

(2005) 12 KAR CK 0055
In the Karnataka High Court
Case No : M.F.A. No. 8347 of 2004

Sushila Siddana Khade and Others

APPELLANT

Vs

The Assistant Commissioner, Belgaum Division

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 18 (1), 23, 4 (1)

Citation : (2006) ILR (Kar) 724

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.N. Hatti, for the Appellant; V. Bychappa, HCGP Advocate, for the Respondent

Judgement

N.K. Patil, J.—This appeal by claimants-appellants, is directed against the judgment and award dated 9* August 2004 in LAC No. 92/2001 on the file of the Civil Judge, (Senior Division), Hukkeri at Hukkeri, on the ground that, the reference application filed by claimants-appellants have been rejected by Reference Court, confirming the award passed by Land Acquisition Officer.

2. Land bearing R.S. No. 193/2 measuring 33 guntas situate at Kamatnur Village, Hukkeri Taluk, Belgaum District, has been notified and acquired by Government through the respondent herein vide its preliminary Notification issued u/s 4(1) of the Land Acquisition Act dated 20th August 1992 for the purpose of irrigation". The Land Acquisition Officer, after taking all relevant factors into consideration, by classifying the land in question as "dry land", has fixed the market value of the land in question at the rate of Rs. 16,000, per acre by his award dated 28th March 1995. Not being satisfied with the award passed by the Land Acquisition Officer, the claimants-appellants herein filed the application for Reference u/s 18(1) of the Land Acquisition Act and requested the Land Acquisition Officer to refer the same to the jurisdictional Reference Court for enhancement of compensation. The Reference Court, in turn, after thorough evaluation of oral and documentary evidence, by adopting capitalisation method, taking "chilli" as

the crop grown in the land in question, taking the yield of the same in pursuance of the yield notification and the price list issued by the competent authority, giving necessary deduction towards the cost of cultivation at 50%, held that, the amount awarded by the Land Acquisition Officer is just, proper and reasonable and it does not find any ground for enhancement of compensation and thereby passed the judgment and award dated 9th August 2004. Being aggrieved by the said judgment and award passed by Reference Court, rejecting the reference petition filed by claimants-appellants, claimants-appellants herein felt necessitated to present this appeal for modification of the impugned judgment and award passed by Reference Court.

3. I have heard Learned Counsel appearing for claimants-appellants and learned Government Pleader appearing for respondent. After careful evaluation of the original records available on file threadbare and after perusal of the judgment and award passed by Reference Court, it is manifest on the face of the judgment and award passed by Reference Court that, it has committed a grave error and material irregularity in rejecting the reference application filed by claimants-appellants for enhancement of compensation. The Reference Court has assigned reasons at paragraph 10 of its judgment stating that, since the major crop grown is "chilli" and as per the price list for the year 1992-93, the rate of chilli was at Rs. 01,000/- per quintals. By adopting capitalisation method, as per the yield notification, the Reference Court has taken the yield of "Chilli" at 3.01 quintals per acres. If 3.01 quintals is multiplied by Rs. 01,000/- per quintal, it comes to Rs. 03,010/- and has deducted 50% towards cost of cultivation, which comes to Rs. 01,505/- Relying upon the Apex Court decision reported in AIR 1984 SC 774, the Reference Court has adopted permissible multiplier "10" and arrived at Rs. 15,050/-. It has further observed that, when Land Acquisition Officer himself has awarded a compensation of Rs. 16,000/- the claimants-appellants are not entitled to any enhancement of compensation. The yield of "chilli" taken by Reference Court is contrary to the notification issued by the competent authority as per Ex. P5. In the notification issued by the competent authority, the yield of superior "chilli" is known as 421 Kg. i.e. 04 quintals 21 kgs. per acre but the Reference Court has committed an error by taking the yield at 3.01 quintals per acre. Further, the Reference Court has also committed an error in deducting 50% towards the cost of cultivation when it has treated the land as "dry land" and applied the right multiplier by adopting capitalisation method. It is well settled principles of law laid down by the Apex Court and this Court, in catena of judgments that, if the land is treated as "dry land" then the just and reasonable deduction towards cost of cultivation in respect of "dry land" is 40% and not 50% which is to be deducted if the land in dispute was "wet land". But, in the instant case, the Reference Court has committed an error in deducting 50% towards cost of cultivation.

4. Further, it is significant to note that, the Land Acquisition Officer has passed the award and specifically referred that, the land in question possesses black soil. When the Land Acquisition Officer has come to the conclusion that, the land

in question possesses black soil, it goes without saying or reasonable doubt that, the land is of a superior quality. Therefore, I am of the considered view that, the average yield of "chilli" ought to have been taken was at the rate of 04 quintals instead of 3.01 quintals as per the yield notification issued by the competent authority as has been taken by Reference Court. Further, the appropriate deduction in respect of the land in question was 40% towards cost of cultivation and not 50%. Therefore, the Reference Court has committed an error in determining the market value of the land in question and the claimants-appellants have made out a strong case for modification of judgment and award passed by Reference in respect of the aforesaid head to the above extent.

5. Having regard to the oral and documentary evidence and the submission made by Learned Counsel for claimants-appellants, it would be just and reasonable to take the yield of "chilli" grown in the land in question at the rate of 04 quintals per acre. As per the price list at Ex. P4, the price shown per quintal of chilli is Rs. 01,000/- per quintal. If the same is multiplied, it comes to Rs. 04,000/- per acre (i.e. Rs. 01, 000X04 quintals). Out of the said sum, if 40% is deducted towards cost of cultivation, it comes to Rs. 02,400/-. By following the Apex Court decision reported in AIR 1984 SC 774 if the appropriate multiplier of "10" is applied, the total amount comes to Rs. 24,000/- per acre (i.e. Rs. 02,400X10) which is the net income in respect of one acre of land in question. Therefore, taking into consideration the fertility of land, nature of crop and the ratio of law laid down by Hon"ble Supreme Court and the mandatory provisions of the Land Acquisition Act, it would be just and reasonable to determine the market value of the acquired land at Rs. 24,000/- per acre instead of Rs. 16,000/- per acre, as has been awarded by the Land Acquisition Officer.

6. For the foregoing reasons, the appeal filed by claimants-appellants stands disposed of with the following directions:

- i) The appeal filed by claimants-appellants is allowed;
- ii) The judgment and award passed by Reference Court dated 9th August 2004 in LAC No. 92/2001, rejecting the claim petition of claimants-appellants, is hereby modified, fixing the market value of the land in question at Rs. 24,000/- per acre instead of Rs. 16,000/- as awarded by Land Acquisition Officer by his award dated 28th March 1995;
- iii) Further, it is made clear that, the claimants-appellants are entitled to all statutory benefits as envisaged under the mandatory provision of Section 23 of the Land Acquisition Act.

7. With these observations, the appeal filed by claimants-appellants stands disposed of.