(2014) 03 KAR CK 0291

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20513 of 2010 (LAC)

Siddanagouda APPELLANT

Vs

The Land Acquisition Officer RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : (2014) 3 KarLJ 491

Hon'ble Judges : B. Sreenivas Gowda, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : Chandrashekar P. Patil, Advocate for the Appellant; C.S. Patil, Government Advocate, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The appellant is before this Court seeking enhancement of market value as against the market value fixed by the Reference Court in LAC No. 172 of 2003. The brief facts are, that the land belonging to the appellant in Sy. No. 264/2 measuring 5 acres 35 guntas at Koppal Village of Koppal Taluk and Koppal District, was acquired for the purpose of extension of the Office of the Deputy Commissioner. The acquisition was initiated under preliminary notification dated 25-11-2000 published in the gazette on 7-12-2000. The Land Acquisition Officer has fixed the market value at Rs. 1,10,000/- per acre to the extent of 4 acres 11 guntas and Rs. 1,25,000/- per acre to the extent of 1 acre 24 guntas. The appellant was before the Reference Court seeking enhancement of the market value. The Reference Court after considering the rival contentions has fixed the market value at Rs. 10,01,800/- per acre and the statutory benefits accordingly. The appellant is before this Court seeking enhancement of the same.

2. Learned Counsel for the appellant while seeking enhancement would contend that, the Reference Court was not justified in taking into consideration the value as has been done since the guidance value fixed as per the notification itself is Rs. 95/- per sq. ft. in respect of commercial buildings. It is his further case that, the Court below was not justified in awarding the very same value which was indicated in the order passed by this Court which was marked as Ex. P. 14. In

that regard, it is contended that the said market value determined was in respect of the land for which the preliminary notification was issued on 27-1-2000 and in that view considering that the instant land was acquired by the preliminary notification dated 25-11-2000 the escalation should have been taken into consideration. It is also the contention of the learned Counsel that deduction for development charges taken into consideration at 53% is on the higher side and that same requires to be reduced. It is therefore contended that the judgment and award passed by the Reference Court calls for modification.

3. Learned Government Advocate would however seek to sustain the judgment and award passed by the Reference Court. It is contended that when the remaining extent of land belonging to the appellant has been acquired for the same purpose for which it was done earlier i.e., for establishing the Office of the Deputy Commissioner, and that this Court while considering the notification at the first instance has arrived at a conclusion on all aspects of the matter and has fixed the market value, the Reference Court was justified in relying on the document at Ex. P. 14. It is contended that no sufficient evidence has been placed before this Court to take a different view and even in respect of escalation which has been claimed no document has been relied and as such the judgment and award does not call for interference. He therefore, contends that appeal is liable to be rejected.

4. Having noticed the rival contentions we have perused the judgment and award passed by the Court below. In addition, we have also made reference to the records received from the Reference Court. The basic facts relating to the date of acquisition and the purpose for which it has been acquired and also the fact that one extent of the land belonging to the petitioner had been acquired earlier wherein the process was initiated under the preliminary notification dated 27-1-2000 is not in dispute. If this aspect of the matter is kept in view and the judgment passed by the Reference Court is noticed, it is seen that the Reference Court has referred to the entire evidence that had been placed before it and ultimately, the conclusion for enhancing the market value has been arrived at by relying on the document at Ex. P. 14 i.e., the certified copy of the order passed by this Court in earlier proceedings. Since that has been done, we have made reference to the document at Ex. P. 14 which is available in the records. From the same it is seen that a Division Bench of this Court while considering the case for enhancement in relation to the acquisition of another portion of the land belonging to the appellant which was initiated under the preliminary notification dated 27-1-2000, has referred to very similar contentions which have been advanced presently, i.e., with regard to the guidance value fixed for commercial property and also the extent of deduction that is to be made towards developmental charges, which is evident from the judgment of this Court dated 26-11-2008. On the aspect relating to the appropriate value to be taken into consideration and the deduction towards developmental charges, we are bound by the view already taken by this Court in similar set of circumstance. Hence, to the extent of contention which has been urged by the learned Counsel for the

appellant on those aspects of the matter, we are of the view that the rate at which it has been fixed i.e., at Rs. 10,01,800/- per acre and also the deduction at 53% towards development charges is to be accepted by us.

5. The only other question which arise for consideration in the instant appeal is, as to whether any enhancement requires to be granted keeping in view the fact that in respect of the instant lands preliminary notification was issued on 25-11-2000, i.e., after a period of ten months. Though in normal circumstances enhancement could be taken into consideration depending on the time gap between the earlier notification and subsequent notification by applying such percentage of enhancement per annum, but in the instant case period between two notifications is about ten months, i.e., less than a year, the question that would arise is as to whether such consideration should be made in the instant case. As noticed, the portion of the land which was acquired under the preliminary notification dated 27-1-2000 was also for the purpose of constructing the Office of the Deputy Commissioner. If this aspect of the matter is taken into consideration and in a rural set up where the remaining portion of the land was available to the appellant, thought the subsequent acquisition notification is within a short time frame also, there would have been escalation since the said land was situated nearest to the Deputy Commissioner''s Office and also abutting the Highway. Keeping this also in view and also taking note of the fact that all the surrounding lands were also developed, though we see no reason to apply the very same manner of escalation on the annual basis, keeping in view the said special features which arise for consideration in the instant case, certainly there would have been escalation and even though there is no documentary evidence to indicate there has been escalation subsequent to the period of earlier preliminary notification, certainly this Court on the observation made above would have to take note of the fact that there would have been an escalation. Hence, it would not be exaggerated or exorbitant to provide for escalation atleast at 3% of the value which had been taken into consideration earlier. If that aspect is taken into consideration, with the said enhancement at 3% the enhanced value could be taken at Rs. 30,054/- per acre. On the same being added to the value that has already been taken by this Court, the market value in the instant case would be at Rs. 10,31,854/- per acre. The appellant would also be entitled to the statutory benefits, interest and proportionate costs incurred in this appeal.

With the said modification to the judgment and award, this appeal stands allowed in part.

