

(2003) 05 KAR CK 0006

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3423 of 2000

The Special Land Acquisition Officer, UKP

APPELLANT

Vs

Bhimappa and Another

RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition Act, 1894 — Section 18, 4 (1)

Citation : (2003) 3 KCCR 2354

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : K.P. Ashok Kumar, for the Appellant; Basavaraj Kareddy, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, being aggrieved by the Judgment and award dated 16.7.1999 in Land Acquisition Case No. 715 of 1997 on the file of the Additional Civil Judge (Senior Division), Jamkhandi, for short, "the Reference Court", awarding compensation at the rate of Rs. 1,30,000-00 per acre for the acquired land excluding the pot kharab area with 30% solatium and 12% additional market value on the enhanced compensation amount from the date of Section 4(1) notification to the date of award i.e., from 6.10.1994 to 18.9.1996, has preferred this appeal.

2. The background facts in brief are that an extent of land measuring 10 acres 39 guntas comprised in survey No. 389/1 of Todalbagi village, Jamkhandi taluk, was acquired by the State by issuing Section 4(1) notification dated 6.10.1994 for the purpose of Rehabilitation Centre of displaced families of Kavatagi village, Jamkhandi Taluk. The Land Acquisition Officer, after conducting award enquiry and basing on sales statistics, awarded compensation at the rate of Rs. 40,000-00 per acre. The owners of the acquired land, not being satisfied with the

quantum of compensation awarded by the Land Acquisition Officer, sought reference u/s 18 of the Land Acquisition Act, for short "the Act" to the Reference Court and accordingly, the claims were referred. The Reference Court by applying the method of capitalisation and taking into account Ex. P-8, an award passed in Land Acquisition Case No. 94 of 1997 on the file of the Civil Judge (Senior Division), Gokak, determined the compensation at the rate of Rs. 1,30,000-00 per acre. Hence this appeal by the State.

3. We have heard learned Government Advocate for land acquisition and Sri Basavaraj Kareddy, learned Counsel for the Respondents, owners.

4. While assailing the correctness of the impugned award, the learned Government Advocate would contend that the finding of the Reference Court that the acquired land is an irrigated land is not based on any substantive legal evidence; that fixation of compensation at the rate of Rs. 1,30,000-00 is very much on higher side particularly having regard to the fact that though sugarcane crop had been grown in the acquired land, there is absolutely no evidence to show the nature of the acquired land thereby meaning whether the acquired land is the best, good or ordinary land for cultivation of sugarcane.

5. Sri Kareddy contended that the Appellant has utterly failed to make out any case to interfere with the impugned award. Although the owners have not chosen to file any cross-objection in this appeal, Sri Kareddy, learned Counsel for the land-owners, placing reliance on the Judgment of a coordinate Division Bench of this Court in *The Special Land Acquisition Officer, Upper Krishna Project Vs. Balappa*, would maintain that it is an eminently fit case where this Court should exercise its discretion dictated by good conscience and grant enhancement of compensation to the owners of the land inasmuch as the Reference Court, though it came to the conclusion that the market value of the acquired land is Rs. 1,60,560-00 per acre, illegally and without any justification scaled down to Rs. 1,30,000-00 per acre.

6. Having heard learned Counsel for the parties, we think it appropriate to first dispose of the claim put forth by Sri Kareddy that even in the absence of cross-objections in this appeal, the owners are entitled to claim higher rate of compensation than the one awarded by the Reference Court. As already pointed out, the above claim of the learned Counsel is based on the Judgment of the Division Bench of this Court in *Special Land Acquisition Officer's case* (supra). The claim is totally misconceived and the above Judgment of the Division Bench would not entitle the owners to claim higher rate of compensation without filing cross-objections.

7. In *Balappa's case* (supra), it was contended on behalf of the land owners that the Reference Court wrongly denied the interest to them on the amount representing solatium and additional market value despite the fact that the land owners are entitled to such interest in view of the binding decision of the Supreme Court in *Sunder Vs. Union of India*, and Judgment of the Division Bench

of this Court in *Special Land Acquisition Officer v. S.M. Gajendran @ S.M. Gajendra Babu*, ILR 2001 Kar. 2404. The Division Bench, in the context of the above contention of the land owners, examined the question, whether by virtue of the provisions of Order 41, Rule 33 of the Code of Civil Procedure, the Appellate Court shall have the power to pass any decree and make any order which ought to have been passed or made in favour of all or any of the Respondents or parties although such Respondents or parties may not have filed any appeal or objection? The Division Bench, on consideration of a number of Judgments of the Supreme Court, in paragraph No. 22, held:

A conspectus of the above pronouncements establishes a broad unanimity in so far as the scope of Order 41, Rule 33 is concerned. Three distinct aspects that permeate the pronouncements may be summarised thus: (i) That even when the power conferred under Order 41, Rule 33 is wide, the discretion vested in the Court has to be exercised cautiously and only in rare cases where the Court considers the exercise of the said power to be absolutely necessary for doing complete justice between the parties. (ii) The power may be legitimately exercised where interference in appeal requires interference even with that part of the decree which has attained finality. This could be done to adjust equities or to mould the relief to which the parties or any one of them may be entitled and (iii) The power may also be exercised in situations where benefits that flow from statutory provisions like solatium and interest under the Land Acquisition Act, are denied to a party without any justification.

8. Thus, it is settled that the discretion vested in the Appellate Court under Order 41, Rule 33, CPC had to be exercised only in rare cases to do complete justice for the parties before it and that discretion cannot be exercised casually or mechanically. The power under Order 41, Rule 33 of the CPC being a discretionary power vested in the Appellate Court, no party-Respondent can claim, as a matter of right or as a matter of course, that the Appellate Court should exercise that discretion in its or his favour despite the fact that the said Respondent has not filed appeal or cross-objections. In deciding whether the Court should exercise the discretion in favour of the Respondent-land owners even in the absence of cross-objections in this appeal, the Court cannot lose sight of the fact that the entitlement to substantive compensation envisaged in the Act has to be worked out by the owners of the acquired land, generally speaking, by the modes and methods envisaged by the Act itself. The Act is a Code in itself as regards legal remedies. The Act not only provides, u/s 18, to seek higher rate of compensation by way of reference, but also further provides for successive appeals to this Court and the Supreme Court, if the compensation awarded by the Reference Court is not acceptable to the parties. What the Respondents-land owners in this appeal seek is enhancement of substantive compensation in terms of the market value of the acquired land and not statutory benefits such as interest on solatium and additional market value, with regard to which the law is well settled. Therefore, we are of the considered opinion that this is not a fit case where this Court, being the Appellate Court,

should exercise discretion vested in it under Order 41, Rule 33 of the CPC and grant higher rate of compensation to the land owners as claimed by their Counsel. Therefore, we decline to exercise discretion vested in the Court under Order 41, Rule 33, Code of Civil Procedure.

9. This takes us to the merits of the appeal preferred by the Special Land Acquisition Officer. We do not find any merit in either of the two contentions urged by the learned Government Advocate for land acquisition. The classification of the land done by the Reference Court as irrigated land is based on substantive legal evidence. The Reference Court, in para 10 of the Judgment, has referred to the recitals in the award marked as Ex. D-1 in which it is stated that the land acquired is a fertile land and kept in good condition by the owners and that the owners have been raising sugarcane crop, and that irrigation is provided by digging a bore-well in the acquired land. At the time of hearing, learned Government Advocate placed before us the original records and we have perused Ex. D-1. In Ex. D-1, the Land Acquisition Officer has stated that the acquired land is irrigated and quite fertile and two sugarcane crops have been raised Ex. D-1 fully corroborates the evidence of P.W.1. Therefore, it cannot be said the finding of the Reference Court that the acquired land is irrigated land is perverse or based on no evidence".

10. We also do not find any substance in the contention that the fixation of compensation at the rate of Rs. 1,30,000-00 per acre is on higher side. The fact of raising sugarcane crops, the fact of yield of sugarcane crops to an extent of 45 to 50 tons and price of sugarcane are fairly well established by the documentary evidence vide Ex. P-2, Ex. P-3, Ex. P-4 and Ex. P-6. Although the finding of the Reference Court is that the sugarcane yield per acre is 45 to 50 tons, for the purpose of computation of the compensation, the Reference Court has taken the crop yield at 40 tons per acre on the ground that the agricultural officer has not classified the land into categories like "superior, medium and inferior".

11. No other grounds are urged before us while assailing the validity of the impugned award. In conclusion, we do not find any ground whatsoever to interfere with the impugned award.

The appeal is devoid of merit and it is accordingly dismissed with no order as to costs.