

(2003) 06 KAR CK 0002

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4705 of 1997

Sharanappa

APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11 A, 23, 4 (1)

Citation : (2004) 1 KarLJ 435 : (2003) 3 KCCR 2235

Hon'ble Judges : Tirath S. Thakur, J; Mohan Shanthanagoudar, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant; H.M. Manjunath, High Court Government Pleader, for the Respondent

Judgement

1. This appeal arises out of an order passed by the Additional Civil Judge at Gulbarga whereby LAC No. 31 of 1984 has been allowed in part and the amount of compensation payable to the appellant-landowner enhanced from Rs. 2,000/- per acre to Rs. 4,000/- per acre with consequential statutory benefits. The appellant-landowner has appealed to this Court for a suitable enhancement of the said amount.

2. An area measuring 6 acres 23 guntas in Sy. No. 8/1 of Village Rajapur near Gulbarga city was notified for acquisition in terms of a preliminary notification dated 8-7-1976 for the purpose of construction of a Government Arts and Science College. Six years after the notification, the Land Acquisition Officer made an award determining the compensation payable to the landowners at Rs. 2,000/- per acre. Dissatisfied with the said amount, some of the landowners sought references to the Civil Court for determination of the just and fair compensation payable to them. The reference made at the instance of the appellant herein was registered as LAC No. 31 of 1984 which was by a common order dated 8-2-1988 disposed of by the Court below enhancing the amount payable to the owners to Rs. 4,000/-per acre as already noticed earlier. While doing so, the Reference Court took note of the material placed on record and

concluded that the land in question had on account of the development in its vicinity acquired non-agricultural potential. The deposition of the witnesses produced before the Reference Court suggested that the land acquired from the appellant-landowner was better situate than that acquired for the establishment of the University campus at Gulbarga. Keeping in view that the land acquired for the campus had been paid for at the rate of Rs. 4,000/- per acre, the compensation payable to the landowners could not according to the Reference Court be less than the said amount especially when the land of the appellant was nearer to Gulbarga city than that acquired for the University campus.

3. Appearing for the appellant, Mr. Shankar, strenuously argued that the Reference Court was in error in limiting the amount of compensation to . 4,000/- per acre only. He submitted that if the land acquired from the appellant was better situate than that acquired for the University campus, there was no justification for the Reference Court to restrict the enhancement to what was paid for the said land. The better location of the land of the appellant in terms of the distance from the city of Gulbarga and its non-agricultural potential should have, according to the learned Counsel, earned a better compensation for the appellant. He urged that the Land Acquisition Officer having failed to make any award for nearly 6 years from the date of the preliminary notification, this Court would be justified in awarding compensation to the appellant by reference to the value of the land as on the date of the award instead of the market value prevalent on the date of issue of the preliminary notification. Mr. Shankar also placed reliance upon two decisions of this Court in M.F.A Nos. 2107 of 1994 and 239 and connected matters of 1997. He urged that the acquisitions which formed the subject-matter of the said two appeals also related to lands situate in close proximity of the land acquired from the appellant so that the amount held payable to the owners in those cases could be reasonably made a basis for enhancing the amount of compensation payable to the appellant in the present appeal.

4. We have given our anxious consideration to the submissions made by Mr. Shankar and perused the record. The making of the award was in the instant case delayed by a period of over 6 years. That delay may have been unjustified having regard to the scheme of the Act especially the provisions of Section 11-A thereof which require the Collector to make an award within a period of two years from the date of the publication of the declaration and stipulate that if no award is made within that period, the entire proceedings would lapse. The claimant did not, it appears, make any grievance as to the validity of the proceedings on account of the delay in the making of the award contrary to Section 11-A of the Act. The proceedings were allowed to continue and conclude, the irregularity, if any, notwithstanding. The delay in the making of the award therefore pales into insignificance at least for the purposes of determination of the amount of compensation payable to the landowners in terms of Section 23 of the Act. A plain reading of the said provision which regulates the determination of compensation would show that while determining the amount of compensation

to be awarded for land acquired under the Act, the Court has to take into consideration among other factors the market value of the land on the date of the publication of the notification u/s 4(1) of the Act. There is no provision either in Section 23 or any other part of the Act which may permit determination of the amount of compensation by reference to the market value of the land as on the date of the making of the award instead of the preliminary notification u/s 4(1). We have therefore no hesitation in rejecting out of hand the contention urged by Mr. Shankar that the compensation payable to the appellant-owner had to be determined by reference to the date of the making of the award and not the date of the preliminary notification. Reliance by Mr. Shankar upon a Single Bench decision of this Court in Patel Byrappa and Others Vs. State of Karnataka and Others, , is in our view misplaced. That was a case in which the landowners had challenged the validity of the award on the ground that the same was delayed. It was in that background that the Court had, relying upon another decision rendered in a similar writ petition, directed the compensation to be determined by reference to the price of the land prevailing on the date of the award instead of the date on which the preliminary notification was issued. The position in the instant case is different. The landowner had not in the instant case found fault with the delay in the making of the award, nor was the validity of the acquisition proceedings assailed on that ground. It was open to the landowner to challenge the validity of the proceedings and seek an appropriate relief in which the writ Court could either quash the proceedings or grant any other lesser relief like a direction for payment of compensation by reference to the value prevalent on the date of the award. Having failed to do so, it may not be open to him to seek determination of the amount of compensation by reference to the date of the making of the award in proceedings u/s 18 of the Act. That is because the scope and the nature of the jurisdiction exercised by a writ Court is wider than that exercised by a Court dealing with a reference u/s 18 of the Act or hearing an appeal arising out of the same. The later Court is bound by Section 23 of the Act while the former may grant an appropriate relief even in the teeth of the said provision.

5. Coming then to the question whether the amount of compensation awarded by the Reference Court is justified, we find that the land in question had on account of the extension of the Gulbarga city acquired non-agricultural potential. The acquired land it is evident from the deposition of the claimants situate towards the eastern side of Gulbarga city. Similar lands in that direction had been acquired earlier by the authorities for the University campus. The deposition of P.W. 1 further shows that the land acquired for the Gulbarga University campus was more than 2 kms. away from the land owned by him. This acquisition for the University was made in the year 1971 in which this Court had in M.F.A. Nos. 2489 to 2491 of 1983 determined the compensation payable to the landowners at Rs. 4,000/- per acre. The said acquisition could and was in our opinion rightly be made a basis for enhancement granted in favour of the appellant-landowner. What the Reference Court overlooked while doing so was that the acquisition

made in favour of the University was 5 years earlier to the acquisition made in the instant case. The Reference Court also overlooked the fact that the land acquired from the appellant was situate nearer to Gulbarga city in comparison to those acquired for the University. This necessarily implied that the value of the land acquired from the appellant was in comparison to the earlier acquisition better. The Reference Court therefore ought to have given some weightage for the said better location of the land of the appellant apart from a suitable escalation in the price determined by this Court by reference to the 1971 acquisition for the University campus. Instead of doing so, the Reference Court appears to have simply adopted the rate awarded by this Court in miscellaneous first appeals mentioned earlier for an acquisition that was 6 years earlier in point of time and in respect of land that was further away from the land of the appellant from the center of the city. It follows that the Reference Court committed an error in restricting the enhancement of compensation to Rs. 4,000/- per acre only.

6. The next question then is what ought to be the just and fair compensation payable to the landowner in the instant case. There are 3 distinct circumstances which need to be kept in mind while answering that question. The first and foremost is that the landowner has in his own deposition recorded before the Reference Court clearly admitted that he had claimed compensation at the rate of Rs. 10,000/- per acre only before the Land Acquisition Officer. The specific suggestion made to him in the cross-examination that his claim for payment of compensation at Rs. 10,000/- was excessive has also been denied by him. This implies that the landowners' own assessment of the market value of the land closer to the date of acquisition was around of Rs. 10,000/-. The second and an equally important circumstance which need be kept in view is that this Court had for an acquisition made 5 years earlier i.e., in the year 1971 determined compensation at the rate of Rs. 4,000/- per acre for land acquired for the Gulbarga University campus. That land was according to the claimant around 2 kms. away from the land acquired from him. If one were to make the award of compensation in the case of earlier acquisition a basis for determination of compensation payable to the landowner in the instant case, we shall have to add to the price awarded by this Court, escalation at the rate of 10% p.a. for the period that separated the earlier acquisition from the acquisition in hand. In other words, apart from Rs. 4,000/- per acre awarded for the 1971 acquisition, the appellant would be entitled to a further sum of Rs. 2,000/- towards escalation taking the price to Rs. 6,000/- per acre. Super added to that would be the additional amount that may have to be added to that price on account of the proximity of the land to the city of Gulbarga in comparison to the acquisition made in the year 1971. It is not in dispute that the land acquired in 1971 is 2 kms. further away from the land acquired from the appellant. We are therefore on that account inclined to hold that the land acquired from the appellant could on account of that advantage be more valuable than the land acquired for the University at least to the extent of Rs. 4,000/- per acre. In the process, the

landowners would be entitled to a sum of Rs. 10,000/- per acre if the compensation were to be determined entirely on the basis of the acquisition made in the year 1971 and weightage for the advantageous location of the land given to the appellant.

7. The third circumstance which was highlighted by Mr. Shankar in the course of his submissions relates to the amount of compensation awarded by this Court in relation to two subsequent acquisitions. One of these acquisitions was notified as late as in August 1984 from out of village Badepur. A reading of the judgment of this Court in Chandrashekar (Deceased) by L.Rs Vs. The Assistant Commissioner and Land Acquisition Officer, , and that of the Reference Court dated 28-2-1994 would show that an extent of 3 acres and 9 guntas situated in 2 different survey numbers of village Badepur was notified on 30-8-1984 for the construction of a Government College. The Land Acquisition Officer had made an award in which the compensation payable to the landowners was assessed at Rs. 19,090/- per acre. On a reference, the said amount had been enhanced by the Reference Court to Rs. 1,03,000/- per acre. Aggrieved by the said enhancement, the landowner as also the State had filed cross-appeals which were disposed of by a Division Bench of this Court. It was contended by Mr. Shankar that this Court ought to take support from the said decision to award a suitable compensation to the appellant-landowner having regard to the fact that the acquisition was from out of an adjoining village and the non-agricultural potential of the lands acquired in the two notifications were almost identical. We have found it difficult to accept that contention. The acquisition in the instant case as seen earlier was notified in the year 1976. The acquisition in Chandrashekar's case, supra, was nearly 8 years later i.e., in 1984. That apart, the acquisition in the instant case is from Rajapur Village which is different from the Badepur Village in which Chandrashekar Bilagundi's land is situate. It is also noteworthy that there is no evidence whatsoever to show that the land acquired from the appellant in the instant case was comparable in terms of its non-agricultural potential with the land acquired from Chandrashekar Bilagundi. It is therefore difficult to hold that the non-agricultural potential of the two parcels of land i.e., one acquired from the appellant and the other from Mr. Bilagundi was comparable or similar to each other. Last but not the least of the reasons which dissuades us from placing reliance upon or drawing any support from the Division Bench decision in Chandrashekar's case, supra, is the fact that the Court has in that case made the sale of a site in a developed layout a basis for determining compensation for a larger extent acquired from the owners. While doing so, the Court has instead of deducting 53% towards development charges, deducted only 33% and arrived at a figure of Rs. 1,75,000/- per acre. There are a catena of decisions of the Supreme Court which authoritatively declare that sale transactions relating to smaller pieces of land cannot by themselves be made a basis for determination of compensation of larger parcels of lands acquired from private individuals. In the absence of any better evidence for determination of compensation such transactions may be referred to and relied upon provided suitable deductions

towards development charges are made by the Court determining the amount payable to the owners. In *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, , the Court held that the deduction towards development charges could be upto 53% *Brig. Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others*, , reiterated the view taken in *Smt. Tribeni Devi's* case, *supra* and declared that deduction towards amount to be spent for roads and drainages could be to the extent of 20% whereas development of such roads, drainages and other civic amenities would account for another 33 and a 1/4% taking the total deduction towards development cost to 53% in normal circumstances. To the same effect are the subsequent decisions of the Supreme Court in *Gulzara Singh and Others Vs. State of Punjab and Others*, , *K. Vasundara Devi Vs. Revenue Divisional Officer (LAO)*, , *Hasanali Khanbhai and Sons and Others Vs. State of Gujarat*, , *Smt. Basavva and others Vs. Special Land Acquisition Officer and others*, and *Ratanlal Gupta and Ors. v. Union of India* AIR 1995(6) Scale 698. The Division Bench decision relied upon by Mr. Shankar does not make reference to any one of these decisions. In the light of the legal position settled by the above decisions, we are of the view that apart from the time-lag that separated the two acquisitions, the view taken in *Chandrashekhar 's* case, *supra*, does not find any application to the instant case as the process of determination of compensation has ignored judicially recognised principles.

8. Mr. Shankar placed reliance upon yet another decision of this Court in *M.F.A? Nos. 55, 239 and 877 of 1997* disposed of on 21-9-2002. He urged that a SLP filed against the said decision by the beneficiary had been dismissed and the amount of compensation determined by this Court at Rs. 65,000/- per acre upheld. That acquisition was in terms of a preliminary notification issued on 13-5-1982 for the purpose of extension of Gulbarga city. The Land Acquisition Officer had awarded a sum of Rs. 13,500/- per acre towards compensation. It was on a reference made at the instance of the landowners enhanced to Rs. 65,000/- per acre *M.F.A. Nos. 55, 239 and 877 of 1997* filed against the said enhancement were dismissed by this Court subject to a minor alteration insofar as the award of compensation for the well-existing in the acquired land was concerned. Mr. Shankar argued that the acquisition in question could be made a basis for a suitable award in favour of the appellant by off-loading the price at the rate of 5% per annum to bring it in tune with the date of the issue of the preliminary notification in the instant case.

9. The acquisition in the cases referred to above is also from Rajapur Village of Gulbarga Taluk. To that extent, therefore, there is some similarity between the acquisition from the appellant and that made in the said cases. The preliminary notification in the cases referred to above was issued nearly 6 years after the issue of the notification in the present case. This period of 6 years will have to be off-loaded by deducting from the amount determined by this Court a suitable percentage which in the facts and circumstances cannot be less than 10% p.a. having regard to the decision of the Supreme Court in *The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib*, , and of

this Court in The Special Land Acquisition Officer, Ghataprabha Project Vs. Malali alias Sanasatti Thimmanna Hanamappa, . If 60% of the price held payable to the owners in that batch of cases is reduced from the amount awarded in their favour, the net figure available would work out to Rs. 26,000/- per acre. Although there is no direct evidence drawing a comparison between the non-agricultural potential of the land acquired from the appellant the land acquired in those cases, we are of the view that if not entirely, the amount worked out on the basis of the earlier acquisition could form one of the inputs for purposes of determining a just and fair compensation payable to the owners. That is especially so when Rajapur Village is on the basis of the evidence before the Reference Court, located on the outskirts of Gulbarga town and has seen gradual all-round development in terms of construction of houses, office buildings, colleges, hospitals etc. Suffice it to say that the sum of Rs. 26,000/- per acre if not applied directly can nevertheless be made a basis for determination of a fair compensation by taking the average of what has been indicated by us earlier and the said figure. Taking the average of the two figures, the amount actually payable to the landowners would work out to Rs. 10,000/- + Rs. 26,000/- divided by 2 = Rs. 18,000/- per acre. That amount in our view ought to represent the true market value of the land acquired from the appellant during the relevant period.

10. This appeal accordingly succeeds and is hereby allowed but only in part and to the extent that instead of Rs. 4,000/- per acre awarded by the Reference Court, the appellant shall be entitled to compensation at the rate of Rs. 18,000/- per acre with all consequential statutory benefits. The appellant shall also be entitled to proportionate costs in this appeal.