

(2005) 11 KAR CK 0001

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1443 of 2003 and CROB 258 of 2004

The Special Land Acquisition Officer and Assistant
Commissioner, Dharwad Sub-Division

APPELLANT

Vs

Mallanagouda Kallanagouda Patil and Another

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 18 (1), 23, 4 (1), 51 A

Citation : (2006) 1 KCCR 114

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

Bench : Single Bench

Advocate : V. Bychappa, High Court Government Pleader, for the Appellant; N.S. Sanjay Gowda, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The common Appellant - State, through the Special Land Acquisition Officer and Assistant Commissioner, Dharwad Sub-Division, Dharwad and second Appellant in MFA No. 1442 of 2003 - The Divisional Railways (Works), Hubli and the Cross Objector - The Divisional Railways (Works), Hubli in MFA CROB No. 258 of 2004 and MFA CROB No. 259 of 2004, being aggrieved by the judgment and award dated 16th August 2002 in LAC No. 185 of 1987, LAC No. 181 of 1987 and LAC No. 186 of 1987 on the file of the Additional Civil Judge, (Senior Division), Hubli, on the ground that, the amount awarded by Reference Court is excessive, have presented the instant appeals and Cross Objections respectively before this Court.

2. The Divisional Railway (Works), Manager, South Central Railway, Hubli, Dharwad District, who is second Appellant in MFA No. 1442 of 2003 and a beneficiary, has filed the instant two cross objections namely MFA CROB No. 258 of 2004 in MFA No. 1443 of 2003 and MFA CROB No. 259 of 2004 in MFA No. 1444 of 2003, praying this Court to set aside the judgment and award passed by Reference Court on the ground that, the enhancement of market value is on a

higher side and therefore, claim petitions filed by claimants - Respondents are liable to be dismissed.

3. The land bearing Sy. No. 53/B or 53A+B/2A measuring 31 guntas (LAC No. 185/1987 in MFA No. 1443 of 2003;; Sy. No. 53/C or 53A+B/2A, measuring 31 guntas (LAC No. 181 of 1987 in MFA No. 1442 of 2003); and Sy. No. 50 measuring 01 acre 29 guntas (LAC No. 186 of 1987 in MFA No. 1444 of 2003), all situate at Unkal Village, Hubli Taluk, along with several other lands were notified and acquired by State Government through the Special Land Acquisition Officer and Assistant Commissioner, Dharwad Sub-Division, Dharwad vide preliminary Notification dated 2nd April 1981 issued u/s 4(1) of the Land Acquisition Act for the purpose of "erecting an Additional Loop Line to hold 70 vehicles" at Unkal Railway Station, Hubli. The Land Acquisition Officer, by taking all the relevant factors into consideration and other material available on file, has fixed the market value in respect of the lands in question by his award dated 23rd September 1986. Not being satisfied with the amount awarded by the Land Acquisition Officer, the claimants - Respondents have filed an application u/s 18(1) of the Land Acquisition Act on the ground that, they are entitled for higher compensation 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 evaluation of oral and documentary evidence such as record of rights and certified copy of the sale deed dated 8th January 1981 and other material available on file, by assigning cogent reasons with reference to credible documentary evidence, at paragraph 13 of its judgment, and after giving necessary deductions towards development purposes, has determined the market value at Rs. 4, 335/- per gunta. Being aggrieved by the said determination of market value by Reference Court on the ground that, the same is excessive and exorbitant, the Appellant herein as well as the cross objector herein have presented the instant appeals and the Cross Objections respectively seeking modification of the same.

4. The principal submission canvassed by learned Government Pleader appearing for Appellant - Special Land Acquisition Officer in the above three appeals and Respondent in the two cross objections is that, the Reference Court has failed to appreciate that, the major extent of land is an agricultural land and only an extent of 31 guntas has been converted from agricultural to non-agricultural land. Therefore, the Reference Court has committed a grave error in fixing the market value uniformly at Rs. 4,335/- per gunta for both agricultural as well as non-agricultural land which were acquired as far back as in the year 1981. Further, he submitted that, in the absence of cogent evidence to show that, the land in question and the land concerned in Ex-P3 - the sale deed dated 8.1.1981, under which four guntas of land was sold for Rs. 26,000/- were similar in all respects, commanding the same advantages, the Reference Court ought not to have drawn any support from Ex-P3 for the purpose of determining the market value of the lands in question. Further, he submitted that, the Reference Court ought to have deducted at least 65% instead of deducting only 33% towards cost

of development. Therefore, the market value determined by the Reference Court is on the higher side and that judgment and award passed by it requires modification.

5. It is the case of cross objector that, the Reference Court could not have treated agricultural lands on par with converted lands for the purpose of determination of market value and therefore, it has committed a serious illegality in awarding the same compensation for both agricultural lands and non-agricultural lands. Learned Counsel appearing for cross-objector submitted that, it is settled law that, the market value in respect of a non-agricultural land can never be equal to that of an agricultural land and as a matter of fact, the value of the said lands can by itself never be compared let alone be treated on par with each other. Further, he submitted that, the Reference Court, has erred in placing reliance on Ex-P3, the certified copy of the sale deed dated 8th January 1981 in respect of a small bit of land measuring four guntas while determining the value of a large extent of land measuring nearly an acre and it ought not to have relied entirely on the sale deed at Ex.P3 to determine the market value at Rs. 4,335/- per gunta. He submitted that, the Reference Court has further erred in not noticing the fact that, the Special Land Acquisition Officer, had considered the sale statistics of nine similar lands of the same period and had fixed the market value at Rs. 4,000/- and the Reference Court ought not to have relied upon a single sale deed in respect of a small piece of land to arrive at a figure of Rs. 4,335/- per gunta. He also submitted that, the Reference Court ought to have considered the fact that, 53% of the value of the land ought to have been deducted in respect of converted lands in determining the market value. Further, he vehemently submitted that, the award passed by Reference Court is wholly erroneous and unsustainable and is liable to set aside and the claim petitions filed by claimants are liable to be rejected. Therefore, the Appellant and Cross Objector felt necessitated to present the instant appeals and instant Cross Objections respectively.

6. Per contra, learned Counsel appearing for claimants - Respondents in MFA No. 1442 of 2003 and MFA No. 1444 of 2003 submitted that, the Reference Court has not committed any error in passing the impugned common judgment and ward. To substantiate the said stand, they have taken me through the judgment and award passed by Reference Court and pointed out that, the Reference Court has assigned cogent reasons while arriving at the impugned market value at paragraph 13 of its judgment. He further pointed out that, the Reference Court has gone into the matter in detail and relying upon the judgments of the Apex Court, has held that, one-third of the sale price in Ex.P3 has to be reduced as the acquired lands are agricultural lands, and consequently, 1/3rd of Rs. 6,500/-, which is the sale consideration in Ex.P3, comes to Rs. 4,335/- and the same would be the fair and correct determination of market value in respect of the lands in question. Therefore, he submitted that, the market value determined by Reference Court is just and reasonable and the same does not require any modification.

7. Having heard learned Government Pleader appearing for common Appellant (Respondent in Cross objections), learned Counsel appearing for cross-objector, and after considering the rival contentions urged by both the parties, the only question that arise for consideration is as to:

Whether the determination of market value at the rate of Rs. 4,335/- per gunta by Reference Court, is just and reasonable?

After careful perusal of the judgment and award passed by Reference Court, it emerges on the face of the judgment and award and other material available on file that, the Reference Court has not committed any error much less material irregularity in determining the market value at the rate of Rs. 4,335/- per gunta. The Reference Court, has placed reliance on the judgment of the Supreme Court reported in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , wherein it is held that, as per Section 51A of the Land Acquisition Act, for determining the market value of acquired land, certified copy of sale deed relating to similar lands situated in vicinity can be relied upon without examining vendee or vendor or anybody else connected with the sale and rightly relied upon Ex.P3 certified copy of the sale deed dated 8th January 1981 in respect of four guntas of land at Rs. 26,000/-. The Reference Court has safely placed reliance on the market value of the land in the sale deed dated 8th January 1981, relating to similar land situate in the same vicinity on the basis of Apex Court judgment, referred above and arrived at Rs. 6,500/- per gunta at the rate of Rs. 26,000/- for four guntas. Further, placing reliance on another judgment of the Supreme Court, reported in Vijay Kumar Moti Lal Vs. State of Maharashtra, , wherein it is held that, while computing market value in respect of land which is not fully developed, the sale value to be reduced by one-third, the Reference Court has reduced 1/3rd of the sale price, as permissible u/s 23 of the Karnataka Land Acquisition Act for determining the market value. If the said principle is applied in arriving at the market value of the lands in question, then, 1/3rd of Rs. 6,500/- comes to Rs. 2,165/- and if Rs. 2,165/- is reduced/deducted from Rs. 6,500/-, it comes to Rs. 4,335/- per gunta. Further, the Reference Court has given a specific finding that, there is no dispute that, Unkal village comes within the Hubli-Dharwad Corporation limits and the said area has been completely developed and therefore, it is rightly felt that, it would be just and proper to fix the market value of the lands in question at Rs. 4,335/- per gunta. The said reasoning, coupled with cogent reasons with reference to the judgments of Apex Court and credible documentary evidence, in my considered view, is in accordance with law and the same is in consonance with the mandatory provisions of Section 51A and Section 23 of the Land Acquisition Act. Therefore, I do not find any legal infirmity much less material irregularity as such committed by Reference Court in determining the market value of the lands in question. The said determination made, is after taking into consideration the vicinity of the lands notified within the developed area and the potentiality of the lands, which are the basic ingredients for determination of market value. Therefore, I do not find any good grounds or justification to interfere in the impugned judgment and

award passed by Reference Court. Hence, interference in the impugned judgment and award passed by Reference Court is uncalled for.

8. Having regard to the facts and circumstances of the case, as stated above, the appeals filed by common Appellant and the beneficiary/second Appellant in MFA No. 1442 of 2003 seeking reduction in the market value and cross objections filed by cross objector/beneficiary also seeking to set aside the impugned judgment and award passed by Reference Court, stand dismissed.