

(2014) 10 KAR CK 0214

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3018 of 2012 (LAC)

N. Rajendrappa

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 23, 4(1), 6(1)

Citation : (2014) 10 KAR CK 0214

Hon'ble Judges : Ravi V. Malimath, J; K.L. Manjunath, J

Bench : Division Bench

Advocate : A. Hanumanthappa, Advocate for the Appellant; Vasanth V. Fernandes, AGA, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—Heard the counsel for the appellants and Government Advocate for the respondents.

2. The appellants being not satisfied with the determination of the market value by the Reference Court, i.e., Principal Senior Civil Judge, Davangere, in LAC No. 124/2003 dated 01.10.2011, the present appeal is filed for enhancement of compensation.

3. The undisputed facts in this appeal are as hereunder:

The claimants are the owners of 6 acres 16 guntas of land situated in Sy. No. 81/1BC of Donnehalli Village, Jagalur Taluk, which land was notified under Section 4(1) of the Land Acquisition Act dated 22.03.2001 for the purpose of construction of a VVIP Guesthouse abutting National Highway 13 between Hospet and Chitradurga. The preliminary notification was published on 22.03.2001 and final notification under Section 6(1) of the Act was published on 20.04.2002 and a draft award came to be passed by the Special Land Acquisition Officer for National Highways on 24.02.2003, notice under Section 12(2) of the Act was issued on 08.05.2003, possession was taken on 12.06.2003. The Land Acquisition Officer determined the market value of the land at Rs. 21,000/-per

acre.

4. Being not satisfied with the award, reference under Section 18 of the Land Acquisition Act, was sought on 06.08.2003. Accordingly reference was sent under Section 18 of the Act to the Reference Court to determine the market value. Before the Reference Court, the first claimant was examined as P.W. 1. He relied upon Exs. P-1 to P-10. On behalf of the respondents, no witnesses were examined. However, certified copy of the General Award was marked as Ex. R-1.

5. The Trial Court after examining the evidence let in by the parties, came to the conclusion that the claimants are entitled for compensation at the rate of Rs. 62,000/-per acre along with solatium and other benefits as contemplated under Section 23 of the Land Acquisition Act. Being not satisfied with the Judgment and Award dated 01.10.2011, the present appeal is filed.

6. Sri. A. Hanumanthappa, learned counsel for the appellants strongly contends that the Reference Court did not consider that the land in question was very fertile land, wherein the appellants were raising two crops per year. According to him, the appellants were growing cotton, sunflower and groundnut. It is also his case that the Trial Court has committed an error in holding that the claimants were growing in a year either sunflower or groundnut. He further contends that the Trial Court did not consider Ex. P-19, wherein the Reference Court for an earlier notification of 1996 has determined the market value at the rate of Rs. 80,000/-per acre and the land concerning Ex. P-19 and the present land are having some potentiality of growing cotton, sunflower and groundnut. According to him, the Trial Court did not consider the RTC extract of the land in question, wherein it is clearly stated that the claimants were also growing cotton and that their land had a well and a pump set was installed in the year 1972 itself.

7. He further contends that on account of formation of National Highway between Solapur and Chitradurga (National Highway 13), the value of the land on both sides of the National Highway has been increased by many fold and that the Reference Court was also required to look into the development and commercial activities, which have taken place after the formation of National Highway. He lastly contends that the land in question was notified for construction of a VVIP Guesthouse abutting the National Highway, which only discloses the potentiality of the land in question. In the circumstance, he requests the Court to allow the appeal and modify the Judgment and Award of the Reference Court.

8. Per contra, learned Government Advocate submits that the Trial Court has examined all the relevant materials placed before it and also consider that the land covered under Ex. P-19 is altogether a different land and that the cotton was growing in the said land. The Reference Court has rightly refused to follow the Judgment in Ex. P-19. According to him, Jagalur Taluk is considered as a drought Taluk by the State Government every year and that the determination of market value by the Reference Court is just and proper and does not call for interference.

9. Having heard the learned counsel for the parties, the only point to be considered by this Court is:

Whether the determination of the market value by the Reference Court is just and proper or does it require any enhancement?

10. The location of the land in question is not in dispute. The land is abutting the National Highway 13. The purpose of acquiring the land is also not in dispute because of its potentiality, the respondents intends to construct the WIP Guesthouse between Chitradurga and Hospet, both places are historically important places in the State of Karnataka. Frequency of visitors on the road is also increased on account of construction of National Highway. The construction of National Highway prior to acquisition is also is not in dispute. After the formation of National Highway, several commercial activities have come up between Chitradurga and Hospet.

11. In this background, we have to examine what is the market value of the land in question and whether the Trial Court has examined all the materials placed before it while determining the market value of the land in question and reasoning for not considering the Judgment rendered by the same Court under Ex. P-19, which was notified five years prior to the notification in the present case, wherein the market value has been determined by the very same Court at the rate of Rs. 80,000/-peracre.

12. Ex. P-2 is the sketch depicting the various developments taken place on both sides of National Highway in and around the acquired land. After formation of National Highway, several petrol bunks are established on both sides of the road. An ITI College is also situated adjoining the notified land. The land in question is situated at the intersection of National Highway 13, which leads from Chitradurga to Bellary and Challakere to Jagalur, Davangere, which is within 1/2 a furlong from the new National Highway and State Highway. Therefore, it cannot be ruled out that by passage of time, after formation of National Highway, the value of the land on both sides of National Highway is considerably increased and cannot be equated as mere agricultural land.

13. Ex. P-10 is the RTC extract in respect of the very same land. On perusal of Ex. P-10, prior to acquisition, they were growing cotton in addition to groundnut and sunflower. On perusal of the Judgment of the Reference Court, the Reference Court has not looked into the different crops grown by the claimants in different years.

14. Ex. P-19 is the award passed by the very same Reference Court in L.A.C. Nos. 18 to 21/1999 dated 15.04.2010. The lands situated in Alur Village were notified for acquisition for the construction of Alur Taluk and the lands acquired therein were also dry land and the preliminary notification is dated 19.09.1996, in other words five years prior to the notification in the present case.

15. On perusal of Ex. P-19, it is clear that the Reference Court has determined

the market value of the lands therein for the land acquired in the year 1996 at the rate of Rs. 80,000/-per acre only on the ground that the RTC reveals cultivation of cotton. But, in the instant case, the Trial Court has not considered the cotton grown by the claimants as per Ex. P-10. Therefore, we are of the view that the Reference Court has committed an error in not considering all the relevant materials placed before it by the claimants.

16. As stated supra, the land in question, though agriculture land, is capable of converting it into commercial activities, since the lands are abutting the National Highway.

17. When the Reference Court, for a similarly situated land, has determined the market value at the rate of Rs. 80,000/-per acre in respect of a notification issued five years prior to the land acquired in the present case, we are of the view that the Reference Court has committed an error in considering Ex. P-19 and we are also of the view that in addition to the market value determined at the rate of Rs. 80,000/-per acre vide Ex. P-19, claimants are also entitled for escalation at the rate of 5% per annum. If we consider the escalation at the rate of 5% per annum, the market value of the land in question has to be determined at the rate of Rs. 1,00,000/-per acre.

18. In the result, the appeal is partly allowed The Judgment and Award passed by the Principal Senior Civil Judge, Davangere, in LAC No. 124/2003 dated 01.10.2011 is hereby modified. The market value of the land in question is determined at Rs. 1,00,000/-per acre and the claimants are also entitled to for all other statutory benefits including the solatium. The appellants are entitled for cost of this appeal.