

(2007) 01 KAR CK 0013
In the Karnataka High Court
Case No : M.F.A. No. 4341 of 2002

Shanta Benni and Chanabasappa Benni

APPELLANT

Vs

The Executive Engineer, Karnataka Housing Board and The
Assistant Commissioner and Land Acquisition Officer

RESPONDENT

Date of Decision : 29-01-2007

Acts Referred:

Land Acquisition (Mysore Extension and Amendment) Act, 1961 — Section 18 (1) (a),
21

Citation : (2007) 3 KarLJ 361

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

Bench : Division Bench

Advocate : Umesh. R. Malimath, for the Appellant; V. Basavaraj Sabarad, for R1
and M.A. Narayanappa, AGA for R2, for the Respondent

Judgement

1. The appellants are the owners of a plot measuring 140 x 99 feet It is about 12 guntas in Sy. No. 14/1/2 of Lakmanahalli in Dharwad District. It is a remaining portion after the Government taken over the excess portion under the repealed Urban Land (Celling & Regulations) Act The said left-over land was acquired for Karnataka Housing Board for construction of houses. Preliminary Notification was dated 20-3-1989 and Final Notification was dated 18-11-1989. Award was passed by the Land Acquisition Officer on 8-5-1992. Compensation awarded was Rs. 25,000/- per acre. Not satisfied with the compensation awarded, the Appellants sought reference u/s 18(1)(a) of the Land Acquisition (Mysore Extension and Amendment) Act of 1961 (hereinafter called as "L.A Act" in short) for higher compensation by determining the market value of the land. The reference Court passed a common judgment and award dated 28-1-2002 in L.A.C. Nos. 267 & 268/93 re-determining the market value at Rs. 2,80,000/- per acre with other statutory benefits after conducting on enquiry u/s 21 of the L.A Act Being dissatisfied with the same also, the appellants have filed this appeal seeking further enhancement of compensation urging various grounds contending that determination of market value is contrary to legal evidence on

record and law on the question.

2. Learned Counsel for the Appellants raised the following grievances against the impugned judgment and award:

i) Though the reference court re-determined the market value on the basis of sale statistics, it has not correctly applied the same and the documents are not properly considered and therefore the findings recorded on the contentious point are not only erroneous but also error in law;

ii) That the reference Court was not justified in giving deduction of 53% towards development charges and since the acquired land is in a developed area and it being a small plot, development charges shall not be deducted as held by the Apex Court in the decision reported in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality,

3. Learned Addl. Govt. Advocate Mr. Narayanappa sought to justify the impugned judgment and award.

4. The Appellants claimed compensation of Rs. 1,00,000/- per guntas whereas the LAO awarded only a sum of Rs. 25,000/- per acre. The reference Court enhanced it to Rs. 2,80,000/- per acre. It works out to Rs. 7,000/- per guntas. As per the sale deed Ex. P-4, the valuation is Rs. 30,000/- per guntas upon which strong reliance is placed by the appellants' counsel. We now proceed to examine what should be the correct market value for the acquired land involved in this case

5. Ex.P-10, the certified copy of the award passed by the reference Court in respect of other lands which were also acquired under the same notification, is the basis for the reference Court to determine the market value. In that, the market value was determined at Rs. 13,800/- per guntas. The same was challenged in this Court This Court granted stay subject to the condition of depositing 50%. To come to the conclusion that the market value of the acquired land in the instant case is Rs. 2,80,000/- per acre, the reference Court assigned the reasons as under:

Accordingly the respondents have deposited 50% of the said award amount and the Hon'ble High Court has allowed the petitioners therein to withdraw the amount deposited. Considering this aspect the counsel for the respondents are contending that the Hon'ble High Court has prima-facie has come to the conclusion that the petitioners therein are entitled to get the compensation only at the rate of Rs. 7000/-per guntas. The respondents without disputing the said interim order have deposited the amount and the said amount is already released to the petitioners therein. As being contended by the counsels for the petitioners this factor has to be kept in mind. Though as per sale deed at Ex. P4 the valuation is at Rs. 14,000/- per guntas, considering the fact that the said sale transaction has taken place after issuance of preliminary notification under the World Bank Scheme, in my opinion the determination of market value at Rs.

7000/-per guntas appear to be just and appropriate. It is also worth to note here that LAC Nos. 131/93 and 132/93 and LAC No. 155/93 and 35/2000 concerned to the same notification and same award have been disposed off by this Court by determining the value of the lands at Rs. 7000/- per guntas.

Accordingly the market value is determined, after the deduction of the developmental charges at Rs. 7000/- per guntas. So the market value per acre will be Rs. 6,00,000/-and after deduction of 53% it will come to Rs. 2,82,000/- and by rounding it, the market value is determined at Rs. 2,80,000 per acre.

6. The reference Court did not accept the market value mentioned in the sale deed Ex.P-4 on the ground that the same was subsequent to preliminary notification. The preliminary notification was dated 20-3-1989 and the sale deed Ex.P-4 was dated 18-10-1989.

7. The reference Court while answering Point No. 2 pertaining to the legality and validity of the award passed by the LAO, has referred to the evidence adduced by RW-1, the Sheristedar. He has categorically admitted that the acquired land has got non-agricultural potentiality; that Kamadhenu Spun Pipe Factory, Doddawad Oil Mill, Offices of Karnataka Industrial Areas Development Board, Air Pollution Control Board, A Saw Mill, premises of Karnataka Milk Federation, K.E.B Grid etc., are located close to the land; Yalakki Shettar residential colony, which is in developed area of Dharwad City, is at a distance of 200 feet. It is also on record that the land in question is abutting NH-4 Poona-Bangalore High Way; that it is within the limits of Hubli-Dharwad Municipal Corporation; that the lay-out approved by the Hubli-Dharwad Development Authority and Manju House Building Co-operative Society layout are adjacent to the land. PW-1 and PW-3 have deposed about the topography of the acquired land. There is no serious challenge to the legal evidence on record. They have also produced Ex.P-2 the map showing the location of the land and Ex.P-3 another map in proof of the fact that the land in question is included in the Comprehensive Development Plan under the provisions of the Karnataka Town and Country Planning Act of 1961 and the land is earmarked for residential purpose. All these relevant facts and legal evidence on record would clearly establish the fact that the acquired land has got non-agricultural potentiality as it is situated in the developed area of Hubli City; that it has lost its agricultural character, therefore its market value has to be determined on the basis of its non-agricultural potentiality. The Reference Judge was not right in not taking into consideration the documentary evidence Ex. P4, Sale Deed wherein the sale consideration is mentioned as Rs. 30,000/- per guntas. Therefore, both the LAO and the reference Court are rightly treated the land in question as such. Even as per the decisions reported in Bhagat Ram Vs. The State of Punjab and Others, and 1982(2) Kar.L.J 288, the land in question will have to be treated as urban land. That being so, as per the decisions of this Court reported in The State Government Employees" Co-operative Housing Society Limited, Hubli, Dharwad District Vs. The Hubli-Dharwad Urban Development Authority, Hubli, Dharwad District, and 1987(3)

Kar.L.J 1717, there is no need for conversion of the land since it has lost its agricultural character.

8. In the Award at Ex.P-10 the reference Court fixed the market value of the lands involved therein at Rs. 13,800/- per guntas. This re-determination of the market value of the acquired land is affirmed by this Court in M.F.A No. 3940/1998 D.D 08/03/2006. learned Counsel for the respondent submits that the said judgment may be applied to this case also. The above said contention is strongly rebutted by the learned Counsel for the appellant by placing reliance upon Ex.P4 the sale deed of similar comparable land, this document was not produced before the reference court in the above L.A.C case where the previous judgment Ex.P10 was passed and therefore the determination of the market value is not correct, apart from the said fact as per the sale deed Ex.P-4 it is Rs. 30,000/- per guntas. The market value for the land abutting NH cannot be the same in respect of lands situated interior to that Highway. The said position is laid down in Union of India and others etc. Vs. Mangatu Ram, etc., . It is his further submission that the lands with different feature should not be valued at uniform rate, in support of this contention he has placed reliance upon the decision of the Apex Court reported in M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, When the reference Court itself fixed the market value at Rs. 13,800/- in respect of agricultural lands not abutting NH, in our opinion taking the above relevant aspects, evidence and also the sale deed Ex.P4 the said document is of near proximity to the Prl. Notification which land is comparable to the acquired land. There is neither challenge to the correctness of the sale consideration amount as mentioned in the said document nor adduced rebuttal evidence to disprove the claim of the appellant to show that the market value as shown in the said sale deed per guntas is not correct. In view of the said documentary evidence it would be just to fix the market value of the acquired at Rs. 20,000/- per guntas would be just and reasonable in respect of the land covered in the Land Acquisition claim case of the appellant.

9. The next point to be considered is, whether deduction of 53% allowed by the reference Court is justified and sustainable. Since the acquired land is in developed area and it has lost its agricultural character and acquired the status of urban land and it being a small plot, deduction of 53% or even 33% is inadmissible. The learned Counsel for the appellant has rightly placed reliance upon the decision reported in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, which supports the view taken by us. The observations made in that case are with all fours applicable to the fact situation of the present case.

10. For the reasons stated above, the appeal is allowed partly with costs. The judgment and award of the reference Court is modified and the market value is fixed at Rs. 20,000/- per guntas. The appellants are also entitled to all statutory benefits.

11. Before parting with the case, we feel that it is necessary to make certain

observations in this judgment. The possession of the land was taken over by the KHB on 4-2-1993, sites had been formed and applications had been invited for allotment of sites formed in the land. There was no proper response from the eligible person for allotment of sites is the reason assigned by the beneficiary respondent in whose favour the land is acquired for residential purpose. In those circumstances, one Smt Mubarak, wife of D.H. Yarzari applied to the KHB for allotment of 12 guntas of land for putting-up industrial unit. The same was allotted on 29-12-2001 and sale deed dated 21-1-2002 was executed in her favour. The allottee was also put in possession of the land. At that juncture the owners filed W.P. No. 38470/2002 challenged the acquisition proceedings as also the allotment to industrial purpose. The said writ petition was dismissed on 25-7-2003 but the allotment made by first respondent in favour of Smt. Mubarak was declared illegal. The KHB was directed to sell the sites in public auction after taking possession from her. The allottee filed W.A. No. 6233/2003 challenging the correctness of the order passed in the writ petition but the same was dismissed on 5-1-2004. The SLP filed by the allottee before the Supreme Court was also dismissed. Even the review petition was also rejected by the Apex Court.

12. Pursuant to the order passed in the aforementioned writ petition, the allotment of land was cancelled on 7-3-2005. The allottee challenged the cancellation of allotment of the land in W.P. No. 12602/2005 before this Court. Though interim order was granted in the above said Writ Petition for a period of 8 weeks, the same is not further extended, but the respondent has not taken further steps to take possession of the granted land from the allottee eventhough there is no impediment for the first respondent to take possession from the said allottee and comply with the direction issued to it in the order passed by this Court in the Writ Petition referred to supra.

13. The land in question is earmarked for residential use in the CDP for that purpose only the land in question was acquired. Hence, allotment of the same for industrial purpose in favour of Smt. Mubarak W/o D.Y. Yarzari is bad in law. Therefore this Court in W.P. No. 38470/2002 declared the allotment of site made in her favour as illegal and gave direction to first respondent, to take possession of the land allotted in her favour and to dispose of the same. Eventhough that order was passed on 25-7-2003, the cancellation of allotment of the above extent of acquired land was made on 7-3-2005 which order is challenged in Writ Petition No. 12602/2005, the KHB has not taken any steps to recover possession from the allottee so far though there is no legal impediment. Therefore, the first respondent herein is directed to take immediate steps for recovery of possession from the above said person and comply with the directions issued to it in the order passed by this Court in the earlier Writ Petition referred to supra and submit compliance report to this Court within eight weeks from the date of receipt of the copy of this order.