

(1995) 11 KAR CK 0024

In the Karnataka High Court

Case No : MFA No: 1111/92, No: 1112/92, No:1113/92, No:1114/92,
No:1115/92, No:1121/92 and No:1122/92

The Assistant Commissioner and L.A.O., Yadgir

APPELLANT

Vs

Mohammad Aziz Rahaman and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Evidence Act, 1872 — Section 43, 55, 74
Karnataka Municipalities Act, 1964 — Section 37
Land Acquisition Act, 1894 — Section 18

Citation : (1996) ILR (Kar) 1666 : (1995) 6 KarLJ 435

Hon'ble Judges : J. Eswara Prasad, J;A.B. Murgod, J

Bench : Division Bench

Advocate : M.R. Janardhana, AG and Vishwanath, HCGP, for the Appellant; U.L. Narayana Rao and N.K. Patil, for the Respondent

Final Decision : Partly Allowed

Judgement

J. Eswar Prasad, J.—These appeals arise out of the common Judgment of the learned Civil Judge, Yadgir, in LAC No:- 416 to 422 of 1991, on reference to u/s 18 of the Land Acquisition Act.

2. The lands of the appellants in a total extent of 88 Acres 17 Guntas, were acquired for the purpose of construction of 1st Grade Degree College at Shahapur, under the preliminary Notification published in the Karnataka Gazette on 10.3.1988. A common award was passed by the Land Acquisition Officer, offering compensation at the rate of Rs. 6,800/- per acre. Not being satisfied with the said offer, the claimants sought reference u/s 18 of the Act, claiming compensation at the rate of Rs. 25,000/- per acre. One of the claimants made a claim for fixing compensation of Rs. 1,03,175/- for the well situated in Sy.No. 499, In support of their claim, the claimants examined PW1 to PW3 on their behalf and marked Ex.P1 to P15. On behalf of the Appellant-Assistant Commissioner, the Land Acquisition Officer was examined as RW1 and no

documents were marked. The learned Judge, on consideration of the evidence on record, fixed market value at Rs. 1,05,000/- per acre, together with solatium and interest. An amount of Rs. 10,000/- was awarded as compensation in respect of the well situated in Sy.No. 499. The State has preferred these appeals, contending that the award of compensation by the Court is exorbitant and is not supported by the evidence on record.

3. The point for consideration in these appeals is :-

Whether the evidence on record supports the fixation of market value at Rs. 1,05,000/- per acre and at Rs. 10,000/- for well in sy. No. 499?

4. The learned Advocate General appearing for the Appellant firstly contended that the learned Judge erred in relying on Ex.P1 and 14, which are the certificates issued by the Chief Officer, as inadmissible u/s 74, read with Section 55 of the Evidence Act. He further contended that the reliance placed on Ex.P8, by the learned Judge was erroneous, in as much as the Judgment in Ex.P8 cannot be treated as substantial evidence u/s 43 of the Evidence Act. His further submission was that the claimants themselves agreed to receive lesser compensation and that the documents evidencing such offers should be received as additional evidence and should be taken into consideration. He further submitted that the lands under acquisition could not be treated as situated within the Municipal area. He lastly submitted that the Court ought not to have granted more compensation than what was claimed by the Respondents.

5. Sri Narayan Rao, appearing for the Respondents contended that the acquired lands are situated in Municipal Area and have building potentiality and that the learned Judge was justified in awarding the compensation, by taking into consideration the relevant materials on record.

6. In awarding the compensation, the learned Judge placed reliance on the evidence of PW1 and RW1 and on Ex.P1, 13 and 14. It is in the evidence of PW1 that the acquired lands are situated adjacent to the Gulbarga - Bangalore Highway, and are situated within a distance of half a kilometer from the Shahapur Bus Stand. He further stated that a Picture House, Shopping Complex, KEB Office and Quarters are situated near the lands. The land in Sy. No. 498, 426, 427 and 428 were converted into non-agricultural lands as per Ex.P2 to 5, Ex.P1 and Ex.P14 were relied on to prove that the lands are situated within the Municipal limits. Small extents of lands were auctioned for amounts ranging between Rs. 28,000/- and Rs. 62,150/- as evidenced by Ex.P7. PW1 further stated that the compensation should be fixed at Rs. 25,000/- per gunta, which will work out to Rs. 10 lakhs per acre. PW2 is the owner of the land in Sy. No. 499, in which the well was situated. He claimed compensation of Rs. 1,03,724.20. He relied on the evidence of PW3 in support of the said claim. The situation of the well in Sy. No. 499 is not disputed. However, the learned Judge granted compensation of Rs. 10,000/- for the well. This award is not seriously disputed by the learned Advocate General.

7. Holding that the acquired lands were located within the Municipal Area, the learned Judge valued the lands applying the hypothetical lay-out method in determining the market value, on the ground that the lands have building potentiality, and that they are situated near residential and commercial buildings, shopping complex, bus stand, petrol bunk, KEB Office and Head Office of UKP and are abutting Gulbarga - Bangalore State Highway."

8. The main contention of the learned Advocate General is that Ex.P1 and 14 are not admissible in evidence, as they are not based on the documents maintained in accordance with the Municipalities Act. Public Documents are defined by Section 74 of the Evidence Act. Under Clause 32 of Sub-section 1 records of public bodies are public documents. u/s 77 of the Evidence Act, certified copies of public documents may be produced in proof of the contents of the public documents. The contention of the learned Advocate General is that the Municipality is not bound by statute, to maintain any documents known as "base map" mentioned in Ex.P1 and Ex.P14. u/s 37 of the Karnataka Municipalities Act, 1964, the areas of the Municipality have to be notified. Boundary marks with description, defining the limits, or the altered limits of the Municipality, shall be made. This statutory duty of the Municipality, clearly implies the drawing up of a map, showing the boundaries and limits of the Municipal area. The map so drawn as per Municipalities Act is perhaps called a "base map". This will be undoubtedly a record maintained by a public body within the meaning of Section 74 of the Evidence Act. A certificate issued by the concerned officials of the Municipality, based on the said official record, can be proved by production of the copy of the map as required by Section 74 of the Evidence Act. It is therefore to be held that Ex.P1 and Ex.P14 are admissible in evidence. The learned Judge was not precluded from looking into the same. They reveal that the lands in question fall within the Municipal limits. We cannot, therefore, agree with the contention of the learned Advocate General on this aspect.

9. In *The Collector, Raigarh Vs. Harisingh Thakur and Another*, , it was held that the question, whether the land had potential value as building sites or not is primarily one of fact, depending upon several factors, such as, its condition and situation, the user to which it is put or is reasonably capable of being put to its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, whether the nearby town is a developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the lands acquired or in the neighbourhood thereof.

10. In the case on hand it is revealed from the evidence, that the lands are situated within the Municipal Limits of Shahapur, and are within the vicinity of residential and commercial buildings, shopping complex, bus stand, petrol bunk, KEB Office, and Head Office of the UKP are adjacent to the Gulbarga-Bangalore State Highway. The adjoining lands have been converted into non-agricultural

lands and sites have been formed. It is therefore to be held that the lands have the potential value as building sites and are capable of being put to such use.

11. RW1, who worked as Assistant Commissioner, at Yadgir and was the Land Acquisition Officer, admitted in his cross examination that he mentioned at para 12 of award of Land Acquisition Officer, in Ex.P13, that the lands come under the Municipal limits. He admitted that the lands about the Bangalore - Gulbarga State Highway and that the Shahapur bus stand, cinema theater, KEB Office, Head Office of UKP, petrol bunk shopping complex of Shahapur are- nearby the lands. In view of the said admission of RW1, the finding of the learned Judge cannot be found fault with.

12. Lastly, learned Advocate General submitted that the claimants themselves claimed only meagre compensation in their letters and that they are precluded from claiming higher amounts. An application is filed for admission of additional evidence for admitting the said letters. No useful purpose will be served by admitting the said letters, as it is open to the claimants to claim higher compensation than what they sought earlier, as held in Special Land Acquisition Officer Vs. Kallangouda, . A Full Bench of this Court held that the claimants are free to ask and obtain compensation after making an appropriate demand before Court, subject to making good the claim, by substantiating it by adequate evidence. It would not be necessary for the claimant to explain away the circumstances under which he made no claim or made a smaller claim before the Land Acquisition Officer, in view of the amended provisions of Section 25 of the Act. The full bench relied on the decision in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, while coming to that conclusion.

13. In Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , it was held:-

"It must be remembered that this was not a dispute between two private citizens, where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed, though even in such a case, there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance, where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the state was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value."

Merely because the claimants made claim for payment of compensation which is less than the market value, that will not preclude them from claiming compensation on the basis of the market value payable to the claimants.

14. The Market Value was fixed in LAC 533/86 in Ex.P8 and Ex.P9 at Rs. 52,500/- by relying on a sale deed and agreement of the year 1978. The learned Judge, added 10% per annum to the Market Value fixed in the previous award and fixed the market value at Rs. 1,05,000/- per acre. The learned Advocate General submitted that the extents of the land acquired in LAC No. 533/86 was a small bit of land in an extent of 5 Acre 30 guntas, whereas, the lands acquired in the present case are vast in an extent of 88 Acres 17 Guntas and therefore a reduction of 53% should be made in fixing the market value and the addition of 10% per annum over the market value fixed in Ex.P8 is not justified.

15. In Administrator General of West Bengal Vs. Collector, Varanasi, , it was held that :-

"The Principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extent. However; if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical layout could with justification be adopted, then in valuing such small, laid out sites, the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price, the profits on the venture, etc., are to be made."

It was indicated that the deductions for land required for roads and other developmental expenses can, together, come up to as much as 53%. It is to be seen from the evidence, that the land in question falls squarely within the principles enunciated in the above mentioned case and therefore 53% of the market value that may be fetched by similar bits ,of lands has to be deducted from the market value fixed for the lands in question. The addition of 10% per annum to the market value is based on the decision of this court in H. Narayaniah and etc. Vs. The Land Acquisition Officer, Bangalore, which pertains to Bangalore City and the same cannot be applied for small towns like Shahapur. At the most, an addition of 5% per annum may be justified.

16. The market value fixed in Ex.P8 for an extent of 5 acre 26 guntas, was itself based on the market value of a small extent of land. Taking the market value in the year 1978 at Rs. 52,500/- 50% addition at the rate of 5% per annum for 10 years from 1978 to 1988 can be added to the said amount and the market value for small extents of land can be fixed at Rs. 78,750/-. Out of this amount, 53% is to be deducted and the market value is determined at Rs. 37,013/- per acre.

17. For the aforesaid reasons the compensation awarded by the learned Judge cannot be sustained. The market value is fixed at Rs. 37,013/- per acre accordingly, the appeal is partly allowed to that extent. No costs.