(2007) 10 KAR CK 0036

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1460 of 2004 and Cross Objection No. 225 of 2005

The Special Land Acquisition Officer APPELLANT

Vs

Ashok Venkatesh Desai RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4 (1), 6 (1)

Citation : (2007) ILR (Kar) 5203 : (2008) 1 KarLJ 20 : (2007) 4 KCCR 309 SN

Hon'ble Judges : Manjula Chellur, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : L. Umakanthan, Addl. HCGP, for the Appellant; Jagadish Patil, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Land bearing R.S. No. 115/2 measuring 4 acres 26 guntas, situated at Hiremuramatti village, Bagalkot Taluk, was notified for acquisition u/s 4(1) of the Land Acquisition Act ("the Act" for short), on 25.7.1996. The said property was acquired for the public purpose of upper Krishna Project, i.e., submergence in the back water of Almatti Reservoir. The final notification u/s 6(1) of the Act was issued on 15.9.1997 acquiring the said property for the said purpose. The LAO has passed the award on 27.2.1999, determining the market value of the property at Rs. 18,351/- per acre.

2. The land owner being dissatisfied with the award made by the LAO, contending that the compensation has not been determined in accordance with law and the award was meager, sought for a reference to the Civil Court u/s 18 of the Act. The reference Court after issue of notice to the concerned, has enquired into the matter.

3. The owner/claimant has examined himself as PW.1 and produced documents in support of the claim made by him, which have been marked in his evidence as Exs. P1 to P5. The LAO did not lead any evidence and the award passed by him was marked as Ex.D1.

4. The reference Court on consideration of the material placed before it, has determined the market value of the property acquired and the compensation payable for it, at Rs. 74,250/- per acre and has ordered for payment of the statutory benefits in accordance with law. No compensation was awarded in respect of the photo kharab. While passing the said award, the reference Court has adopted the capitalisation method. It has taken 50% as the value for the second crop.

5. The State through LAO has filed the main appeal contending that the reference Court has erred in treating the entire property as an irrigated land and that two crops are grown on the property and the compensation thus determined and awarded as illegal.

6. The owner/claimant has filed the cross objection contending that the market value determined by the reference Court is unjust, inadequate, inequitable, contrary to the facts and circumstances of the case and has sought for enhancement. It is further contended that though sufficient material has been placed on record as evidence to assess the income of the second half year, the reference Court has not taken into account consideration of the crops grown on the land and averaging of the income, is incorrect. It is contended that the reference Court has not made proper determination of the compensation and has failed to exercise its jurisdiction properly and thus he has claimed enhanced compensation. The owner/claimant has sought to determine the market value at Rs. 99,000/- per acre.

7. We heard the learned advocates appearing for the parties and perused the records of the reference Court.

Claimant has examined himself as PW. 1 and has produced Exs. P1 to P5. LAO has not led any evidence, but by consent, the award passed by him has been marked as Ex.D1. Ex.P1 is the petition filed u/s 18 of the Act, before the Special LAO, seeking reference to the Civil Court, for correct determination of the market value of the property. Ex.P2 is the copy of the order dated 9.10.2002 passed in W.P. Nos. 37830-37840/2002, wherein it was held that, if the authorities do not come forward to state the date on which possession is taken, it is always open to the petitioners, to set out the date on which, they lost possession and that date has to be taken into consideration for the purpose of awarding interest. Ex.P3 is the RTC of the property for the period 1995 to 1997-98, from which, it could be seen that, the property was an irrigated land and crops like cotton, groundnut have been grown by the claimant. Ex.P4 is the extract issued by the office of the Agricultural Department, Bagalkot, for the period 1995-96 to 2001-02, in respect of the yield of the various crops. Ex.P5 is the certificate issued by the APMC, Bagalkot, for the period 1995-96 in respect of the rate of various produce. The reference Court taking into account the entries in Ex.P3, has held that the property is an irrigated land and crops such as cotton, groundnut etc., were grown on the property. PW. 1 has also spoken about the crops grown by him in the acquired property. As against the evidence of PW. 1 and Ex.P3, the Special

LAO has not led any evidence nor placed any rebuttal evidence. The evidence of PW. 1 is consistent with the entries in Ex.P3 which has presumptive value. Hence, the same has to be accepted. Hence it has been correctly held that the acquired property was an agricultural land and the crops that was grown thereon were cotton and ground nut.

8. The reference Court in the absence of sales statistics produced by the parties, has correctly applied the capitalization method to determine the award. The reference Court has taken into account the documentary evidence at Exs.P4 and P5 to determine the average yield and the amount that can be realised by way of the yield. Even though the reference Court has relied upon Exs.P4 and P5, but by relying upon the judgment reported in Spl. L.A.O. Vs. Irasangavva, has deducted 50% towards the cultivation cost and has arrived at Rs. 74,250/- per acre as the market value.

9. We have examined the findings of the reference Court. The learned Judge after appreciation of the evidence on record, to find out whether the claimant is entitled for enhancement of compensation, has taken into account that the land has irrigation facility. In our opinion, the learned Judge has erred with regard to the cost of cultivation of the crops. The yield from the second crop, must in the absence of certain and adequate source of irrigation, be less than the yield from the first crop. At the same time, the yield is directly related to the irrigation facilities available for the land under cultivation. If the land is properly irrigated and the source of irrigation is, adequate and certain, the difference between the yield of the first and second crop would become negligible. The reference Court in the instant case having found that the land in question was an irrigated land, there being material to show that the claimant had installed irrigation pump set for irrigation purpose, it has to be held, that there was adequate irrigation infrastructure and the land was adequately irrigated for both crops. Hence there was no need for reducing the yield for the second crop. The reference Court ought to have allowed the full value for the second crop and if the same had been done, the award would have been Rs. 49,500/- for the yield, in which event, the reference Court should have held that the market value of the property as Rs. 99,000/-.

10. Having regard to the facts and circumstances of the case and in the light of the evidence on record, it has to be held that the reference Court has erred in awarding Rs. 74,750/- per acre as the market value of the property as against Rs. 99,000/- per acre. In view of the above findings, we pass the following order:

(i) MFA 1460/2004 filed by the Special LAO is dismissed. The judgment and award passed by the reference Court is modified;

(ii) The cross Objection filed by the cross objector in No. 225/2005 is allowed. The market value fixed by the reference Court is enhanced to Rs. 99,000/- per acre;

(iii) The reference Court has allowed the statutory benefits on the amount awarded. The claimant/cross objector is entitled to all statutory benefits on the compensation awarded at Rs. 99,000/- per acre with proportionate cost.

