(2004) 12 KAR CK 0015

In the Karnataka High Court

Case No : M.F.A. No''s. 3168 and 3169/99

Rahiman Sab and Others — APPELLANT

Vs

The Land Acquisition Officer, Assistant Commissioner and Another — RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:
Land Acquisition Act, 1894 — Section 4 (1), 54 (1)

Citation : (2005) ILR (Kar) 854 : (2005) 2 KarLJ 142 : (2005) 1 KCCR 394

Hon'ble Judges : K. Ramanna, J;A.M. Farooq, J

Bench : Division Bench

Advocate : I.G. Gachchinamath, for the Appellant; Ashok Kumar, HCGP, for the Respondent

Judgement

K. Ramanna, J.—Both these appeals are filed by the appellants-claimants u/s 54(1) of the Land Acquisition Act against a common judgment and award dated 18.12.1998 passed by the Addl.Civil Judge (Sr.Dn.), Raichur, in L.A.C.Nos.38 and 39 of 1991, respectively, whereby the reference Court enhanced the market value of the lands from Rs. 3,600/- to Ps.53,800/- per acre with consequential benefits like solatium at 30% on the market value and interest on the enhanced compensation at 9% for the period of one year from the date of taking possession i.e., 22.3.1978 and 15% thereafter till the date of payment. Apart from that reference Court awarded 12% additional value per annum on the market value of the land from the date of possession to the date of the award.

2. Assailing the common judgment and award passed by the reference Court , the appellants-claimants herein have come up with the above appeals mainly on the ground that the reference Court has not properly considered the pleadings and the documentary evidence in determining the correct market value of the land. The conclusion arrived at by the reference Court is not proper. The appellants have specifically pleaded that they are entitled for escalation at rate of 10% but the reference Court has taken the escalation charges only at the rate of

5% which is not correct. As on the date of acquisition of the land the market value of the land was more than Rs.l lakh per acre therefore the market value determined by the reference Court at the rate of Rs. 53,800/- is too low and the same calls for interference incorrect and illegal. Hence these appeals.

3. Heard the learned Counsel for the appellants and the learned Govt. Advocate for the respondents and perused the records.

4. It is an undisputed fact that the appellants in M.F.A.3169/99 are the owners of the land in survey No. 403/A measuring 10 acres guntas of land and the appellants in M.F.A.3168/99 are the owners of the lands in survey No. 403/A measuring 1 acre 20 guntas of Sirwar village, Manvi taluk, Raichur District. The said lands were acquired by the Land Acquisition Officer under preliminary notification dated 14.4.1989 for the purpose of Murrum quarry. After holding enquiry the Land Acquisition Officer determined the market value of the said lands at the rate of Rs. 3,600/- per acre by an award dated 19.11.1990. The appellants not being satisfied with the market value determined by the Land Acquisition Officer filed a protest petition before the Land Acquisition Officer. In pursuance of the protest petitions filed u/s 18(1) of the Land Acquisition Act the Land Acquisition Officer has referred the matters to the Civil Court for determination of the proper market value. On receipt of the reference from the Land Acquisition Officer the Addl.Civil Judge (Sr.Dn.), Raichur, registered the cases as L.A.C.Nos.39/91 and 38/91, respectively, and secured the presence of both parties. The respondent-State did not choose to file any objections. After recording the evidence and considering the materials placed on record the Reference Court determined the market value at the rate of Rs. 53,800/-. The appellants not being satisfied with the market value determined by the Reference Court have come up with these appeals.

5. It is contended by the learned Counsel for the appellants in both the appeals that the lands in question are situated very close to Raichur-Lingasugur main road, and at a distance of half kilometre from Sirwar bus stand and very close to I.B. and petrol bunk. To that effect the appellants have placed sufficient evidence through the witnesses. Further it was submitted that the lands have non-agricultural potentiality and the lands can easily fetch Rs.l lakh per acre if it was sold to any public. To corroborate this fact the appellants have produced sale deeds Exs.Pl and P2 to show that a plot of 30'' x 40'' of survey No. sold to P.W.2 by one Basavaraj Patil at the rate of Rs. 6,500/- but it was registered for Rs. 4,500/ to save the stamp duty, this fact has been totally ignored by the Reference Court. Further, it is submitted that the Reference Court, without properly appreciating non-agricultural potentiality of the land, has determined the market value at Rs. 2.50 ps. per sq.ft. Further it is contended that the Reference Court has committed an error in taking the escalation charges at 5% instead of 10% and thereafter deducted 53% towards formation of layout and developmental charges, which is highly incorrect and illegal. Lastly it was submitted by the learned Counsel for the appellants that the respondents have

neither produced any documents nor examined any witness to show that the market value determined by the Reference Court is not more than Rs. 53,800/-, therefore, in view of these facts and circumstances the order passed by the Addl.Civil Judge, Raichur, warrants interference by this Court for enhancement of market value.

6. On the other hand the learned High Court Govt.Pleader for the respondent-State submitted that in fact the Reference Court determined the market value of the land at the rate more than what is fixed by the Land Acquisition Officer and lands in question are far away from the village Sirwar. Further it is submitted by the Govt. Advocate that the Reference Court ought not to have awarded interest on the enhanced compensation from the date of taking possession of the land. It is contended that it ought to have awarded interest from the date of the award. Therefore, interest awarded by the Reference Court is to be from the date of award. Therefore to this extent order has to be set aside.

7. Having heard the arguments of both parties the question that arises for our consideration and determination is whether the market value determined by the Reference Court at the rate of Rs. 53,800/- is inadequate, if so, whether the appellants are entitled for enhancement of the market value?

8. We have carefully analyzed the evidence placed on record by both parties. No doubt the appellants are the owners of the lands and the possession of the lands were taken much prior to the passing of the award dated 19.11.1990 and the copy of the award was served on the appellants on 3.2.1991. The lands in question were acquired for the purpose of Murrum quarry for strengthening the work of Tungabhadra left bank canal. It clearly indicates that the lands in question abutting to Tungabhadra left bank canal are agricultural lands. As per the evidence and the materials placed on record these lands are very close to Raichur- Lingasugur main road, they are very near to bus stand, bank, I.B., Petrol Bunk etc. The Land Acquisition Officer determined the market value of the land by adopting the method known to law. Whereas, the Reference Court applied the sales statistics method to determine the market value. In survey No. 2, which is nearby to the lands in the question, a plot of 30'' x 40'' was purchased by P.W.2 from one Basaraj Patil at the rate of Rs. 6500/- but for the purpose registration it was registered at the rate of Rs. 4,500/-. If it is calculated at this rate the rate per square feet of land works out to Rs. 3.75 ps. But the Reference Court has calculated at rate of Rs. 2.50 Ps per square, which appears to be not proper. The Reference Court has committed an error in not taking into consideration that the lands in question are very close to Raichur- Lingasugur main road and other public places like bus stand, I.B., petrol bunk, hospital, KEB office, etc. while determining the market value of the land.

9. Taking into consideration all these facts and the attending circumstances we deem it just and proper to enhance the market value of the lands in question. Accordingly we fix the market value of the acquired lands at Rs. 3.50 Ps. per square feet, which come to Rs. 1,52,460/- per acre. If we add 5% escalation

charges of Rs. 7,623/- for one year, it would come to Rs. 1,60,083/-. We have to deduct developmental charges at 53% on Rs. 1,60,083, which would be Rs. 84,844/-. Therefore, the market value of the land would be Rs. 1,60,083 - 84,844 = Rs. 75,239, rounded off to Rs. 75,240/-.

10. With regard to interest, the Hon''ble Supreme Court in the case of R.L. Jain (D) by Lrs. Vs. DDA and Others, ., has held that:

"In a case where the land owner is dispossessed prior to the issuance of preliminary Notification u/s 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary Notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

11. In the aforesaid cases the appellants are entitled to claim damages for the use of the property by the Collector from the date of taking possession i.e., 22.3.1978 till the publication of preliminary notification 24.8.1999. But the appellants are entitled to interest from the date of 4(1) Notification for the delayed payment of compensation at the rate prevailing in the bank rate of interest from the date of 4 (1) Notification till the date of deposit.

12. In the result, we allow the aforesaid appeals in part, the judgment and award passed by the Reference Court is modified and the compensation determined from Rs. 53,800/- p.a. is enhanced to Rs. 75,240/- p.a. and accordingly, the appellants are entitled to compensation at the rate of Rs. 75,240/- together with solatium at the rate of 30% on the market value from the date of Section 4(1) Notification i.e., 14.4.1989 and interest at the enhanced compensation at the prevailing bank rate of interest till the deposit being made. In view of the law laid down by the Apex Court referred to above and relied on by the learned Counsel for the appellants, the appellants are entitled to claim damages from the date of taking possession of lands till the date of making Section 4(1) Notification. The LAO or Collector is directed to determine the damage/rent suffered by the appellant/claimant on account of taking possession much earlier to Section 4(1) Notification. Therefore, the L.A.O. is directed to initiate enquiry to determine the damage caused to the claimant from the date of taking possession till the date of Section 4(1) Notification.