(2014) 11 KAR CK 0193

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 21438/2012 (LAC) and 21448, 21449 and 21450/2012

Shreekant APPELLANT

Vs

The Special Land Acquisition Officer Malaprabha Project RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 4(1), 48, 6(1)

Citation : (2014) 11 KAR CK 0193

Hon'ble Judges : Mohan M. Shantana Goudar, J;Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Sriyuths S.N. Hatti and P.V. Sambaragi, Advocates and Hemanthkumar L. Havaragi, Advocate in M.F.A. No. 21448/2012, Advocate for the Appellant; C.S. Patil, Additional Government Advocate G.K. Hiregoudar, Advocate for the Respondent

Judgement

Ashok B. Hinchigeri, J.—These four appeals arise from the common judgment, dated 31.01.2012 passed by Court of the Additional Senior Civil Judge (Reference Court), Saundatti in L.A.C. Nos. 243, 247, 242 and 248 of 2011.

2. The facts of the case in brief are that the preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 18.03.2010 for the purpose of Malaprabha Project. The final notification under Section 6(1) of the said Act was issued on 07.08.2010. The Special Land Acquisition Officer (SLAO) passed the award on 20.04.2011 determining the market value at Rs. 38,952/- per acre. The Reference Court, by its judgment dated 31.01.2012 raised the market value to Rs. 1,80,000/- per acre. The land losers have preferred these appeals agitating for the enhancement of market value.

3. Sri S.N. Hatti, learned counsel for the appellants submits that for the lands situated in the same Thaluk (Saundatti) and covered under the very same notifications, the Division Bench of this Court by its judgment dated 26.08.2013 passed in M.F.A. No. 24037/2012 has determined the market value at the rate of

Rs. 5,08,000/-per acre. He submits that following the said judgment, another Division Bench has awarded the same amount (Rs.5,08,000/-) in M.F.A. No. 21451/2012 disposed of on 24.03.2014 and M.F.A. No. 21447/2012 disposed of on 26.03.2014.

4. Sri G.K. Hiregoudar, learned counsel appearing for the respondent No. 2 submits that the lands covered by M.F.A. Nos. 21451/2012 and 21447/2012 and the lands covered by M.F.A. No. 24037/2012 are entirely different. He would contend that the said two appeals (M.F.A. Nos. 21451/2012 and 21447/2012) ought not to have been disposed of in terms of the judgment passed in M.F.A. No. 24037/2012. He further submits that the respondent No. 2 has already filed the petition for reviewing the judgments in the said two appeals (M.F.A. Nos. 21451/2012 and 21447/2012).

5. At this juncture Sri Ramesh N. Misale, the learned counsel seeks leave of the Court to make certain submissions on behalf of Karnataka Neeravari Nigam Limited on the ground that the said Nigam has also filed an appeal in respect of the lands situated in same Thaluk. He submits that possession of the lands in question is not taken over. He emphatically submits that the possession of lands continues to be with the land owners. He submits that the land owners continue to cultivate the lands and grow the crops thereon.

6. Sri S.N. Hatti, learned counsel appearing for the appellant denies the submissions made by Sri Misale and submits that the possession of land is taken over by the Government 25 years ago.

7. The possession of land is not one of the enumerated matters to be considered while determining the market value, as per Section 23 of the said Act. In these appeals we are also concerned with the determination of the just market value. We are not called upon to deliver any finding as to who is in possession of the land. But on the ground that the possession is not taken from the erstwhile land owners, the market value cannot be reduced. If the possession is indeed not taken over by the Government and if the Government forms the considered view that the lands in question are not required for any public purpose, they can be withdrawn from acquisition, in exercise of power conferred upon the Government by Section 48 of the said Act.

8. As far as the determination of fair market value is concerned, it is covered by the Division Bench''s judgment dated 26.08.2013 passed in M.F.A. No. 24037/2012. It is not in dispute that lands covered by these appeals and by M.F.A. No. 24037/2012 are situated in the same Thaluk and acquired in the same year, that is in 2010. It is not in dispute that the lands covered both by M.F.A. No. 24037/2012 and by these appeals are the sugarcane growing lands. The Division Bench in M.F.A. No. 24037/2012 has employed the capitalisation method. Therefore, we do not see any impediment in following the said judgment and enhancing the market value to Rs. 5,08,000/- per acre. It is trite that a judgment of coordinate Bench has to be followed and not departed from. To

maintain uniformity and consistency in the court orders, we raise the market value of the lands in question to Rs. 5,08,000/-. Needless to observe that the appellants are entitled to the additional market value, solatium, interest besides the proportionate costs.

9. The appellants have calculated and paid the court fee on their prayer for the determination of the market value at the rate of Rs. 3,00,000/- per acre. The appellants are directed to pay the deficit court fee within four weeks from today. Only on their paying the requisite deficit court fee, the office shall draw up the award.

10. Accordingly, appeals are allowed.