

CASE NO.:
Appeal (civil) 6587-6588 of 2000

PETITIONER:
SHARADAMMA

RESPONDENT:
SPECIAL LAND ACQUISITION OFFICER & ANR

DATE OF JUDGMENT: 09/02/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

C.K. THAKKER, J.

The present appeals arise out of a common judgment and order passed by the High Court of Karnataka at Bangalore on October 12, 1998 in MFA Nos. 1387 of 1994 and 1376 of 1994. By the said order, the High Court confirmed the order passed by the Reference Court on May 31, 1993 in LAC Nos. 33 of 1980 and 76 of 1980.

To appreciate the grievance of the appellant, it is necessary to state few facts.

The appellant Smt. Sharadamma, widow of B.M. Venkataswamappa is the owner of land bearing Survey Nos. 112 and 113 situate at village Byappanahalli. Survey No. 112 admeasures 2 acres while Survey No. 113 admeasures 1 acre and 1 gunta. The land was sought to be acquired for expansion of New Government Electric Factory ('NGEF' for short), Bangalore. A preliminary notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on March 26, 1965. The claimant demanded an amount of Rs.20.00 per square yard for the land. The Land Acquisition Officer, by an award dated October 25, 1965 awarded compensation of Rs.8,000 per acre. It is not in dispute that possession of land was taken over on November 16, 1965. Since the claimant was not satisfied with the amount offered by the Land Acquisition Officer vide his award referred to above, she sought Reference under Section 18 of the Act and the Principal Civil Judge, Bangalore District vide his order dated May 31, 1972 enhanced the compensation and awarded Rs.20.00 per square yard less Rs.3,000 per acre in view of the fact that though the land was having potentiality to conversion for non agricultural use, no such order of conversion had been passed and it had come in evidence that conversion charge was Rs.3,000 per acre. Thus the claimant's contention was upheld and the compensation was awarded. The authorities, however, were aggrieved by the enhancement and approached the High Court by filing appeals. The High Court noted that the Reference Court relied upon earlier award but it was challenged and the case was before this Court (Supreme Court). The matter was thus in a 'fluid situation'. The High Court, therefore, thought it proper to set aside the order passed by the Reference Court and to

remand the matter for fresh adjudication in accordance with law. It accordingly set aside the order passed by the Reference Court granting liberty to the parties to adduce further evidence and directed the Reference Court to decide it afresh in accordance with law. After the remand, the Reference Court once again considered the matter on merits. By that time, the matter had already been decided by this Court in *Special Land Acquisition Officer, Bangalore v. B.M. Krishnamurthy*, (1985) 1 SCC 469. The Reference Court, relying on *B.M. Krishnamurthy* held that the claimant was entitled to compensation at the rate of Rs.18,000 per acre and the order was passed accordingly. The said order was confirmed by the High Court which has been challenged in the present appeals.

Leave was granted by this Court on November 17, 2000 and the matter has been placed for final hearing. We have heard learned counsel for the parties.

The learned counsel for the appellant contended that the Reference Court had committed an error in not awarding compensation at the rate of Rs.20 per square yard which had been done earlier by an order dated July 31, 1972. It was submitted that no doubt the High Court set aside the said order passed by the Reference Court and remitted the matter with a direction to decide it afresh, keeping in view the fact that a similar order was challenged by the State Authorities and the matter was pending in this Court. But it was submitted that the matter was decided by this Court on January 22, 1985 in *B.M. Krishnamurthy* and the said decision clearly helps the claimant. The Reference Court was, therefore, not justified in awarding compensation of Rs.18,000 per acre. The High Court also committed similar error and hence the order passed by Reference Court and confirmed by the High Court deserves to be set aside by allowing the appeals.

The learned counsel for the respondents, however, supported the order of the Reference Court and of the High Court. According to him, the earlier order passed by the Reference Court in 1972 could not be taken into consideration since it was set aside by the High Court. There is no error in the impugned order which deserves interference by this Court.

Having heard learned counsel for the parties, in our opinion, the appeals deserve to be allowed.

It is no doubt true that the order passed by the Reference Court on July 31, 1972 awarding compensation to the claimant at the rate of Rs.20 per square yard was set aside by the High Court in the light of subsequent development and challenge to a similar award before this Court. But it cannot be overlooked that while dealing with the matter and considering the claim of the claimant, the Reference Court considered the situation and location of the land.

In paragraph 10, the Court observed:

"10. The only controversial question is about the market value of the lands acquired. To find out this aspect, the location of the land has to be borne in mind. The lands involved in these cases are in S.No. 112, 113 and 26 of Byappanahalli. Of them, it is admitted that S.No.26 is behind NGEF and S.No. 112 and 113 are in front of NGEF. The

evidence shows that NGEF had been built sometime prior to the acquisition of these lands. S.No. 112 and 113 are abutting National High Way namely Bangalore-Madras Road and on one side these two S.Nos. they have another road leading from Bangalore-Madras road to N.G.E.F. and some other villages. The evidence shows that just opposite to S.No.112 and 113 is the Aero Engine Factory. Its location is made clear from the village map Ex.P-24 and Ex.P-25. The evidence placed before this Court also shows that these lands are near the Corporation limits. There is a Isolation Hospital near the acquired land. It is also in evidence that on the northern side of S.No.112 and 113 is the Bangalore-Madras Railway line. It is also in evidence that there are railway quarters near the acquired land. The evidence of P.W.2 shows that he had formed a lay out in S.No. 10 of Byappanahalli which is also shown to be very close to the acquired land. There is also evidence that Byappanahalli railway station and Marshalling yard are very near the acquired land, particularly near S.No.26. The evidence shows that lot of building activity has taken place in and around about the acquired land. This would show that the lands acquired had good transport facilities. The fact that number of quarters are also found nearby would also indicate that the lands acquired were also suited for building purposes".

Keeping in view the site of the land, the Court observed that it would clearly prove that having regard to the location of the lands, they were suited for industrial purpose. It was also observed that the fact that the lands were ideally situated for industries was 'practically conceded' by Syed Abdul Khader, witness examined by the respondents as RW1\027the Land Acquisition Officer, who made the position clear in his General Valuation Memorandum. The Reference Court also noticed that Survey Nos. 112 and 113 had a frontage to the main road. The claimant had placed material to show that some lands which were very near to the acquired lands had been requisitioned for the Military and the market price of such land was Rs.27 per square yard. The Court also considered the location of land bearing Survey No. 14 of Benniganahalli (which was the subject-matter of challenge in B.M. Krishnamurthy). It was in interior part and did not have a frontage unlike the land of Survey No. 112 or 113. The land of Survey No.112 and 113 had a better situation and must get better compensation. Regarding conversion of land, the Court in the earlier order observed:

"I have fixed the minimum that could be given for converted lands at Rs.20/- per sq. yard. This would mean that this Court has to find out whether the lands are all converted or not. I feel that only in respect of S.No.112 there is evidence that it is converted land. P.W.4 has told the court that he had asked her relative PW5 to apply for conversion of

S.No.112. PW4 and PW5 have a joint interest in S.No.112. PW4 is entitled to 2 acres in it while the remaining 2-30 guntas belong to PW5. PW5 has stated that he had applied to the Deputy Commissioner to convert this land for non-agricultural purpose. Ex.P-8, issued by the Deputy Commissioner, Bangalore District, shows that the Deputy Commissioner had intimated him that action is being taken to consider his application for conversion of this land. The Deputy Commissioner has requested PW5 not to put this land to non-agricultural use till the Deputy Commissioner takes a final decision in the matter. No evidence has been placed before me to show that the Deputy Commissioner has neither accorded sanction nor refused to accord sanction for the conversion of this land. The evidence of PW5 that the Deputy Commissioner did not send any intimation in this connection stands un rebutted. Therefore, under law, the sanction of conversion of the land for non-agricultural purpose is deemed to have been granted. Hence S.No.112 has to be held as a converted land on the date of the preliminary notification".

In the present proceedings, however, the Reference Court, relying on B.M. Krishnamurthy, awarded Rs.18,000/- per acre. The High Court, in the impugned order, inter alia, stated that large number of lands situated in Benniganahalli and Byappanahalli were acquired for the NGEF under the Land Acquisition Act which are abutting the lands in question and since in respect of other lands compensation was awarded at the rate of Rs.17,500 or Rs.18,000 per acre, award of Rs.18,000 per acre to the claimants in the instant cases could not be said to be inadequate or insufficient. The High Court also observed that the Supreme Court awarded an amount of Rs.12.50 paise per sq. yard to the claimants and hence the claimants were not entitled to anything more and the award of Rs.18,000 per acre could not be interfered with.

In our view, the learned counsel for the claimant is right in submitting that both the Courts were not correct in not awarding compensation as claimed by the appellant. The counsel is also right in referring to B.M. Krishnamurthy, particularly as to location of the land in question for claiming enhanced compensation vis-à-vis land bearing Survey No. 14. For the said purpose, he relied upon paragraph 6 of B.M. Krishnamurthy. The counsel also drew our attention to map which is on record. It clearly shows that the land of Survey Nos. 112 and 113 is better located than the land of Survey No. 14 in B.N. Krishnamurthy. He also referred to deposition of Syed Abdul Khader, the then Special Land Acquisition Officer, Bangalore from 1964 to 1967. The witness admitted that Kissan Factory was located at the distance of 3/4th mile from the acquired land. He further stated that the Corporation limits were about two furlongs from the acquired land. There was industrial potentiality of the lands though the acquired lands were not converted. He stated that Survey No. 112 was situated adjoining Bangalore-Madras Highway and was in between old Madras road and Madras-Bangalore Railway line.

According to him, New Aero Engine Factory was very much in existence at the time of acquisition and it was opposite Survey No.112 on the other side of the old Madras road. Near about the acquired land, there were other factories also. Corporation limit was within a distance of 50-60 yards from Aero Engine Factory limits. He further stated that approach road from NGEF to old Madras road was adjacent to Survey No. 112. Byappanahalli Railway Station was 1 or 1- $\frac{1}{2}$ furlongs from Survey No. 112. He admitted that Survey No. 113 was abutting Survey No.112 and what was stated about Survey No.112 held good as regards Survey No.113 also. He admitted that Bangalore-Madras road was a National Highway.

In view of the location of land being situated on National Highway of Bangalore-Madras, near Railway line and situated in Industrial Area, in our opinion, the claimant is entitled to compensation at the rate of Rs.20 per square yard as claimed by her. Of course, it is admitted that the land was not converted to non-agricultural use for which the owner was required to pay an amount of Rs.3,000 per acre and to that extent the amount deserves to be reduced. Accordingly, both the appeals are allowed and the claimant is held entitled to compensation at the rate of Rs.20 per square yard less Rs.3,000 per acre. The appeals are accordingly allowed with costs to the said extent.