

(2010) 02 KAR CK 0059

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 2552 and 3120 of 2000

Sri Gavisiddappa (since deceased by LRs. Susheelamma and Others) APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner and The Secretary APMC
 Agricultural Produce Market Committee Vs The Land Acquisition Officer and Assistant Commissioner and Others RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4 (1)

Citation : (2010) 6 KarLJ 443 : (2010) 3 KCCR 2448

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Ramakant V. Shinde, in MFA 3120 of 2000, K. Pradhan, for K.T. Gurudevaprasad and B.G. Sridharan, in MFA No. 2552 of 2000, for the Appellant; N.D. Jayadevappa, HCGP for R1 in MFA 2552 and 3120 of 2000, K. Pradhan, for K.T. Gurudevaprasad, for R2 in MFA 3120 of 2000, C.M. Desai, for R3-R10, R13, R15-R25, R27, R30-R32, R36 and R39(A) and Murthy Halady and Kumar for R38(A)-(E) and Ramakanth V. Shinde, for R2 in MFA No. 2552 of 2000, for the Respondent

Judgement

K.N. Keshavanarayana, J.—These two appeals are directed against the judgment and award dated 28-2-2000 passed by the Principal Civil Judge (Sr. Dn.) and Chief Judicial Magistrate, Shimoga in LAC No. 5 of 1989.

2. As common question of fact and law arose for consideration in these appeal and since the judgment and award against, which the appeals are directed are one and same, these appeals were heard together and are being disposed of by this common judgment.

3. The original appellant in MFA No. 3120 of 2000 - Gavisiddappa - was claimant No. 1 before the reference court. The appellant in MFA No. 2552 of 2000 is the beneficiary for whose benefit the land in question was acquired.

4. Land bearing Sy. No. 21/A of Kallahalli village, Shimoga taluk and district, totally measuring 6 acres 20 guntas belonging to first claimant-Gavisiddappa, along with other lands, came to be acquired for formation of APMC yard, pursuant to the preliminary notification dated 8-5-1982, issued u/s 4(1) of the Land Acquisition Act, 1894 [for short, the Act]. First claimant-Gavisiddappa contended before the land acquisition officer that he had formed a layout of building sites in the said land after obtaining necessary permission from the planning authorities and that he had sold some of the sites and has retained a few of them, and, therefore, market value of the acquired land has to be determined by considering the land as building sites. However, the land acquisition officer by his award dated 30-9-1986 determined the market value by considering the acquired land as an agricultural land at Rs. 12,000/- per acre.

5. Being dissatisfied with the market value determined by the LAO, first claimant-Gavisiddappa filed application u/s 18 of the Act. seeking reference to civil court for determination of fair market value of the acquired land. On receipt of the said application, the LAO referred the matter to the civil court.

6. Before the reference court, several purchasers of sites from first claimant-Gavisiddappa filed applications to implead themselves as claimants and all of them were impleaded as claimants. Before the reference court, the claimants contended that the acquired land has potentiality of building sites and therefore the LAO is not justified in determining the market value of the acquired land as an agricultural land and on the other hand, the LAO ought to have determined the market value of the land by assessing the same as building sites.

7. The claimants led evidence in support of their contention and produced several sale deeds to establish that the land in question had been carved out into building sites, as such it had ceased to be an agricultural land as on the date of preliminary notification and to substantiate that some of the sites had been sold in or about the date of preliminary notification by the original owner of the land - Gavisiddappa - in favour of other claimants. They also produced certain documents to substantiate their claim that the land had been converted into building sites with the permission of the planning authority. However, the LAO did not adduce any evidence before the reference court, except marking a copy of the award passed by it.

8. The reference court, after hearing both the sides and 6th assessment of evidence, both oral and documentary, by the judgment and award under appeal though held that the evidence does not establish that the acquired land had been converted into non-agricultural purpose, nevertheless, proceeded to determine the market value of the acquired land by treating it as building sites. By taking into consideration the value of the sites sold by the first claimant-Gavisiddappa in the acquired land to other claimants, as reflected in the sale deeds, that is Rs. 1,000/-per site measuring 40" x 60", the reference court determined the value of each site measuring 60" x 40" at Rs. 1,000/- and thereafter fixed the market value of the acquired land at Rs. 20,000/- per acre on the basis that out of one

acre of land, 18 sites each measuring 60" x 40" could be formed.

9. However, while considering the question of apportionment, the reference court came to the conclusion that the value of each site measuring 60" x 40" should be enhanced by four times, on the basis of certain judgments presumed to have been cited at the Bar on behalf of the land owners, but not either referred to or discussed in the body of the judgment and determined the market value of a site measuring 60" x 40" at Rs. 5,110/- as against the value of Rs. 1,000/-, which the learned judge of the reference court had himself arrived at on the basis of the sale price as indicated in the sale deeds in respect of sites measuring 60" x 40", which was at Rs. 1,000/- per site.

10. Being aggrieved by the enhancement of compensation, APMC - the beneficiary - filed MFA No. 2552 of 2000. Being dissatisfied with the quantum of compensation awarded and being aggrieved of non-grant of compensation for sites measuring 50" x 70", said to have been retained by him, the first claimant-Gavisiddappa, filed MFA No. 3120 of 2000.

11. We have heard the learned Counsels appearing for both sides and perused the records.

12. As could be seen from the records, in the notification dated 5-8-1982 issued u/s 4(1) of the Act, the acquired land had been described as an agricultural land measuring 6 acres 20 guntas in Sy. No. 21/A, standing in the name of the first claimant-Gavisiddappa. Thus, the preliminary notification makes it clear that the land proposed for acquisition was an agricultural land. Though the first claimant-Gavisiddappa produced certain documents, such as no-objection certificate from the town municipal council, approved layout plan said to have been issued by the local town planning authority and permission said to have been accorded by the Special Deputy Commissioner as per the provisions of Karnataka Prevention of (Fragmentation & Consolidation of holdings) Act, permitting further fragmentation of an extent of 2 Acres of land in Sy. No. 21/A to smaller bits, he did not produce any document to show that the land in question had been converted for non-agricultural purpose, as required u/s 95 of the Karnataka Land Revenue Act [for short, KLR Act]. In fact, perusal of the records indicates that some of the purchasers of sites from the first claimant, subsequently applied to the Assistant Commissioner u/s 95(2) of KLR Act, seeking permission to convert the sites purchased by them in Sy. No. 21/A to non-agricultural purpose. This clearly indicates that the original owner Gavisiddappa did not get the land converted into non-agricultural use. Under these circumstances, the contention of the first claimant-Gavisiddappa that the land was a converted land was not rightly accepted by the reference court. Nevertheless, having regard to the several documents produced by the claimants, the reference court proceeded to determine the market value of the acquired land, as though it was a converted land. While doing so, the reference court has committed an error in holding that in an acre of land, 18 sites measuring 40" x 60" could be carved out. As observed by the reference court, the total area of an acre would be 43,560 sq.ft.

If this total area were to be converted into 40" x 60" sites after leaving out certain area for roads, drainage and other amenities, hardly 12 to 13 sites each measuring 40" x 60" could be carved out. In spite of this, the learned judge of the reference court proceeded to hold that the value of the land, on the basis of the price mentioned in the sale deeds executed by the very first claimant in favour of other claimants in respect of portions of the very land in question, works out to Rs. 18,000/- per acre, on the premise that 18 sites could be formed in one acre of land, ignoring the fact that at least 25% to 30% of the area is required to be left out for roads and other civic amenities, while forming a layout of building sites. If that were to be adopted, the value of one acre of land, even as per the value as reflected in the sale deeds, would work out to Rs. 12,000/- to Rs. 13,000/- per acre. However, the learned judge of the reference court determined the market value of the land at Rs. 20,000/-per acre by giving some escalation having regard to the facts and circumstances of the case.

13. However, after recording a finding that the fair market value of the land would be Rs. 20,000/- per acre, by considering the land as having potentiality of building sites, the learned judge of the reference court proceeded to enhance the market value by four times, on the premise that said procedure would be in consonance with some decisions of this Court and also of the Supreme Court, without even referring to specific citations and discussing the facts of those decided cases, and indicating as to how those decisions are applicable to the facts of the case on hand. As per the value determined by the reference court on sital basis at Rs. 5,110/- for a site measuring 40" x 60" and if the observation of the reference court that in one acre of land 18 sites measuring 40" x 60" can be carved out is accepted, the market value as determined by the reference court work out to Rs. 91,980/- per acre.

14. The learned judge of the reference court having once determined the market value of the land at Rs. 20,000/- per Acre, on the premise that it is a non-agricultural land and on the sital value mentioned in the sale deeds, it was not open for him to further multiply the value by four times without any rhyme or reason. The enhancement of compensation to Rs. 5,110/- for a site measuring 40" x 60" is without any basis and at any rate nothing is forthcoming in the judgment under appeal to substantiate the said enhancement.

15. Though the determination of market value at Rs. 20,000/- per acre in itself was fallacious and on the higher side, having regard to the value of each of the sites mentioned in the sale deeds executed a few months prior to issue of notification u/s 4(1) of the Act, we are not very enthusiastic to apply the corrective measures in this regard and we are inclined to accept the value of the land as determined by the reference court at Rs. 20,000/- per acre. However, the determination of the market value at Rs. 5,110/- per site measuring 40" x 60" without any basis and without assigning any reasons, is perverse and erroneous and cannot be sustained. Therefore, the appeal of the APMC [MPA No. 2552 of 2000] has to be allowed to the extent of the market value determined by the

reference court, over and above Rs. 20,000/- per acre. Accordingly, MFA 2552 of 2000 is allowed and consequently the appeal [MFA No. 3120 of 2000] filed by the first claimant Gavisiddappa inevitably fails, and is dismissed. The market value of the acquired land is fixed at Rs. 20,000/-per acre, with all statutory benefits as per law.

16. it is noticed that in MPA No. 2552 of 2000, this Court on 22/2/2001 passed an interim order, staying the execution of the impugned judgment and award subject to the appellant-APMC depositing 50% of the amount due under the award within four weeks. None of the learned Counsel appearing for the parties is in a position to apprise the court as to whether such a deposit has been made or not, if so, whether the amount has been disbursed to the claimants.

17. Sri Ramakant V. Shinde learned Counsel for the appellants in MFA No. 3120 of 2000 and second respondent-claimant in MFA No. 2552 of 2000, submits that the land owner has not claimed or received any amount so far from out of the amount awarded by way of compensation or as per the interim order passed by this Court.

18. Be that as it may, the land owner being entitled to compensation only at the rate of Rs. 20,000/- per acre, any amount over and above this rate of compensation, if has already been paid by the acquiring authority or the beneficiary or received by the claimants or by any person on their behalf, the amount in excess of the compensation as determined under this judgment is required to be refunded to the state by depositing that excess amount before the land acquisition officer within eight weeks from today, along with interest at the same rate as a land owner is entitled to under the Act for receiving compensation, up to the date of such deposit before the land acquisition officer, failing which the land acquisition officer is entitled to recover this difference of amount with interest as though it is arrears of land revenue owed to the state.

19. As the judgment and award under appeal being one without any rhyme or reason and virtually amounts to perversity on the part of the learned judge of the reference court, we cannot, help but observing that the judgment and award passed by the learned judge of the reference court is rather strange and not in consonance with reasoning or law and contrary to settled legal principles. We direct the Registrar General to place a copy of this judgment before the Hon'ble Judge presently incharge of the administration of the district where the learned judge of the reference court, who had rendered the judgment examined by us, is working at present, for scrutinizing this matter and other contemporary judgments rendered by the very judicial officer in such matters, on the administrative side and for taking suitable action, if so warranted.