(2000) 07 KAR CK 0066

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2422 of 1994

Special Land Acquisition Officer, Mandya — APPELLANT

Vs

Thimmamma and Others — RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 54(1)

Citation : (2000) 7 KarLJ 504

Hon'ble Judges : T. N. Vallinayagam, J;Harinath Tilhari, J

Judgement

Hari Nath Tilhari, J.-This appeal arise from the judgment and award dated 4-11-1991 delivered by Principal Civil Judge at Mandya in LAC No. 12 of 1987.

2. Before we proceed to discuss the merits, it may be pointed out that the matter was listed before the Bench consisting of justice P. Krishna Moorthy and justice V.P. Mohan Kumar and on 22-11-1994 the Division Bench ordered and directed the registry that the appeal may be posted for final disposal on 12-12-1994. It appears the office has not taken note of the order of the Division Bench. Any way we have admitted the appeal and called upon the learned Counsel to argue the matter.

3. We have heard the learned Government Pleader and the learned Counsel for the respondents.

4. The facts of the case in brief are that the land in question was acquired by notification under Section 4 of the Land Acquisition Act, 1894 published on 14-6-1984, in pursuance of the order in LAQ CR No. 26/83-84, dated 18-4-1984. Different bits of lands in various S. Nos. of Chottekyathanahalli village and Ejjalkatte village, were notified in the said notification that they were acquired for the purpose of construction of Hosakere tank. Final notification under Section 6 of the Land Acquisition Act was published in Karnataka Gazette on 24-10-1985. The Land Acquisition Officer awarded compensation at the rate of Rs. 2,650/- per acre. The claimants objected and demanded for compensation at the rate of Rs. 26,000/- per acre from which reference was made to the Civil Court under

Section 18 of the Act. On behalf of the claimants, the claimants examined five witnesses and relied on Exs. P. 1 and P. 2 (two registered sale deed) in order to prove the market value on the relevant date i.e., on 14-6-1984 the date of acquisition. It may be mentioned here that neither the respondents entered the witness-box nor examined any witness or produced any document in support of the assessment of the market value made by him. I mean to say he did not produce any evidence or material on which the Land Acquisition Order is sought to be based. Learned Civil Judge considered evidence as well as placed reliance on Ex. P. 1 the sale deed dated 10-9-1985 and Ex. P. 2 the sale deed dated 19-4-1984. The Court below opined that so far as the sale deed Ex. P. 1 is concerned it is the post acquisition sale deed and Ex. P. 2 is only a day later the date of notification. The learned Civil Judge placed reliance on Ex. P. 2 and after having placed reliance thereon, it opined that on the date of preliminary notification that the market value of the land as reflected in Ex. P. 2 at about the time of the preliminary notification was Rs. 500/- per gunta that works out to Rs. 20,000/- per acre. While placing reliance on this Ex. P. 2 the Court had followed the principle laid down in Administrator General of West Bengal v Collector, Varanasi, AIR 1988 SC 943. On the basis thereof, the Court determined the market value of the dry land on the date of publication of the notification to be Rs. 20,000/-. The Court after opined that under Sections 23(1) and 28 of the Land Acquisition Act came into force on 24-9-1984 and the preliminary notification was issued on 18-4-1984 while the Deputy Commissioner passed the award on 11-3-1986. Therefore, the amendment made under Sections 28 and 23-A will be applicable and for this finding it made reference to the earlier decision of the Supreme Court in Bhag Singh and Others v Union Territory of Chandigarh, AIR 1985 SC 1576 and Union of India and Others v Filip Tiago De Gama of Vedem Vasco De Gama, AIR 1990 SC 981. The Tribunal as such held that the claimants were entitled to the award of solatium at the rate of 30% and interest at the rate of 9% from 13-2-1972 to 12-2-1973 and at the rate of 15% from 13-2-1973 to 13-3-1986. It further held that the claimants have been entitled to additional amount under Section 23(1-A) of the Act at the rate of 12% on market value from the date of notification to the date of taking possession whichever is earlier. Giving these benefits the Civil Judge made the award. Feeling aggrieved from the judgment and decree passed by the learned Civil Judge the State of Karnataka has come up before this Court filing this appeal.

5. Learned Counsel for the appellant i.e., the learned Government Pleader urged that the Land Acquisition Officer''s award was justified when it assessed the market value of the land at Rs. 2,650/- per acre and that the assessment or enhancement of the market value of the land to Rs. 20,000/- per acre by the Civil Judge is without any basis and reason. Learned Government Pleader submitted as such the award given by the Civil Judge to the effect that the claimants are entitled to compensation at the rate of Rs. 20,000/- per acre is erroneous and wrong in law. Apart from this contention, no other contention has been raised by the learned Government Pleader nor the memorandum of appeals

shows any other finding has been challenged.

6. As regards the contention made by the learned Government Pleader this contention is hotly contested by the learned Counsel for the respondents.

7. We have applied our mind. We are of the opinion that the contention of the learned Government Pleader is without any basis and has no force. In case of Administrator General of West Bengal, their Lordships have held:

"The market value of a piece of property, for purposes of Section 23 is stated to be the price at which the property changes hands from a willing seller to a willing but not too anxious a buyer, dealing at arms length. The determination of market value is the prediction of an economic event, viz., the price outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value".

Their Lordships further observed in para 6 as:

"Subsequent transaction which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were to fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. But this principle can be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction".

8. In the present case, the learned Civil Judge relied upon the transaction exhibited by Ex. P. 2 which is dated 19-4-1984 only a day later to the date of issuance of preliminary notification under Section 4 of the Land Acquisition Act. It may be mentioned here that 18-4-1984 is the date when notification was directed to be published and it was published on 19-4-1984. So this sale deed is in between these two dates and the date when it has been issued taken along with the date when it was ordered to be issued this sale deed being in between the two days in our opinion it was rightly relied upon.

9. Ex. P. 2 exhibited that at the time of preliminary notification the transaction exhibited by Ex. P. 1 reveals that land was sold at Rs. 500/- per gunta to work out Rs. 20,000/- per acre. Even Ex. P. 1 also exhibited that the land in 1985 also did bear although the same value i.e., Rs. 20,000/- per acre. In addition to these documents, the learned Civil Judge has placed reliance on the deposition of P.Ws. i.e., the claimants, according to whom the market value was Rs. 20,000/- to Rs. 30,000/-. But the principle being that market value is to be assessed on the basis of the sale deed of the similar lands under which the other properties were

sold during the period and in this view of the matter in our opinion the learned Civil Judge did not commit any error. Learned Government Pleader failed to point out any difference between the subject-matter of the acquisition in respect of which award has been given and the subject-matter of Ex. P. 2 when no difference can be pointed out no evidence can be produced, in our opinion, the award by the Civil Judge cannot be said to suffering from any error of fact or law. Thus, this appeal being devoid of merits has to be dismissed and is hereby dismissed and order

ORDER

The Court, made the following:

Pursuant to an advertisement at Annexure-A, the petitioner participated in the public auction and was the highest bidder for collection of daily market fee. Pursuant to such highest bid, petitioner states that he has paid some amount. Vide Annexure-C, the Commissioner of Town Municipal Council called upon the petitioner to pay the remaining 2/3rd of the bid amount. The petitioner thereafter has paid one lakh rupees vide receipt at Annexure-D in addition to earlier deposit of amount of Rs. 2,11,000/- vide receipt at Annexure-B. The grievance of the petitioner is that the respondents have not restored original position by allowing traders to do business. Hence he has approached this Court seeking a writ of mandamus directing the respondents to restore the

