(2008) 06 KAR CK 0001

In the Karnataka High Court

Case No : M.F.A. No. 6266 of 2005

Shivabasappa Kuntoji APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner RESPONDENT

Date of Decision : 02-06-2008

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 4 (1)

Citation : (2008) 5 KCCR 3297

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : C.H. Jadhav and P. Prasanna Kumar, for the Appellant; M. Narayanappa, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—This appeal is directed against the judgment and award, dt. 13.04.2005 passed by the Court of Civil Judge, Sr. Division, Gangavati in LAC No. 5/2003.

2. The brief facts of the case are that the lands measuring 16 guntas at Sy. No. 2/B of Singanala Village of Gangawati Taluk, Koppal District were notified for acquisition on 06.09.2001 for forming the road from Hanaval to Singanal. The respondent Land Acquisition Officer passed the award, dt. 31.10.2002 determining the market value at the Rs. 19,600/- per acre. It is worthwhile to notice in this context that alongwith the appellants lands, other lands totally measuring 1 acre 4 guntas were acquired.

3. As the appellant and similarly placed other land losers were not content with the determination of the market value of Rs. 19,600/- per acre, they sought the reference u/s 18 of the Land Acquisition Act, 1894 for enhancement The references arising arising therefrom were registered as LAC No. 5, 6, 7 and 8/2003. They were all clubbed and disposed of by a common order, dt. 13.04.2005 of the Reference Court. The Reference Court allowed LAC No. 6 and

7/2003 in part raising the market value to Rs. 1,10,000/- per acre. However it dismissed LAC No. 5 and 8/2003 holding that the kind losers in the said cases are not entitled to enhancement.

4. This appeal arises from LAC No. 5/2003.

5. Sri Prasanna, the learned Counsel for the appellant submits that all the lands covered by the 4 LACs are adjoining lands situated in the same village, acquired for the same purpose and under the same notification. Therefore the denial of enhancement to the erstwhile owners of the lands in LAC No. 5/2003 amounts to treating the equals unequally. He submits that the appellant is also entitled to the enhancement of the market value at Rs. 1,10,000/- per acre.

6. Per contra, Sri M. Narayanappa, learned Addl. Government Advocate submits that the lands covered by the LAC 6 and 7/2003 are admittedly irrigated lands and growing two crops thereon. The lands however covered by LAC Nos. 5 and 8/2003 are dry lands. As no evidence whatsoever is led in by the claimants in LAC Nos. 5 and 8/2003, the Reference Court is justified in denying the enhancement to the claimants in those cases.

7. In the course of the rejoinder submissions, Sri Prasanna states that common evidence was led in, as all the LACs were clubbed.

8. The question that falls for my consideration is, when the lands are acquired for the same purpose, under the same notification and are adjacent to each other, whether some lands can be given higher compensation on the ground that they have the irrigational facility while others do not have. What has to weigh with the Courts while determining the fair and just market value of the acquired land is that its as on the date of the issuance of the y notification. The dictionary meaning of is the power which needs development.

9. In one of the earliest cases namely, AIR 1939 98 (Privy Council) the considered view taken on the issue was that, what has to weigh with the courts in the determination of market value is not merely the realised potentialities of a land, but its possibilities. The portion under head note ''C'' of the said judgement is extracted herein below.

There is not in general any market for land in the same in which one speaks of a market for shares or a market for sugar or Miny like commodity. In the case of land, its value in general can be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by "the market value" in Section 23. But, sometimes, it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities, For the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under thus Indian Act being the date of the notification u/s 4(1)), but also by reference to the uses to which it is reasonably capable of being put in the future. It is possibilities of the land and not its revised possibilities that must be taken into consideration."

10. The Hon''ble Supreme Court in the case of Administrator General of West Bengal Vs. Collector, Varanasi, held as follows:

The determination of market value is the prediction of an economic event, viz., the price-outcome of a hypothetical sale, in terms of probabilities. "

11. The Hon''ble Supreme Court in its judgement in the case of Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, , has held that "Potential value of lands must be kept in view in fixing compensation."

12. In its judgement in the case of Raja Rati Ram v. State of Punjab reported in 1987 (Supp.) SCC 19, the Hon''ble Supreme Court has held as follows;

In view of the increasing prices of the Land with the passage of time and improvement in the potentiality of the land in question because of acquisition for public purpose of the comparable land nearby, claimant is entitled to the same rate of compensation as awarded in case of the comparable land.

13. The Hon''ble Supreme Court in the case of Administrative General of West Bengal v. Collector, Varanasi reported in (1988) 2 SCJ 387 has said that

... In the case of land with potentialities for a more profitable use, it is necessary to acknowledge, and make due allowance for, the possibility that the land alight not be applied for the prospective use at all or not so applied within a reasonable time.

14. It is also profitable to refer to a Division Bench judgement of Allahabad High Court in the case of Azimuddin Ashraf, Chaudhari and Ors. v. Azimuddih Ashraf Chaudhari and Ors. reported in ILR 1961 (All.) 988, wherein it is held as follows;

The value has to be determined; and to this end the correct mode would be to judge the value with an aid of examples by which similar lands in the locality might have been transferred for such a purpose.

15. The afore-referred judgements require that the market value of the acquired land must be estimated not by the existing use of such land but the best use which ft willing purchaser would make of it and therefore its potentiality in the foreseeable future. In the determination of the market value, potential value and value of other lands similarly situated are the factors to be considered. Necessary premium has to be given to the potentialities. In every land acquisition case, present use of land may not be material.

16. The State cannot refuse to pay reasonable compensation in respect of similarly situated lands acquired under the same notification. Where the lands under acquisition are of the same nature and possessed of the same potentialities as the land situated very nearly, the claimants are entitled to similar treatment In this regard, it is also worthwhile to refer to the judgement of the Hon''ble Supreme Court in the same as Union of India (UOI) Vs. Bal Ram and Another, . The relevant portion of the same judgement is extracted herein below.

The High Court also found that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is and lands are identical and similar, though lying in different villages, we find the judgement of the High. Court to be fair and reasonable and no interference is called for.

17. Considering the principles laid down in the above-referred cases, I find that the Reference Courts'' judgement awarding Rs. 1,10,000/- in LAC No. 6/2003 and refusing to enhance the market value of the lands covered by LAC No. 5/2003 is not sustainable at all. The perusal of the acquisition notifications reveals that all the four lands, which were the subject matter of LAC Nos. 5, 6, 7 and 8 of 2003, are shown as ''thari'' (light irrigation). This aspect of the matter is not noticed by file Reference Court. The description of all the four lands as light irrigation lands clearly show that they are comparable and similar.

18. Under these circumstances, even assuming that only the erstwhile owner''s of the lands covered lay LAC Nos. 6 and 7 of 2003 were using the irrigation facilities and those of the lands covered by LAC Nos. 5 and 8 were not using the irrigation facilities, the situation does not call for any differential treatment in the determination of the market value. As the lands covered by LAC Nos. 5, 6, 7 and 8 are similar in nature, adjoining to each other, acquired for the same purpose of road formation and that too under the same notification, I have no hesitation whatsoever in holding that the erstwhile owners of the lands in LAC No. 5/2003 i.e., from which this appeal has arisen are also entitled to the market value at the rate of Rs. 1,10,000/- per acre. The appellant is also entitled to solatium, additional market value and the interest besides the proportionate cost.

19. The office is directed to draw up the modified award in terms of this judgement.

This appeal is allowed.

