(2015) 04 KAR CK 0256

In the Karnataka High Court

Case No : Miscellaneous Second Appeal No. 664 of 2011

The Executive Engineer, MI Division and Others APPELLANT

Vs

Mallikarjun RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (2015) 04 KAR CK 0256

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

Bench : Single Bench

Advocate : Archana P. Tiwari, Govt. Advocate, for the Appellant; Ameet Kumar Deshpande, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—Heard Smt. Archana P. Tiwari, learned Government Advocate appearing for the appellants and also Sri Ameet Kumar Deshpande, learned counsel appearing for the respondent. Perused the records.

2. Heard on I.A. No. 1/2012.

3. The learned counsel for the respondent has no objection to allow the application. Therefore, delay of 524 days in preferring the appeal is hereby condoned. Accordingly, I.A. No. 1/2012 is allowed.

4. This appeal is preferred by the State calling in question the judgment and award passed by the I-Additional District Judge, Gulbarga, in LAC No. 106/2007 dated 22.03.2010 in enhancing the compensation fixing the market value of the land at Rs. 27,500/- per acre and granting interest and other emoluments under the Land Acquisition Act.

5. The contention taken up in the memorandum of appeal as well as argued before the Court is that the First Appellate Court is not justified in taking sole basis of MFA No. 3720/1996 for allowing the appeal. Because in the said MFA,

4(1) Notification was issued in the year 1991-92. But in the present case, 4(1) Notification was issued in the year 1984-85 precisely on 07.11.1985. Hence, the impugned judgment and award needs to be set aside. The second contention raised before the Court is that the appellate Court on the basis of MFA No. 3720/1996 awarded a sum of Rs. 27,500/- per acre by deducting Rs. 14,000/- in Rs. 42,000/- awarded in MFA No. 3720/1996 which is incorrect. If the lower Court adopts deduction of 8% towards de-escalation it will come to Rs. 21,840/-. The same has to be enhanced but not Rs. 27,500/-. But the reference Court has already awarded Rs. 25,000/- per acre. If Rs. 21,840/- is taken into consideration, the First Appellate Court ought to have dismissed the appeal and ought not to have enhanced the compensation to Rs. 27,500/-. On these two grounds the learned Government Advocate submitted that this appeal deserves to be allowed setting aside the judgment and award passed by the Trial Court. There is absolutely no dispute so far as the other aspects are concerned namely, with regard to the acquisition of the land, awarding of the compensation and also the land owners submitting protest petition, thereafter enhancement of the award by the reference Court and also enhancement by the I-Additional District Judge enhancing the compensation to Rs. 27,500/-. What might have been confused by the learned Government Advocate while drafting the memorandum of appeal is that the Government has misconceived that the First Appellate Court has awarded compensation by applying the reverse deduction at the rate of 8%. But as could be seen from the order passed by the Trial Court, it is clear that the Additional District Judge has adopted 5% towards reverse deduction. If at all, 5% per annum as de-escalation is taken from 1991-92 to 1984-85, if it is calculated in such a manner, it would come down to Rs. 28,000/- but the said amount was restricted to the amount claimed at the rate of Rs. 27,500/-. This Court also while dealing with similar matters in MSA No. 660/2011 vide judgment dated 18.03.2015 elaborately considered about the reverse deduction done by the Court in detail discussing at paragaraph-10. This Court has relied upon the judgment rendered in MFA No. 3720/1996, wherein this Court has fixed the market value of the land pertaining to the same village which was acquired for the same purpose at the rate of Rs. 42,000/- per acre and such parties have claimed only Rs. 30,000/-, it was restricted to Rs. 30,000/- by the Court. In view of the above said decision, this Court has already observed that the land losers of the same village shall also be entitled to the same compensation. So far as the reverse deduction or de-escalation at the rate of 5% or 8% is also considered. It is observed at paragraphs-11 and 12 that the learned Government Advocate has submitted that de-escalation according to the Government should have been 8% instead of 5% taken by the Court. The Trial Court has also observed that bench mark is available for the year 1991-92 and the market value will have to be reckoned by reducing 5% of the bench mark value every year. The learned counsel also relied upon the decision reported in MFA No. 1314/2006 dated 21.10.2006, wherein this Court has observed that the reverse deduction shall be at the rate of 5% for every year. Therefore, in this particular case also reverse deduction was done at the rate of 5% and not 8% by the First Appellate Court.

Looking to the materials on record, it is the agricultural land of the farmers have been acquired. Consistently, the Court has held reverse deduction has to be at the rate of 8% to 5% depending upon the facts and circumstances of each case. In some cases, it may also go up to 10% or even it may also exceed 10% depending upon the nature of the land and development of the said land within near proximity of time and also conversion of the said land into non-agricultural purposes. Therefore, in my opinion, in this case, there is no chance of the said lands being converted into non-agricultural lands and converting into residential plots. Under such circumstances, the development charges cannot be taken into consideration. Therefore, agricultural land shall be treated not on par with the lands having potentiality for converting them to non-agricultural purposes. The learned counsel for the appellants relied upon the decision reported in Chandrashekar (D) by L.Rs. and Others Vs. Land Acquisition Officer and Another, (2011) 13 SCALE 48 , wherein the Hon''ble Supreme Court has observed with regard to the market value determination under Section 23 of the Land Acquisition Act, wherein it is stated that,-

"The determination, comparative sales method, consistency in judicial determination utmost importance to be given, High Court deducting 55% of market value assessed on basis of exemplar sale deed towards "developmental charges", 5% towards "Waiting period" and 10% towards "de-escalation" and determining market value of acquired land at about Rs. 68,000/- per acre. However, High Court awarding Rs. 65,000/- per acre relying on its own earlier judgment since land in question was acquired out of same notification and was similar to appellants land. The Court held consistency in judicial determination is of utmost importance. Hence, the Court has not interfered with the said contention."

6. So de-escalation determined by this Court as 10% is not disturbed by the Hon''ble Supreme Court. It does not mean to say that in all the cases irrespective of the facts and circumstances of the case, 10% has to be considered as a bench mark for the purpose of fixing the market value considering de-escalation. Therefore, in my opinion, the above said ruling is not in a straitjacket manner applicable to the case on hand. Because, as I have already stated, these are agricultural lands even on the date of acquisition and even subsequently and it is not the case of the land owners that they would get more compensation if the said land will be converted into non-agricultural purpose and converted into residential plots. They only stated that in the event lands becoming wet land by getting the water facility then they would have got some more compensation little higher than what they have accepted. Therefore, the market value of the property has to be considered determining the potentiality of the land while calculating reverse deduction. The said principle cannot be applied. If it is applied, it would cause great injustice and inconvenience to the parties. Under the above said circumstances, I do not find any irregularity or illegality committed by the learned District Judge in adopting de-escalation at the rate of 5%. Therefore, the appeal deserves to be dismissed.

Accordingly, the appeal is dismissed.

