
(2014) 04 KAR CK 0175
In the Karnataka High Court
Case No : M.F.A. No. 2495/2013 (LAC)

The Special Land Acquisition Officer-I	APPELLANT
Vs	
Putta Revaiah	RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 23, 23(1)(A), 30, 31

Citation : (2014) 3 AKR 422 : (2014) ILR 4583 : (2014) 3 KCCR 2410

Hon'ble Judges : Ravi V. Malimath, J; K.L. Manjunath, J

Bench : Division Bench

Advocate : P.V. Chandrashekar, Advocate for the Appellant

Judgement

K.L. Manjunath, J.—The legality and correctness of the judgment dated 15.09.2009 passed in LAC No. 2/2000 by the Additional Senior Civil Judge, Ramanagaram is called in question in this appeal.

2. The admitted facts are as hereunder:

The respondent's land measuring 04 acres in Sy. No. 78/3 and 15 guntas of land in Sy. No. 78/2 situated at Shanmangala Village in Bidadi Hobli was acquired by the Government for formation of industrial area under Preliminary Notification dated 15.04.1997 and an award was passed determining the market value at the rate of Rs. 1,17,000/- per acre. Being not satisfied with the same, at the request of the respondent, a reference was sent to the Reference Court both under Sections 17 & 30 of the Land Acquisition Act (for short, the "Act").

3. In order to prove the market value, the respondent/claimant got himself examined Power of Attorney as PW-1 and relied upon Exs. P1 to P17. The Land Acquisition Officer was examined himself as RW-1. He relied upon Exs. R1 to R4. The Reference Court formulated the following points for its consideration:

i) Whether, is there any necessity for deciding reference u/s 30 and that is there any rival claim, with regard to deposit of compensation amount?

ii) Whether the claimant proves that the compensation awarded to his acquired land by the respondent is inadequate, meager and required to be enhanced? If so, to what extent?

iii) What Order or Award?

4. On considering the entire evidence, the Trial Court came to the conclusion that there was no need to refer the matter u/s 30 of the Land Acquisition Act since there were no rival claims. Accordingly, the Court below held the respondent as the absolute owner and entitled for compensation. So far as the first point is concerned, relying upon Ex. P10, the Resolution of the Respondent - Board came to the conclusion that the claimant is entitled for compensation at Rs. 6 Lakhs per acre. It also held that the respondent is also entitled to claim compensation at the same rate for kharab land.

5. The Reference Court also held that the respondent is entitled to additional benefit of 12% p.a. on the compensation amount on the market value from the date of the preliminary notification till the date of passing of the award. Aggrieved by the same, the present appeal is filed.

6. Mr. P.V. Chandrashekar, learned counsel for the appellants submit that he does not press the order passed on the review petition filed by the appellant and he requests this Court to consider the case of the appellant on the main order on merits. Accordingly, we have heard him. His submissions are as hereunder:

According to him, the Trial Court has committed a serious error in determining the market value at the rate of Rs. 6 Lakhs per acre relying upon Ex. P10. According to him, Ex. P10 - the Resolution passed by the KIADB is for passing an award by way of consent. Agreeable to receive the compensation on the consent award, such a Resolution is passed which is inclusive of additional benefits, statutory amount of 15%, 30% solatium and other benefits u/s 23 of the Act. Therefore, he contends that the Trial Court has committed an error in determining the market value at the rate of Rs. 6 Lakhs per acre based on Ex. P10.

7. He further submits that the compensation awarded to the kharab land at the same rate is bad in law. The contention is that though possession was taken much prior to the award, without considering the effect of Section 23(1)(A) of the Act, the Reference Court has passed an award directing the appellant to pay additional market value of 12% till the date of the award without considering the date of taking possession. Therefore, he request the Court to allow the appeal.

8. Having heard the learned counsel for the appellant, we are required to consider the following points in this appeal:

i) Whether the interpretation of Ex. P10 by the Trial Court and determining the market value based on Ex. P10 awarding the compensation and determining the market value at Rs. 10 Lakhs per acre is just and proper?

- ii) Whether the Reference Court is justified in awarding compensation to the kharab land at the rate of Rs. 6 Lakhs per acre?
- iii) Whether the awarding of 12% per acre u/s 23(1)(A) till the date of passing of award is just and proper?
- iv) Whether the judgment and decree of the Trial Court is required to be interfered with?

9. Considering the fact that all the three points are interlinked with each other, we would like to deal with them together as hereunder:

The acquisition of land by the State of Karnataka for the benefit of KIADB is not in dispute. Since the appellant has given up reference under Sections 30 & 31, what is required to be considered is only determination of the market value by the Trial Court. Except the self-serving testimony of PW-1 and RW-1 and documents Exs. P1 to P 17 and Exs. R1 to R4, there is no other evidence. The Trial Court has relied upon Ex. P10. The only question to be considered in this appeal is, whether the interpretation of Ex. P10 by the Reference Court in order to hold the market value of the land at the rate of Rs. 6 Lakhs per acre is just and proper? A copy of Ex. P10 is made available to us. The relevant portion reads as hereunder:

Subject No. 7:

[File No.: 1239 (2) 1

Determination of compensation u/s 29(2) of the Act in respect of 713 acres 6 guntas in Bidadi Hobli, Ramnagar Taluk being acquired for Kirloskar - Toyota Project.

It was noted that approval of the Chairman was obtained for payment of compensation at the rate of Rs. 6.00 Lakhs per acre conversion fine for converted lands, as against the recommendations made by the Committee under the Chairmanship of Deputy Commissioner/Bangalore [Rural District, in respect of 713 acres 6 guntas at Bidadi Hobli of Ramnagar Taluk.

After detailed discussions, it was resolved that payment of compensation at the rate of Rs. 6.00 Lakhs per acre for agricultural lands and Rs. 7.00 Lakhs per acre for converted land for 713 acres 6 guntas in the villages of Baleveeranahalli, Shyanamangala and Abbanakunte of Bidadi Hobli, Ramnagar Taluk including all allowances and excluding cost of malkies art structures, as recommended by the Committee under the Chairmanship of Deputy Commissioner, Bangalore [Rural] District, be approved.

10. From reading of the above Resolution, it is clear that the KIADB on its own has determined the market value at the rate of Rs. 6 Lakhs per acre in respect of agricultural land and Rs. 7 Lakhs per acre in respect of converted land. Therefore, what is to be considered is, whether the Resolution passed by the KIADB can be considered as the consent award. In order to hold that the

respondent was not entitled to claim compensation at the rate of Rs. 6 Lakhs as awarded by the Reference Court, the Resolution is passed relying upon the provisions u/s 29(2) of the Karnataka Industrial Area Development Board (KIADB) Act and not under the Land Acquisition Act. In order to appreciate whether the Resolution is a consent award or a mere Resolution passed by the KIADB determining the market value, we are necessarily required to consider the provisions of 29(2) of the KIADB Act, which reads as hereunder:

29(2): Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be paid in accordance with such agreement.

11. It is no doubt true that sub-section (2) of Section 29 of the Act empowers the State to enter into an agreement with the landowners to fix the compensation, which is normally known as consent award. On a perusal of the resolution referred to above, we are of the view that it is not an agreement between the state government and the persons who lost their lands due to acquisition. The first sentence of the resolution reads as under:

It was noted that the approval of the Chairman was obtained for payment of compensation at the rate of Rs. 6,00,000/- per acre for agricultural land and Rs. 6,00,000/- per acre plus conversion fine for converted lands, as against the recommendation made by the committee under the chairmanship of Deputy Commissioner, Bangalore rural district in respect of 713 acres 6 guntas of land at Bidadi hobli, Ramnagar taluk.

Upon reading of the first paragraph of the resolution, it discloses that the Deputy Commissioner, Bangalore rural district had recommended the compensation at different rates, but the chairman has given his approval for payment of compensation at the rate of Rs. 6,00,000/- per acre for agricultural land and Rs. 7,00,000/- per acre for converted land. Based on the aforesaid resolution, no court can hold that the resolution was passed by consent between the state government and persons who have to receive the compensation. In other words, we are of the firm view that the persons who have received the compensation are not parties to the resolution. When it is a unilateral resolution passed by the KIADB or the government, it cannot be considered as a "consent award".

12. Subject - 7 for awarding compensation has been determined at Rs. 6 Lakhs per acre, the persons who have lost the land are not parties. Unilaterally, the KIADB cannot rely on sub-section (2) of Section 29 of the Act. Merely because, in the head note of the Resolution, there is a mention of 29(2) of the KIADB Act, according to us, the said Resolution cannot be considered as a consent award since none of the land owners were parties to such a Resolution. The Resolution is passed by the Board to determine the market value. When the Board on its own has determined the market value at Rs. 6 Lakhs per acre for agricultural land and Rs. 7 Lakhs per acre for non-agricultural land, we are of the view that the Reference Court is justified in determining the market value at Rs. 6 Lakhs

per acre. We reject the contention of the appellant that Rs. 6 Lakhs has to be paid only to the person who has agreed for passing a consent award since the Resolution does not read so. Therefore, we are of the view that the Trial Court is justified in passing the award. Accordingly, we have to hold Point No. 1 against the appellant.

13. So far as Point No. 2 is concerned, the learned counsel for the appellant Sri. M.V. Chandrashekar does not dispute that in respect of an unreserved kharab land, right, title and interest will run along with the respective owner. Since it is not a reserved kharab land, the respondent is not entitled to claim compensation at the same rate. Accordingly, we answer Point No. 2.

14. So far the last point is concerned, as per Section 23(1)(A) of the Land Acquisition Act, the respondent is entitled to claim additional benefit of 12% from the date of passing of Preliminary Notification till the date of taking possession or till an award is passed whichever is earlier. But there is no discussion by the Reference Judge while considering the third point in order to ascertain whether the possession was taken much earlier to the passing of the award. Therefore, we are of the opinion that liberty has to be given to the KIADB to file an application for review or to file an application to lead additional evidence to determine the date of taking possession of the land in order to fix the additional benefit of 12% p.a. from the date of Preliminary Notification till the date of taking possession or till the date of passing of the award whichever is earlier. Granting such liberty, we dispose of this appeal.

15. In the result, the compensation determined by the Reference Court is confirmed. Liberty is given to the appellant to file necessary application to determine the additional benefit payable to the respondent, if necessity arises. Liberty is given to the parties to lead additional evidence to find out whether possession is taken prior to passing of the award and if so, when actually possession was taken. Based on the same, the Trial Court is directed to modify the award to that extent.

Ordered accordingly.