB" Act in short). That was followed by the notification dated 28/04/1983 u/s 29(2) of the KIADB published on 28/4/1983. Possession of the lands were taken on 13/6/1983 by the KIADB, Thereafter award is passed by the second respondent Special LAO awarding Rs. 15,000/-per acre treating the lands in question as agricultural lands and Rs. 40 per guntas for phot kharab land. The award passed by the Special LAO was not acceptable to the claimants and therefore they got their claim made to the Reference Court namely, the Civil Judge (SD), Hubli for enhancement of compensation by re-determining the market value of the acquired lands and the same were registered in LAC No. 102/86 and LAC No. 103/86. Statement of objections were filed by the appellant herein. Enquiry u/s 21 of the Land Acquisition (Mysore Extension and Amendment) Act of 1961 (hereinafter called as L.A Act) was held by the reference Court. On behalf of the claimants, 5 witnesses were examined as PW-1 to FW-5 and the documents produced were marked Exs. P1 to P43 in justification of their claim. On behalf of the beneficiary appellant, the Spl. L.A.O and two other witnesses were examined as RWs-1 to 3 and Exs. R1 to R7 documents were marked. On the basis of pleadings the Reference Court formulated points for consideration and upon appreciation of material evidence brought on record, passed the judgment and awards awarding Rs. 2700/- per guntas. The aforesaid judgment and awards were challenged by the KIADB before this Court at an earlier occasion in Writ Petition Nos. 23208-209/1996 D.D. 06/12/1996. This Court after hearing the said Writ Petitions has set aside the judgment and Awards and remitted the matter to the Reference Court with a direction to re-determine the market value and to award just and fair compensation in respect of the acquired lands. The appellant herein was impleaded as a party in the proceedings as Respondent No. 3. Accordingly, the present judgment and awards are passed by relying upon five documents namely Ex.P9, P37, P38, P39 and P40.

3 (i). In respect of 34 guntas of land in Sy.No.53 and 3 acres 30 guntas in Sy. No. 67 of Ayodhya village which were acquired for the purpose of formation of house sites, the L.A.O fixed Rs. 203/- per guntas, The State Government had recommended Rs,3800/- per guntas while Hubli Dharwar Municipal Corporation recommended Rs. 6000/- per guntas and the reference court has determined at Rs. 4000/ - per guntas.

(ii)Under Exs.P37 & P38 the acquisition notification was dated 16/9/1979. 7 acres of non-agricultural land in City Survey No. 4807 by Hubli Dharwar Corporation of J Koppa village was acquired and the Reference Court has determined the market value at Rs. 6534/- per guntas. On appeal, the High Court enhanced it to Rs. 10000/-per guntas.

(iii) Ex.P39, Ex.P40 are in respect of 8 acres 18 guntas of agricultural land of Gokul village which is situated within the Hubli Corporation limits, acquired under Notification dated 27/9/1984, The Reference Court has determined the market

value at Rs. 6500/- per guntas. The same has been reduced to Rs. 5,600/- per guntas in the Miscellaneous First Appeal by this Court.

4. It is the contention of the claimants that the aforementioned exhibits are previous judgments, therefore, as pleaded by them in the instant case, the Reference Court has rightly accepted escalation of market price at 7% per year and determined the market value at Rs. 5000/- per guntas.

5. It is contended by the learned Sr. Counsel Mr. A.G. Holla on behalf of the appellant that without considering the sale statistics relied upon by the appellant in both the Appeals, namely Ex.R3 dated 8/4/1982 pertaining to land of the same village in which the acquired lands are situated was sold for Rs. 11,000/- per acre. Ex.R4 is another sale deed dated 15/2/1980 under which an extent of 11 acres 25 guntas was sold to Urban Development Authority for Rs. 140,657.00 which works out to Rs. 12,100/- per acre. In another sale deed Ex.R5 dated 15/2/1980 in respect of 18 acres 23 guntas was sold for a sum of Rs. 2,24,750/- at the rate of Rs. 12,100/- per acre. The learned Sr. Counsel contended that the Reference Court has not placed reliance upon the sale statistics in respect of similar non agricultural lands on the basis of which the Special LAO determined the market value of the acquired lands at Rs. 15,000/- per acre in his awards. It is contended that the non-consideration of the aforesaid sale deeds and sales statistics referred to in the award Ex. R2 by the reference court at the time of determination of the market value of the acquired lands of the claimants has vitiated the impugned common judgment and awards and the findings are therefore erroneous in law and liable to be set aside. The learned Senior Counsel arguing on behalf of the appellant placed strong reliance upon the provisions of Section 50(1)(A) of the L.A. Act and also the decision of the Supreme Court in the case of P. Ramareddy etc. v. Land Acquisition Officer, Hyderabad JT 1995(1) SC 513 paragraph 21 in support of the contention that the reference Court could not have rejected the sale deeds produced by the appellant on the ground that persons associated with those documents were not examined by the Spl. L.A.O before the Reference Court. Non-consideration of the aforesaid documentary evidence on record in favour of the appellant has rendered the findings erroneous in law, The learned Sr. Counsel relied upon another decision of the Supreme Court reported in Karan Singh and others etc. Vs. Union of India, paragraphs 6 & 10 wherein it is held that in the absence of evidence regarding sale of land on the date of issue of notification u/s 4(1), the post-notification transactions of sale of land can be relied upon for determining the market value of the acquired lands, Ex.P9, P39 & P40 were relied upon by the reference court which are the previous judgments for determining the market value of the lands in question and previous judgments can be considered to determine the market value as held in AIR 1992 BC JT 371 (Pal Singh v. Union Territory Of Chandigarh). In support of the same proposition of law reliance is placed upon the decision reported in Kanwar Singh and Others Vs. Union of India, . Comparison of the lands involved in these two appeals with the lands involved in the previous judgments marked as Exs. P39 & P40 in the absence of any legal

evidence on record to hold that the acquired lands have the same potentiality of the lands covered in the aforesaid previous judgments, has rendered the findings erroneous in law. Therefore the finding recorded on the contentious point framed by the Reference Court holding that the compensation awarded by the Land Acquisition Officer is inadequate as the acquired lands are comparable to the lands covered in Ex. P9 & P40 is not proper. The learned Sr. Counsel has placed reliance upon another judgment of the Supreme Court reported in 1994(6) KLJ 428 (SC) Special Land Acquisition Officer, Belgaum v. Siddppa Omannu Tumari in support of his submission that initial burden is upon the claimants to prove by producing cogent evidence for determining the market value of the lands acquired, which is not discharged by them in these cases. Therefore, he has contended that the findings recorded in the impugned common judgment on the contentious issue in favour of the claimants are erroneous in law and the same are liable to be set aside. Further he has placed reliance upon the decision of the Supreme Court in Ranvir Singh and Another Vs. Union of India (UOI), regarding percentage of escalation to be taken into consideration on the basis of the aforementioned previous judgments and also in support of his contention that in respect of the xerox copy of the sale deeds marked as exhibits in the Land Acquisition Proceedings by the Spl. L.A.O, objection cannot be raised by the claimants for the first time before the reference Court contending that they are not proved. Therefore the finding with regard to the escalation charges taken at 8% by the Reference Court on the basis of previous judgments in respect of the lands covered in Exs.P9, P39 and P40 is not permissible in law and therefore the finding recorded by the reference court on the contentious point and re-determination of the market value is vitiated, hence the same is liable to be set aside in these Appeals.

6. The learned Senior Counsel also further contended that no proper points are framed by the reference court on the basis of the pleadings for its determination. The only point that is framed by the reference court is with regard to the adequacy or inadequacy of the market value fixed in the awards passed by the Special Land Acquisition Officer. Therefore, he has prayed for setting aside the common judgment and awards impugned in these appeals. He has further contended that the earlier common judgment and awards passed against the Karnataka Industrial Area Development Board, wherein the reference court has determined the market value at Rs. 2700/-per guntas in respect of the acquired lands were not challenged by the claimants as they have been satisfied with the compensation amount awarded. This aspect of the matter also may be taken into consideration by this Court to examine the correctness of the market value fixed in respect of the acquired lands by the reference court, After remand order passed by this Court in the earlier Writ Petitions referred to supra filed by the KIADB the re-determination of the market value by the reference court at Rs. 5000/- per guntas for the acquired lands would certainly affect the appellant and this aspect also may be taken into consideration by this Court to Award just compensation in respect of the acquired lands.

7. The learned Senior Counsel Sri C.B. Srinivasan for the claimants made his submissions justifying the findings and reasons recorded with regard to re-determination of the market value of the acquired lands by the reference court. The learned senior counsel submitted that the reference court has rightly appreciated the pleadings and documentary evidence on record upon Exs.P9, P39 and P40 and considered the law on the question and fixed the market value for the acquired lands. In the Outline Development Plan maintained by the Planning Authority of Hubli-Dharwar approved by the State Government in the year 1975 as per Ex.P8, Ayodhya and J Koppa are neighbouring villages. Ayodhya village is near the heart of Hubli City and J. Koppa is beyond the heart of the City. Therefore, the acquired lands are treated on par with the lands covered in Ex.P9 in which the lands covered belongs to Ayodhya village. The lands involved in Ex.P37 & P38 belong to J. Koppa and in Exs.P39 & 40 the lands involved belonged to Gokul village. In view of this, the reference court has properly taken the aforesaid previous judgments as the basis to determine the market value of the acquired lands and awarded just compensation holding that the lands covered in the said judgments are comparable to the lands covered in these appeals. The lands in question are designated for residential purpose u/s 69 of the K T & C P Act, 1961 which was approved by the State Government under the said Act. Therefore, as per Section 72 of the KT&CP Act the amended Section 23 to the Land Acquisition Act is applicable in respect of the lands acquired under the KIADB Act. Section 23 of L.A Act was amended by Act No. 14/1964. It was further substituted by Act No. 1/2005, The guidelines provided in this Section are different from the provisions of Section 23 of the LA Act, the acquired lands on par with the lands though at the time of issuing Section 29(1) Prl. Notification of the KIADB Act, the acquired lands were agricultural lands, in view of the amended Section 23 of the L.A Act as the lands in question were designated in the C.D.P in the year 1975 which was approved by the State Government, he had submitted that the lands acquired by the State Government had acquired non-agricultural potentiality and therefore comparison of the same on par with the lands covered in Exs.P9, P37, P38, P39 and P40 is perfectly legal and valid and the same is supported by the decision of the Privy Council reported in AIR 1939 98 (Privy Council) . In that Case the Privy Council, after interpretation of Section 23 & 24 of the Land Acquisition Act, at page 102 it has made certain observations regarding determination of market value of the acquired land with reference to Section 4(1) of the Land Acquisition Act, which principles are applicable to the case on hand as the same is in conformity with the decision of the Supreme Court The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, At paragraph 9, wherein the Apex Court has laid down three cardinal principles in the said case as guiding principles for the purpose of determination of market value of the lands acquired which relevant portion is extracted hereunder:

9.x x x x x (1) Opinion of experts, (2) the price paid within a reasonable time in bonafide transactions of purchase of the lands acquired or the lands adjacent to

the lands acquired and possessing similar advantages and (3) a number of years of purchase of the actual or immediately prospective profits of the lands acquired
x x x x x x

The said principles are again reiterated in another three Judge Bench judgment of the Apex Court reported in Smt. Tribeni Devi and Others Vs. Collector of Ranchi, at paragraph 4. The learned Counsel on behalf of the claimants contended that the determination of the market value at Rs. 15,000/- per acre by the Spl. L.A.O on the basis of sales statistics collected by him is in contravention of amended Section 23 of the Land Acquisition Act u/s 72 of the KT & CP Act and the decision referred to supra. Therefore, he submits that there is no merit on any one of the legal contentions urged in this appeal and hence he had prayed for dismissal of the appeals with costs.

8. After hearing the learned Counsel for the parties, we have to answer the following points that would arise in these appeals.

(a) Whether the reference Court is justified in comparing the acquired lands on par with the lands covered in Ex. P9, P39, and P40?

(b) Whether the findings and reasons recorded by the reference Court in the impugned common judgment holding that the award of compensation by the Special LAO is inadequate is based on proper appreciation of legal evidence?

(c) Whether the reference Court is justified in not accepting the documentary evidence Ex.R2 to R5, the sale deeds produced by the appellant herein?

9. After careful consideration of the rival legal contentions urged on behalf of the parties, perusal of the common judgment with reference to the reliance placed upon the decisions referred to supra by both the learned Sr. Counsel 011 behalf of the parties, we have answered the said points against the appellant for the following reasons.

10. Undisputedly the acquired lands covered in these appeals were designated in the CDP for industrial purpose. The same is evident from the acquisition proceedings initiated by the State Government at the instance of the KIADB in exercise of its power u/s 29(1) of KIADB Act The lands were included in the "industrial area" in the notification published by the State Government u/s 3 of the Act Therefore, provisions of Section 69 and 72 of KTCP Act are attracted to the case on hand.

11. u/s 72 if the land is acquired for the purpose of developmental plan, the matters required to be considered for determination of the market value under the amended Section 23 of the Land Acquisition are entirely different from that of Section 23 of 1894. In this background, the reference Court has compared the said lands on par with the lands covered in Ex.P9. which pertains to the land of Ayodhya village. According to C D P, the said village is beyond Krishnapur. The land covered in ExP37 & P38 belong to J. Koppa which is also beyond Krishnapur village from the heart of the City. Gokul is stall away beyond Krishnapur from the

heart of Hubli City. The tends covered in Ex.P39, P40 belong to Gokul. Therefore the reference court has correctly and properly taken the same as the basis to determine the market value of the acquired land to award compensation in these cases, the acquisition of land in respect of Ex.P9 is dated 29/12/1977, No doubt resolution was passed by consent by the Corporation for Rs. 6000/- per guntas as the market value, State Government has approved the said resolution. The State Government on appreciation of the aforesaid evidence in the said case fixed Rs. 4000/- per guntas for the acquired land covered in that judgment. So also Ex. P37, P38 of J Koppa village, acquisition of land was of 16.9.1979, the reference Court has determined the market value of those lands at Rs. 6535/- per guntas. This Court at the instance of the claimants in those cases has enhanced it to Rs. 10,000/- per guntas. So also Ex. P39, P40 dated 27/9/1984 no doubt the acquisition proceedings are subsequent to Section 29(1) notification of the KIADB Act in respect of the lands involved in these appeals. The same have been rightly accepted by the reference Court treating that the said lands and the acquired lands are comparable lands. In Ex.P9 the land was acquired for house sites. The lands covered in Ex. P37 to P40 were acquired for the purpose of construction of workshop for KSRTC, Hubli that is again for industrial purpose. The said findings of the learned judge of the reference court in comparing the lands acquired with the aforesaid documentary evidence upon which strong reliance was placed by the claimants was rightly accepted by the teamed Judge of the reference Court and the same is perfectly legal and valid. The Privy Council in the case of Gajapatiraju referred to supra at page 102 has made an observation, which relevant portion is extracted hereunder:

No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain however that the land must not be valued as though it had already been built upon, a proposition that is embodied in Section 24(5) of the Act and is sometimes expressed by saying that it is the possibilities of the land and not its realized possibilities that must be taken into consideration.

The aforesaid legal principle has been followed by the Supreme Court in the case of at paragraph 9 the three guiding principles are laid down in this case after interpreting the provision of Section 4 & 23 of the Act which principle has been reiterated by the Supreme Court in the case AIR 1979 SC 1417 at paragraph 4. The relevant portion from Adhinarayana Shetty's case at para 9 reads as under:

9. The methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification u/s 4(1) which are: (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase

of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years" purchase of the actual or immediately prospective profits of the lands acquired.

The said principles are in conformity with Section 69 read with Section 72 of KT & CP Act and amended Section 23 of Land Acquisition Act. Further reliance placed upon the decision of Supreme Court The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, , wherein at para 6 it is held as under which relevant portion is extracted hereunder:

6... Further when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions....

Rightly the submission is made by the learned Counsel on behalf of the claimants/respondents with reference to the sate deeds Ex. R4 & R5 upon which the learned Sr. Counsel on behalf of the appellant has placed reliance contending that there is an exception to the rule that the market value of the acquired lands to be determined on the basis of willing seller selling to the willing buyer. With reference to the above documents he further submits that the recitals and reasons mentioned in those documents have to be seen to find out whether the unwilling seller has sold the land in favour of the willing buyer-Hubli Dharwar Municipal Corporation. In this regard, a submission is made by the learned Counsel for the claimants by placing reliance on the recitals and reasons assigned in the sate deeds, which disclose that the vendors in those sale deeds were not willing to sell the land in favour of Hubli Dharwar Municipal Corporation for the price mentioned therein. In view of the observations and the law laid down by the Privy Council and the Apex Court in the cases referred to supra and having regard to the undisputed fact that the lands covered in those previous judgments are beyond the lands of Krishnapur and Ayodhya villages and those lands acquired for the purpose of house sites and industrial purpose and the lands covered in these cases are designated lands u/s 69 in the CDP for residential purpose, contrary to the same the State Government has issued notification and included the lands in the industrial area to form an industrial estate by the KIADB which is not permissible in law. The industrial estate was formed by the KIADB for the purpose of developmental purpose as envisaged u/s 72 of the KT & CP Act and the same has been allotted in favour of the appellant. The appellant has already established its industry and is manufacturing mosaic tiles. Therefore, the acquired lands had non-agricultural potentiality and the lands covered in Ex.P9, P37, P39 and P40 were also agricultural lands and the time of acquisition. The reason given by the learned Judge at paragraph 20 of the common judgment for comparing those lands with the lands covered in the cases are perfectly legal and valid and in conformity with the law laid down in the cases referred to supra by the Privy Council and Apex Court in this regard. In this

view of the matter, the various decisions upon which reliance placed by the learned Senior Counsel on behalf of the appellant on various aspects adverted to in the earlier paragraph of this judgment are not applicable to the facts situation and they cannot be accepted by us as they are wholly untenable in law. The reliance placed upon the decision of the Privy Council and Supreme Court by the learned Counsel on behalf of the claimants is well founded and the same must be accepted. The contention that Ex.P9, Ex.P39 & P40 are the previous judgments and they could not have been relied upon by the reference court, also cannot be accepted by this Court as the contention is not only misconceived but also wholly untenable in law.

12. Though only one issue is framed, the parties have understood the case, adduced evidence in support of their respective claim and counter claim. The learned Judge has applied his mind consciously to the pleadings and evidence on record and determined the market value by taking 7% of the escalation charges from the market value fixed in respect of the lands covered in the previous judgments referred to supra for the reasons recorded at paragraph 21 by the learned judge of the reference court and rightly not placed reliance upon the sales statistics collected by the LAO Ex.R2 or the sale deeds produced by the appellant before the reference Court. The contention urged by the Sr. Counsel on behalf of the appellant placing reliance upon the recitals in Exs. R4 & R5 is not legal and valid as there is no basis to term them as bonafide sales in respect of the lands covered in the documents, namely lands covered in the aforesaid sale deeds were not sold in the open market, as there was no advertisement and sufficient publicity was not given for the sale, enquiries were also not made, whether the experts of land values were consulted in this regard, the sale transaction was done with due care and caution of either side taken is also not forthcoming either in the above documents or evidence is adduced in this regard by the Spl. L.A.O or beneficiary the appellant Therefore, the reference court not placing reliance upon those documents for re-determination of the market value of the acquired lands is justified for the reasons recorded in the impugned judgment the learned reference judge has preferred to accept the previous judgments Ex.P9, P37 & P40 rather than the sale deeds Exs.R2-R5 upon which strong reliance was placed by the appellant for re-determination of the market value of the acquired lands. The same cannot be found fault with by us, Therefore, the findings and reasons recorded on the contentious point by the learned Judge cannot be termed as erroneous or error in law. The learned Judge after remand of the case by this Court on the appeal of the KIADB has taken each one of the aspect of the case, scrutinized the legal evidence on record, applied his mind carefully and recorded a finding of fact assigning valid and cogent reasons for determination of market value of the land in question. The same is in conformity with the provisions of the amended Sections 23 of the Act and also the previous judgments referred to supra. The determination of market value of the land in question is in accordance with law and therefore, we do not find any good reason whatsoever to interfere with the impugned common

judgment and award.

13. Appeals are devoid of merit and are dismissed with costs.