

(2011) 04 SC CK 0147
In the Supreme Court Of India
Case No : C.A. No. 4226 of 2007

Spl. L.A.O. City Improvement Trust Board	APPELLANT
Vs	
S.G. Channabasavana Gowda and Another etc.	RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Karnataka Improvement Boards Act, 1976 — Section 15
Land Acquisition Act, 1894 — Section 18, 54

Citation : (2012) 5 KarLJ 308 : (2012) 3 RCR(Civil) 370 : (2011) 5 SCALE 221

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against judgment dated 7.4.2006 of the Division Bench of the Karnataka High Court whereby the appeals preferred by the Respondents u/s 54 of the Land Acquisition Act, 1894 (for short, "the Act") were partly allowed and market value of the acquired land fixed by the Reference Court was enhanced from Rs. 87,000/- to Rs. 1,74,000/- per acre.

2. The land belonging to the Respondents was acquired vide notification dated 5.7.1979 issued u/s 15 of the Karnataka Improvement Board Act for developing S. Nijalingappa layout (Shamanur, Stage-II). The Land Acquisition Officer fixed market value of the acquired land at Rs. 16,709/- per acre in respect of some parcels of land and Rs. 22,545/- per acre for other parcels of land.

3. The Respondents did not feel satisfied with the determination made by the Land Acquisition Officer and filed applications u/s 18 of the Act. Thereupon, the Collector made reference to the Court of Additional Civil Judge (Senior Division), Davangere. After examining the oral and documentary evidence, the Reference Court fixed market value of the acquired land at Rs. 87,000/- per acre.

4. The aforesaid determination made by the Reference Court also did not satisfy the Respondents, who filed appeals u/s 54 of the Act. The Division Bench of the

High Court referred to the judgments Exhibits P5, P18 and P19 rendered in MFA Nos. 670 of 1971, 7 of 1972, 1426 of 1987 and 1492 of 1990 respectively and the judgment of this Court in K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, and held that the land owners are entitled to compensation at the rate of Rs. 1,74,000/- per acre with proportionate benefits for the enhanced portion including the interest on compensation. The reasons assigned by the High Court for fixing higher market value of the acquired land are contained in paragraphs 18 to 22 of the impugned judgment, which are extracted below:

18. In view of the said contention, it is necessary for us to examine as to whether Ex.P.5 could be relied on as the basis for fixing the market value in the present case. In this regard, we have perused the judgment of the Apex Court in the case of K.S. Shivadevamma cited supra. While deciding the said case, the Apex Court has merely referred to the order passed in MFA No. 670/71 and 7/72 which was relied on by the learned Counsel for the claimants in that case. Though the Apex Court did not decide the correctness or otherwise of the said decision, it has merely observed that the approach adopted by the Court is not sound principle to form the basis for determination of compensation in that case. By the said observation, the Supreme Court has not overruled or set aside the findings in MFA No. 670/71. That apart the said decision in MFA No. 670/01 was made as the basis for the subsequent decisions rendered by this Court in MFA No. 1426/87 and 1492/90 which are marked as Ex.P.18 and 19. Though the judgment in MFA No. 1426/87 was also referred to in Shivadevamma's case, the Supreme Court has not chosen to comment on the same. Further the judgment passed in MFA No. 670/71 was not directly in issue before the Supreme Court either in that case or at any earlier point of time. On the other hand, the judgment of the reference Court would indicate that the order in MFA No. 1490/90 Ex.P. 19 though appealed before the Supreme Court has been upheld by the Supreme Court and this fact has not been disputed by the beneficiary. Therefore, what could be deduced is, that the judgment in MFA No. 1492/90 at Ex.P.19 was passed making P.5 herein as the basis and it has been approved by the Supreme Court and as such the compensation awarded in Ex.P.5 could be made as the basis and necessary adjustments/escalation could be granted.

19. One other reasons for us to make Ex.P.5 as the basis is that apart from the sale deeds, which we have rejected as not the proper basis, what we are left with is only the judgments passed in earlier cases. It is now well settled that the judgment passed in earlier cases is a reliable piece of evidence, which could form a basis for determining the compensation. The beneficiary and the acquiring authority have not produced any other document before the Reference Court so that reliance could be placed and as such even a remand would be without purpose. Therefore, we are of the view that the market value could be fixed in the instance case by placing reliance on Ex.P.5 and also taking into consideration that the Reference Court has thereafter made adjustments and has granted a lower market value than what has been granted in Ex.P.5.

20. That takes us to the question as to what is the proper market value to be fixed in the present case. The market value fixed in Ex.P.5 is at Rs. 35/- per square yard. The Reference Court after taking into consideration all the relevant factors has rightly fixed the market value at Rs. 18/- per square yard. Therefore, we deem it proper to retain the same market value, which has been fixed by the Reference Court by making proper adjustment after keeping Ex.P.5 as the basis. The said market value has been fixed in respect of the preliminary notification dated 24.4.1969. In the instant case, the preliminary notification is of the year 5.7.1979. The fact that there has been development in the surrounding area cannot be disputed since several other bits of lands have been acquired for different purposes. Even the present acquisition is for the second stage of the housing layout. In respect of granting escalation, it is settled law that the same could be granted between 5% to 10%. In the instant case, taking into account the material on record with regard to development, we deem it proper to grant escalation at 10%.

21. The appreciation/escalation on Rs. 18/- per square yard at 10% would be Rs. 1.80 per square yard. The time gap between the two notification is 10 years and as such the total escalation would be in a sum of Rs. 18/- per square yard. Thus, the market value is to be determined and fixed at Rs. 36/- per square yard, which would work out to Rs. 1,74,240/- per acre and the same is rounded off to Rs. 1,74,000/- per acre. After having arrived at the said market value, the question that would arise for consideration is as to whether any further deduction is required to be made towards development costs. In this regards, the well established position is that the appropriate deduction towards the development costs is to be made when smaller extent of lands are taken as the basis for determining the market value of the larger extent. In the instant case, while determining the market value in the decision rendered at Ex.P.5, the Court had considered the value of smaller extent of lands and after granting deduction towards development costs had fixed the market value. What we have done in the present case is only keeping the same as a basis and granted the escalation at the rate of 10%. Therefore, we are of the view that making further deduction towards development costs would not arise and the market value determined at Rs. 1,74,000/- per acre to be awarded without any further deductions.

22. Even though we have fixed the market value in respect of the properties acquired at Rs. 1,74,000/- per 45 acre, it is noticed that in MFA No. 4742/ 2001 the claimant has sought for enhancement from Rs. 87,000/- to Rs. 1,50,000/- and the appeal memo has "been value accordingly and the Court fee has been paid. Since we have decided to fix the market value at Rs. 1,74,000/- the claimant in the said appeal also would be entitled to the market value subject to the Appellant in MFA No. 4741/2001 paying the deficit Court fee within a period of six weeks from today.

5. Shri Basava Prabhu S. Patil, learned senior Counsel appearing for the Appellant argued that the High Court was not justified in relying upon Exhibits

P.5, P. 18 and P. 19 because determination of market value made in those judgments has not been approved by the Supreme Court in K.S. Shivadevamma v. Assistant Commissioner and Land Acquisition Officer (supra). As against this, Shri R.S. Hegde and Shri Naresh Kaushik, learned Counsel for the Respondents supported the impugned judgment and argued that the High Court rightly relied upon the earlier judgments for fixing market value of the acquired land.

6. We have considered the respective submissions and carefully perused the record. In our view, the High Court did not commit any error by relying upon Exhibits P.5, P.18 and P. 19 for granting further enhancement in market value of the acquired land. In K.S. Shivadevamma v. Assistant Commissioner and Land Acquisition Officer (supra) this Court did not reject the determination of the market value made by the High Court vide Exhibit P.5. Therefore, the same could furnish basis for determination of market value of acquired land.

7. The appeal is accordingly dismissed.

8. The City Improvement Board is directed to pay the balance amount along with all statutory benefits admissible to the Respondents within a period of three months.

9. With a view to ensure that the Respondents are paid the amount without the intervention of any middleman, the following directions are issued:

i) Within a period of one month from today, the Appellant shall deposit the entire amount payable to the Respondents with the Special Land Acquisition Officer, Davanagere.

ii) Within two weeks from the date of receipt of copy of this order, the Special Land Acquisition Officer shall depute an officer not below the rank of Naib Tehsildar to contact the Respondents and inform them about their right to get additional compensation. The concerned Officer shall ask them to open Bank Accounts, if they already do not have such account

iii) Thereafter, the Special Land Acquisition Officer shall ensure that the amount payable by the Appellant is deposited in the Bank Accounts of the Respondents by way of account payee cheque(s).