(2005) 08 KAR CK 0061

In the Karnataka High Court

Case No : MFA No. 2836 of 2003

Smt. Salaha Begum — APPELLANT

Vs

The Special Land Acquisition Officer — RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Citation : (2005) 08 KAR CK 0061

Hon'ble Judges : K. Ramanna, J;A.M. Farooq, J

Bench : Division Bench

Advocate : Christopher Noel and Dakshayani, for the Appellant; Ashok Kumar Aga, for the Respondent

Judgement

1. These appeals arise from the common judgment dated 7/1/2003 passed by the Court of Second Additional Civil Judge (SD), Mysore in LAC No. 353, 354 and 355 of 1998. The brief facts of the case are that the lands in question were notified for acquisition vide Preliminary Notification, dated 9/3/1995. On the issuance of the Final Notification, the respondent Special Land Acquisition Officer passed an award, dated 28/11/1995 determining the market value of the acquired lands at Rs. 65,000/- per acre based on the sales statistics method.

2. Not content with the respondent''s award., the appellants-claimants sought reference u/s 18 of the Land Acquisition Act, 1894 agitating their entitlement to have the market value raised to Rs. 4 lakhs per acre. The Reference Court enhanced the market value to Rs. 1 lakh per acre.

3. Aggrieved by the aforesaid Reference Court''s award, the claimants are in appeal before us demanding the market value at the rate of Rs. 2,20,000/- per acre

4. We have heard the learned counsels for the appellants-claimants and the respondent. The following contentions are urged on behalf of the appellants:

(a) The Reference Court ought to have granted the enhancement to Rs.

2,20,000/- per acre based on the sale deed, dated 7/1/1993 at Ex. P12 wherein the sale consideration paid was Rs. 6,60,000/- for 3 acres of land,

(b) The evidence of PW-1 and PW-2 has remained unchallenged and therefore the appellants'' claim to have the market value determined at Rs. 2,20,000/- per acre ought to have been accepted.

(c) The lands in question are fertile and are just 200 meters away from the Corporation limits. The Reference Court has not paid any weightage to the location and character of the lend

(d) The appellants were earning Rs. 1.5 lakhs to Rs. 2 lakhs per annum from the lands in question; if the Reference Court had only resorted to the determination of the market value based on the capitalization method, it would have arrived at different conclusions.

(e) Viewed from any angle, awarding of market value at the rate of Rs. 1 lakh per acre is low and hence extremely arbitrary.

5. To buttress his submissions, the appellants'' counsel has also relied upon a Division Bench judgment of this Court in the case of Sri. Ugregowda Vs. The Special Land Acquisition Officer, Kabini Project, wherein it is held that when a comparable sale transaction is available which is proximate in time and locus, such sale transaction is a dependable basis to determine the market value of the acquired land. When the sale deed (Ex. P2) is two years earlier in point of time to the issuance of the Preliminary Notification, that alone constituted the best foundation for the determination of the market value of the lands in question.

6. These submissions met with resistance by the learned Additional Government Advocate. He contended that the fixation of Rs. 1 lakh per acre for the lands in question is fair, just and proper.

7. Considering the rival submissions made at the Bar, we have to scrutinize the impugned award. The learned Civil Judge has referred to a number of sale deeds executed between 1993 and 1995. He has observed that under what circumstances a sum of Rs. 6,60,000/- was paid for 3 acres of lands (under Ex. P12) is not forthcoming. He has also referred to 179 coconut trees standing therein, fencing on all four sides of the lands, existence of a farm house and an electricity connection. Therefore, he has refused to take the price shown in the sale deed (Ex. P12) as the basis for determining the market value of the lands in question. It is not the case of the appellants that on their acquired lands also a farm house and an electricity connection existed.

8. Nextly the impugned award mentions "from the evidence and also from the general award we find that proper picture of the income is not forthcoming....................................... In the cross-examination of PW-1 also he admitted that he has not maintained any documents regarding income and expenses form the agricultural source." Therefore, the Reference Court was right in not determining the market value based on the capitalization method,

9. As is evident from the impugned award, the claimants did not produce materials to prove that the acquired lands were adjacent to any particular place.

10. As no clinching materials were placed on record of the Reference Court, it had to hazard at a guess on the basis of the acquired lands being proximate to Mysore city and raise the market value from Rs. 65,000/- to Rs. 1,00,000/- per acre.

11. The oral and documentary evidence placed on the record of the Reference Court is such that reassessment of the market value becomes necessary. For the land consisting of farm house and electricity Connection a lawful consideration of Rs. 6,60,000/- was paid. Notionally if we take the value of farm house and electricity connection at about Rs. 1,50,000/-, then the sale consideration for the bare lauds comes to Rs. 5,10,000/- for 3 acres of land. Thus the value of one acre comes to Rs. 1,70,000/- per acre. Therefore, we deem it fit and safe to enhance the market value from Rs. 1,00,000/- to Rs. 1,70,000/- per acre. In the result, we allow these appeals in part by modifying the Reference Court''s judgment under appeals. We enhance the market value from Rs. 1,00,000/- to Rs. 1,70,000/- per acre. Needless to state that the appellants are entitled to receive the additional market value, solatium and the interest thereon besides the proportionate costs. The office is directed to draw up the modified award in terms of this order.

