

(1972) 03 KAR CK 0004

In the Karnataka High Court

Case No : Misc. First Appeal No's. 340 to 344 of 1969

Special Land Acquisition Officer, Mangalore

APPELLANT

Vs

Smt. Ovamma

RESPONDENT

Date of Decision : 23-03-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25 (1), 9

Citation : AIR 1973 Kar 175 : AIR 1972 Kar 175

Hon'ble Judges : E.S. Venkataramiah, J;B. Venkataswami, J

Bench : Division Bench

Advocate : N.S. Chandrasekhar, High Court Govt. Pleader, for the Appellant;
Padubidri Raghavendra Rao, for the Respondent

Judgement

Venkataswami, J.—The above appeals are by the Special Land Acquisition Officer Port, Mangalore, and are directed against a common award made by the learned Second Additional Civil Judge at Mangalore, South Kanara. In O. P. No. 806/67. L. A. C. Nos. 27 28 29 and 30 of 1967. Since the claimant is common in all these cases, these appeals can be disposed of by a common judgment.

2. The lands comprised in these cases are dry garden, wet II and Wet III lands. In regard to the said lands, the Land Acquisition Officer awarded compensation at the rate of Rs. 2,000/-, Rs. 3,000/-. Rs. 2,400/- to Rs. 4,000/- and Rs. 2,000/- per acre respectively. On a reference to the Court at the instance of the claimant, the Court enhanced the compensation to Rs. 4,000/- Rs. 13,200/-, Rs. 8,800/- to 13,200/- and Rs. 6,600/- per acre respectively, in regard to the above said lands. Aggrieved by this award, the Land Acquisition Officer has approached this Court in the present appeals.

3. M. F. A. No. 340/69 arises out of O. P. No. 806/67. M. F. A. No. 341/69 arises out of L. A. C. No. 27/67; M. F. A. No. 342/69 arises out of L. A. C. No. 28/67; M. F. A. No. 343/69 arises out of L. A. C. No. 29/67 and M. F. A. No. 344/69 arises out of L. A. C. No. 30/67. The original petition and the Land Acquisition cases were all cases on the file of the learned Civil Judge, Mangalore. It is relevant to

specifically refer to a few particulars regarding some of the lands. In the context of the arguments addressed before us.

4. S. No. 26/23 concerned in M. F. A. No. 340/69 is a garden land, measuring 9 cents. The claimant had claimed initially compensation at the rate of Rs. 25,000/- per acre. Later, when she asked for a reference u/s 18 of the Land Acquisition Act. hereinafter called the Act, confined the claim to Rs. 8,000/- per acre. The Court treating the garden land as wet II, for the reason that it was entirely surrounded by wet II lands, awarded compensation at the rate of Rs. 13,200/- per acre. In the same appeal. S. No. 26/28, measuring 43 cents, is a wet II land, in regard to which, the claimant had claimed Rs. 25,000/- per acre, in response to the notice issued u/s 9 of the Act. Later, while asking for a reference u/s 18 of the Act, she confined her claim to Es. 10,000/- per acre. The Court, however awarded Rs. 13.200/- per acre.

5. Similarly in M. F. A. No. 341/69 one of the lands concerned is S. No. 26/16, measuring 27 cents, classified as wet II. The claimant before the L. A. O. had claimed compensation at the rate of Rs. 25,000/- per acre. Later, while asking for a reference to the Civil Court, she confined her claim to a rate of Rupees 10,000/- per acre. The Court, however, awarded Rs. 13,200/- per acre,

6. In M. F. A. No. 342/69, one of the lands concerned is S. No. 215/2, measuring 22 cents classified as wet III (one crop land). The claimant had claimed before the Land Acquisition Officer, compensation at the rate of Rs. 20,000/-per acre. Later, while asking for a reference u/s 18 of the Act, she confined her claim to a rate of Rupees 6,000/- per acre. The Court, however, awarded Rs. 6,600/- per acre.

7. In M. F. A. No. 343/69, the land concerned is S. No. 173, classified as wet III. Here again, the Claimant had claimed compensation at the rate of Rupees 30,000/- per acre and subsequently confined her claim to a rate of Rs. 5,000/- per acre in her application u/s 18 of the Act. The Court, however, awarded compensation at the rate of Rs. 6,600/-per acre.

7-A. It is unnecessary to refer to the other lands and the compensation claimed therein, as the main argument addressed on behalf of the appellant in all these appeals. centred round the above referred lands. The lower Court computed the compensation payable by adopting the capitalisation method. To that end it acted upon the "geni" payable in regard to the Wet II and Wet III lands. The ruling price of rice on the relevant date has been taken as Rs. 55/- per mura.

8. On behalf of the appellant, "geni" or the rent recoverable from the lands and the ruling price of rice per mura was not seriously disputed. But, the following contentions were pressed for consideration by Sri N. S. Chandrashekhar, the learned High Court Government Pleader; (1) that the quantum of compensation arrived at. by the application of the capitalisation method was not warranted by the evidence on record; (2) that the garden land concerned in S. No. 26/23, which is the subject-matter in M. F. A. No. 340/69, should not have been treated

as a Wet II land and compensation awarded accordingly; and (3) that the determination of the compensation in regard to the lands enumerated above, far exceeded the claim made by the respondent in her application u/s 18 of the Act; thus, the award is contrary to the provisions of Section 25(1) of the Act.

9. The first contention relates to the quantum of compensation. We have been taken through the judgment of the learned Civil Judge. It is clear that the learned Civil Judge has taken 12 murals of geni in regard to wet II land (capable of growing two crops). 8 murals of geni in regard to wet II Patla lands, yielding a single crop and 6 murals of geni per acre in regard to wet HI land capable of yielding a single crop. He has also taken into account the prevailing rate of rice in the year 1986 as Rs. 55/- per mura. That the rice was being sold at Rs. 55/-per mura is clear from the Gazette Notification issued by the relevant authority for that year. Having regard to the fact that these ere wet lands, it cannot be said that the computation of the market value of the land by the learned Civil Judge is excessive. We, therefore, reject the contention in this regard, urged on behalf of the appellant.

10. As regards treating S. No. 1 26/23 as a wet land, although it is classified as a garden land the contention is that the lower Court was not justified in assuming that it was capable of being converted into a wet II land merely on the basis that it is surrounded on all sides with wet II lands. The fact that S. No. 26/23 is classified as a garden land with buildings standing thereon, would not detract from its potentialities for conversion into a wet II land. It is well settled law, in matters relating to land acquisition, that compensation must be awarded taking into consideration the value of the land with all its potentialities. In the instant case, it appears to us that the claimant has merely left it fallow in order to use it for the purpose of a farm tenement for her residence. We are therefore, clearly of opinion that the learned Civil Judge has not erred in any manner in treating it as wet II land, on a par with the surrounding lands, for the purpose of determining the market value. Hence this contention also fails.

11. The third contention relates to the jurisdiction of the learned Civil Judge to award compensation in excess of what was claimed by the claimant herself. On this aspect, our attention was invited to the various applications filed by the claimant u/s 18 of the Act, while asking for references to the Civil Court for purposes of determination of just and proper compensation payable to the lands under acquisition. It is relevant to mention that this question appertains only to the lands detailed earlier.

12. While asking for a reference, the claimant has stated as hereunder. It is sufficient to refer to two of such statements, as all others are almost on similar lines. In L, A. C. No. 28/67. concerned has stated:--

"The reasons given by the land Acquisition Officer to reduce the value of the land are not tenable. The lands in S. No. 215/1 should have been valued at least at Rs. 8,000/- per acre and S. No. 215/2 at Rs. 5,000/- per acre." (underlining is

ours).

13. In L. A. C. No. 27/67 concerned in M. F. A. No. 341/69, the claim is in respect of S. No. 26/4 and S. No. 26/6, both of which are wet II lands capable of growing two crops. This is what the claimant has stated:

"The petitioner submits that the rate at which the value has been fixed by the Land Acquisition Officer for the above land is very low in view of the various reasons such as the nature of the land, their potential value etc. The reason given by the Land Acquisition Officer to reduce the value of the land are not legal and tenable. The land should have been valued at least at Rs. 10,000/- per acre." (underlining is ours).

14. In view of the above mentioned statements, it was contended on behalf of the appellant that the claims should have been limited to such amounts having regard to the provisions of Section 25(1) of the Act. It is relevant to remark that the learned Civil Judge has not at all taken into account such statements made by the claimant in her applications for reference to the Civil Court u/s 18 of the Act. On behalf of the respondent, Sri Padubidri Raghavendra Rao, the learned counsel, submitted that the use of the words "at least" in the said statements would not connote that the claimant had resisted from the claims made by her before the Land Acquisition Officer. His further argument was that if the statements were read as a whole it would be clear that what the claimant had specified was the minimum, the implication being that she had not given up her claim to the compensation in excess of the figures as mentioned. We are unable to accede to this argument urged on behalf of the respondent.

15. It is no doubt clear from the provisions of Section 25(1) of the Act, that a limitation is imposed on a Civil Court as regards the limit of compensation that could be awarded, and that it should in no case exceed the amount claimed by the owner whose lands have been acquired. But. it does not prevent an owner of the lands acquired from reducing and limiting the compensation to a figure lower than the one claimed in the first instance before the Land Acquisition Officer, while the matter is being brought up before the Civil Court. It is also reasonable to suppose that the claimant while reducing the claim, as has been done in the instant cases, would be having in mind the costs that might be awarded by the Civil Court on a disallowance of such claims. It may be as argued on behalf of the respondent that the word "at least" would signify the minimum compensation payable. It is to be remembered that in matters relating to compensation cases, the governing principle for determination of the market value of the property acquired is the price which a willing buyer would pay to a willing seller. When an owner of a land specifies a certain sum as the minimum payable in respect of the land under acquisition, it is reasonable to infer that the minimum so mentioned represents a fair value for the property so acquired. To put it differently, the owner would be willing to part with the property if the minimum price stated by her is paid. It seems to us that the object underlying the enactment of Section 25(1) is to hold the claimant to his or her own bargain in regard to the

compensation payable. The matter can also be viewed from another angle. It is fairly well settled proposition that an award by a Land Acquisition Officer can be assimilated to an offer of price for the property acquired, made on behalf of the Government. If the owner accepts the award there is an end of the matter. If the offer is not accepted, the owner can ask for reference to Court for a determination of the fair and proper compensation payable. In asking for a reference, or even after the matter reaches the Court, the owner could reduce, but not increase, such claim as any such step taken by him will be akin to a counter-offer by a party to a bargain as contrasted with the earlier offer made on behalf of the Government. No inhibition against such a reduction of a claim, can be spelled out from the language of Section 25(1) of the Act. In this view, the contention urged on behalf of the appellant has to be accepted.

16. We shall now proceed to determine the compensation "payable on the lands under acquisition, in regard to which the compensation awarded by the learned Civil Judge has to be modified in the light of the above conclusion of ours. (The rest of the judgment is not material for purposes of reporting--Ed).