(2003) 09 KAR CK 0041

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3509 of 2002

The Assistant Commissioner and Land Acquisition Officer and Another — APPELLANT

Vs

Sham Rao — RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:
Land Acquisition Act, 1894 — Section 18 (1), 4 (1), 54 (1)

Citation : (2003) 6 KarLJ 255

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M. Shiva Prasad, High Court Government Pleader, for the Appellant; Veeresh B. Patil, for Caveator, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—This appeal is filed by the Land Acquisition Officer and the Divisional Controller, KSRTC, Gulbarga u/s 54(1) of the Land Acquisition Act (hereinafter referred to as ''Act''), questioning the judgment and award dated 21-2-2002 in L.A.C. No. 1504 of 1996 passed by the Additional Civil Judge, Senior Division, Gulbarga.

2. The facts of the case are that:

By notification u/s 4(1) of the L.A. Act, 1894, which was published in the State Gazette on 4-9-1993 the land of claimant measuring 8 acres in Sy. No. 206/3/3B situated within the Sedam Town has been acquired by the Government for the construction of KSRTC Depot and Staff Quarters. The Land Acquisition Officer by his award dated 10-12-1993 has fixed the market value of the land of claimant at Rs. 28,000/- per acre on the basis of sales statistics.

3. On a reference made u/s 18(1) of the L.A. Act by the claimants, the Additional Civil Judge (for short "Reference Court") by his judgment dated 21-2-2002 evaluated the market value of the land on the basis of the sales statistics relating

to small residential plots of land in the surrounding vicinity. The Reference Court calculated the market value of the acquired land at Rs. 16/- per sq. foot. After effecting deduction for development charges at the rate of 53%, the Reference Court arrived at a market value at Rs. 7.50 per sq. ft. The Special Land Acquisition Officer and the Divisional Controller, KSRTC, Gulbarga, have presented this appeal questioning the enhancement of market value from Rs. 28,000/- per acre to that of Rs. 7.50 per sq. ft.

4. The question that arises for decision making is what is the rate of compensation that the lands are capable to secure in an open market?

5. It is not in dispute that the lands were agricultural lands as on the date of the notification. The lands are situated abutting the national highway i.e., by the side of Sedam-Chincholi Main Road and within the municipal limits of Sedam Town Municipality. These lands, even according to the Special Land Acquisition Officer have a potential value for non-agricultural purposes. It is also a matter of record that these lands are situated near Sedam Railway Station. The Market Yard and Central Warehouse Buildings are situated surrounding the acquired land.

6. The claimant has adduced evidence before the Reference Court to substantiate the aforesaid facts and in addition to prove that the lands have potential value if used for non-agricultural purposes for making layouts.

7. In support of the case of the claimant, has relied upon exhibits (Exs. P. 19 to P. 21), which are the registered sale deeds of smaller plots of cultivable lands, situated abutting the lands in question. The Reference Court taking into consideration the aforesaid facts coupled with the admission of Land Acquisition Officer in his award regarding the potentiality of the land, answered Point No. 2 in the negative holding that the market value of the lands fixed by the Land Acquisition Officer at Rs. 28,000/- per acre is too low.

8. On the question of entitlement of enhanced compensation, the Reference Court has considered the oral evidence of the witnesses for the claimant and the documentary evidence produced by the claimant to hold that if as on the date of notification the lands were converted for non-agricultural purposes, the land would fetch the market value on the basis of square feet. The Reference Court accepted the sale deeds produced at Exs. P. 19 to P. 21, as genuine, most comparable instances to correlate the market value and as an index of market value.

9. P.W. 2 in his deposition has stated that the lands in question are situated abutting his land in Sy. No. 4 and that in his land he had made 15 to 20 residential plots and has sold one plot bearing No. 29 for sale consideration of Rs. 15,000/- in the year 1990.

10. P.Ws. 3 and 4 have deposed that they are adjacent landowners and vendors who have sold plots of land from their properties during the years 1982 and 1989 respectively. The Reference Court took the average of the market value of the

small plots under the three separate sale deeds, and the escalation in price for a period of three and half years while arriving at a market value of Rs. 16/- per sq. ft. which the lands in question would fetch if converted to non-agricultural purposes on the date of notification and if fully developed.

11. The Reference Court has referred to the decision of the Full Bench of this Court in The Asst. Commissioner Vs. Smt. Kamalabai Kom Laxman Metri, wherein it is held that 33% of deduction in market value would be sufficient towards development charges. However, the Reference Court after having determined the market value of the acquired land found it just and proper to deduct 53% of Rs. 16/-, towards developmental costs, i.e., Rs. 8.48 ps. and arrived at a market value of Rs. 7.50 per sq. foot, for the acquired lands.

12. It is not in dispute that the State has not preferred any appeal against the judgment and award passed by the Reference Court in LAC No. 357 of 1999 awarding compensation at the rate of Rs. 16 per sq. foot for lands acquired under notification dated 14-6-1990, as at Exhibit P. 18. The Reference Court satisfied itself that the lands in LAC No. 357 of 1999 are partly converted non-agricultural lands and partly agricultural lands, situated a little distance from the plots of land conveyed under Exhibits P. 19 to P. 21 and concluded that they were comparable lands.

13. The claimant has shown that the price offered by the 1st appellant at Rs. 28,000/- (Rupees Twenty-eight Thousand) per acre in the award is inadequate by producing materials being the sale deeds, at Exhibits P. 19 to P. 21, being sale deeds prior in time to the notification u/s 4(1) of the Act in respect of the lands in question. The claimant has established that these are the most comparable instances which provide the index of market value, particularly with reference to proximity of time and situation. The claimant has also adduced evidence that the lands in question are abutting the main highway and is in close proximity to the developed area of Sedam Town Municipality. The lands were fit for conversion to non-agricultural residential purposes. The adjoining lands in Sy. Nos. 4, 5 and 6 are converted to non-agricultural purposes long ago. Residential plots and construction on the same are already existing in Sy. Nos. 199, 205 and 207, situated adjacent to the lands in question. The map, Ex. P. 14, shows that these lands surround the lands in question. The appellant''s witness, R.W., has not disputed the correctness of the aforesaid facts, nor proved any negative factors or dissimilarity between these lands and the lands in question. There is no dispute that the Reference Court in LAC No. 357 of 1993 has fixed the market value of the land acquired on 14-6-1990 at Rs. 16/- per sq. foot and that the said lands are situated at a little distance away from the plots of land conveyed under the sale deeds at Exhibits P. 19 to P. 21. More importantly the Special Land Acquisition Officer has admitted that the lands in question have non-agricultural potential. The appellants have not placed any material to prove any minus factors, or dissimilarities with the comparable lands, disentitling the respondent for enhancement of compensation.

14. The Apex Court, in a catena of cases has held that the Judge determining compensation has to sit in the arm chair of a prudent purchaser, eschew feats of imagination, and put a question to himself whether a reasonable prudent purchaser in the open market would offer the same price sought to be awarded by the Court for the acquired land.

15. The learned Government Advocate sought to discredit the finding of the Reference Court that it had committed manifest error in determining the market value on square feet basis and relied upon the ruling of Apex Court in AIR 1996 SC 5. The further contention of the Counsel is that the Reference Court in any event ought to have deducted 65% of market value towards development charges.

16. However, the learned Counsel for the appellants fairly admitted that the Apex Court in the case of Hasanali Walimchand (Dead) by L.RS. Vs. State of Maharashtra, has approved determination of market value on square foot basis and invited my attention to the paragraphs 6 and 7 of the judgment, which is extracted below:

"Para 6: The High Court has noticed in the impugned judgment and order that the ''location'' of the land indicates that it has building potential but fell into an error in ignoring that factor by observing:

"There is no record of any income being received by any of the landowners. These lands must, therefore, be valued as agricultural land with no potentiality whatsoever in the foreseeable future"

Para 7: We are unable to find any justification for such observation and finding. The above finding of the High Court is contradictory to the earlier finding based on the location of the land. It is no doubt correct that the Reference Court was influenced by sale transactions in respect of developed land and it failed to make any deduction for development of land while enhancing the compensation, but the High Court fell in error in ignoring the future potential of the land in question and instead resting its finding as realized potential only. The evidence on the record clearly establishes that the acquired land did have future potential on account of its location. It is not denied that the area around the city of Ahmednagar is fast developing and the land in question was located only at a short distance of about one and a half miles from Ahmednagar town. The finding recorded by the High Court to the effect that there was no demand of any urban character in respect of the land in question is belied by the evidence on record. Indeed the land unlike the Housing Society Land was not developed and, therefore, proper course for the High Court, would have been that it should have taken note of development charges, and made some suitable deduction for the same. The Reference Court had made the award based on the material on the record but had failed to notice that the acquired land was still undeveloped. It, therefore, appears appropriate to us to set aside the impugned judgment and order of the High Court and restore the award made by the Reference Court with the modification that out of the amount fixed by the Reference Court at Re. 1/- per square foot, deduction to the extent of 50 paise per square foot, towards development charges, shall be made and compensation calculated on that basis and shall be paid to the claimants in accordance with their holdings, along with the statutory benefits of solatium and interest".

17. The learned Government Advocate solicited an answer to the question of determination of the market value by following the aforesaid rulings and to effect a deduction of 50% of the value of the land towards the development charges. In the context of the oral and documentary evidence on record as also the reasoning adopted by the Reference Court, I do not find any legal infirmity in the impugned judgment and award much less arbitrariness in the determination of market value, calling for any interference. The admission of the Special Land Acquisition Officer that the lands have non-agricultural potential adjacent to the main road, and are situated within the Municipal limits of Salem Town Municipality coupled with the fact that the surrounding lands were already developed as on the date of notification, clearly establish that the acquired lands did have future potential on account of its location. There is no perversity in the finding of the Reference Court in accepting as genuine, the transactions of sale as at Exhibits P. 19 to P. 21 and determining market value by adopting the method of correlating market value of most comparable instances. The Reference Court was perfectly justified in taking into consideration the judgment and award in LAC No. 357 of 1993 as at Exhibit P. 18 in respect of lands situated a little distance from the plots sold at Exhibits P. 19 to P. 21, the market value of which was determined at Rs. 16/- per sq. foot and which the State had not appealed against. The deduction of 53% towards development charges cannot be said to be unreasonable. The contention that the deduction should be 65% is not substantiated with reference to any material on record or legally justifiable reasons.

18. The learned Government Advocate did not press the other grounds that have been set out in the memorandum of the appeal i.e., 30% of the solatium on the enhanced market value, interest at 9% per annum for a period of one year from the date of taking possession and interest at 15% on the enhancement of compensation which includes enhanced market value, solatium and additional market value, hence there is no need to consider the same.

19. In the result, the appeal is dismissed. No order as to costs.

