

(2007) 03 KAR CK 0074
In the Karnataka High Court
Case No : M.F.A No. 5723 of 2005

Sri T.N. Sanikop

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23 (1)

Citation : (2007) ILR (Kar) 2324 : (2007) 4 KarLJ 545

Hon'ble Judges : Chidananda Ullal, J; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Ravi B. Naik, in M.F.A No. 5722, 5723 and 6332 of 2005, S.P. Shankar, for S.P.S. Associates in M.F.A. No. 6332 of 2005, for the Appellant; C.S. Patil, AGA, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—These appeals are directed against the common judgment and award, dated 31st March, 2005 passed by the Court of the III Addl. Civil Judge (Sr. Dn.) Belgaum, in L.A.Cs No. 11, 12, 13 and 14 of 1999.

2. The brief facts of the case are that the lands in question were notified for acquisition u/s 4(1) of the Land Acquisition Act [hereinafter referred to as "the said Act" for short] on 19th December, 1994 for the purpose of establishing Indian Medical Research Centre. The respondent-Special Land Acquisition Officer, passed the award, dated 6th March, 1998 fixing the market value at Rs. 42,000/- per acre (Rs. 1,050/- per guntas). Contending that this fixation is on the lower side, the appellants sought reference u/s 18 of the said Act.

3. The Reference Court enhanced the market value to Rs. 7,000/- per guntas based on this Court's judgment, dated 26th October, 1998 passed in M.F.A. No. 2384 of 1996 and other connected appeals. Aggrieved by this judgment, the claimants are in appeal before us seeking enhancement to Rs. 1,10,000/- per guntas in M.F.As. No. 5723, 5722 and 6332 of 2005 and to Rs. 1,00,000/- in M.F.A. No. 6868 of 2005.

4. Sri Ravi B. Naik, the learned Counsel for the appellants in the first 3 cases, has urged the following submissions:

(a) He submits that the fixation of the market value at Rs. 7,000/- per guntas is grossly insufficient. There is no basis whatsoever for arriving at this unrealistic determination of the market value. The Reference Court is not justified in relying on a judgment, dated 26th October, 1998 passed by this Court in M.F.A. No. 2384 of 1996 and other connected appeals. He submits that the lands covered by these appeals and the lands covered under the said appeals are dissimilar in nature and that there is a distance of 2.5 kilometers between them. He submits that if it were only marked as an exhibit, the appellant-claimants would have established to the satisfaction of the Reference Court that the compensation paid to the lands covered in M.F.A No. 2384 of 1986 cannot form an ideal basis for the determination of the market value of the lands in question. He further submits that the Preliminary Notification in respect of the lands covered by M.F.A. No. 2384 of 1986 is of the year 1986, whereas in respect of the lands in question, the preliminary notification was issued in 1994.

(b) The Reference Court has not given any weightage to the sale-deed at Exhibit-P10. The said sale-deed is dated 23rd July, 1994; the sale consideration of Rs. 6,60,000/- was paid for four guntas of land. As the said sale transaction is genuine and as it has taken place just on the verge of the issuance of the preliminary notification, the said sale-deed constitutes the ideal foundation for fixing the market value.

(c) The Reference Court has not even made any cursory reference to the valuation report at Exhibit-P9. Without giving any reason, the Reference Court appears to have impliedly rejected the appellants' claim for enhancement in respect of the buildings in question (in M.F.A. No. 5723 of 2005 arising from L.A.C. No. 11/1999).

5. Sri S.P. Shankar, the learned Senior Counsel for Smt. Manila Kulkarni, the counsel appearing for the appellant in M.F.A. No. 6868 of 2005, advanced the following contentions:

(a) He has placed on record the certified copy of the sale-deed, dated 18th November, 2006 executed by one Sri Shirish Mahaveer Patel in favour of I.T.C. Limited. The said document shows that the sale consideration of Rs. 4,37,50,000/- (Rupees four crore thirty seven lakh and fifty thousand only) was paid for the property measuring 20 guntas. He further submits that the said land is in the vicinity of the lands in question. He also submits that per guntas it comes to Rs. 21,87,500/- (Rupees twenty one lakh eight seven thousand five hundred only). As this sale is of the year 2006 and the preliminary notification in respect of the lands in question is of the year 1994, there is a gap of 12 years. If de-escalation is to be provided for, at 7 1/2% per annum, the amounts aggregate to Rs. 1,68,715/- (Rupees one lakh sixty eight thousand seven hundred fifteen only) per guntas. He submits that such a hypothetically worked out price is

comparable with the prices paid for the lands in respect of Exhibit-P10, (Rs. 1,65,000/- per gunta.). The learned Senior Counsel has also relied on a judgment of the Hon'ble Supreme Court in the case of Kiran Tandon Vs. Allahabad Development Authority and Another, , wherein it is held that if the acquired lands are situated in developed area, the deduction at 20% from the market value of the land is reasonable.

(b) He submits that considering the factual aspect that the lands in question had already acquired the potentiality for construction of residential and commercial buildings and other advantages, deduction at 20% instead of the normal rule of one third deduction towards the cost of development, is most appropriate in the instant case. In support of his submission he relied upon the judgment of the Apex Court in the case of Kasturi and Others Vs. State of Haryana, .

(c) Without prejudice to the aforesaid submission, he contends that no deduction towards the cost of development is warranted in this case, as admittedly the lands are acquired for setting up a Medical Research Centre and not for the formation of any residential layout or industrial area. He brings to our notice the view taken by the learned Single Judge of this Court in the case of The Special Land Acquisition Officer Vs. Vyjanath Since Dead by LRs. Siddappa Patil, wherein it is held that if the land is acquired for the purpose of widening the railway track, deduction at 53% towards creating civic amenities is not warranted.

6. Per contra, Sri C.S. Patil, the learned Additional Government Advocate, would support the impugned judgment. His reply-submissions are as follows:

(a) He submits that as the lands in question have retained their agrarian character, they cannot be treated as the lands having non-agricultural potentiality. He further submits that there is a distance of 2.5 kilometers between the acquired lands and the lands covered by Exhibit-P10. He strenuously contends that the appellant cannot draw any support from Exhibits-P5, P6, P7 and P8, as the structure on land, which is the subject matter of M.F.A. No. 5723 of 2005 arising from L.A.C. No. 11 of 1999, is temporary and unauthorised. No compensation is payable in respect of the same.

(b) He further brings to our notice a judgment of this Court in the case of Smt. Basavva and others Vs. Special Land Acquisition Officer and others, , wherein it is held that if the acquired land is situated at a far flung place, it takes a long time for its development, and therefore, besides imposing a cut of 53% towards the cost of development of land, additional cut of 12% can also be imposed.

(c) Nextly, he has relied on a judgment of the Apex Court in the case of Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, . He read out the relevant portion of the said judgment contained in paragraph 27. The same is extracted hereinbelow:

27. In K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, , it was held:

10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned Counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation u/s 23(1), as on the date of notification u/s 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal".

7. We have minutely scrutinised the lower court records. The Land Acquisition Officer's award at Exhibit-D1, though based on sale statistics method, makes no reference to the sale-deed at Exhibit-P10. Similarly, no cogent reasons are forthcoming from the Reference Court's award, as to why Exhibit-P10 was not given the weightage that it deserves. In this regard, it is profitable to refer to the judgment of the Hon'ble Supreme Court in the case of H.P. Housing Board Vs. Bharat S. Negi and Others, , wherein it is held that while computing the market value all proven instances of ABH. comparable sales need to be taken into consideration. As the sale-deed at Exhibit-P10 is dated 28th July, 1994 and the Preliminary Notification is issued immediately thereafter, because of the proximity in time and in space, the sale-deed at Exhibit-P10, in our considered view, is of great assistance in arriving at a fair and just market value of the lands in question. As the Reference Court excluded this vital document from its consideration and relied on a judgment, dated 26th October, 1998 passed in M.F.A. No. 2384 of 1986, the fixation of the market value in question, cannot be said to have been based on just consideration. The judgment in the said appeal was not marked as an Exhibit before the Reference Court. If the appellants were only given an opportunity, they would have established how the said judgment had no application for the facts of the case on hand. The lands which were the subject matter of the said appeal were notified for acquisition in 1986. Overlooking the long gap of eight years between the date of issuance of the lands covered by the M.F.A. No. 2384 of 1986 and the lands in question which were notified for acquisition in 1994, the Reference Court mechanically held that the compensation paid for the lands acquired in 1986 applies for the lands acquired in 1994. For these reasons the Reference Court's judgment under appeal is liable to be set aside and accordingly it is set aside.

8. We are now left with the question of determining the market value of the

lands in question. The sale-deed at Exhibit-P10 is dated 23rd July, 1994. It shows that the total sale consideration of Rs. 6,60,000/-(Rupees six lakh sixty thousand only) is paid for an extent measuring four guntas. That it is a genuine sale transaction; that the property covered under Exhibit-P10 and the lands in question fall within the limits of Belgaum Urban Agglomeration, are not in dispute at all. Further the purchaser of the property at Exhibit-P10 is also examined as PW.2. He has deposed that the area in question is the commercial area and that the plots therein are not readily available on sale. His further evidence is that the value of the acquired lands is higher than that of the properties situated on the Club road.

9. PW. 1 (appellant No. 1) has given the evidence that in the vicinity of the acquired lands, a KPTCL office, Dental College, Polytechnic School, High Schools and Colleges are situated. He erected a building and started his business venture of vehicle showroom and an auto garage. It is his further evidence that the water supply and electrical connections were given to the building erected on the lands of PW. 1. Plant and machinery was installed in the building. On account of the compulsory acquisition of the land, the appellant had to close down his business and pay a compensation of Rs. 1,00,000/-(Rupees one lakh only) to his workmen. Totally he claims to have incurred loss of Rs. 2,00,000/- on account of dislocation of his business activities.

10. In our considered view, the sale-deed Exhibit-P10 forms the reliable basis for the determination of the market value of the lands in question. However, the price of Rs. 1,65,000/- given for one gunta of land cannot be straight away made applicable for the acquired lands. Because, as revealed by the respondent-Land Acquisition Officer's award at Exhibit-D1, the lands in question were agricultural lands as on the date of the issue of the preliminary notification. They were not converted into non-agricultural lands. As held by the Hon'ble Supreme Court in a catena of cases, there is difference between a developed area and an area having potential value which is yet to be developed. That the land is A.B.H. adjacent to a developed area will not ipso facto make every land situated in the area also developed so to be valued as a building site or plot. The acquired land is just abutting National Highway-4. In the vicinity of the acquired lands a number of commercial establishments, Government offices and educational institutions were already in existence at the time of the issuance of the Preliminary Notification in 1994. Under these circumstances, we have no doubt that the lands in question had acquired high potential value; but that by itself does not enable the lands in question to be treated as developed lands. Lot of developmental activities are to be undertaken, like laying of roads and creating facilities and amenities, viz. electricity and water supply, culverts, sewerage, parks, etc. We also give our anxious consideration to the submissions made on behalf of the Government that there was not even the preliminary earthwork and that the lands continue to retain their agrarian character for all practical purposes. Thus the appellants are required to incur enormous amount of expenditure towards conversion, earthwork, formation of layout, etc.

11. Now, we have to provide for deduction of certain percentage towards the cost of development, taking the value of the developed plot at Rs. 1,65,000/-per gunta. There has been a serious contest at the bar regarding the percentage of deduction towards the cost of development of land; it can vary from 20% to 53%. The facts of the instant case are entirely different from the facts of the case of Smt. Basavva (supra). None can have any dispute over the well considered position laid down by the Hon"ble Supreme Court that the time lay A.B.H. for real developmental and the waiting period for development are also relevant considerations for determination of just and adequate compensation. In the instant case, one of the acquired lands was already being used for non-agricultural, i.e. commercial purpose. Therefore we are afraid the said reported decision does not come to the rescue of the Government in any way. There is no hard and rigid formula or yardstick for providing the percentage towards the cost of development. It depends on the facts of each case. In our considered view, as the acquired lands have attained high potentiality value and they were acquired for the purpose of setting up a Medical Research Centre, not too many internal roads are required to be formed; hence there is also the like hood of utilising more space. We therefore feel it safe, reasonable and just to hold that 40% of Rs. 1,65,000/- per gunta has to be earmarked for developmental activities. 40% of Rs. 1,65,000/- comes to Rs. 99,000/- (Rupees ninety nine thousand only). We therefore enhance the market value of the lands in question from Rs. 7,000/- per gunta to Rs. 99,000/- per gunta. Needless to observe that the appellants are entitled to proportionate increase in the solatium and additional market value besides the interest thereon.

12. We have to examine as to whether the appellant in M.F.A. No. 5723 of 2005 is entitled to any enhancement in respect of the building in question. The respondent-Special Land Acquisition Officer has awarded the compensation of Rs. 5,27,835/- (Rupees five lakh twenty seven thousand eight hundred thirty five only) for the same. We do not see any cogent evidence being placed on the record of the Reference Court for enhancing this amount. The valuer's report at Exhibit-P9 puts the value of the building at Rs. 7,51,270/-(Rupees seven lakh fifty one thousand two hundred seventy only), which is about Rs. 2,30,000/- more than what the Land Acquisition Officer has awarded. Our perusal of the report reveals the following:

(a) It does not refer to the year(s) during which different items or bits of the building were created; if any additions are made after the issuance of the preliminary notification, they do not entitle the appellant to claim any compensation for the same;

(b) It does not. state whether the valuer is an approved valuer;

(c) We do not find full description of item-wise valuation.

13. That apart, the author of the Exhibit-P9 himself is not examined before the Reference Court. The possibility of exaggerating the claims cannot be ruled out

under the circumstances of the case. We are therefore, disinclined to grant any enhancement for the building based on the valuer's report at Exhibit-P9.

14. We are nextly left with the question of examining the appellant's entitlement to receive any compensation as per Section 23(1) fourthly and fifthly of the Land Acquisition Act, which read as follows:

23. Matters to be considered in determining compensation, -

(1) In determining the amount of compensation to be awarded for land acquired under this Act the Court shall take in consideration-

first...

secondly, ...

thirdly, ...

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if in consequence of the acquisition of the land, by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, ...

15. The evidence of PW. 1 shows that he had to close down his showroom and garage on account of compulsory acquisition of his lands. He is therefore entitled to certain compensation for the loss of earning caused by the change of place of business. We notice with concern that the Reference Court has not granted any compensation under the heads of 23(1) fourthly and fifthly of the said Act. Although the appellant claims to have suffered a loss of Rs. 2,00,000/-, no material particulars are furnished in proof of the said claims. There is nothing on record except the oral evidence of PW1. Leaving some room for the exaggeration in claims, we deem it safe and reasonable to award in M.F.A. No. 5723 of 2005 Rs. 75,000/- (Rupees seventy five thousand only) under the heads of 23(1) fourthly and fifthly of the said Act. In granting the damages u/s 23(1) fourthly and fifthly of the said Act, we are fortified by the judgment of the Hon'ble Supreme Court in the case of Ramesh Dutta v. State of Punjab and Ors., (2004) 7 SCC 388 . This amount shall also carry interest at statutory rates. But we hasten to add that this amount shall not carry any solatium and additional market value, as the same are to be granted in respect of the market value of the land acquired.

16. The office is directed to draw up the modified award in the above terms. The appellants are entitled to proportionate costs. These appeals are allowed in part.