(2003) 03 KAR CK 0088

In the Karnataka High Court

Case No : Miscellaneous First Appeal Cross Objection No. 34 of 2003 and Miscellaneous First Appeal No. 959 of 2003

Special Land Acquisition Officer — APPELLANT

Vs

Malali @ Sanasatti Timmanna Hanamappa — RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Citation : (2003) 4 KCCR 2870

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : K.P. Ashok Kumar, Government Advocate and S.N. Hatti, for the Appellant; S.N. Hatti and K.P. Ashok Kumar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—Land measuring 2 acres and 4 guntas situated in Survey No. 95/1 and 95/2 of Kunnal Village, Ramadurg Taluk was notified for acquisition in connection with the construction of Hidkal Dam Project under a preliminary notification dated 29.1.1998. The Land Acquisition Officer determined compensation at the rate of Rs. 20,000/- per acre which did not satisfy the land owners resulting in a reference to the Civil Court for determination of the just and fair compensation payable to them. The Reference Court recorded evidence on behalf of the land owners and by adopting the capitalisation method came to the conclusion that the land owners were entitled to compensation at the rate of Rs. 1,94,560/- per acre. The Court, however, felt that since in a similar case arising out of an earlier acquisition made in the year 1994, the Court had determined compensation at Rs. 96,000/- per acre only the said amount would meet the ends of Justice. The Special Land Acquisition Officer has in this appeal assailed the said order. The owner has on the contrary filed Cross Objections claiming enhancement of compensation from Rs. 96,000/- to Rs. 1,40,000/- per acre.

2. Mr. Hatti, learned Counsel for the Appellant and land owners submitted that having determined the compensation payable to the land owners at Rs. 1,94,560/- per acre on the basis of capitalization of the yield from the land the Reference Court was not justified in reducing the same to Rs. 96,000/- per acre just because the said amount had been awarded as compensation to some other land owner for an acquisition made more than three years before the issue of the preliminary notification in this case. He submitted that a copy of the Judgment in the said earlier case had been produced by the land owners marked Exhibit-P12 not because the said decision was conclusive in so far as the amount payable to the Appellant was concerned but because the same showed that the amount of compensation awarded by the Special Land Acquisition Officer was grossly incommensurate with the actual market value of the acquired lands. He urged that even if the Reference Court was to take the amount of Rs. 96,000/- determined for similar land in the year 1994 as a benchmark, the least which the said Court ought to have done was to give escalation at the rate of 10% p.a. for period of 3 years and 4 months which represented the time tag between the two notification. The Reference Court had according to the learned Counsel failed to notice that such an escalation was essential to ensure parity in the compensation payable to the Appellants with the amount awarded to the land owners in the earlier case referred to above. He also relied upon the Judgment of the Reference Court marked Exhibits No. P14 and P.15 dated 24.9.1998 in which compensation for similar land was awarded at the rate of Rs. 1,30,000/- per acre in respect of lands situated at Nipal Village of Raibag Taluk.

3. Mr. K.P. Ashok Kumar, Counsel for the Respondent, on the other hand, submitted that the land owners having themselves produced a copy of the earlier Judgment in LAC No. 7 of 1991 Exhibits No. P12 and P13, cannot find fault with the view taken by the Reference Court that the amount of compensation awarded in the said case could be a sound basis for any award made in favour of the Appellants. He submitted that taking Rs. 96,000/- per acre as the threshold, the Appellants could be given a reasonable amount of escalation for the time gap between the notifications issued in the said earlier case and the case of the Appellants. According to the learned Counsel, escalation at 5% p.a. would be the optimum that this Court could award having regard to the facts and circumstances of the case and keeping in view the decision of this Court in Gundappa Vs. State of Karnataka, where only 3% per annum was awarded towards escalation, over a previously determined amount.

4. The material facts are not in dispute. The Reference Court has on the basis of the capitalization of the yield found that the amount of compensation payable to the land owners could go upto Rs. 1,94,560/-. At the same time, the Court found that there was other material available on record that could help in determining a fair amount of compensation payable to the land owners. It has in that connection placed reliance upon its earlier decision in LAC No. 7 of 1991 in which the amount of compensation awarded was Rs. 96,000/- per acre in respect of an acquisition made on the basis of a Notification issued in September 1994. There

is in my opinion no error in the Reference Court taking the said amount as the foundation for determination of the amount of compensation payable to the Appellants. That is because the quality of the soil and the agricultural potential of the lands acquired in the two cases were not materially different. Even the Appellants had placed reliance upon the decision in LAC No. 7 of 1991 awarding Rs. 96,000/- per acre in support of their claim for higher amount of compensation. If the said amount is taken as the threshold for determination of fair amount payable to the Appellants, the only question that remains to be examined is as to what is the proper escalation that could be awarded to the Appellants. Judicial pronouncements on the question of the escalation have taken different views and awarded escalation at different rates ranging between 3% to 10% p.a. In Gundappa''s case supra, the escalation awarded was 3% p.a., whereas in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, the escalation awarded was to the extent of 10% p.a., over the value of land determined for an earlier acquisition. It is therefore evident that there has been wide range or variation in so far as the award of escalation over the previously determined amount of compensation is concerned. As to what would be the most reasonable amount to be awarded towards escalation would however largely depend upon the nature of the land acquired, the purpose for which the same was being utilised and the time gap for which the escalation is to be granted. In Gundappa''s case, the time lag between the two notifications under which the two acquisition were made was nearly 15 years. That appears to be the reason why a lesser percentage was preferred by the Court over a higher percentage awarded by the Supreme Court on account of escalation. This Court has in MFA No. 4815 of 1996 disposed of on 11.2.1997 upheld the escalation of 8% p.a awarded by the Reference Court in relation to acquisition of agricultural land. That appears to me to be the most appropriate percentage to be awarded in the instant case also. The lands in both the acquisitions were admittedly being used for growing sugarcane. Both the parcels of land were acquired for the very same purpose and were situated in the same taluk. The time gap between the two acquisitions is nearly three years and four months. Taking into consideration all these circumstances, therefore, if escalation of 8% p.a. is awarded to the land owners over the amount of compensation determined in LAC No. 7 of 1991 for a period of 3 years, the same should in my opinion represent a fairly accurate amount towards the market value of the land at the relevant time. So calculated, the Appellants would be entitled to a sum of Rs. 23,000/- towards escalation charges for a period of 3 years at the rate of 8% p.a of Rs. 96,000/- per acre determined in LAC No. 7 of 1991. The total thus work out to Rs. 1,19,000/- which can be rounded of to Rs. 1,20,000/- keeping in view the fact that the escalation for nearly three months beyond three years has not been taken into consideration.

5. In the result, MFA No. 959 of 2003 fails and is hereby dismissed. Cross Objections filed by the land owners however succeed in part and to the extent that instead of Rs. 96,000/- per acre awarded by the Reference Court, the land

owners shall be entitled to recover compensation at the rate of Rs. 1,20,000/- per acre with all other statutory benefits like solatium, additional compensation and interest on the said amount. The land owners shall be entitled to proportionate costs, in the Cross Objections.

