
(2002) 09 KAR CK 0034

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 2126 of 1995 and 6075 to 6087 of 2002

The Special Land Acquisition Officer, Hidkal Dam Project

APPELLANT

Vs

L.B. Desai

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Citation : (2003) 1 KarLJ 257 : (2002) 4 KCCR 387 SN

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : Chandrashekar Rodnavar, for the Appellant; C.S. Kotawale and S.N. Hatti, for the Respondent

Judgement

M.F. Saldanha, J.—The State of Karnataka has, through this appeal assailed the enhancement that has been awarded by the learned Additional Civil Judge, Chikkodi, in LAC No. 19 of 1994. At the very outset, we put a question to the Government Pleader as to how one appeal has been filed even though the record clearly indicates that this was a group of 14 acquisitions even though they are all in one compact area. The learned Advocate submitted that since these were filed through a Power of Attorney Holder before the Reference Court that one number has been allotted by the Court and that this is the reason why the State has also filed one appeal. As far as the Court fee is concerned, the question does not arise since the valuation has been done on the basis of the individual pieces of land and since the State is the appellant and is exempted from paying Court fees, there is no need to issue any directions in this regard. However, for purposes of the record even though we entertain a common challenge the office is directed to renumber the appeals allotting separate numbers to the remaining 13 appeals all of which will form one group. The group of 14 appeals is being disposed of through this common judgment and the office to immediately indicate to the judgment writer the numbers that are allotted to the group of appeals so that the same may be shown in the cause title of the judgment. This is also important because as we shall point out, it is not one piece of land that is under acquisition

but there were 14 different spots of land and in the course of the hearing we have had to hear the learned Advocates on both sides individually and separately on merits in respect of each of the 14 acquisitions for the reason that the nature of each of the lands was required to be ascertained insofar as some lands were dry lands and some of them were wetlands. Secondly, and more importantly since the capitalisation method was adopted in this case, we have had to individually hear the learned Advocates on both sides on merits separately in relation to each of the lands in question because some of the lands are supposed to have been under groundnut cultivation, some of them are supposed to have been under chillies cultivation and the wetlands were supposed to have been yielding sugarcane. In addition to this, there was another head of dispute because there were supposed to have been 387 fruit yielding trees or Sitafal trees and there was considerable dispute with regard to the valuation of the trees in question. This is the reason why the individual examination of each of the cases became necessary. We are however disposing of the group of 14 appeals through a common judgment because the issues that have been canvassed can be conveniently disposed of through a common order.

2. To start with, we need to deal with I.A. No. I of 2002 which the State of Karnataka has filed with the prayer that the additional evidence that is sought to be produced should not only be taken on record but furthermore that it should be relied upon. The additional evidence consists of a bunch of Revenue records or extracts ostensibly dealing with the lands in question and the learned Government Pleader submits that the claimants had got the value of their lands enhanced and that this was done on the basis of the Revenue extracts which were then produced before Court. According to the learned Counsel, at the relevant point of time one Sri S.L. Malagar was the Village Accountant and this man is supposed to have issued false documents to the claimants which were relied upon by them before the Court. The Special Land Acquisition Officer contends in the year 2002 that he was not aware of the fact that these extracts were false and that only at this late point of time he has come to know that the extracts in question were false and that he has therefore obtained the true and correct extracts and this should be relied upon by the Court and the order passed by the Reference Court on the basis of the false documents should be set aside. The claimants who are the respondents to this appeal have strongly objected to the acceptance of any additional evidence at this late point of time. They have pointed out two things, the first of them being that the reference was made in or about the year 1984 and that it came to be disposed of after 11 years in the month of April 1995. Elaborate hearings had taken place, evidence was recorded, arguments were heard and the Reference Court enhanced the compensation, though to a very modest extent. All through this period of time it was open to the authorities to have verified the correctness of the documents produced. It was also open to the authorities to have led whatever evidence they want to refute the correctness of the documents or of the oral evidence, none of which was done. The appeal was filed in the year 1995 and even at that stage, no so-

called additional evidence was forthcoming and after the lapse of another 7 years an application is filed for taking on record additional evidence. The submission is that the application is hopelessly belated and that on this ground alone it should be dismissed.

3. The more significant objection and the one which in our considered view requires very serious attention is the fact that even at this point of time the extracts that have been produced are for a period well before the acquisition and in a few stray instances there are some entries for a period much beyond the date of acquisition. The submission canvassed is that these records are totally useless when it comes to the question of ascertaining the nature of the crops at the point of time when the acquisition took place.

4. We have heard the learned Advocates on both sides with regard to I.A. No. I and what we note in the first instance is that the requirements of law relating to the acceptance of additional evidence virtually at stage 3 of the proceeding and that too 23 years after the acquisition will hardly be permitted by any Court and even if that is done, it will only be if the party concerned satisfies the Court that the evidence in question was not in existence or that the party could not lay hands on that evidence about the point of time when it should have been produced before the lower Court. This requirement has not been satisfied. Secondly, the whole basis of fraud relating to the veracity of the documents produced by the applicants proceeds on the footing that the Village Accountant had issued false documents. The Government Pleader submitted that if the particular officer is dishonest and if he has been a party to the fraud that such material cannot form the basis of enhanced compensation. The arguments appears to be very plausible upto a point except for the fact that we find from the reply that has been filed that the concerned Village Accountant who according to the State was subjected to an enquiry has happily continued in service, no action has been taken against him and under the circumstances, the entire plea that he is dishonest and that he is responsible for fabricating the documents virtually falls to the ground. Furthermore, apart from the fact that the application is belated, apart from the fact that the officers ought to have challenged and verified the correctness of the material produced before the Reference Court what we note is that even at this late stage in the year 2002 no reliable material has been brought on record to support the State's plea that the nature of the cultivation which has been established before the lower Court was incorrect. Under these circumstances, even though legally we would have been justified in dismissing the I.A. No. I outright out of a sense of fairness we have looked at the documents in question and since we find that they do not assist the appellants at all, the I.A. No. I is rejected.

5. Coming to the merits of the case, there is precious little that can be said to the enhancement that has been awarded by the Reference Court. We have gone through the order in question, we have examined the record and we have heard the learned Counsels on both sides. The plea that has been put forward is that in

one portion of the dry lands groundnuts were being cultivated, in the second portion chillies were being cultivated and as far as the wetlands are concerned that they were under sugarcane cultivation. The fact that some of the lands were dry and some of them were wet is not in dispute. The applicants have produced documents in support of their oral evidence and what we find is that the Reference Court has very correctly assessed the yield from the lands, he has applied the light multiplier and the figure arrived at by him is certainly something that cannot be faulted under all the 3 heads. It is true that the learned Government Pleader vehemently submitted that even assuming some enhancement was to be granted that the quantum is on the high side. We need to record after having examined the documents before us that this is a case in which the Reference Court has granted very marginal enhancement. In our considered view, the enhancement is on the low side and we need to say that, out of a full sense of responsibility, had the respondents filed a cross-appeal this Court would most certainly have enhanced the compensation further.

6. Having very carefully reassessed the whole of the record we see no ground on which the order of the Reference Court can be interfered with. The set of appeals accordingly fails on merits and stand dismissed with costs.

7. It is not clear to us from the record as to whether the 50% compensation has been deposited or nor is it at all very clear to us as to whether at all the applicants were permitted to withdraw the deposited amount. We however direct the State to compute and to deposit with the lower Court within an outer limit of 12 weeks from today the whole of the balance compensation which is outstanding. On receipt of the amount in question the Trial Court shall forthwith disburse the compensation to the beneficiaries. With these directions the appeals to stands disposed of.

8. At this stage, the respondents' learned Counsel submits that if the respondents have not deposited the amount as directed, that this Court should at least award interest on the amount in question. We leave the option open to the learned Advocates to apply for further directions after checking up the necessary records if any when the same becomes necessary.