

(2005) 12 KAR CK 0051

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4152 of 2002

The Assistant Commissioner and Special Land Acquisition Officer

APPELLANT

Vs

Hanumanthappa Durgappa Jagannavar, since (deceased) by L.Rs. and Another

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

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

Citation : (2006) 2 KCCR 1208

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

Bench : Single Bench

Advocate : V. Bychappa, High Court Government Pleader, for the Appellant; Suresh P. Huddadagaddi, for Respondent 1(A), for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This matter is listed in orders list for furnishing of PF and correct address to issue notice to second Respondent . Learned Counsel appearing for the legal representative of first Respondent , submitted that, second Respondent has died when the case was pending adjudication before the Reference Court itself and her name has been deleted from the array of parties but inadvertently, the name of second Respondent has been typed in the judgment of the Reference Court. As per the order dated 28th September, 2002 on the file of the Reference Court, in LAC No. 40 of 1992, it is stated that, second Respondent has died and she is permitted to be deleted as per the order dated 27th July, 2001 and the only legal representative of second Respondent is R-1 (A) who is already on record. In view of that, second Respondent is not a necessary party to the proceedings.

2. In the light of the submission made by learned Counsel appearing for R-1(A), learned Government Pleader appearing for Appellant, after going through the original records and the order sheet maintained by Reference Court, has not

disputed regarding the order passed by Reference Court for deleting second Respondent from the array of parties, on 27th July, 2001.

3. In the light of the submission made by learned Counsel appearing for the parties, learned Government Pleader appearing for Appellant is permitted to delete second Respondent from the array of parties in this appeal and he is further permitted to carry out necessary amendments forthwith.

4. Though this matter is posted in orders list, with the consent of learned Counsel appearing for the parties, the same is taken up for final hearing and is disposed of as hereunder.

5. This appeal by Appellant-State is directed against the judgment and award dated 5th January, 2002 in LAC No. 40 of 1992 on the file of the II Additional Civil Judge (Sr. Dvn.), at Dharwad on the ground that, enhancement of market value made by Reference Court is excessive.

6. Land bearing Sy. No. 64 measuring 3000 sq. mtr. situate at Attikolla village, Dharwad, has been notified and acquired by Government vide its preliminary Notification issued u/s 4(1) of the Land Acquisition Act dated 22nd March, 1990 for the purpose of "Micro-wave Project". The Land Acquisition Officer, after taking all relevant factors into consideration and by relying upon the sales statistics method and taking all the relevant entries into consideration, has fixed the market value at the rate of Rs. 25,000/- per acre by his award dated 25th May, 1991. Not being satisfied with the award passed by the Land Acquisition Officer, the claimants-Respondents 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 evidence and documentary evidence and other material available on file, by assigning cogent reasons at paragraph 26 of its judgment, by following the judgment of the Supreme Court and Full Bench of this Court, has determined the market value at the rate of Rs. 02,40,000/- per acre. The Appellant-State, being aggrieved by the said determination made, on the ground that, the market value fixed is excessive, and is contrary to the oral and documentary evidence adduced, felt necessitated to present the instant appeal for modification of the impugned judgment and award passed by Reference Court.

7. I have heard learned Government Pleader appearing for Appellant and learned Counsel appearing for R-1(A). The third Respondent is served and un-represented. After careful evaluation of the entire original records available on file including the judgment and award passed by Reference Court, it is manifest on the face of the judgment and award passed by Reference Court that, the Reference Court has not committed any error or illegality as such in determining the market value of the land in question at the rate of Rs. 02,40,000/- per acre. The said determination of market value fixed by Reference Court is just and reasonable and interference by this Court is uncalled for. The Reference Court

has given a specific finding at paragraph 26 of its judgment, and after appreciation of the evidence on record that, the acquired land comes within the Corporation limits of Hubli-Dharwad and that, the claimants-Respondents have placed reliance on Exs. P1 to P3 which are the sale deeds in respect of the similar lands situate at Attikolla village, wherein the land in question is also situated and the sale consideration per gunta of the residential site sold under Exs. P1 to P3, shows as Rs. 21,000/- Rs. 18,000 and 14,000/- per gunta respectively. The Reference Court has taken the average of these three sale deeds and arrived at the market value of the land in question per gunta. These three sale deeds pertain to the residential sites. Therefore, the price has to be deducted towards the development charges. Learned Counsel appearing for claimants-Respondents have placed reliance on the Full Bench decision reported in The Asst. Commissioner Vs. Smt. Kamalabai Kom Laxman Metri, and submitted that, deduction should be given at the rate of 33%. But, the Reference Court has not accepted the reliance placed by learned Counsel for claimants-Respondents, and instead, placing reliance on the judgment of the Supreme Court reported in Smt. Basavva and others Vs. Special Land Acquisition Officer and others, , wherein the Supreme Court has held that, 53% deduction towards development charges will be just and reasonable and further held that, the land acquired, capable of development but considering the fact that, development of land would have taken years. The order of High Court deducting 12% more i.e., 65%, is rational and justified. Following the said ratio of law laid down by the Supreme Court and taking into consideration the cost incurred towards development charges that, it requires some years to develop, the Reference Court has deducted 65% of the market price out of the sale consideration as per Ex. P1 to P3 and after deducting 65% towards the development charges, the amount comes to Rs. 11,482/-. The said amount has been deducted from the average price of three sale deeds, (i.e., Rs. 21,000/- + Rs. 18,000/- + Rs. 14,000/- = 53,000 divided by 3) which comes to Rs. 17,666/- and the net market price comes to Rs. 6,184/- per gunta. The same is rounded off to Rs. 06,000/- per gunta. For one acre, the market price comes to Rs. 02,40,000/- per acre (i.e., Rs. 06,000/- x 40 guntas). Further, the Reference Court has observed that, it is admitted fact that, the land acquired in the instant case is for the purpose of micro wave project of the railways and that the land acquired in this case is on a hillock and naturally it is the most advantageous to the railways to install the micro wave station. The said reasoning given by Reference Court in determining the market value by assigning cogent reasons with reference to credible documentary evidence and following the ratio of law laid down by Apex Court and this Court at paragraphs 26, 28 and 29, is in accordance with law. I do not find any error much less irregularity as such committed by Reference Court in determining the market value nor the Appellant has made out any good grounds to entertain the instant appeal.

8. Having regard to the facts and circumstances of the case, as stated above, the instant appeal filed by Appellant is liable to be dismissed. Accordingly, it is dismissed as devoid of any merits.