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Court : Karnataka

Decided On : Sep-26-2005

Reported in : ILR2005KAR5453; 2006(6)KarLJ692

Judge : N.K. Patil, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1) and 18(1)

Appeal No. : M.F.A. No. 3844/2000

Appellant : M. Shivakumar and anr.

Respondent : The Assistant Commissioner and the Land Acquisition Officer

Advocate for Def. : V. Bychappa, HCGP

Advocate for Pet/Ap. : R. Gopal Adv.

Judgement :

N.K. Patil, J.

1. This appeal by claimants-appellants is directed against the judgment and award dated 14th January 2000 in LAC No. 382/1990 on the file of the Civil Judge (Senior Division), Davangere on the ground that, the enhancement made by

Reference Court is inadequate.

2. Land bearing Sy. No. 9/1 measuring 04 acres 07 guntas (out of 06 acres 32 guntas) situate at Mahajenahalli in Harihar Taluk was notified and acquired by the competent authority vide preliminary Notification issued under Section 4(1) of the Land Acquisition Act dated 6th January 1977 for the purpose of 'construction of S.J.V.P. Hostel Building and play ground' The Land Acquisition Officer, after taking all relevant factors into consideration and other material available on record, has passed the award dated 30th July 1979 fixing the market value of the acquired land at the rate of Rs. 03,300/- per acre. Being not satisfied with the award passed by the Land Acquisition Officer, the claimants-appellants herein along with other claimants before the Reference Court filed the application for Reference under Section 18(1) of the Land Acquisition Act for enhancement of compensation and requested the Land Acquisition Officer to refer the matter to the jurisdictional Reference Court for enhancement of compensation. The Reference Court, in turn, after thorough evaluation of the oral and documentary evidence, has re-determined the market value at the rate of Rs. 09/- per square yard. The Reference Court has placed reliance on Ex. P4-judgment and award passed by this Court in M.F. A. No. 460/1987 and 531/1989 while determining the market value at the rate of Rs. 09/- per square yard. The grievance of the claimants-appellants herein is that, the said determination made by Reference Court is inadequate and the same is contrary to the oral and documentary evidence. It is their further case that, the land in question has got high potentiality and is fit for construction of hostel and play ground, but the Reference Court has failed to appreciate the said fact and also failed to note that acquired land which belongs to appellants is just adjacent to National Highway. Therefore, the claimants-appellants, being aggrieved by the impugned judgment and award on the ground that, the determination of market value by the Reference Court is inadequate and is contrary to material on record and the documentary evidence available on file, have presented the instant appeal.

3. I have heard learned Counsel appearing for claimants-appellants and learned Government Pleader appearing for respondent. After careful evaluation of the entire original records available on file, threadbare, and after careful perusal of the

judgment and award passed by Reference Court, it is manifest on the face of the judgment and award that, the Reference Court has committed an error in proceeding to determine the market value at the rate of Rs. 09/- per square yard, by placing reliance on Ex. P4 -the judgment and award passed by this Court in M.F.A. No. 460/1987 and 531/1989. In the said judgment of this Court, the land involved was Sy. No. 9/2 of Mahajenahalli village in Harihar Taluk acquired for the purpose of 'construction of college hostel and play ground of S. J.P. V. Vidya Peetha'. In the instant case, land acquired is in Sy. No. 9/1 situate at Mahajenahalli village and this land is just adjacent to National Highway as per Ex. P-6-Akara Band Extract issued by the competent authority. At the time of taking possession, Mahazar has been drawn and sketch has been prepared at Ex. P10. After careful perusal of the sketch at Ex. P10, it clearly goes to show that, the land in question notified and acquired in S.No. 9/1 is situate just adjacent to the National Highway No. 4, Harihar-Bangalore. The land in question i.e. Sy. No. 9/1 is bounded by N.H.4 towards North, Sy. No. 9/2 and R.S. No. 17 towards south, Survey No, 10 towards East and college land towards west. When these two vital credible documentary evidence were very much available on the file of the Reference Court at Exhibits P6 and P10. the Reference Court has erred in determining the market value at the rate of Rs. 09/- per sq. yard by relying upon Ex. P4. As per the evidence given by PW1-first claimant herein, it can be seen that, he has stated in unequivocal terms that, the land in question is situate abutting to National Highway and that, therefore, they are entitled to higher compensation at the rate of Rs. 45/- per square yard and further, the said claimant has placed reliance on the judgment and award passed by Reference Court in Misc. No. 24/1982 at Ex. P11 and has stated that, the potentiality of his land is far higher than the land involved in Ex. P11. Therefore, he requested the Reference Court to enhance the market value. PW1 has been cross examined by A.G.P for respondent and no worthwhile evidence has been elicited from the claimant, except making suggestion that, there is a stream in which waste water of Harihar town is flowing and therefore on account of the same, the said land is not so valuable. The said suggestion made by A.G.P. in the cross examination of PW1 has been denied by PW1. Further, it has come in the re-examination of PW1 that, Sy. No. 9/1 measures east to west 155 yards and north to south 170 yards. This

shows that, the potentiality of the land in question is on a little higher side than the potentiality of land in Sy. No. 9/2. this Court has enhanced the market value from Rs. 06/- per Sq. yard to Rs. 09/- per Sq. yard in respect of Sy. No. 9/2 situate in the same village and notified for the purpose of 'construction of College hostel and play ground of S.J.P.V. Vidya Peetha' under the same notification. But, this Court, while so enhancing the market value to Rs. 09/- Per sq. yard, has observed that, the Reference Court therein has also taken into consideration the fact that, at the time of acquisition, there was no approach road to the instant land (Sy. No. 9/2), although it is in the vicinity of National Highway No. 4. None the less the fact remains that, considerable development activity had taken place, such as location of college and other urban amenities adjacent to or immediately in the vicinity of the instant land, scaling down of the value under Exhibit-P2 to Rs. 06/-per sq. yard appears to be too drastic and hence cannot be sustained. this Court, in the above referred judgment, having regard to all the facts and circumstances emerging out of the evidence and apparent on the record, thought it proper to enhance the rate to Rs. 09/- per Sq. yard. After careful perusal of the judgment and award passed by this Court enhancing the market value to Rs. 09/- per square yard in respect of Sy. No. 9/2 at Ex. P4, and the sketch at Ex. P10, it proves beyond all reasonable doubts that, the land in question is just adjacent to National Highway No. 4 and that, the instant land is also notified and acquired for the purpose of 'construction of hostel and play ground'. The Reference Court ought to have considered these credible documentary evidence available on file which have not been disputed, by the other side nor the other side has produced any authenticated document to show that, the claimants are not entitled for further enhancement of compensation, having regard to the potentiality of the land and the fact that, the instant land is situate just adjacent to National Highway No. 4. Therefore, in my considered view, the claimants-appellants are entitled to little higher compensation compared to claimants in Sy. No. 9/2 wherein Rs. 09/- per square yard has been awarded.

4. Having regard to the facts and circumstances of the case and the material available on file and law laid down by the Division Bench of this Court, referred above, I am of the considered view that, the claimants-appellants are entitled to enhancement of just and reasonable market value to an extent of Rs. 09.50 per square yard instead of Rs. 09/- per square yard as awarded by Reference Court

having regard to the potentiality of land and that, the land in question is situate abutting to NH.4 unlike Sy. No. 9/2, which is not abutting to National Highway.

5. Having regard to the facts and circumstances of the case as stated above, the instant appeal filed by claimants-appellants stands disposed of with the following directions:-

(i) The appeal filed by appellant is partly allowed;

(ii) The market value of the land in question is fixed at the rate of Rs. 09.50 per square yard instead of Rs. 09- per square yard as awarded by Reference Court;

(iii) However, so far as all other statutory benefits are concerned, the impugned judgment and award passed by Reference Court remains undisturbed:

(iv) Further, so far as the submission of learned Counsel for claimants - appellants regarding deduction mentioned in the award is concerned, it is needless to clarify that, it is open for the claimants - appellants to make necessary application before the Reference Court. If the Claimants-appellants file any application for the same, the Reference Court is directed to consider the same and pass appropriate orders, in accordance with law.

6. Learned Government Pleader is permitted to file memo of appearance within two weeks from today.

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