

(2011) 11 KAR CK 0394
In the Karnataka High Court
Case No : MFA No. 3212 of 1996 (LAC)

The Executive Engineer Karnataka Housing Board	APPELLANT
Vs	
Shri Malleshappa Deceased by L.Rs. (Smt. Shailaja and Others)	RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Citation : (2013) 2 KCCR 1046

Hon'ble Judges : H.S. Kempanna, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Mamadapur, for Sri Ashok R. Kalyanshetty, for the Appellant; Amresh S. Roja, for R1 to R6, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Litigation in our country has the knack of outliving litigants and this appeal by a beneficiary in a land acquisition matter relating to the quantum of compensation as determined by the reference court in a reference u/s 18 of the Land Acquisition Act has been travelling between the High Court and the reference court in the first instance and later between this court and the Supreme Court and is before this Court in the second round! The appellant is the beneficiary i.e. the Karnataka Housing Board for whose requirement an extent of 12 acres of land in Sy. No. 35 of Vakkalgera village, Gulbarga Taluk and District had came to be notified for acquisition in terms of a preliminary notification dated 11.2.1982 issued u/s 4(1) of the Land Acquisition Act. In due course it had resulted in the award dated 21.10.1993 passed by the Land Acquisition Officer who determined the value of the land at Rs. 13,000/- per acre.

2. The land owner being aggrieved by this valuation had sought for reference to the civil court u/s 18 of the Land Acquisition Act and the reference was numbered as LAC No. 1/1985 and the reference court passed the award on 8.2.1995 enhancing the compensation to Rs. 1,75,800/- per acre based on the

valuation of land as was available in terms of three sale deeds Exs. P13, P14 and P15 marked on behalf of the land owner particularly Ex. P13 indicating that a small plot of land measuring 40" x 60" had been sold on 11.8.1981 for a sum of Rs. 16,000/-. The reference court taking into account that the subject lands had not been laid out as plots, after conversion for non-agricultural use and also taking into consideration that the acquisition was a large extent of land of 12 acres and the sale transaction relied upon being in respect of a small plot of land and valued on square foot basis at Rs. 6.65 paise per square foot made commensurate deductions for developmental activities and after such deduction and particularly as the sale deed was of a period i.e. couple of months prior to issue of 4(1) Notification determined the value at Rs. 4.00 per square feet after all necessary deductions and therefore enhanced the value to Rs. 1,75,800/-.

3. In support of the claimants case three witnesses had been examined. The claimant himself had deposed as PW 1 and an approved valuer by name K.M. Basayya deposed as PW 2, PW 3 being an attester to the sale deed - Ex. P13, PW 4 being the husband of the purchaser of the land under Ex. P13, PW 5 being the neighbour a retired Tahsildar who had spoken to the potential of the land in the locality etc., Ex. P20 being the report of valuer - PW 2 dated 20.7.1994 speaking about the general development in the locality and the potentiality of the acquired land as it was in a strategic location etc.

4. The beneficiary who was not on the scene before the reference court, chose to file Writ Petition No. 38277/1995 and this Court in terms of the order dated 3.1.1996 set aside the award of the reference court and remanded the matter to the reference court.

5. The present appellant though had preferred Writ Appeal No. 899/1996 being aggrieved by the condition for remand namely that the beneficiary should deposit 50% of the amount as had been determined by the reference court, the appeal ultimately was dismissed as having become infructuous as on 20.6.1996, as in the interregnum the reference court on remand yet again passed an award and confirmed its earlier determination of value of the land at Rs. 1,75,800/- per acre. The beneficiary was again before this Court in MFA No. 3212/1996.

6. In this appeal only by the beneficiary and not by the acquiring authority, the land owner also chipped in by filing Cross Objection No. 179/2002 seeking for further enhancement of the value of the acquired land.

7. This Court in terms of the judgment dated 26.9.2002 while dismissing the Cross Objection, partially allowed the appeal of the present appellant - Board, by reducing the compensation by 25% of the enhanced amount, perhaps taking cue from the fact that in the SLP that had been filed by the beneficiary - Board against the condition for staying the execution of the award of the reference court was to deposit an amount at 75% of the amount awarded by the reference court and the Supreme Court only modifying the order that the deposit by the beneficiary and withdrawal by the claimant can be subject to furnishing of

security for the amount, affirmed the valuation of the subject lands to be at 75% of the value as determined by the reference court in terms of the judgment and award dated 26.9.2002.

8. However, while disposing the appeal this Court nevertheless had looked into the various grounds urged by the appellant such as in terms of the additional evidence produced before this Court in the form of compromise decree entered into between the owner and some hundred encroachers for the rest of his land in Sy. No. 35, the value had been worked out at around Rs. 36,000/- per acre and if subsequent to the acquisition, the owners who have accepted the value of their land to be at Rs. 36,000/- that too in a compromise decree and therefore the valuation at Rs. 1,75,800/- by the reference court is too high valuation and this argument had been rejected taking note of the fact that the valuation for the purpose of compromise decree was a salvage type of situation, as the land owner had lost the lands to encroachers and therefore this Court rejected that amount represented the true or fair market value of the land and also further examined the determination at Rs. 1,75,800/- per acre by the reference court and found that the figure more or less tallied with the figure as was independently arrived at on the basis of taking the value at four times the value as had been arrived at in the compromise decree, as the compromise value based on the compromise decree was concisely rejected and if that is to be taken, the amount has to be multiplied by four times and if so computed the figure that would emerge being more or less tallying with the determination at Rs. 1,75,800/- etc.,

9. Be that as it may, the Supreme Court having allowed the beneficiary - Boards appeal filed as against the judgment and decree dated 26.9.2002 in terms of their order dated 5.5.2010 passed in civil appeal No. 4516/2004 and having remanded the matter for the reason that this Court should not have determined the market value of the acquired land merely based on the direction issued by the Supreme Court to deposit 75% of the compensation amount to be the basis for re-determination of the value of the land at Rs. 1,75,800/- and on the other hand this court should have looked into the merits of the matter and having remanded the matter on such premise, the matter is yet again before us for examination in MFA No. 3212/1996 in the second round.

10. We have heard Sri Mamadapur, learned counsel for the appellant appearing on behalf of Sri Ashok R. Kalyanshetty and Sri Amresh S. Roja, learned counsel appearing for the land owner.

11. Mr. Mamadapur, learned counsel urged many points and in the first instance he has pointed out that when the matter had once been remanded to the reference court, the land owner did not chose to enter the witness box; that the document Ex. P13 was never proved by examining either the attesting witness or the purchaser and the reference court merely placing reliance on the provisions of Section 33 of the Evidence Act accepting the contents of the Ex. P13 is a clear error in law as the appellant was not a party when the earlier evidence had been let in and therefore Section 33 of the Evidence Act does not apply to the present

situation and reliance placed on Section 33 of the Evidence Act is a clear error in law committed by reference court.

12. Secondly it is pointed out that the market value could not have been accepted at as high value as Rs. 1,75,800/- as against the valuation of a meager Rs. 13,000/- per acre as was valued by the Land Acquisition Officer, particularly when Ex. P13 had not been proved in the manner known to law and the document which had come into existence which is four months prior to the preliminary notification, obviously the owner having got scent of the acquisition proceedings had indulged in an act of creating or bringing into existence such a document and therefore that should have been rejected by the reference court.

13. It is thirdly contended that this court having allowed the appellant to produce additional evidence in this appeal by allowing the application under Order 41 Rule 27 of the CPC and the appellant having placed before this Court the compromise decree in O.S. No. 228/1989 and the valuation as per this compromise decree being in respect of the other part of 12 acres of the very survey number at Rs. 36,000/- per acre, there is no reason to ignore this material on record etc.,

14. On the other hand Sri Roja, learned counsel appearing for the land owner submits that it is on record that the value of the land based on earlier sale transactions even in respect of a preliminary notification dated 6.10.1996 and in respect of the land in the vicinity of the land had been valued at Rs. 31,000/- per acre in terms of the judgment of this court dated 1.12.1993 in MFA No. 2113/1988 - Ex. P12 and even in the year 1966 subject land had been valued at Rs. 1.04 paise per square feet and having regard to the past potential and developmental activities particularly the subject land being within the city of Gulbarga valuation at Rs. 6.66/- in the year 1982 cannot be considered as an improbable or impossible valuation etc.,

15. It is also submitted by drawing attention to the testimony of PWs. 2 and 3 the Valuation Officer and his report Ex. P20 and the testimony of PW 5 - a retired Tahsildar leaving in the neighbourhood about the considerable potential of the land and the very strategic location of the land and therefore has submitted that the valuation in terms of Ex. P13 being accepted by the reference court is neither an error on fact nor an error in law; that there is no need to disturb this order and award of the reference court and prays for dismissal of the appeal.

16. Mr. Roja has also drawn our attention to Section 51A of the Land Acquisition Act and submits that the appellant cannot make much out of the non-proving Ex. P13, by not examining the attesting witness and the purchaser etc., that Ex. P13 document being a certified copy, its contents can be accepted by the Court if it inspires the confidence of the Court etc.,

17. Both the learned counsel for the appellant beneficiary and the respondent land owner have drawn our attention to the judgment of the Supreme Court in Cement Corporation of India Ltd. Vs. Purya and Others, but while Mr. Mamadapur has submitted that, notwithstanding the provisions of Section 51A of the Land

Acquisition Officer, it is still open for the Court to accept or reject the contents of a document which is either not the original and is only a certified copy placed before the Court or the execution of which is not proved by the person as a piece of evidence which may be accepted or otherwise by the Court and just because of Section 51A of the Act it does not amount to the document being conclusive evidence of the transaction recorded therein, but on the other hand Sri Roja, learned counsel for the respondent - land owner has submitted that the Supreme Court has in fact pointed out in this judgment that provisions of Section 51A is enabling additional provision and particularly useful in land acquisition matters for establishing the market value of the acquired land through transactions of the contemporary period even by producing certified copies of the sale deeds and in the absence of any contrary material placed before the Court by beneficiary or the Land Acquisition Officer. There is no reason either for not acting at Ex. P13 or for denying the benefit of Section 51A to the land owners.

18. We have noticed from earlier narration that the only reason for which the Supreme Court remanded the matter to this Court though the matter was not of such a complication nor merited further material to be brought on record, was because the High Court had not gone into the merits of the appeal, but had adopted the norm employed by the Supreme Court for issuing a direction of deposit of 75% by the Supreme Court as a guiding factor for re-determining the market value of the land in the appeal by the beneficiary.

19. We have noticed that independently as urged by learned counsel for the land owner evidence in the form of Ex. P13 elicits acceptance than the market value as determined by the reference court sustains. In fact it does not even called for reduction of 25% as had been done by this Court earlier.

20. Though Mr. Mamadapur, learned counsel for the beneficiary has ultimately urged that the present appellant was not a party to the proceedings before the reference court when the land owner adduced evidence, whereas, the beneficiary would not place any material before the court etc., and though we notice that it is way back in the year 1996 that the beneficiary preferred this appeal, no efforts having been made on the part of the appellant to adduce evidence or to be precise to adduce additional evidence and no material having been placed before this Court other than the judgment and decree in a suit compromised between the land owner and some encroachers of rest of the land left un-acquired, but this evidence though considered by this court having been found not a relevant or dependable material for the purpose of determining the market value of the subject land i.e. acquired land as the value indicated in terms of the compromise decree was only because of the land owner was in a desperate situation to salvage whatever he could in view of the un-authorised occupation of the rest of his land by encroachers and trespassers and the beneficiary Board having not made any further effort to place any other material or evidence on record which could in some way or the other discredit or challenge the value as determined by the reference court based on Ex. P13, we do not find any scope in law to

interfere with the determination made by the reference court with its method of quantification of the value of the acquired land at Rs. 1,75,800/- per acre.

21. Before parting we cannot help to observe the trend of the beneficiaries coming up before this Court to question the determination of market value of the acquired lands by the reference court and seeking for setting aside the judgment and award of the reference court on the premise that the beneficiary though was an interested party had not been put on notice either by the Land Acquisition Officer before passing an award or was not given an opportunity before the reference court to adduce evidence on its side etc. and the number of cases on such premise being on the rise due to the development of law relating to the interpretation or understanding of the person interested as it occurs in Section 3(b) of the Act. Later decision in this series of cases being Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others, and starting from the case of Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's., and followed in a good number of cases later.

22. While it may be more prudent to understand that a beneficiary also can be included within the meaning of a person interested as it occurs in Section 3(b) of the Act, the mere ipso facto of a beneficiary that they were not made parties before the Land Acquisition Officer or the reference court, whether carries conviction or not and many a times made without any bona-fides and coming up with such grievance after a long lapse of time should be a matter for examination by courts and cannot be a justification for setting aside or disturbing the judgment of the reference court solely on the ground that the beneficiary had not been given an opportunity etc...

23. We say so for the reason that while length of litigation is proverbially long in our land and litigation in our legal system can easily last generations together, a poor land owner who loses his land because of compulsory acquisition, being made to wait endlessly to receive a just compensation for his land acquired by the State and such determination being postponed due to one technical reason or the other and such matters making their journey from the reference court to the High Court and back to the reference court and again to the High Court then to the Supreme Court, thereafter a reverse journey to the High Court is nothing but a hazardous and arduous journey for the land owner and harassment of the highest order due to the existing legal system.

24. When the very purpose of acquisition is notified to be for a public purpose namely for construction of a residential houses by the present appellant beneficiary the Karnataka Housing Board and the Housing Board is quite aware of the developments, even assuming they are not notified, it was their duty to follow up and to have volunteered to participate not only in the proceedings before the Land Acquisition Officer, but also in the further reference before the civil court wherein the Land Acquisition Officer - an employee of the State Government who acts as a statutory functionary is impleaded as a respondent. The beneficiary like the Board feigning ignorance of the proceedings and seeking

for annulment of the judgment of the reference court calling in aid administrative law principles such as violation of principles of natural justice is in our view nothing short of a contention lacking conviction and bona-fide.

25. It is in such situations where the superior courts have to guard themselves and have a duty to further look into the matter as to whether a ground of this nature taken by a beneficiary is a bona fide ground and particularly so if there is any element of collusion between the land owners and the Land Acquisition Officer.

26. While in our current quandary of administration by the executive part of the State and the reputation of the revenue officials who double up as Land Acquisition Officers definitely being at a very low ebb particularly for their competence or integrity. Until and unless a beneficiary rises that also as a possible ground seeking for setting aside a judgment of the reference court brought about in its absence, a mere invoking the ground of not impleading them as a party or not issuing notice to them as a party, is in our understanding a rather approach the matter at the peril of poor land owners.

27. We are not even satisfied that the Board was acting with any bona fides in seeking to set aside the judgment of the reference court by invoking the writ jurisdiction of this Court in the first instance. Be that as it may it is only history now and we having looked into the merits of the appeal also in some detail and being satisfied that the judgment of the reference court does not call for any interference on merits, however are left with no choice but to dismiss this appeal.

In the peculiar circumstance, we leave the parties to bear their respective costs.