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Court : Karnataka

Decided On : Sep-21-1964

Reported in : AIR1966Kant66; AIR1966Mys66; (1965)1MysLJ300

Judge : A.R. Somnath Iyer and ;D.M. Chandrashekhar, JJ.

Acts : Land Acquisition Act - Sections 4

Appeal No. : Regular Appeal No. 147 of 1960

Appellant : A.B. Nanjappa

Respondent : Special Land Acquisition Officer, City Improvement Trust Board, Bangalore

Judgement :

(1) This is an appeal arising out of land acquisition proceedings by the claimant who is dissatisfied with the enhancement made by the Court below of the compensation awarded by the Land Acquisition Officer.

(2) The land which was acquired measured 884 square yards, and, as the Land Acquisition Officer himself stated in his award, it was situate in a very important locality inside the City of Bangalore. One part of the property was bounded by the sample Road which connects the Residency Road with the corporation building.

The land was acquired for the purpose of laying out a new road connecting the sample Road with another road beyond. The acquired property formed part of the compound of the claimant's bungalow. By reason of the acquisition, two triangular bits were severed from the compound was a narrow strip, one part of which was bounded by the sample Road.

(3) The Land Acquisition Officer awarded compensation at Rs. 10 a square yard which was enhanced by the District Judge to Rs. 12. In this appeal, the claimant who claimed compensation at Rs. 40 a square yard before the Land Acquisition Officer has restricted his claim to compensation at Rs. 25 a square yard.

(4) In support of his claim for enhanced compensation, the claimant examined himself and three witnesses. C.W.1 Venkatara Gowd gave evidence that on April 5, 1957, he purchased a house belonging to the claimant for Rupees 30,000. According to his evidence the building was worth Rs. 13,000 and the land Rupees 17,000. According to the evidence given by C.W. 1, the building measured 13 squares or 1,300 square feet and the area of the land was 800 square yards. Exhibit P-1 is the sale deed executed by the claimant in favour of C.W. 1, and, the argument constructed on the basis of this sale deed by Mr. Doreswamy the learned advocate for the claimant is that the acquired property was worth not less than Rs. 21 a square yard.

(5) I should have mentioned that the date of the preliminary notification issued under section 4 of the Land Acquisition Act is December 21, 1956.

(6) The next witness examined for the claimant is one Sanyasi according to whose evidence, he offered Rs. 25 a square yard for part of the acquired property whereas the claimant insisted on Rupees 30 a square yard. This witness did not state in his evidence very clearly as to when he made this offer. It is clear from the other part of his evidence that this offer, if true, was made by him before there was the acquisition in question. The witness stated that it was on one part of the very property which he wished to purchase from the claimant that the Corporation has laid the new road, and, this statement can have no other meaning than that the offer of C.W. 2 if his evidence could be believed, was made before there was the acquisition.

(8) Normally, we should have found little difficulty in depending upon the evidence of C.Ws. 2 and 3 against whom nothing has been elicited in their cross-examination. But, Mt. Government Pleader has pointed out that the evidence of C.Ws. 2 and 3 suffers from the gross infirmity that the evidence given by them was not corroborated and not even referred to by the claimant himself who gave evidence about their own offers, that the claimant would refer to those offers when he gave evidence. If the claimant himself did not refer to those offers and gave no evidence about it, it would not, in my opinion, be possible for us to depend upon the uncorroborated testimony of C.Ws. 2 and 3, particularly, having regard to the fact that their evidence in regard to the exact point of time when they made their offers is somewhat vague.

(9) On behalf of Land Acquisition Officer, he examined himself and the Executive Engineer. What was elicited in the evidence of these witnesses in cross-examination was that sites which lay beyond the acquired property on the southern side farther away from the same road was sold at Rs. 10 a square yard. In his cross-examination, the Special Land Acquisition Officer admitted that that area was lower in level than the land acquired. In his evidence, the Executive Engineer stated that although some of those sites were sold at Rs. 10 a square yard, it was proposed to sell the other sites at Rupees 15 a square yard. However that may be, it is clear that those sites did not enjoy the superior situation which the acquired property enjoyed on account of its contiguity to the main road, namely, the sample Road.

(10) There is not, in my opinion, any reason why we should distrust the testimony of C.W.1 whose evidence stands corroborated by the sale deed exhibit P-1 according to which for the property purchased by him, he paid a consideration of Rs. 28,500. Mr. Doreswamy asks us to say that the consideration was Rs. 30,000. But Mr. Ashrit the learned Government Pleader has pointed out that Rs.1,500 was paid towards the expenses of stamping the document and registering it. So, we should in my opinion, say that the consideration paid for the sale was Rs. 28,500.

(11) From this amount, Mr. Doreswamy asks us to subtract Rs. 13,000 towards the cost of the building. But Mr. Government Pleader asks us to say that the building

was worth much more than Rs. 13,000. But this argument advanced by Mr. Government Pleader is unacceptable for the reasons that no question were put to C.W. 1 when he was in the box with reference to the answer given by him in examination-in-chief that the value of the building was Rs. 13,000 on the date of the sale deed. That part of his evidence was not subjected to any cross-examination whatsoever.

(12) We should, therefore, in my opinion, say that Rs. 15,500 after excluding Rs.13,000 which was the value of the building, represented the value of the site which measured 884 square yards. It is on this basis that we should now proceed to assess the market value of the acquired property at the relevant point of time.

(13) Mr. Ashrit advanced the argument that since Exhibit P-1 was executed by the claimant in favour of C.W. 1 more than three months after the date of the preliminary notification, we should altogether exclude the sale transaction recorded in that sale deed from consideration. In advancing this argument, Mr. Ashrit overlooks the principle that for the determination of the market value of the acquired property, transactions relating to sales of properties contiguous to the acquired property which took place not only before the date of the preliminary notification but also sufficiently proximate to the preliminary notification even if the transaction are subsequent transactions, should constitute the guiding factor. No bona fide sale transaction can be excluded from consideration merely on the ground that the transaction was entered into subsequent to the date of the preliminary notification.

(14) It is, of course, true that when depending upon a subsequent transaction, we should not overlook enhanced values attributable to the very acquisition or to a general increase in the market prices. But having regard to the fact that the sale recorded in Exhibit-1 was made within four months from the date of the preliminary notification and also having regard to the fact that there is no evidence whatsoever on the basis of which we can say that there was any such phenomenal or other general increase in the value of building sites after the date of the preliminary notification, we should not be justified in saying that the data available from Exhibit P-1 should be subjected to any drastic variation.

(15) Taking all the circumstances into consideration, to appears to me reasonable to say that the value of the acquired property was worth Rs. 19 a square yard on the date of the preliminary notification.

(16) So computed, the claimant will be entitled to compensation amounting to Rs. 16,796. To this will be added the usual statutory allowance of fifteen per cent, and, on the aggregate amount the claimant will be entitled to interest at six per cent per annum from the date on which delivery of possession was taken till date of payment.

(17) The decree of the Court below will be modified accordingly.

(18) Before concluding we should notice an argument advanced by Mr. Doreswamy which was to the effect that the claimant was entitled to some kind of compensation for injurious severance. The argument placed before us was that, by reason of the acquisition for a road which divided the property of the claimant into two small triangular bits, the lands were severed from the rest of the building and that the severance was injurious to the claimant and the grounds attached to it.

(19) No evidence is produced on behalf of the claimant establishing the truth of the allegation that the severance of the property into two portions caused any diminution to the claimant which remained with him.

(20) Mr. Doraiswamy placed before us a plan which was exhibited in the case delineating the portion acquired for the road and the portions which remained with the claimant after this acquisition. On a perusal of this plan it becomes clear that there can be no truth in the claimant's story that the value of the main building which remained with the claimant has become reduced by reason of the two triangular bits having been separated from that part of the property. On the contrary it appears to me that by reason of the acquisition for the road which now runs on the claimant's land, the two triangular bits of vacant sites have become more valuable and, far from causing any injury to the claimant, constitute a source of gain for him which he would not have derived had there been no acquisition. Likewise, there is plenty of open space on two sides to think that the value of the

building became diminished by reason of the acquisition. The argument based on injuries severance cannot therefore succeed.

(21) In regard to costs, the direction should be that the claimant should receive costs proportionate to his success in this Court and in the Court below and the opposite side should bear his own.

Chandrashekhar, J.

(22) I agree

(23) Order accordingly

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