(1996) 10 KAR CK 0045

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 182 of 1992

The Special Land Acquisition Officer, Upper Krishna Project, Bheemarayanagudi	APPELLANT
Vs	
Shivalingayya (Since Deceased) by L.Rs.	RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:
Land Acquisition Act, 1894 — Section 20(C)

Citation : (1997) 1 KarLJ 35

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This miscellaneous first appeal is preferred under Section 54(1) of the Land Acquisition Act. It has been preferred by the Special Land Acquisition Officer from the judgment and order dated 2-8-1991 whereunder, the learned Additional Civil Judge, Gulbarga, had allowed the reference and held the claimants to be entitled for the enhanced compensation at the rate of Rs. 15,000/- per acre in respect of the land acquired i.e., Survey No. 19/B measuring 9 acres 26 guntas situate in Village Jewargi (K), Taluk Jewargi, District Gulbarga, as well as held the owners of the land or claimants to be entitled to other statutory benefits under the provisions of Section 23(1) of the Land Acquisition Act as amended.

2. The facts of the case in brief are that preliminary notification under Section 4(1) of the Land Acquisition Act was issued on 4-8-1982, under which the land bearing Survey No. 19/B, Jewargi (K), Taluk Jewargi, District Gulbarga was acquired and the Land Acquisition Officer awarded and determined the compensation therefor, at the rate of Rs. 5,000/- per acre. The claimants moved an application under Section 18 of the Land Acquisition Act, for short ''Act'' challenging the award of the Land Acquisition Officer on several grounds.

3. On behalf of the Government, the Land Acquisition Officer''s objection was filed by the learned District Government Pleader taking the plea to the effect that reference was time barred and claimants'' claim for compensation was exorbitant which they were not entitled to.

Considering the matter on merits, the Civil Judge, Gulbarga, passed the judgment and order (award) dated 2-8-1991, enhancing the compensation payable. Having felt aggrieved from the judgment and order (award) of the Civil Judge, enhancing the amount of compensation, the Special Land Acquisition Officer, Upper Krishna Project (U.K.P.), Bheemarayanagudi, has filed this appeal.

4. I have heard learned Counsel for the appellant and the learned Counsel for the respondents. Amongst the various pleas taken by the learned Government Pleader appearing for the appellant it has been contended that land has been acquired for the purpose of Agricultural Produce Market Committee, Jewargi, for the construction of Agricultural Produce Market Committee Yard. He contended that though compensation has been enhanced but, it has been enhanced without hearing the person likely to be affected by the enhancement namely, the Agricultural Produce Market Committee, Jewargi. He submitted that the land has been acquired for the purpose of the Market Committee and the compensation has to be paid by it. Learned Counsel for the appellant invited my attention to the provisions of Section 20, as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961. The learned Counsel submitted that as the acquisition was not made for Government, but for Market Committee, mandatory provisions of Section 20 requires the Court to cause the notice to be served on the authority for whom the acquisition has been made and as such, notice has to be served on the Market Committee being person interested as well. He submitted that this provision has not been followed and compensation has been enhanced and so the exercise of jurisdiction by the Civil Court suffers from legal error which may affect its jurisdiction as well. In this connection, learned Government Pleader-Sri Hanumantharayappa, placed reliance on the two decisions of this Court with reference to the meaning of person interested. He further made reference to the decision of their Lordships of the Supreme Court in the case of Himalaya Tiles and Marble Private Limited v Francis Victor Coutinho (dead) by L.Rs, AIR 1980 SC 1118, also to the decision of their Lordships of the Supreme Court in the case of Neelagangabai and Another v State of Karnataka and Others, AIR 1990 SC 1321. The learned Government Pleader made a reference to the decision of Division Bench in the case of Land Acquisition Officer and Assistant Commissioner, Gadag Division v Chandrashekaragouda Basanagouda Patil and Another, 1984(2) Kar. L.J. 12 Sh.N. 17.

5. On behalf of the respondents, appearance has been put by Sri S.P. Shankar and Sri Praveen Kumar Raikote, learned Counsels for respondents submitted that, no doubt such a plea is always open to the Market Committee to raise and no finality may be reached to the above decision, as that decision may not be said to be binding on the Market Committee as it has not been made a party and it may have and may raise objection at a later stage. So, it will be better that this Court may dispose of this appeal on this ground with a direction to the Civil Judge, to decide the matter expeditiously, if this Court looking to the facts of the case and the law laid down by the Supreme Court holds that the notice on Market Committee ought to have been served. Sri S.P. Shankar, submitted that,

as service of notice is concerned, he has verified from the record and he could not find that any notice to have been served under Section 19(2) or under Section 20 on the Market Committee as a person interested in the matter of compensation that is, person interested in the matter of assessment of compensation under clause (b) unamended and clause (c) amended to Section 20, as the acquisition has been made for the benefit for the Market Committee. He submitted that no notice appears to have been issued or served on the concerned opposite party.

I have applied my mind to the contentions made by the learned Counsels for the parties. The admitted position appears to be that no notice in the case has been issued by the Court below to Market Committee, Jewargi in course of reference under Section 18 of the Land Acquisition Act. It will be profitable to refer to materially relevant provisions of the Act. Section 20 of the Land Acquisition Act reads as under:

"The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:-

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and (c) if the objection is in regard to the area of the land or to the amount of compensation, the Collector".

The Karnataka State Amendment to Section 20 of the Land Acquisition Act reads as under:

(1) For the words "determine the objection", the words "determine the reference" shall be substituted;

(2) For clauses (a), (b) and (c), the following clauses shall be substituted, namely:-

"(a) the Deputy Commissioner;

(b) all persons interested in the reference; and (c) if the acquisition is not made for Government, the person or authority for whom it is made". (24-8-1961)

It will be profitable to quote the observations of their Lordships of the Supreme Court defining the expression ''person interested'' in the Francis Victor Coutinho''s case, supra, their Lordships of the Supreme Court observed as under:

"It seems to us that the definition of ''a person interested'' given in Section 18 is an inclusive definition and must be literally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In the instant case, it is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the Government, after acquisition, it stood transferred to the company under the agreement entered into between the company and the Government. Thus it cannot be said that the company had no claim or title to the land at all. Secondly, since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce evidence on the question of the quantum of compensation".

6. As the Market Committee is the person or authority for whose benefit and for whom the land is being acquired and who may have to pay the compensation amount can well be said to be a party interested entitled to the notice. Apart from that in view of the Karnataka Amendment to Section 20 and substitution of new clause (c) for old clause (c) in Section 20 now, it is very clear that as the Market Committee is the authority or person for whom or for which the acquirement has been made, Section 20 requires that notice should be given to such person very specifically. When I take this view, I find support from the view expressed by the Supreme Court in Neelagangabai''s case, supra, as per observations and law laid down in paragraph 3 at page 1322. As the mandatory provision of the law has been laid, the proceedings I may say, determination or enhancement of the compensation without any notice being issued to the Market Committee can be said to be invalid and to be the result of error of law apparent and affecting the jurisdiction of the Civil Judge to enhance it. It is well-settled principle of law that when power had been given to determine and enhance the compensation under Section 18 on a reference made and specific manner and procedure has been prescribed namely, that this can be done only after giving notice to the person or authority for whom the land has been acquired. The same could not be done without following this mandate of law as when law requires certain things to be done and to be done in a particular manner, then it means the doing of that thing only in that manner and not otherwise. In this view of the matter, the impugned order appears to be illegal and deserves to be set aside, but the initiation of reference is not bad. Reference has to be decided afresh as such, by the learned Civil Judge under Section 18 of the Act in the light of other provisions of law and the observations made in this judgment after giving the parties due notice that is, notice even to the Market Committee and after giving them due and proper opportunity of leading the necessary evidence.

The evidence which has already been led may also be considered along with the evidence that may be lead by parties during the fresh retrial of the matter after notice to the Agricultural Produce Market Committee and other parties and giving them due opportunity to lead evidence or to cross-examine the witnesses. It will also be open to the Market Committee to request the Civil Judge to recall those witnesses whose evidence had been recorded in the absence of the Market Committee for the purpose of cross-examination as well.

7. In the result, this appeal is allowed. Costs are made easy. The matter is

remanded to the learned Civil Judge for decision afresh on the merits of the matter, as I have not expressed any opinion. All the pleas will be open to the parties to be taken up before the Civil Judge, Gulbarga.

It is expected, as the matter is an old one and pending since 1982, which requires expeditious disposal of the matter and that it will be disposed off expeditiously. The amount that has been deposited under the interim order of this Court and if it has been withdrawn, the Government will be entitled to adjustment thereof when the compensation is determined. Therefore, it is expected that this matter will be decided expeditiously.

1997(1)kar.l.j.42

CIVIL PROCEDURE CODE, 1908, Section 114 and Order 47, Rule 1 - Review - Of order in writ petition - Party seeking review on basis of evidence not produced at time of passing of order - Party required to explain circumstances in and reason for which said evidence was not produced - Review application not containing such explanation - Liable to be rejected.

HELD: The case of the applicant is that he could not file the minutes dated 4-6-1985 which he wanted the Court to take into consideration. Nowhere in the petition it has been indicated why those documents could not be filed or why those minutes could not be brought to the notice of the Court by the petitioner. Whether those minutes were not within the knowledge of the party. If they were not within the knowledge of the petitioner party then petitioner had also to clarify as to what diligence or efforts he made to know about that. In this case the applicant has nowhere asserted that minutes were not known to him. Applicant has failed to make out the case for reviewing of the order. [Para 3]

