
(2013) 07 KAR CK 0349
In the Karnataka High Court
Case No : M.F.A. No. 7415 of 2010

Sri G. Ravishankar

APPELLANT

Vs

National Highways Authority of India, Competent Authority
for Land Acquisition and The Deputy Commissioner

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

National Highways Act, 1956 — Section 3D, 3G(1), 3G(5), 3G(7)

Citation : (2014) 2 KarLJ 536

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Shankarlingappa Nagaraj, for the Appellant; Shilpa Shah, for Singhanian and Partners for R1 and Sri S.B. Shahapura, AGA for R3, for the Respondent

Judgement

B.S. Patil, J.—In this appeal, appellant is challenging the order dated 17.03.2010 passed by the learned Principal District Judge, Chitradurga, in Arbitration Case (A) No. 75/2007, thereby allowing the application by setting aside the award dated 08.05.2007 passed by the Deputy Commissioner, Chitradurga, in No. LAQ/C.R/14/2005-06. An extent of 22,869 sq. ft. of land comprised in Sy. No. 49/2 of Aimangala village, Hiriur Taluk, Chitradurga District, belonging to the appellant has been acquired for the benefit of respondent No. 1-National Highways Authority of India, for the purpose of widening National Highway No. 4. A notification u/s 3D of the National Highways Act, 1956 (for short, "the Act") came to be issued on 29.10.2001. On 30.12.2002, the Competent Authority/Land Acquisition Officer passed an award determining the market value and compensation payable at the rate of Rs. 42 per sq. ft. Aggrieved by the same, the claimant moved the Deputy Commissioner u/s 3G(5) of the Act, read with the provisions of the Arbitration and Conciliation Act, 1996.

2. The Deputy Commissioner/Arbitrator exercising his power u/s 3G(7) of the Act, has passed the award dated 08.05.2007 enhancing the market value of the

land and fixing the same at Rs. 125/- per sq. ft. He has granted the following reliefs taking note of the loss suffered by the appellant in his business and the inconvenience caused to him apart from the trauma undergone in that process.

(a) Land compensation at Rs. 125/- per sq. ft. for 22,869 sq. ft. as the land value.

(b) Loss of business for 10 years at Rs. 5,00,000/-.

(c) The respondents shall provide intersection to access the vehicles from N.H. within 500 mtrs., from the sides. This facility is ordered to be made in view of fact, the land owner has sacrificed his precious land and parted his livelihood for this purpose. This is to be done on both humanitarian grounds and as a matter of justice and fair play.

(d) The respondents shall also prepare a rehabilitation package if the appellant is likely to be displaced from the existing place.

3. Aggrieved by this order, the respondents herein filed Arbitration Case No. 75/2007 invoking the provisions of Section 34(2) of the Arbitration and Conciliation Act, 1996, seeking to set aside the order passed by the Deputy Commissioner.

4. The learned District Judge, having considered the respective contentions, has passed the impugned judgment setting aside the award passed by the Arbitrator. The learned District Judge has found fault with the approach adopted by the Deputy Commissioner in determining the market value at Rs. 125/- per sq. ft. in the wake of the sale transaction, wherein the claimant had sold certain extent of land comprised in the very same survey number in favour of the National Highways Authority at Rs. 42/- per sq. ft. The learned District Judge has further found that the relief granted by the Arbitrator directing the National Highway Authorities to provide inter-section to have access to the vehicles from National Highway within 500 metres to the petrol bunk of the claimant was without authority of law. Referring to Section 3G(7) of the Act, the District Judge has found that the Deputy Commissioner failed to discharge his duties by passing a speaking order and the order passed by the Deputy Commissioner was contrary to the provisions contained u/s 3G(7) of the Act.

5. Learned Counsel appearing for the appellant submits that the District Judge has totally erred in passing the impugned judgment. His contention is, that having found fault with the award passed by the Arbitrator, the District Judge has not made any attempt to ensure that the claimant-land owner gets a just and fair compensation in terms of the provisions contained under the Act. He further points out that as the claimant-appellant had access to the petrol bunk well before the acquisition for widening the National Highway, the authorities while determining compensation are required to take into account the deprivation of such access to the existing petrol bunk for the purpose of ensuring that the loss of business is minimized and mitigated. His further contention is that the District

Judge has failed to even consider the question of remanding the matter to the Deputy Commissioner to re-consider the entire matter afresh, keeping in mind, the purpose and object of the enactment which provides for payment of just and fair compensation for the acquired land to the land loser.

6. Counsel appearing for the respondent-National Highways Authority strongly supports the judgment passed by the District Judge and contends that the Deputy Commissioner has no power to direct the National Highway Authority to provide any inter-section or access to the petrol bunk run by the appellant. It is her submission that there is a separate procedure provided in this regard for the purpose of providing access from the National Highway. She draws the attention of the Court to Sections 29 & 30 of the Control of National Highways (Land and Traffic) Act, 2002. Learned Counsel is also highly critical of the approach of the Deputy Commissioner in issuing omnibus directions and in enhancing the market value at Rs. 125/- per sq. ft. without assigning any acceptable reasons.

7. Having heard the learned Counsel for the parties and on careful perusal of the award passed by the Arbitrator and the judgment rendered by the learned District Judge, I am of the considered view that while the District Judge was right and justified in returning the findings stating that the Deputy Commissioner did not pass a speaking order supporting his conclusions and had merely referred to the contentions advanced by the claimants in support of their claim, I find that the District Judge has totally erred in not choosing to remand the matter to the Deputy Commissioner and in thus allowing the claim made by the land loser undecided, thereby almost rendering the provisions contained u/s 3G(7) nugatory.

8. The findings recorded by the District Judge do not also suggest that the compensation determined by the Land Acquisition Officer constituted fair and just determination of compensation. For that purpose, no discussion is made with regard to the evidence adduced by both parties. The right course for the District Judge was to remand the matter to the Deputy Commissioner for fresh consideration. In a matter like this, where the land owner claims compensation and provision is made for redressing his grievance by providing a forum for determination of just and fair compensation payable to him, the authorities/court invested with the power has to consider the evidence on record and fix the market value as it obtained on the date the notification u/s 3A of the Act came to be issued. Section 3G(1) of the Act, provides for payment of amount by way of compensation which shall be determined by the competent authority under the Act. Section 3G(5) of the Act, provides that the aggrieved party can make an application to the Arbitrator for determining just and fair compensation payable to the acquired land, for which purpose the provisions of the Arbitration and Conciliation Act, 1996, is applicable.

9. Section 3G(7) of the Act, lays down the factors to be taken into consideration while determining the amount of compensation. Some of the factors to be taken note of are the damage, if any, sustained by the person interested at the time of

taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings. Yet another factor to be taken into consideration is, that if as a result of the acquisition, the person interested is compelled to change his residence or place of business, then reasonable expenses, if any, incidental to such change, has to be awarded.

10. It is the contention of the learned Counsel for the respondent-National Highway Authorities that the Deputy Commissioner is not competent to issue any direction to the National Highway Authorities directing to provide any access or inter-section for the continuance of business of the claimant in the non-acquired portion of the land. It is her submission that if at all the claimant intends to have access from the National Highway to the petrol bunk run in the land, the claimant has to make necessary application u/s 29 of the Control of National Highways (Land and Traffic) Act, 2002, to the competent authority and obtain the same. In other words, her submission is, that the Deputy Commissioner is only required to determine the amount of compensation payable and cannot travel beyond that to issue any other direction. On the other hand, learned Counsel for the claimant specifically urges that before the acquisition of land, the claimant had established his petrol bunk and was having access to the petrol bunk from the National Highway and once the National Highway is widened, particularly to provide service road, it becomes the duty and obligation of the authorities to ensure that the petrol bunk which is run in the land and which has not been acquired is provided with the access, so that the petitioner's livelihood is not taken away by denying the opportunity to continue his business.

11. The scope of Section 3G(7), if examined carefully, includes in its fold the payment of just and fair compensation to the acquired land as it obtained on the date of publication of the notification u/s 3A of the Act. The requirement spelt out in Section 3G(7)(c) & (d) obligating the authority to make good the damage, if any, sustained by the person interested at the time of taking possession of the land in view of the acquisition injuriously affecting his other immovable property in any manner, or his earnings, encompasses in it an attempt to be made to mitigate such damage, if permissible and possible. It cannot be said that when a portion of the land is acquired and in the non-acquired portion if the land owner can legally carry on his business to eke his livelihood, he could not be denied of such opportunity to carry on the business by denying him access to the unacquired portion and that the only obligation of the acquiring body is to assess the damage and pay the compensation including for the loss of business. This is a very pedantic approach. If the land owner is entitled in law to continue his business in the non-acquired portion by running a petrol bunk, in accordance with law, then every effort has to be made firstly by the acquiring body itself and subsequently by the competent authority which is invested with the power to determine and pay the just and fair compensation. If such an effort was not made by the acquiring body then, when the matter comes up before the Arbitrator - Deputy Commissioner, such an attempt to mitigate the damage can be justifiably done.

12. The National Highway Authority, no doubt, would be within its rights to contend that such access or inter-section has to be given keeping in mind the safety of traffic and if there are any safeguards to be imposed and requirements to be adhered to by the claimant as per law, he has to abide by the same. But to say that the Deputy Commissioner has no right and the claimant cannot make any grievance even though they are deprived of their business fully and completely resulting in taking away their livelihood would be to frustrate the whole object behind mitigating the loss caused and the fundamental right to livelihood guaranteed in the Constitution. The object of clothing the various authorities with the obligation to compensate the land looser fairly and reasonably will also get defeated.

13. In fact, the mandate contained in Article 300-A and Article 21 of the Constitution must dissuade the National Highway Authority to take up such a contention. It has been well established that the right to property though no longer a fundamental right, is a human right and when such right is taken away, the aggrieved person is entitled for protection in the form of payment of compensation which includes attempts to mitigate the loss which he may suffer. Therefore, in the instant case, if the claimant can be provided access to his petrol bunk in accordance with law, at the same time ensuring the safety of the traffic on the national highway, there is absolutely no reason why the authorities should not explore such a possibility.

14. It is also not possible to accept the contention of the respondent-National Highway Authority that the Arbitrator cannot go into such a question to explore such a possibility and to record findings on that. However, as the learned District Judge has not gone into the merits of the matter and has failed to remand the matter to the Deputy Commissioner for fresh consideration, it is just and appropriate to leave this question open to be agitated before the Deputy Commissioner by producing required evidence. Hence, this appeal is allowed. The impugned order passed by the District Judge is set aside. The order passed by the Deputy Commissioner which is not a speaking order is also set aside. The matter is remitted back to the Deputy Commissioner for fresh consideration in accordance with law, keeping in mind the observations made above.