

(2013) 09 KAR CK 0389

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 23042 of 2012 (LAC)

Smt. Anusuyadevi and Others

APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner,
Dharwad and Another

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2013) 6 KarLJ 258

Hon'ble Judges : K.L. Manjunath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : F.V. Patil, for the Appellant; A.A. Patnar, Additional Government Advocate and Sri G.I. Gachchinamath, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The appellants were claimants in LAC No. 1 of 2010, on the file of II Additional Senior Civil Judge, Dharwad. The appellants are the owners of 8 guntas 11 anas of land situated in Sy. No. 54A/4 of Lakamanahalli Village. For the formation of a connecting road to Kalaghatagi-Dharwad Main Road to Gandhinagar, Dharwad, the land of the claimants was sought to be notified. Accordingly, the same was acquired under preliminary notification dated 6-9-2007. The Land Acquisition Officer passed an award determining the market value at the rate of Rs. 5,399/- per gunta. Being not satisfied with the same, the appellants sought for reference u/s 18 of the Land Acquisition Act, 1894. Accordingly, the matter was referred to the Reference Court u/s 18 of the Land Acquisition Act. Before the Reference Court, evidence was let into show the potentiality of the land for exploiting to use it either for commercial purpose or for residential purpose. The claimants also contended that the property is situated within the limits of Hubli-Dharwad Municipal Corporation and from 2003 onwards in the Master Plan of Hubli-Dharwad Urban Development Authority, the land in question has been notified for residential and formation of road. The

claimants have also relied upon the sale statistics of the adjoining survey numbers of the same village. They have also produced the plan Ex. P. 8, which discloses the location of the property and the development of the surrounding areas. Still the Reference Court considering the same as an agricultural land and without assigning any reasons determined the market value at the rate of Rs. 45,000/- per gunta. Therefore, the present appeal is filed.

2. Having heard the learned Counsel for the appellants and the learned Counsel for the respondents what is to be considered by us in this appeal is whether the determination of the market value by the Reference Court is just and proper.

3. Admittedly the location of the property is not in dispute. It is within the limits of Hubli-Dharwad Municipal Corporation, abutting National Highway, which runs from Bangalore to Pune. It is also not in dispute that the land in question is acquired for formation of connecting road to Dharwad-Kalaghatagi Main Road. It is also not in dispute that adjoining lands are already converted into residential layouts and now the entire area has become a well-developed residential area prior to the notification. When such developmental activities have taken place and the land is earmarked for residential purpose in the comprehensive development plans of Hubli-Dharwad Urban Development Authority, the Trial Court has committed an error in treating the land as an agricultural land. When the land has been acquired for formation of road to connect Dharwad-Kalaghatagi Main Road, and the entire area is converted into residential layouts long prior to the acquisition, the question of treating the land in question as an agricultural land does not arise at all. Therefore the Trial Court was required to consider the NA potentiality of the land. We could have considered the appeal of the appellants on merits provided we had an occasion to have the view of the Trial Court, if the matter had been considered as the land having non-agricultural potentiality.

4. Moreover, the Trial Court has not assigned any reasons to determine the market value of the land in question at the rate of Rs. 45,000/- per gunta. Therefore, we are of the opinion that the judgment and award of the Trial Court is perverse and liable to be set aside and accordingly we set aside the judgment and award passed in LAC No. 1 of 2010, dated 30-11-2011. Since the Reference Court has not considered the evidence regarding that the land in question having NA potentiality, the matter requires reconsideration by the Reference Court.

5. In the result, the appeal is allowed.

6. The judgment and award dated 30-11-2011 passed by the II Additional Senior Civil Judge, Dharwad, in LAC No. 1 of 2010 is set aside. The matter is remanded to the Reference Court for fresh consideration, in accordance with law. In view of the order of remand, the appellants are entitled for refund of the Court fee in accordance with law.