

(2016) 10 KAR CK 0103

In the Karnataka High Court

Case No : M.F.A. No. 23025 of 2013 C/W M.F.A. No. 23815 of 2013

Special Land Acquisition officer

APPELLANT

Vs

Sharanabasappa

RESPONDENT

Date of Decision : 27-10-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 11(2), Section 18

Citation : (2017) 2 AirKarR 560 : (2017) ILRKarnataka 1003

Hon'ble Judges : Ashok B. Hinchigeri and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : M.F.A. No. 23025 of 2013; Smt. K. Vidyavathi, Addl. Govt. Advocate, for the Appellant; Sri Anand R. Kolli, Advocate, for the C/Respondent Nos. 1 and 2; M.F.A. No. 23815 of 2013; Sri. Anand R. Kolli, Advocate, for the Petitioner; Smt. K. Vidyavathi, Addl.

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J.—with these appeals are preferred against the judgment and award, dated 07. 01. 2013 passed by the Court of II Addl. Senior Civil Judge (Reference Court), Bagalkot, in LAC No. 44/2008.

2. MFA No.23025/2013 is filed by the Government. MFA No.23815/2013 is filed by the erstwhile land-owners.

3. The facts of the case in brief are that the lands measuring 14 acres 30 guntas at R. S. No.101 and 7 acres 19 guntas at R.S. No. 100 of Hiregulabal village were acquired for the Upper Krishna Project. In that regard, preliminary notification, dated 21. 5.1998 under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") and the final notification, dated 20-3-1999 under Section 6(1) of the said Act were published. As the Special Land Acquisition officer (SLAO for short) passed the consent award on 24.5.2000 giving total compensation of Rs. 45,84,584/-. Contending that the awarding of the compensation amounts are meager, the erstwhile land-owners (appellants in MFA No. 23815/2013) sought the Reference invoking Section 18 of the said Act. The Reference Court

redetermined the market value at Rs. 5,75, 000/- per acre.

4. Smt. K. Vidyavathi, the learned Additional Government Advocate appearing for the appellant in MFA No. 23025/2013 submits that the claimants gave the consent to receive Rs.1,14,000/- per acre, as is evident from the agreement, dated 15.6.1989 (Ex.R.3). She submits that having given their consent to pass the award for the said amounts, they are estopped from contending that the amount is not just and adequate. She submits that they have agreed that there are no fruit bearing trees on the land in question and that, that is why they did not insist for any compensation for the trees. She submits that it is based on their consent that no amounts are awarded towards the pomegranate trees. She denies the claim of the erstwhile owners as to existence of any standing crops. The valuation made towards the land is inclusive of the value of the standing trees also, so contends Smt. Vidyavathi.

5. She relies on the Hon"ble Supreme Court decision in the case of State of Karnataka and another v. Sangappa Dyavappa Biradar and others, reported in AIR 2005 SC 2204 to advance the submission that the Reference application is not maintainable when the consent awards are passed. Paragraph No. 13 of the said decision readout by her is as follows:

"13. A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the Civil Court. An agreement between the parties as regard to the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say that without questioning the validity thereof, the Respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the Respondents were for quashing the order dated 23. 8.1999 passed by the Special Land Acquisition officer and for issuance of a direction upon him to refer the matter to the Civil Court. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India, thus, could not have substituted the award passed by the Land Acquisition officer by reason of the impugned judgment. Furthermore, the question as regard to the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the Respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution of India or had not been drawn up in the prescribed pro forma."

6. She has also relied on the Division Bench decision of this Court in the case of Suresh D. Bankapur v. State of Karnataka and others, passed in W.A. No.

30007/2013 : (AIR 2015 (NOC) 1044 (Kar) and other connected appeals disposed of on 28. 3. 2013. paragraph Nos.24. 2 and 31 readout by her as follows:

24.2. Once the agreement in respect of the amount of compensation is arrived at and if the person interested signs the agreement and accepts the agreed amount as full and final settlement, either under Section 29(2) of KIAD Act or in the course of enquiry under Section 11(2) of the L.A. Act, it becomes final and the acquisition proceedings in so far as such person is concerned, stands concluded/terminated and it is not open to such person to make an application either under Section 18 of the L.A. Act or to file a Writ Petition under Article 226 of the Constitution of India for seeking the reliefs, as prayed for, in the present petitions.

31. In the result, we have no hesitation in holding that in the event of an agreement under Section 29(2) of the KIAD Act, between the State Government and the person to be compensated, once the agreement is signed and the agreed amount of compensation is paid and accepted without demur/protest, one cannot turn around and seek solatium or interest on the market value unless he seeks a declaration from a Court having jurisdiction, that the agreement is void or voidable in terms of the provisions of the Indian Contract Act, having been obtained by fraud, collusion, etc. or is against public policy. The writ petition under Article 226 or 227 of the Constitution of India for the reliefs, as sought in the present writ petitions, is not maintainable. In the result, all the writ appeals are dismissed with costs.

7. Per contra, Sri. A.P.Murari, the learned counsel for the claimant-appellants in M.F.A. No. 23815/2013 submits that the claimants have given the consent to pass the award in respect of the land excluding 10-11 acres on which pomegranate trees were grown. He brings to our notice, the letter sent by the claimants on 25.1.2000 (Ex. P.4) in that regard. He submits that the award (Ex.R.1) was passed long after the receipt of the letter dated 25.1.2000 (Ex.P.4). He relies on the JMC report (Ex.P.23), evaluation of pomegranate trees standing on the land at R.S. Nos.100 and 101 (Exs.P.28 and P.29) and Drip Irrigation Certificate (Ex. P.32), in support of his submission that the determination of the market value by the Reference Court is not on the higher side. On the other hand, he would contend that the Reference Court ought to have granted escalation at the rate of 10 % p.a., because the documents on the basis of which the redetermination of the market value is done are in respect of the transactions which have taken place two years prior to the acquisition of the lands in question.

8. The question that falls for our consideration is:

"Whether a person interested in the land, who had opted for consent award, is entitled to seek reference for enhancement of compensation under Section 18 of the Land Acquisition Act, 1894?"

9. To answer this question it is necessary to refer to the various judgments of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of Sangappa

Dyavappa Biradar (AIR 2005 SC 2204) (supra) has held that the applications in terms of Section 18 of the Act were not maintainable where the consent awards are passed. It is further held in the said case that an agreement between the parties as regards to the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in appropriate proceedings by the court of law having jurisdiction in relation thereto, the same remains binding. It is one thing to say that the agreements are void or voidable in terms of the provisions of the Contract Act having been obtained by fraud, collusion, etc. or/are against public policy. But it is another thing to say that without questioning the validity thereof, the claimants could have maintained their reference applications. This view is reiterated in the Hon'ble Supreme Court in its latest decision in Ranveer Singh v. State of U.P. through Secy. & Ors., reported in 2016 SCC Online SC 727 (Civil Appeal No.13324 of 2015) : (AIR 2016 SC 3753). It is further held therein that the consent award accepted without protest extinguishes the legal right to maintain a reference for enhancement of compensation, *moreso*, when the landowners agreed not to seek any enhancement.

10. The Division Bench in the case of The Special Land Acquisition officer (Claims), Upper Krishna Project, Almatti and another v. Krishnabai and others, reported in 2011(3) Kar LJ 95, has expressed the considered view that no reference would lie for enhancement of compensation in respect of consent award. In the case of The Special Land Acquisition officer and another v. Lakshmanbabu Gayakwad and others, reported in ILR 2006 Kar 4563 : (AIR 2007 (NOC) 268 (Kar) it is held that when a person interested in the land has opted for consent award under Section 11(2) of the Land Acquisition Act, he is not entitled to seek any reference for enhancement of compensation under Section 18. The relevant portions of the said decision are extracted herein below :

"23.XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX xxxxx Under Section 11(2) of the Act, the statute envisages, that the persons interested in the land, at any stage of the proceedings of the Collector, may agree in writing on the matters to be included in the award of the Collector. On receipt of such request, the Deputy Commissioner, without making any further enquiry, may make an award according to the terms of such agreement. Under this Section, a right is conferred on the persons interested in the land to enter into an agreement with the Deputy Commissioner on the matters to be included in the award that may be made by the Deputy Commissioner. By exercising this right, the owner of the lands is authorised to settle with the Deputy Commissioner matters in dispute by mutual concession, to avoid any legal proceedings, but to settle it between themselves by a give and take agreement. It is a right given to the persons interested in the land. By this process, they enter into an agreement for preventing and for putting an end to all further litigations. It is his voluntary act and by this process, he waives all his rights under the Act, to avoid delay in determination of the compensation amount payable to the lands acquired. The Act confers this right on the persons interested in the land. Having agreed in

writing on the matters to be included in the award that may be passed, and the authorities having acted as per the agreement, the public trust is estopped from making a claim contrary to the terms of the agreement and insist upon the enforcement of the rights waived in law. A compromise is always bilateral and means a mutual adjustment. According to New Standard Dictionary, a "compromise" means agreement or adjustment for the settlement of controversy by mutual concession of ten involving partial surrender. Therefore, a person who has entered into an agreement voluntarily, mind you, that there is no prohibition in law against waiving of any right under the Act, to settle the matters to be included in the award of the Deputy Commissioner, cannot be an "aggrieved person", since he is not unjustly deprived or denied of something, which he would be entitled to obtain under the Act. The Supreme Court in the case of *State of Gujarat v. Daya Shamji Bhai* (supra), while considering the issue whether a person interested in the land, who had opted for consent award, whether he could seek reference to the Civil Court under Section 18 of the Act was pleased to observe that "sub-section (2) of Section 11 gives right to the parties to enter into an agreement to receive award compensation awarded under Section 11 in terms of the contract. In fact, it would be more expeditious to have the dispute sorted out so as to avoid delay in determination of proper compensation. The contract between the owners and the Collector in writing of the terms to be included in the award of the Collector is conclusive and binds the parties. They would not be entitled to seek any reference for enhancement of the compensation required to be adjudicated under Section 23(1) of the Act"

24. In our considered opinion, when a person interested in the land having opted for consent award under Section 11(2) of the Act, is not entitled to seek any reference for enhancement of the compensation under Section 18 read with Section 23(1) of the Act, and cannot be an "aggrieved person-to claim re-determination of the amount of compensation on the basis of the award of the Civil Court."

11. In the case of *State of Gujarat and others v. Daya Shamji Bhai and others*, reported in (1995) 5 SCC 746 : (AIR 1996 SC 133), the Hon'ble Supreme Court held that the award made under Section 11(2) of the Land Acquisition Act in terms of the agreement is, therefore, an award with consent obviating the necessity of reference under Section 18. The right and entitlement to seek reference would arise only when the amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award.

12. In the case of *Smt. Mariyamma v. The Special Land Acquisition officer, Kiadb, Mysore and others*, reported in 2013 (5) KCCR 4393 : (2014 (1) AIR Kar R 383), the learned single Judge of this Court has also expressed the considered view that when the applicant is a party to the agreement, has received compensation and has also executed an indemnity bond, application under Section 18(1) of the said Act is not maintainable.

13. Now let us examine the exact factual matrix of the case. The claimants have agreed to receive the compensation of Rs.1,14,000/- per acre. The agreement executed by them is at Ex.R3. They have also executed the indemnity bond which is at Ex.R4. They have also received the agreed compensation, as is evident from their acknowledgment in Form No.1, which is at Ex.R6. They have not even stated that they are receiving the amounts under protest. Therefore, they are estopped from seeking the reference invoking Section 18 of the said Act in so far as the consent award pertains to the land.

14. The Reference Court has not referred to any of the decisions of the Hon''ble Supreme Court and of this Court on the point. On the other hand, it has allowed the Reference in question on the basis of the judgment and award in L.A.C. No.13/2009 passed by another Reference Court. The justification given by the Reference Court for passing the impugned award is that another Reference Court has allowed the Reference in respect of consent award. It is most untenable, to say the least. The Reference Court's judgments do not lay any precedent. The Reference Court is not a court of records. Under Article 141 of the Constitution of India, the law declared by the Hon''ble Supreme Court, shall be binding on all the courts within the territory of India. Article 144 states that all the authorities, civil and judicial in the territory of India, shall act in aid of the Hon''ble Supreme Court. We are appalled that the Hon''ble Supreme Court's decisions are ignored and a decision of another Reference Court is followed.

15. It is also trite that the law declared by this Court is binding upon all the courts situated within the territory of Karnataka. It is not known why the parties have not brought the binding decisions to the notice of the Reference Court, which has passed the impugned award. Assuming that the agreement at Ex.R3 is void or voidable in terms of the provisions of the Contract Act or the said agreement is against any public policy, it was open to the claimants to challenge the validity of the said agreement in appropriate proceedings. But merely submitting a letter at Ex.P4 requesting that 10 to 11 acres are to be excluded from the scope of the agreement and that the general award be passed in respect of the said 10 to 11 acres would not make their reference-application entertainable. It is also to be noticed that Ex.P4 is submitted seven months after the execution of the agreement at Ex.R3.

16. That apart, Ex.P4 does not even specify the boundaries in respect of which they claim to have grown pomegranate trees. Besides their subsequent conduct shows that they have not acted upon their letter dated 25.01.2000 (Ex.P.4) because they have withdrawn the consent award amounts unconditionally, that is without raising any protest or demur.

17. Answering the formulated question against the claimants by holding that the Reference application is not maintainable in respect of the consent award, we set aside the impugned judgment raising the market value of the land from Rs.1,14,000/- to Rs.5,75,000/- per acre.

18. As far as the claimants-appeal for enhancement is concerned, we have carefully gone through the agreement at Ex.R3. The relevant paragraph of the agreement reads as follows:

(VERNACULAR MATTER)

19. The plain reading of the afore-extracted clause reveals that the sum of Rs.1,14,000/- is inclusive of 30% solatium and additional market value. However, it is not inclusive of the buildings, trees and other improvements on the land. We wish the Government had entered into a comprehensive agreement without leaving any scope for further litigation. But, for the reasons best known to the Government, it has not done so. Going by the plain language of the agreement, we have to give the relief to which the claimants are entitled. As there is no agreement in respect of the buildings, trees and other improvements on the land in question, the award under Ex.R.1 cannot be held to be binding on the claimants in so far as it pertains to buildings, trees and other improvements on the land. When there is no agreement in respect of them, there cannot be any consent award. We, therefore, hold that the Reference under Section 18 is valid only and strictly for the purpose of examining what compensation is to be paid towards the buildings, trees and other improvements on the land. The matter is remanded to the Reference Court for the purpose of adjudicating as to what is the market value of the buildings, trees and other improvements on the land as on the date of the issuance of the preliminary notification.

20. Needless to observe that with the parties are at liberty to lead their evidence in the remanded matter.

21. In the result, with the appeals are allowed but to the extent indicated herein above by quashing the impugned award and by remanding the matter to the Reference Court for fresh enquiry for the purpose of adjudicating the market value of buildings, trees and other improvements on the land. At the risk of repetition, we make it clear that the Reference in so far as it pertains to the land is invalid and consequently the impugned award raising the market value of the land is quashed.

22. The remanded matter shall be disposed of as expeditiously as possible and in any case within an outer limit of six months from the date of the production of the certified copy of today's judgment.

23. Registry is directed to send the copies of this judgment to all the Reference Courts in our State and to the Karnataka Judicial Academy.

24. No order as to costs.