
(2015) 12 KAR CK 0174

In the Karnataka High Court

Case No : Review Petition Nos. 100034, 100035, 100036, 100037, 100038, 100039, 100040, 100041, 100042, 100043, 100044, 100045, 100046 and 100047/2015

The Union of India and Others

APPELLANT

Vs

Basanagouda and Others

RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Citation : (2015) 12 KAR CK 0174

Hon'ble Judges : S. Abdul Nazeer and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Ajay U. Patil, Advocate, for the Appellant; B.S. Sangati, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—The Union of India is the review petitioner in all these cases. It has sought review of the judgment and award in different Miscellaneous First Appeals and connected MFA. CROBs all dated 13.12.2012, whereby this Court has awarded Rs. 15,24,600/- per acre towards compensation with other statutory benefits and interest.

2. Learned Counsel for the review petitioner submits that the lands in question have been acquired for the formation of broad railway line at Ugniken Village, Kalaghatagi Taluk, Dharwad District. The Land Acquisition Officer has awarded Rs. 79,500/- per acre towards compensation. The Reference Court has enhanced the compensation to Rs. 10 lakhs per acre and this Court has further enhanced the same to Rs. 15,24,600/- per acre. It is argued that he has not made any submission as noted in paragraph 3 of the judgment.

3. Therefore, this Court passed an order on 31.8.2015 as under:

"The learned Counsel for the review petitioner claims that the judgment under review was rendered recording the submission made by the respondents,

namely, the Union of India and the State Government, had submitted that the rate produced by the appellants/claimants as per the records of the Sub-Registrar could be accepted for assessing the compensation. This the learned Counsel for the petitioner would insist, was never made and seeks to substantiate the same.

Normally, this Court would not accept any such submission in the face of the tenor of the judgment which reads otherwise. Since the judgment was rendered in the year 2012 and the review petition being filed in the year 2015 is also a circumstance, which is inexplicable. If such a judgment was rendered, in the face of no such statement being made by the Counsel, it would be expected that a serious protest would be raised and such a review petition ought to have been filed immediately thereafter. The fact that there is a delay of three years is inexplicable.

Therefore, the learned Counsel for the petitioner is required to further substantiate his allegation with greater detail and proper documentation.

Two weeks time is granted for the purpose."

4. As per the above order, learned Counsel for the review petitioner has filed his affidavit dated 9.9.2015. In the affidavit, learned Counsel has stated that he has not made any submission as has been recorded in paragraph 3 of the judgment. It reads as under:

"1. I am the Counsel appearing for the review petitioner in the above cases and I know the facts of the case and hence swearing to the instant affidavit by placing all the relevant record for kind perusal of this Hon"ble Court.

2. I submit that Review Petition No. 100034 to 47/2015 in MFA No. 26061 to 74/2011 and Cross Objections No. 725-730, 732-735, 737-739 & 937/2012 are all connected matters, wherefore a single affidavit is filed in the instant review petition and the same may be taken on record in all the connected matters.

3. I submit that MFA No. 26061/2011 to 26074/2011 were filed by the beneficiary Railways assailing the orders passed by the Reference Court wherein Rs. 25,000/- per gunta was awarded with regard to MFA No. 26061-74/2011 as they are dry agricultural lands. In respect of MFA No. 26072-74/2011 Rs. 48,000/- per gunta was awarded as they were having commercial potentiality by the Reference Court.

4. I submit that all the above appeals were listed before learned Single Judge for hearing on I.A. and the Hon"ble Court was pleased to condone the delay and granted an order of stay as prayed for subject to deposit of 50% of the enhanced compensation. The said order was duly complied with and the said deposit made was also withdrawn by the respondents.

5. I submit that by representation of the respondent before this Hon"ble Court all the matters were ordered to be connected with Cross Objection No. 730/12 in

MFA No. 26074/11 though the matters were pending before learned Single Judge. It is pertinent to note here that some of the cross objections were dismissed by the learned Single Judge for non-compliance of office objections.

6. I submit that on 13.12.2012, the top noted cross appeals came to be listed for hearing on I.A. and for non-compliance of office objections and the appeals came to be disposed of. It is also to bring it to the kind notice of this Hon''ble Court that two lists were issued by the Hon''ble Court on that specific day. Copy of both the cause lists are produced herewith and marked as Annexure-A & B. I submit that on 5.12.2012, I had filed a memo before this Hon''ble Court seeking adjournment of two weeks as the lower court records were not made available to me. In the said memo, it was specifically stated that there is no such urgency to dispose of the matter as the respondents had also withdrawn the 50% of the enhanced compensation deposited before this Hon''ble Court. I submit that the adjournment also was sought for at the first instance. Original copy of the memo filed before this Hon''ble Court is produced herewith and marked as Annexure-C.

7. I submit that though adjournment on the grounds mentioned in the memo dated 5.12.2012 was sought for, no adjournment was granted by this Hon''ble Court. I submit that this Hon''ble Court proceeded to pass the order though there was no urgency. It is submitted that the matters were listed for noncompliance of office objections and the cross objector along with the other objections raised had not even paid the requisite court fees as prescribed under the Act. I submit that as noted in para 3 of the judgment, I have not made any such submission to accept the rate prescribed by the Sub-Registrar at Rs. 35/- per square feet, in fact, it is pertinent to note here that I have produced the guide line value issued by the Sub-Registrar along with the memo dated 5.12.2012 to bring it to the notice of this Hon''ble Court that the actual value of the land in question is Rs. 52,500/- per acre and there was no commercial transaction entered into between either as on the date of acquisition nor on the subsequent year. Hence, there is no question of me submitting before this Hon''ble Court that the rate as assessed by the Sub-Registrar in the year 2004-05 to be taken into considered, though the lands remain agricultural land and have not been converted till date. I submit that the judgment of the Hon''ble Supreme Court relied upon by me in the case of Chandrashekar (D) by L.Rs. and Others Vs. Land Acquisition Officer and Another, was also not considered. Original copy of the memo dated 5.12.2012 is produced herewith and marked as Annexure-D. It is further pertinent to note here that a serious protest was also raised before this Hon''ble Court not to dispose of the matter. However, on 12.12.2012 this Hon''ble Court asked to keep the Deputy Chief Engineer to be present before the Court. Hence, the Officer of the Dy. Chief Engineer was kept present before the Court. I further submit the Hon''ble Court did not allow to make my submissions.

8. I submit that on 22.11.2012 in Cross Objection No. 730/12, which was the only matter before the Division Bench as the other matters were listed before the learned Single Judge, this Hon''ble Court had made a specific order stating that

"since the office objections are not complied, hence, call after four weeks". It is submitted that the office objections were not complied by the cross objector but however the matters were listed immediately on 27.11.2012. I further submit after perusal of the order sheet that the cross objections were allowed even without condoning the delay. Certified copy of the order sheet passed in MFA. Crob. 730 is produced herewith and marked as Annexure-E.

9. I submit that the judgments in the above appeals were passed on 13.12.2012, certified copies of the same were applied on 15.12.2012 and the same were delivered on 12.6.2013, and 31.5.2013 in respective cases. I submit that the certified copies obtained were delivered to the Railways on 11.7.2013 and the same was acknowledged on 16.7.2013. Copy of the acknowledgement is produced herewith and marked as Annexure-F. It is further submitted that I received a letter dated 21.4.2014 by the petitioner to give a legal opinion as to whether a review petition can be filed as the petitioner had collected certain relevant documents from the Sub-Registrar's office and had observed that no commercial transactions are entered into and this Hon''ble Court has taken rates pertaining to the year 2004-05, whereas the acquisitions in the instant case was 2002. After receipt of the said letter, I have given a legal opinion on 26.5.2014 stating that the review can be filed subject to payment of full court fees or the same can be assailed before Hon''ble Apex Court. Copy of the legal opinion sought is produced herewith and marked as Annexure-G. Thereafter, the file was processed before the department and necessary approval and sanctions were obtained. On 23.6.2014, I was intimated that necessary approvals were obtained and the Deputy Chief Engineer, SWR, requested me to furnish calculation sheet in order to arrange for court fees. I submit that on 2.7.2014, I furnished the calculation sheet for processing of the court fees giving the details in each case. As intimated to me, finance concurrence has to be obtained from the necessary department to process the court fees and sanction of the same has to be obtained. I submit that after obtaining necessary sanction by the department, I was handed over with the requisite demand drafts issued in favour of the Addl. Registrar of this Hon''ble Court on 30.3.2015, copy of the same is produced herewith and marked as Annexure-H. Hence after receipt of the same, necessary interim applications and memorandum of petitions were made ready and immediately the above appeals were filed.

10. I submit that in respect of similar matters pertaining to the same Kalaghatagi Taluk and also pertaining to the same year of acquisition, the petitioner had filed MFA No. 22341-23245/2011 challenging the award passed by Reference Court which had awarded Rs. 42,000/- per gunta. As the claimants had filed cross objections, the enhancement was made by this Hon''ble Court to Rs. 59,895/- per gunta. I submit that in all these appeals i.e. 23241, 23242, 23243 and 23245/2011 and Review Petition Nos. 1516, 1517, 1518 & 1519/2013 were filed and this Hon''ble Court was pleased to condone the delay and allowed the review petitions by setting aside the order and consequently, restored to its filed. Copy of one judgment passed in MFA No. 23241/2011 is produced herewith and

marked as Annexure-J. Copy of the order passed in one Review Petition No. 1516/2013 is produced herewith and marked as Annexure-K. I further submit that in LAC No. 119/06 pertaining to the very same village and of the same notification and year, the reference Court vide its order dated 23rd February 2011 has awarded compensation for a sum of Rs. 8,000/- per gunta. Copy of the judgment and award passed in LAC No. 119/06 is produced herewith and marked as Annexure-L. I submit that as all these facts and materials are brought to the kind notice of this Hon"ble Court to establish that there is an error apparent on the face, hence, it is most respectfully prayed to recall and review the order dated 13.12.12.

Hence, to bring all these facts and materials to the notice and kind consideration of this Hon"ble Court the above affidavit is filed with all the details and records. I further submit that Annexure A to L are all copies of their respective originals."

5. Respondents have filed objections to the review petitions as also to the affidavit of the learned Counsel for the appellant/review petitioner.

6. The delay in filing the review petitions was condoned on 24.11.2015 by consent of the learned Counsel for the respondents.

7. Sri Ajay U. Patil, learned Counsel appearing for the review petitioner further submits that he had not made any submission as noted in paragraph 3 of the judgment dated 13.12.2012. He submits that in fact, many cross objections were pending before the learned Single Judge. Even office objections have not been complied with. In many matters, the claimants have not paid appropriate court fees. Therefore, the judgment impugned herein requires review.

8. Learned Counsel for the respondents submit that in the review petitions false contentions have been raised. They have denied the statements made in the affidavit of the learned Counsel for the review petitioner.

9. It is clear from the materials on record that on 13.12.2012, the Miscellaneous First Appeals came to be listed for hearing on Interlocutory Applications and for non-compliance of office objections and the appeals came to be disposed of on that day. It is also clear that on 5.12.2012, learned Counsel for the appellant/review petitioner has filed a memo before the Court seeking adjournment for two weeks. It reads as under:

"The appellant submit that in view of non-securing of lower court records which are available with the lower Court Advocate are to be made available to the Counsel appearing for railways/appellant herein, hence, two weeks time may kindly be granted to secure that records and defend/assist this Hon"ble Court accurately. Since the matters pertain to the year 2011/2012, there is no urgency to dispose of the matter. Wherefore it is most humbly prayed that this Hon"ble Court may be pleased to grant two weeks time so as to enable us to put forth the matter before this Hon"ble Court effectively. Hence, this memo."

10. Yet another memo filed by the learned Counsel for the appellant/review

petitioner dated 5.12.2012 reads as under:

"The appellant herein seeks the leave of this Hon"ble Court to produce the Guide line value issued by the Sub-Registrar pertaining to the instant lands involved in the present appeal and as on the date of acquisition, for the kind consideration of this Hon"ble Court, in the interest of justice."

11. As noticed above, many cross objections were pending before the learned Single Judge and even office objections have not been complied with in the said cases. The appropriate court fees also has not been paid by the claimants in many of the cases. The statements made in the affidavit dated 9.9.2015 have been supported by documents. We are of the view that the appeals and cross objections have to be heard again. Therefore, the review petitions are allowed. The judgment in MFA Nos. 26061/2011, 26062/2011, 26063/2011, 26064/2011, 26065/2011, 26066/2011, 26067/2011, 26068/2011, 26069/2011, 26070/2011, 26071/2011, 26072/2011, 26073/2011 & 26074/2011 dated 13.12.2012 and in all the connected MFA. CROBs are recalled and they are restored to file.

Post all these appeals and the connected cross objections on 18.12.2015.