(2007) 07 KL CK 0028

In the High Court Of Kerala

Case No : L.A.A. No. 1243 of 2003

Yamuna and Others — APPELLANT

Vs

Special Tahasildar — RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Kerala Civil Rules of Practice, 1971 — Rule 378, 378(4), 378(5), 378(6)
Land Acquisition (Amendment) Act, 1984 — Section 25
Land Acquisition Act, 1894 — Section 11, 18, 25, 4(1), 49

Citation : (2007) 07 KL CK 0028

Hon'ble Judges : T.R. Ramachandran Nair, J;Kurian Joseph, J

Bench : Division Bench

Advocate : A.V.M. Salahudin and V. Smitha, for the Appellant; K.R. Deepa, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—Whether the claimant is entitled to claim compensation more than what is claimed before the Land Acquisition Officer in the Reference, is the question to be decided in this case. The appeal is at the instance of the claimants in L.A.R. 437/99 on the file of the Sub Court, Kozhikode. The acquisition is for the purpose of Calicut Bypass. Section 4(1) notification was issued on 26-4-1991. The Appellants filed a statement before the Land Acquisition Officer claiming Rs. 20,000 per cent. An award was passed on 13-9-1993. The Land Acquisition Officer awarded land value at the rate of Rs. 4,115 per cent. The extent of property involved is 20 cents. Before the Reference Court, claim was made for Rs. 35,000 per cent. However, the Reference Court, taking note of the fact that the claim before the Land Acquisition Officer was only for Rs. 20,000 per cent, fixed the market value at the rate of Rs. 12,000 per cent. There was also a claim with regard to the building. The Reference Court refused to grant any value for the building since there was no evidence in that regard. The appeal is filed dissatisfied with the judgment and decree. The claim for the purpose of Court fee is for fixation of market value at the rate of Rs. 32,000 per cent, i.e., at the rate of Rs. 20,000 per cent more, on the value already fixed by the Reference Court.

2. The claimants placed reliance on Ext. A-1 judgment in LAR 479/97. However, the Reference Court refused to follow the same on the ground that an appeal was pending as L.A.A. 774/06. This Court has in the meanwhile disposed of the appeal-fixing the land value at the rate of Rs. 60,000 per cent.

3. In order to address the question as to whether a claimant is entitled to claim compensation before the Reference Court more than what he claimed before the Land Acquisition Officer, it is necessary to refer to the Land Acquisition Act, 1894, prior to its amendment in 1984. Dealing with the amount of compensation to be awarded by the Court, the unamended Act provided as follows, in Section 25:

25. Rules as to amount of compensation.-

(1) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

Under the unamended Act it was specifically provided that the amount awarded by the Court shall not exceed the amount claimed before the Land Acquisition Officer. However, it was also provided that in case the person interested had originally omitted to make such a claim and if the Court allowed him to make such a claim before it, the compensation amount could exceed the amount awarded by the Land Acquisition Officer. Thus, only if the claim was permitted to be raised by the Court, he could make the claim for compensation. After amendment, cumbersome process was omitted and the amended provision reads as follows:

25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.-The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11.

Thus it may be seen that the only condition is that the compensation awarded by the Court shall not be less than the award by the Collector u/s 11. Necessarily by implication, the Court can award a higher compensation than what was awarded by the Land Acquisition Officer. There is no fetter in making a higher claim before the Court, as was there in the unamended provision. The claimant does not have to offer any explanation as to why he made a lower claim before the Land

Acquisition Officer or a higher claim before the Reference Court.

4. It is now settled law by the celebrated decision of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, that a reference u/s 18 of the Land Acquisition Act is not an appeal against the award and that the award of the Land Acquisition Officer is not to be treated as judgment of the trial Court. The award is merely an offer made by the Land Acquisition Officer. It is also held by the Apex Court in the decision that "the Court has to treat the reference as an original proceeding before it and determine the market-value afresh on the basis of the materials produced before it". Still further, it is held therein that the claimant is in the position of a Plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court.

5. A reference to the Civil Rules of Practice, Kerala would also be profitable in this context. Rule 378 deals with the procedure for trial of references. The rule, to the extent relevant reads as follows:

378. Service of notice and trial of references.-

(1) The service of notice shall be as provided in Section 49 of the Land Acquisition Act.

(2) Subject to these rules, the procedure to be followed for the trial of a reference shall be that prescribed by the Code in respect of original suits.

(3) The application before the Collector for reference shall be treated as the plaint, and the investigation shall be with reference to the claim made therein.

(4) The claimants may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement setting out their claim in full.

(5) The Collector, the company and the local authority may, and if so required by the Court, shall, file a statement in reply.

(6) The statement filed under Sub-rules (4) and (5) shall, together with the application for a reference, constitute the pleadings in the case, and the rules in Order VII and VIII of the Code shall apply mutatis mutandis to such statements.

The rules clearly indicate that the application made by the claimant before the Land Acquisition Officer is treated as the plaint and the claimant is also at liberty to present a statement setting out his claim in full. The investigation by the Reference Court is to be made with reference to the claim made before the Reference Court. The statement filed under Sub-rules 4 and 5, by virtue of Sub-rule 6, together with the application for reference constitute the pleadings in the case and the rules in Order VII and Order VIII of the CPC should apply to such statements. In the instant case, it is seen from the judgment itself that the Appellants/claimants had filed a statement "in which they contend that at the time of acquisition their property ought to have fetched at least at the rate of Rs.

35,000 per cent". It may be noted that before the Land Acquisition Officer, the claim of market-value was only at the rate of Rs. 20,000 per cent. Thus, the Reference Court is bound to make an investigation with reference to the claim made by the claimants before the Reference Court, viz., at the rate of Rs. 35,000 per cent.

6. State of Kerala v. Sankara Panicker 1990 (1) KLT 303 is one case, wherein there is an apparently contra stand. That was a case dealing with an acquisition prior to the amendment. The judgment of the Reference Court also was prior to the amendment.

Balakrishnan, J., as His Lordship then was, observed in the judgment that the case is to be dealt with under the unamended provision. It was also noted therein that the claimant had stated before the Land Acquisition Officer and before the Reference Court that he was entitled to the land value at the rate of Rs. 700 per cent. Rejecting the contention of the Appellant before the High Court, for compensation at the rate of Rs. 1,750 per cent, it was observed inter alia that "Section 25 of the Central Act only says that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11. That does not give an unfettered discretion on the Court to award any amount even exceeding the claim put forward by the owner of the acquired land". For one thing it has to be noted that the decision pertained to an acquisition and reference Court judgment prior to the amendment. It has also to be noted that whether a claimant is entitled to claim compensation in excess of what is claimed before the Land Acquisition Officer was not the issue arising for consideration in that case and thirdly, that was also a case where even the claim before the Reference Court was for the same amount claimed before the Land Acquisition Officer. There is also no reference to the Civil Rules of Practice. Hence the observation does not in any way lay down a principle that under the amended Act, a claimant is not entitled to claim compensation before the reference Court in excess of what he claimed before the Land Acquisition Officer. In case the claimant claimed in the statement filed before the Reference Court, compensation in excess of the rate fixed by the Land Acquisition Officer, the Reference Court is bound to investigate on the claim made by the claimant before the Court. What is intended as the "claim" in Sankara Panicker''s case (supra) can only be the claim made before the reference Court and not before the Land Acquisition Officer, as far as the fixation of market-value under the amended Act is concerned. In that case, as already noted, there was no higher claim before the Reference Court, unlike in the instant case.

7. We are also persuaded to hold so, by a Full Bench decision of the Karnataka High Court in Special Land Acquisition Officer (NHW) Dharwad v. Kallangouda (FB) AIR 1994 Kar 112, wherein it has been held as follows:

Section 25 as amended does not either by implication or explicitly limit the compensation amount that could be claimed by a claimant. The Section, on the other hand, makes it plain that under no circumstance the award made by the

Court should be less than the amount awarded by the Collector. By implication it means that the Court can award higher compensation than what was awarded by the L.A.O. Significantly the Section remains untrammelled by any conditions enjoining the making of a claim higher than what was sought for before the L.A.O. In other words the Section does not forge a connecting link between the claim made before the L.A.O. and a claim made before the Court. The result is the claimant will be free to claim any amount before the Court as compensation and this liberty to claim any amount in Court remains totally uninhibited by any claim made before the L.A.O. even if there was a great disparity between the two claims i.e. the one made before the L.A.O. and the one made before the Court. The Section itself being silent about any barriers that either prohibit making of a higher claim before Court vis-a-vis the claim made before the L.A.O., there is no need at all for the claimant to offer any explanation whatsoever as to why he made a lower claim before the L.A.O. while hiking it up before the Court. The law does not enjoin offering of any such explanation. The lands being taken away under the Act without the consent and much against the wish of the land owner, the humanising factor in the law has thought it fit to remove all hurdles and humps in the way of the claimant getting a compensation which is deemed just and adequate. While the law of course expects him to make good the claim made before Court by producing ample evidence, it has nonetheless thought fit to remove all barriers that may prevent or preclude him from claiming the market-value of the land. This is more so as the reference made to a Court u/s 18 of the Act is an original proceeding requiring the Court to determine the market-value of the property on the basis of the material produced before it treating the claimant as the dominus litis occupying the position of the Plaintiff.

Thus, under the amended Land Acquisition Act of 1984, a claimant is entitled to claim land value before the Reference Court, in excess of what he claimed before the Land Acquisition Officer and the Court is bound to independently investigate the claim on the basis of the materials available on record. However, in view of the position under the Civil Rules of Practice, Kerala discussed above, unless a higher claim is made before the Reference Court, the claimant will not be entitled to value in excess of the value claimed before the Land Acquisition Officer, since the Reference Court is to investigate on the claim before it.

8. Mere is no dispute that the acquired land is similar to the land covered by L.A.A. 774/06, where this Court has fixed the land value at the rate of Rs. 60,000 per cent. The Reference Court refused to follow Ext. A-1 (LAR 479/97) against which L.A.A. 774/06 was filed by the State for the only reason that the judgment had not become final. Now that the judgment has become final, the Appellants are certainly entitled to rest their claim on the said judgment. For the purpose of Court fee, the Appellants have limited the claim to Rs. 4 lakhs, i.e., fixation of the market-value at the rate of Rs. 32,000 per cent. In the light of the above discussion, we hold that the Appellants are entitled to succeed. They shall be entitled to have the market-value fixed at the rate of Rs. 32,000 per cent along with all statutory benefits.

