

(1975) 11 KAR CK 0003
In the Karnataka High Court
Case No : Misc. First Appeal No. 667 of 1974

Saraswathi Sundaram and Another

APPELLANT

Vs

The Assistant Commissioner and Land Acquisition Officer,
Bangalore

RESPONDENT

Date of Decision : 25-11-1975

Acts Referred:

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

Citation : AIR 1976 Kar 124 : (1976) ILR (Kar) 128 : (1976) 1 KarLJ 1

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.N.Venkatachalaiah, J

Bench : Division Bench

Advocate : T. Krishna Rao, for R.D. Kolekar, for the Appellant; N. Venkatachala, 2nd A.G.A., for the Respondent

Judgement

Govinda Bhat, C.J.—This appeal is by the claimants against the Award and Decree made in L. A. C. No. 12 of 1969 on the file of the Court of the Civil judge, Bangalore City.

2. Land of the extent of 65,509.37 sq. ft. in Survey Nos. 23 and 24 of Vyalikaval, VIII Main Road, Malleswaram, Bangalore City, was acquired for the Government Porcelain Factory, pursuant to the Preliminary Notification u/s 4(1) of the Land Acquisition Act, 1894, published in the Gazette dated 17-8-1961. The Declaration u/s 6 of the Act was published on 21-1964. The Award u/s 11 of the Act was made on 25-4-1968. The Land Acquisition Officer valued the land at Rupees 18,000/- an acre, which was not accepted by the claimants. On reference u/s 18 of the Act, the learned civil judge enhanced the compensation, valuing the land at Rupees 24,200/- an acre (Rs. 5/- a square yard). Before the Land Acquisition Officer, the claimants had claimed compensation at Rs. 50/-a square yard. In this appeal also they claim compensation at the same rate.

3. I. As. Nos. II and IV are for admitting additional evidence in the appeal. We have perused the records of the case and heard the learned counsel on both sides. The question for determination is as to what is the market value of the

land acquired. On the basis of the material on record, it is not possible for this Court to assess the market value.

4. The purpose of valuation is to predict an economic event, the price outcome of hypothetical sale of the subject, viz., and property, expressed in terms of all probabilities. The Court, for the purpose of valuation of the property referred to it, is involved in this fact-finding exercise. When the parties have failed to produce the necessary material to enable the Court to perform this function of fact-finding, the only course left is to remand the matter.

5. In the instant case, the Award of the Land Acquisition Officer is wholly arbitrary, as he has not taken into account the potential value of the land acquired, not with standing the fact that it is situated in the midst of an industrial area and was eminently suited for industrial purposes. Because the land was an unconverted agricultural land at the time of the acquisition proceedings, the Land Acquisition Officer has purported to value the land solely as an agricultural land without taking into consideration its potential value. His Award made u/s 11 refers to the fact that there were sales of similar lands although they related to small sites and were not sales of lands wholesale. In other words, there were sales of lands in retail but the particulars of the said transactions, viz., dates and sale price fetched, have not been mentioned in the Award. When the Award of the Land Acquisition Office fails to take into consideration the potential value of the land acquired and values the land, on the basis that it is agriculture land, such Award -k nothing but arbitrary. The burden, in such a case, is not shifted to the claimants to show that the Award of the Land Acquisition Officer is inadequate. It is for the Land Acquisition Officer to support his Award. Before the Court, the Land Acquisition Officer merely, examined himself, and he did not adduce any evidence of transactions of sale of similar lands. There is also another reason as to why the Award of the Land Acquisition Officer has to be regarded as arbitrary. At the time of the Section 4(1) Notification the land in question was owned by a Private Limited Company, which was the claimant in the first instance. The name of the Company is Messrs. Bangalore Chemical Manufacturing Company, (Private) limited. It had made a claim for compensation at Rs. 50/- a square yard. After the Section 6 Declaration, the said Company sold the land in favor of the present appellants.

6. It is in evidence that the claimants are closely related to the Managing Director of the said Company. One of them is "his daughter." The sale deed in favor of the appellants is Exhibit P-9, dated 1-7-1966, under which the land in question was conveyed for a consideration of Rs. 20,000/-. The Land Acquisition Officer relied on the fact that in the year 1966, the said Company had sold the very land for Rs. 20,000/- and, therefore, held that the award of compensation at Rupees 18,000/- acre is reasonable. What the Court has to consider is transactions of sale of similar lands at about the time of the preliminary Notification. The sale deed Exhibit P-9 came into existence about five years after the date of the Preliminary Notification. Secondly, since the transaction is

between close relatives, viz, between father and daughter, and therefore, it cannot be said to be a transaction reflecting the real market value. What we have to consider is, would The Company have sold the same land to a stranger for a consideration of Rs. 20,000/-.

7. It has to be noted that the land acquired has been valued by the Land Acquisition Officer at Rs. 18,000/- an acre. Although the Award of the Land Acquisition Officer states that the extent of the land is 1 acre 5 guntas, there was dispute regarding the actual area of the land. The Court below has held on the basis of the report of a Commissioner appointed by it that the actual area is 65,509.37 sq. ft., which comes to about one and a half acres. It has also to be noted that land value has been appreciating in Bangalore City from year to year and it is inconceivable that a sum of Rs. 20,000/- could be said to be the real market value of the land in the year 1966. Therefore, the burden was on the Land Acquisition Officer to support his Award. In his Award, he has stated that an entire survey number or a large extent in any one particular survey number has not been sold in that village, but the Sub-Registrar's Office statistics show that small bits of lands as building sites had been sold. It is surprising that the Land Acquisition Officer did not produce registration copies of such sale deeds, when there were such sale deeds. In the absence of transactions pertaining to sale of land wholesale, evidence of transactions of sale of small extents of land or building sites becomes relevant. On the basis of the price of land sold in retail, it is possible for the Court to arrive at the market value of the land wholesale, as laid down by this Court in *The Assistant Commr and Land Acquisition Officer, Davangere v. Bharat Oil Mills Limited* (1973) 2 Mys LJ 187.

8. On behalf of the claimants, Exhibits P-2, P-3 and P-4, which are certified copies of the extracts from the Property Register of the Corporation, were produced to show that in the year 1965 certain lands in the vicinity had been assessed to vacant property tax and that valuation works out to Rs. 50/- a square yard- The claimants also could have produced registration copies of sale deeds of sites or small bits of lands in stead of merely relying on Exhibits P-2 to P-4. It appears to us that each side was trying to outwit the other, & Land Acquisition Officer relying on the sale deeds executed by the Company in favor of the claimants and the claimants relying on the Registers of the Corporation levying vacant property tax. Exhibits P-2 to P-4 can be relied on only for the purpose of showing that the value as fixed by the Land Acquisition Officer is wholly inadequate. They can be also relied on for the purpose of showing that the valuation made by the learned civil judge is also inadequate. But they do not enable this Court to fix the market value of the land acquired. We do not have the assessment order made on the basis of which Exhibits P-2 to P-4 have been prepared. There is also the report of a Valuer and that report is marked as Exhibit P-8 the learned Civil Judge has rightly characterized this report as of no assistance. No doubt, the person who has prepared the report is an Approved Valuer; but he has given no basis for the value he has fixed. If the report of a Valuer or an Expert is to be of any value, then he has to give the basis for his

valuation. If his valuation does not rest on relevant materials, then such report is worthless and has to be discarded. If the Award of the Land Acquisition Officer had been made in accordance with settled principles of valuation, and based on transactions, of sale of similar lands or, in the absence of transactions of sale of similar lands, sale transactions pertaining to house sites, then the burden would have rested on the claimants to show that what has been awarded by the Land Acquisition Officer is inadequate and if the claimants had failed to discharge that burden, the Court would have been justified in merely affirming the Award of the Land Acquisition Officer. But, in the instant case, as already stated, the burden has not shifted to the claimants. The Court is not in a position to determine the market value of the property acquired, having regard to its admitted potentiality for industrial purposes.

9. Therefore, we set aside the Award and Decree of the Court below and remand the matter for adjudication afresh, reserving liberty to the parties, to lead further evidence.

10. The learned Counsel for the appellants submitted that the claimants are entitled to interest u/s 3(3) of Karnataka Act No. 10 of 1968.

11. When the matter goes back, the Court below will also decide that question.

12. Since we are remanding the matter, it is open to the claimants to, Procedure whatever documents they rely on. Therefore, I. As. Nos. II and IV are dismissed as not pressed.

13. Let a certificate for refund of the court-fee paid on the memorandum of appeal be issued in favor of the appellants.

14. Parties to bear their own Costs. Ordered accordingly.

15. Ordered accordingly.