

(2012) 06 KAR CK 0068

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7530 of 2010

V. Gopalakrishna, Represented by His Power of Attorney
Holder, V. Ashwathanarayana Murthy

APPELLANT

Vs

The Special Land Acquisition Officer, Shimoga Urban
Development Authority, Shimoga District, Shimoga

RESPONDENT

Date of Decision : 04-06-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 18 (1), 23 (2), 9

Citation : (2012) 06 KAR CK 0068

Hon'ble Judges : S.N. Satyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : S.V. Prakash, in MFA No. 7530/2010, Sri S.V. Prakash, in MFA Nos. 7531 and 7532/2010 and Sri G.S. Balagangadhar, in MFA No. 3408/2010, for the Appellant; A.V. Gangadharappa For M/S. A.V.G. Assts. in All Respondent, for the Respondent

Judgement

N.K. Patil, J.—Though all these four appeals are listed for admission, they are taken up for final disposal as requested by the learned Counsel for the parties. These appeals are arising out of common judgment and award dated 6.10.2009 passed in IA,C. Nos. 143, 147, 148 and 145 of 1999 on the file of I Additional Civil Judge (Sr.Dn) and CJM, Shimoga. The claimants/appellants being aggrieved by the common judgment and award passed in the aforesaid proceedings felt necessitated to present these appeals on the ground that the compensation awarded is inadequate and requires enhancement.

2. Brief facts of the case are as under:

The lands in question have been notified and acquired by the State Government in favour of Shimoga Urban Development Authority; the beneficiary for formation of residential layout by issuing the final notification and followed by the notices issued under Sections 9 and 10 of the Land Acquisition Act. Thereafter, after receiving the objections filed by the appellants the Land Acquisition Officer

passed the award. Not being satisfied with the award passed by the Land Acquisition Officer on the ground that the market value fixed by the Land Acquisition Officer is inadequate, the appellants herein filed reference u/s 18(1) of the Land Acquisition Act seeking enhancement. The Reference Court, after assessing the oral and documentary evidence borne-out from the record, allowed the reference in part awarding compensation at the rate of Fts.65,000/- per acre with all statutory benefits as envisaged u/s 23(2) and also u/s 23(1)(a) of the Land Acquisition Act. Not being satisfied with the common judgment and award passed by the reference Court, the appellants felt necessitated to present these appeals seeking appropriate relief as prayed for in the appeals.

3. The submission of the learned Counsel for the appellants is that, the market value determined by the Reference Court is inadequate, as the same is determined without taking into consideration the potentiality of the lands notified and acquired and also the fact that, in and around the lands in question several complexes and residential houses have come up. Hence, having regard to the aforesaid aspects the reference Court ought to have determined higher compensation. Further, the reference Court while determining the compensation has not followed the legal procedure required under the acquisition proceedings. Hence, they filed IA. Nos. I and 11/2012 for producing additional evidence to substantiate their claim seeking enhancement of compensation awarded by the reference Court, which have been allowed by this Court. Therefore, the impugned judgment and award passed by the reference Court may be set aside and the matter may be remanded back to reference Court to reconsider the same afresh and to decide the same on merits and in accordance with law

4. In reply to the said submission of the learned counsel for the appellant, the learned counsel for the respondent inter alia submitted that the submission of the learned counsel for the appellants may be placed on record and the matter may be disposed of with a direction to the reference Court to dispose of the matters as expeditiously as possible.

5. In the light of the submission made by the learned Counsel for the parties and after perusal of the common judgment and award passed by the reference Court and also taking in to consideration the grounds urged by the appellants and the statements made in the affidavits accompanying the applications tiled seeking production of additional evidence, in our view, the matters require reconsideration of the matter afresh after adducing oral and documentary evidence. That exercise can only be done by the reference Court to decide the matter on merits and in accordance with law. Therefore, without expressing any opinion on the merits or de-merits of the appellants' case and in the light of the submission made by the learned counsel for both the parties, it would suffice for this Court to remand the matters back to the reference Court for fresh consideration so far as appellants and respondents herein are concerned to meet the ends of justice and to safeguard the interest of parties. For the foregoing reasons, the appeals are allowed. The impugned common judgment and award

dated 6.10.2009 passed by the reference Court in LAC Nos143, 145, 147 and 148/1999 on the file of I Additional Civil Judge (Sr.Dn) & CJM, Shimoga, is hereby set aside and the matter is remitted back to the reference Court to reconsider the matter afresh and to pass appropriate orders in accordance with law after hearing the counsel for the parties as expeditiously as possible, at any rate within a period of six months from the date of appearance of parties before the reference Court.

The appellants and respondent are permitted to file their additional evidence oral and documentary and grounds, if any, within a period of three weeks from the date of receipt of a copy of this judgment.

In case such applications are filed, the reference Court is directed to receive, consider and dispose of the same in accordance with law and in compliance with the direction issued by this Court as stated supra.

The appellants and respondent are directed to appear before the jurisdictional Reference Court on 18.6.2012 and collect necessary further date from the reference Court.

Office is directed to return the entire original records forthwith to the jurisdictional reference Court. Further, the registry is also directed to refund the court fee paid by the appellants on the memorandum of appeals to the appellants personally or through their counsel.