

(2003) 10 KAR CK 0001

In the Karnataka High Court

Case No : M.F.A. No"s. 3815, 3816, 3817 and 3818/01 and etc.

Paragouda Chanagouda and Others

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4 (1)

Citation : (2004) ILR (Kar) 1720 : (2004) 2 KCCR 121 SN

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : C.S. Kothavale, for the Appellant; M. Shivaprasad, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal, J.—These four appeals are disposed of by this common judgment. MFA 3815/01 relates to LAC 1/90; MFA 3816/01 relates to LAC 5/90; MFA 3817/01 relates to LAC 3/90 and MFA 3818/01 relates to LAC 2/90.

2. During the course of this order, the parties shall be referred to as per their rankings in the Trial Court.

3. Pursuant to the preliminary notification issued u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") dated 3.1.1985, several bits of the lands belonging to the claimants was acquired for the purpose of construction of bridge across Krishna river. In MFA 3815/01 an extent of 3 acres 5 guntas in R.S. No. 176/ 1 A & 176/1B; 0.5 guntas in R.S. No. 177/14 and 30 guntas in R.S. No. 177/2, totally measuring 4 acres; in MFA 3816/01 an extent of 1 acre 3 guntas in R.S. No. 177/7 and 5 guntas in R.S. No. 178/5, totally measuring 1 acre 8 guntas; in MFA 3817/01 an extent of 38 guntas in R.S. No. 177/5 and in MFA 3818/01 an extent of 1 acre 2 guntas in R.S. No. 177/3+4 were acquired under the aforesaid preliminary notification. All the lands are situate in Halyal village. The Land Acquisition Officer (LAO) relying on the sale statistics awarded a sum of

Rs. 8100/- per acre. The claimants not satisfied with the compensation awarded by the LAO sought reference u/s 18 of the Act. In support of their claim, the claimants examined PW. I Malagouda who is the claimant in LAC 1/90 and they also marked as many as 68 documents from Exs P. 1 to P.68. The LAO who was the respondent in the proceedings in the reference court did not examine any one nor any documents were marked in support of their contention. The main contention before the reference court was that the LAO was not justified in taking the sale statistics for the period of three years immediately prior to the notification u/s 4(1) of the Act. It was further contended before the reference court that the LAO has not taken into consideration the nature of soil and fertility of the lands acquired. They contended that the sale statistics do not depict the correct consideration amount which was paid to party and necessarily the sale statistics were under valued. The main contention before the reference court was that the lands were acquired for the purpose of construction of a bridge across Krishna river. The lands in question are situate in Halyal village and these lands are irrigated and sugarcane crops are grown in these lands and they are Bagayat lands. In support of their contention, the claimants got marked record of rights in respect of their respective lands which were marked as Exs.P.25 to P.63, which, according to them, clearly show that the lands are irrigated lands by taking water from Krishna river. In the record of rights it is mentioned that sugarcane crops are grown in these lands. It was the contention of the claimants before the reference court that the area is surrounded by several sugarcane factories in Karnataka as well as in Maharashtra States (lands are situate on the border of Maharashtra and Karnataka). They also got marked Ex.P.65 the yield certificate given by the Asst. Director of Agriculture Athani and Ex.P.68 the price list. The reference court taking into consideration the material on record and the evidence adduced struck a balance between minimum and maximum and adopting capitalisation method as laid down in the decision of the Hon"ble Supreme Court reported in Union of India and Another Vs. Shanti Devi and Others, came to the conclusion that what is awardable to the claimants in respect of the lands acquired could be Rs. 54,500/ and accordingly passed the award with all additional and statutory benefits. As stated earlier, the claimants die-satisfied with the award passed by the reference court are before this Court seeking enhancement of compensation.

4. Ms. Veena Kothavale, learned Counsel appearing for the appellants, strenuously urged that the reference court has completely ignored the relevant material on record, in as much as, it has not taken into consideration the material on record both oral and documentary. She strenuously urged that the reference court was not justified in ignoring the price list nor the yield notification produced at Exs.P.65 and P.66 to show that the yield and the price at the relevant point of time. She further submitted that under the same preliminary notification the lands belonging to several other persons were acquired which were mainly situate in Darur village. She submitted that the lands of Darur village as well as the land situate in Halyal village are identical in nature and

grow same crop and there cannot be any disparity between the lands of Darur village and that of Halyal village. She submitted that the LAO while determining the market value in respect of the acquired lands both from Darur village and Halyal village had categorically recorded a finding that the lands of Halyal and Darur village are on the bank of river Krishna and these land are of black soil and of identical fertility. She reiterated her contention regarding the identical nature of the lands of Darur and Halyal village. She maintained that the land holders of Darur village had also sought for reference u/s 18 of the Act and the learned Civil Judge on Identical evidence had enhanced the compensation from Rs. 8100/- to Rs. 70,000/- per acre. She submitted that the State had taken a decision not to pursue the matter further and it has attained finality. The said judgment and award passed by the reference court and also the Govt. notification is produced by way of an application under Order 41 Rule 27 CPC as additional evidence. She has also made available the copy of award passed by the LAO. She further submitted that if the average yield of sugarcane is taken for all the relevant years, it would be 40 tons. In so far as the price of sugarcane at the relevant point of time is concerned, the claimants have produced Ex.P.23 and 24, the price list. Even if the yield is taken as 40 tons per acre and the price as maintained by the reference court is taken into consideration, she submitted, the least the claimants would be entitled to Rs. 73,000/-per acre and not Rs. 54,000/- as awarded by the Reference Court. In support of her contention she has relied upon the following judgments: Major Dhian Singh Vs. Union of India, ; Krapa Rangiah Vs. Special Deputy Collector, Land Acquisition, , Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, and SUNDER v. UNION OF INDIA AIR 2001 SC 5316.

5. The State has filed its objection to the application for additional evidence. In fitness of things, I find that these materials are necessary for the proper disposal of these appeals. In the circumstances, the application under Order 41 Rule 27 is allowed.

6. The learned Government Pleader submitted that the compensation awarded by the reference court is just and reasonable and does not call for interference as the same is based on material on record. He further submitted that notwithstanding the fact that the lands of both villages, namely, Darur and Halyal were acquired for the same purpose under the same notification; the lands of Darur village are not comparable in nature. He submitted that even though the LAO has made an observation in the award that the soil and the fertility of both the villages are identical and both the lands are on the bank of river Krishna, he submitted that they cannot be compared and the compensation awarded in respect of the lands in Darur village cannot be the basis for enhancing the compensation in the present appeals. He further submitted that until and unless the claimants are able to establish that the lands of Darur and Halyal are identical in nature the compensation awarded in respect of the lands of Darur village cannot be taken as a piece of evidence. He further submitted that the fact that the State has not challenged the judgment and award passed in respect of

the lands of Darur village and assuming that it has become final, that by itself will not be a piece of evidence for the claimants in these appeals to seek a uniform compensation in respect of their acquired lands. In support of his contention, the learned Govt.- Pleader relied upon the following judgment *Jai Prakash and others Vs. Union of India*, ; and *Kanwar Singh and Others Vs. Union of India*, .

7. After giving my anxious consideration to the rival contention on either side, the points for determination are:

1) Whether the Reference Court was justified in awarding Rs. 54,000/- per acre in respect of the acquired lands in the case on hand; whereas the market value of the adjoining lands having been determined at Rs. 70,000/- per acre?

2) Whether de hors of the material which is placed by way of additional evidence, the claimants are entitled to Rs. 70,000/- per acre in respect of their acquired lands?

8. The Reference Court has relied on two documents, namely, Ex.P.65 the yield certificate given by the Asst. Director of Agriculture Athani in respect of Halyal village wherein the yield of sugarcane for the relevant year was 40 ton per acre and Ex.P.68 the price list on which the reference court has relied and held Rs. 365/- per ton, There is no apparent reason why the reference court should ignore this material on record. Ultimately, if the yield of sugarcane is taken at 40 ton per acre and the price at Rs. 365 per ton, it would come to Rs. 14,600/-. If 50% is deducted towards cost of cultivation, the net amount would be Rs. 7300/- If proper multiplier of 10 is adopted, the total compensation awardable would come to Rs. 73,000/- per acre. There is no reason why the reference court should decline to take this material into account. If proper multiplier of 10 is adopted, the total compensation awardable would come to Rs. 73,000/- per acre. The reference court merely states that the sugarcane crop being 11 months crop, for every succeeding year the yield would come down and every succeeding year the yield would be moderate. However, there is no conclusive evidence for this analogy. As has been noticed, the LAO has neither stepped into the witness box nor they have marked any documents in this regard to show that every succeeding year the yield of the sugarcane would become less. In the circumstances, it is to be noted the compensation which is awarded in respect of the acquired lands to the claimants in these appeals is liable to be interfered with. Even otherwise it is noticed that while passing the award, the LAO has recorded a finding that the lands situate at Darur and Halyal villages are identical and are of the same fertility and the nature of the soil is also same. In view of this, it cannot be said that the lands are not identical. The learned Govt. Pleader drew my attention to a judgment of the Hon''ble Supreme Court reported in *Jai Prakash and others Vs. Union of India*, to submit that merely because in some neighboring village the valuation has been made at higher rate, it cannot be said that the appellants must be given same rate of compensation. The said finding was recorded by the Hon''ble Supreme Court on the basis of the material therein

where the Land acquired at Chaukhandi was situate in two well developed colonies where buildings had come up. Therefore, having regard to the proximity of the surrounding colonies, the compensation was determined. But however there was no evidence in respect of the other neighboring village that it was also situated very close of the lands in Chaukhandi. In these circumstances, the Hon''ble Supreme Court observed that the determination of the market value in respect of other village which was not similarly situated cannot be the basis for determining the compensation. Another judgment of the Hon''ble Supreme Court on which reliance is placed i.e. Kanwar Singh and Others Vs. Union of India, ; there also it was found that the potentiality of the adjoining village was different. In the present case, it is to be noted, even according to the LAO, the lands of Darur and Halyal villages; both are identical and are of the same fertility and lands of both the villages are irrigated lands by drawing water from the same river,

9. The appellants have also filed an application under Order 41 Rule 27 for production of certain additional documents, which, according them are necessary for the disposal of the above appeals. The first document on which the counsel for the appellant wants to rely is a judgment in a batch of matters i.e., LAC 20/90 and connected matters, disposed of 27.3.1999. In the said reference cases the lands were acquired under the present notification and for the same purpose. The Reference Court on consideration of Identical and similar material has determined the market value of the acquired land at Rs. 70,000/-per acre. Those reference cases relate to Darur village. A finding is also recorded by the reference Court that the lands are irrigated by taking water from Krishna river. He has also relied on Ex. P.18 the yield notification of Chikodi taluk wherein it is stated that the principal crop is sugarcane. Another document which is sought to be relied on by the appellant is a judgment in LAC .56/93 disposed of on 13.4.1999. In this case also the land was acquired under the same notification for identical purpose and the lands were growing sugarcane and the water was being drawn from Krishna river. In all these cases the Government has taken a decision not to prefer an appeal and have accepted the award. The said Govt. notification is also produced by way of additional evidence. In this view of the matter, there is no apparent reason as to why the claimants in these appeals should be denied their legitimate compensation which is determined at Rs. 70,000/- per acre. The said determination of the market value is independent of these documents. It is necessary to note that both the lands at Darur village as well as Halyal village are undoubtedly adjacent which is also the subject matter of the latter proceeding. I do not think that any distinction can be made with respect to LAC 20/90 and LAC 56/93 and the present LAC Nos. 1/90, 5/90, 3/90, & 2/90, which are before me. What is sauce for the goose is the sauce for the gander. The Hon''ble Supreme Court in the decision reported in 2002(6) Supreme 11 (Mahadev v. The Asst. Commissioner/ Land Acquisition officer) has observed as follows:

"Having heard the counsel for the parties and perused the records, we do not

think the High Court was Justified in interfering with the award of the reference court. The High Court ought to have seen that the acquiring authority viz; the Government has accepted the award in regard to similar lands, all of which were sought to be acquired under the same notification. The High Court has not come to the conclusion that the lands of the appellant are in any way inferior to the lands of those owners in whose favour the reference Court award has become final. In such a situation, we find it difficult to agree with the view taken by the High Court mainly because of the fact that the acquiring authority itself has accepted the award to the reference Court. The appeal before the High Court was not based on any question of law applicable to the peculiar facts of the appeal before it. It was also an appeal on facts on the basis of which the learned District Judge confirmed the award. If the very same evidence was acceptable to the acquiring authority in regard to six other owners, we fail to understand why it should not be acceptable to the acquiring authority, in regard to the appeal before us. At the cost of repetition, it may be stated that it is not the case of the acquiring authority that the land of the appellant is, in any way, inferior to that of the other lands acquired under the same notification."

The Hon"ble Supreme court in the case reported in *Krapa Rangiah Vs. Special Deputy Collector, Land Acquisition*, has observed as follows:

"The area being comparable, the situation also being the same and all the plots having been acquired under the self-same notification for Housing Scheme it seems to us proper that the same rate of compensation should be awarded to the claimant herein as was awarded by the High Court in Appeal No. 50 of 1976."

In another decision reported in *Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another*, , wherein the Supreme Court has observed as follows:

"So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex. 16 and the present land even if they are 5 kms., apart would not be relevant the relevancy could be, their distance from the viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms., away from it, while the land under Ex. 16 is about two kilometers away from it this difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ex. 16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq. mtr. cannot be sustained."

10. It is seen that the State has not adduced any evidence either oral or documentary to show that the lands in Darur village and that of Halyal village are

not identical. In fact the LAO himself has very clearly stated in the award that both are identical in nature. The observations of the LAO in the award reads as follows:

"I have inspected the suit lands on 3.11.1988 the road has already been formed. Both the Sy. Nos of Halyal and Darur are on the bank of the Krishna river. All these lands containing black soil, and of the same fertility. R.Sy. No. 117/1, 178/2, 178/4, 495/1A, 495/(IB)2, are shown as Pad in the award statement in these Sy. Nos. the road has already been formed. In case road has not been formed these Sy. Nos. of Halyal and Darur are just adjacent to each other and these lands are capable of growing crops like sugarcane, tobacco, wheat, chilli, Bazra, jowar etc., in considering all these facts it is just and reasonable to fix up the market value of the suit lands at Rs. 8100-00 per acre as reasonable and I award the compensation accordingly."

In view of the observation and the finding recorded by the LAO, it is not open to the State now to contend that the lands are not identical or similar in nature. This is another reason why the market value of* the acquired land in the present proceeding will have to be determined at Rs. 70,000/- per acre. As the lands of both the villages are identical, even on capitalisation method the compensation which is awardable in these appeals will have to be determined at Rs. 73,000/- per acre. But however it is seen that the claimants have restricted their claim in these appeals at Rs. 70,000/- per acre.

11. In the circumstances, these appeals are allowed and the compensation is enhanced from Rs. 54,000/- to Rs. 70,000/- per acre. The enhanced compensation shall carry all statutory benefits. The claimants are entitled for solatium as well as interest as contemplated u/s 23 of the Act. The appellants are entitled to proportionate costs.