KAHS010039202019

Presented on : 04-09-2019
Registered on : 04-09-2019
Decided on : 05-11-2024
Duration: 5 years 1 month 22 days

IN THE COURT OF V ADDL. DISTRICT AND SESSIONS JUDGE , AT HASSAN

: PRESENT :

SRI. H.R.Ravikumar B.A.L., LL.B, LL.M.,
V Addl. District & Sessions Judge,
Hassan

Dated the 5th day of November 2024

LAC(APPL)/302/2019

Appellants : Javaramma W/o Late Subbegwoda,
aged 65 years,
R/o Bhaktharavalli village,
Kundur Hobli, Alur Taluk,
Hassan District.

(By Sri K.T.C, Advocate)

V/s

Respondents: 1. The Special Land Acquisition Officer,
Hassan.

2. Managing Director,
Cauvery Niravari Nigama,
Anadarao circle, Bangalore.

(R1 By D.G.P, R2 by S.H.M Advocate)

JUDGMENT

This is an appeal filed under Order 41, Rule 1 of the CPC read with Section 54 of the Land Acquisition Act against the Judgment and Award passed in LAC 162/2011 dated 08.10.2012, on the file of the learned Prl. Senior Civil Judge, Hassan.

2. The brief facts of the case are that the Land Acquisition Officer acquired 07 guntas of dry land in Sy.No.52/1 belonging to the claimant, situated at Baktharavalli village, Kundur Hobli, Alur Taluk and Hassan District, for the purpose of the Hemavathi Reservoir Project. The 4(1) notification was issued on 19.10.2006 and the Land Acquisition Officer passed an award on 20.08.2010 by fixing the market value at Rs.40,000/- per acre. The claimant received the said amount under protest and filed a petition seeking to have the Land Acquisition Officer refer the case to the civil court for determination of the correct market value.

3. After receipt of the reference, the case was numbered as LAC 162/2011. In the reference court, the claimant contended that the market value fixed by the Land Acquisition Officer was too low, nominal, illusory, and disproportionate to the existing features and fertility of the land. It was further contended that the acquired land was valued at more than Rs.5,00,000/- per acre in respect of the acquired land.

4. After issuance of notice, the Special Land Acquisition Officer was represented by the learned DGP. The Land Acquisition Officer contended that the reference application was barred by limitation, the compensation awarded was just, proper, and reasonable, and all relevant factors were taken into consideration while determining the market value prevailing at the time of the 4(1) notification.

5. Based on the materials on record, the reference Court framed the following points for consideration:

1. **Whether the references are barred by time as condoned by the Respondent?**

2. Whether the market value determined by the Respondent is improper and inadequate?

3. Whether the claimants are entitled for enchancement of compensation? If so at what rate?

4. What order or award?

6. A perusal of the impugned Judgment and Award discloses that the reference Court clubbed LAC 159/2011, 160/2011, 161/2011, 162/2011 and common evidence was recorded. The claimant in LAC 161/2011 examined himself as PW.1, and Ex.P1 to P.16 documents were tendered in evidence. The Respondent did not lead evidence before the Reference Court.

7. After hearing the counsel for the claimant and the learned DGP, the reference Court allowed the claim petition in part and enhanced the compensation by redetermining it at Rs.5,000/- per gunta, with solatium at 30%, additional market value at 12% per annum, and other statutory benefits as stated in the award.

8. Being aggrieved by the same, the Appellant/ Claimant in LAC 162/2011 preferred this appeal on the grounds that the Judgment and Award passed by the reference Court were not correct and were against the settled principles of law. It was further contended that the learned Reference court failed to appreciate the oral and documentary evidence placed before it. In LAC. No.65/2017, the II Additional Senior Civil Judge, Hassan had awarded Rs.35,000/- per gunta vide its Judgment dated: 24.11.2018 for the acquired lands for similar purpose under the same notification and the said aspect has to be considered and the award has to be passed. With these grounds the Appellant has sought for allowing the appeal and set-aside the Judgment and award passed by the Reference Court on 08.10.2012 and sought for enhancing the compensation at Rs.30,000/- per gunta.

9. After the filing of this appeal, notice was issued to Respondents. Respondent No.1 has been represented by

the learned DGP and Respondent No.2 is represented by Sri.S.H.M Advocate.

10. The Appellant also filed an application under Section 5 of the Limitation Act seeking to condone the delay in filing the appeal. This Court, vide order dated 14.03.2022, allowed the application, condoned the delay, and declined interest on the enhanced amount, solatium, and other statutory benefits for the period of delay.

11. The points that arise for the consideration of this court are:

1. **In view of the non-impleading of the beneficiary i.e., Kaveri Neeravari Nigama, as a party before the reference court, does the matter require remand to the trial court for redetermining the market value of the acquired land?**
2. **Does the impugned Judgment and Award passed by the trial court require interference by this Court?**
3. **What order?**

12. Heard the arguments of the counsel appearing for the parties and perused the materials on record.

13. The findings of this court on the above mentioned points are as follows:

Point No.1: In the Affirmative.
Point No..2: In the Affirmative.
Point No..3: As per the final order, for the following:

REASONS

14**. POINT NO.1 AND 2**: Since these two points are interconnected, to avoid repetition of facts and findings, they are taken up together.

15. A perusal of the trial court record and the impugned judgment discloses that the trial court clubbed LAC 159/2011, 160/2011, 161/2011, 162/2011 and common evidence was recorded. The claimant in LAC 161/2011 examined himself as PW.1, and Ex.P1 to P.16 documents were tendered. The reference Court enhanced the compensation to Rs.30,000/- per gunta, along with statutory benefits.

16. Although several grounds were raised in the memorandum of appeal, the Appellant's counsel only relied on the judgment and award in LAC. No.65/2017, passed by the II Additional Senior Civil Judge, Hassan, wherein the market value of land acquired for the Hemavathi Reservoir Project was fixed at Rs.35,000/- per gunta.

17. A perusal of the impugned judgment discloses that the beneficiary, Kaveri Neeravari Nigama, was not impleaded as a party before the reference court. The learned DGP for Respondent No.1 and Sri. S.H.M, Advocate for Respondent No.2 argued that since the beneficiary was not heard, the matter requires remand to the reference court to allow the beneficiary an opportunity to contest.

18. The Apex Court, in ***Neyveli Lignite Corporation Limited v. Special Tahsildar (Land Acquisition),*** **(1995) 1 SCC 221, and** ***Delhi Development Authority v. Bhola Nath Sharma (Dead) by LRs,*** **(2011) 2 SCC 54,** has held that **beneficiaries have a right to adduce**

evidence before a reference court. In the absence of such opportunity, judgments may be vitiated.

19. Similarly, the Division Bench of the Hon'ble High Court of Karnataka in ***Executive Engineer v. Nagaraju*** **(MFA 4090/2018, dated 19.02.2021)** held that **failure to include the beneficiary as a party rendered the judgment unsustainable.**

20. In light of these decisions, and considering that Kaveri Neeravari Nigama was not impleaded or heard, the impugned judgment requires setting aside. The matter is remanded for fresh adjudication with the beneficiary as a party. **Accordingly, this court answers points No.1 and 2 in the Affirmative.**

21. **<u>POINT NO.3</u>**: In view of the above findings, this court proceeds to pass the following:

ORDER

The Appeal filed under Order 41, Rule 1 read with Section 54 of the Land Acquisition Act is allowed.

The impugned Judgment and Award dated 08.10.2012, passed by the learned Additional Senior Civil Judge, Hassan, in LAC No.162/2011 is set aside.

The matter is remanded to the reference court for fresh trial. The Claimant/Appellant is directed to implead Kaveri Neeravari Nigama as a party. Failing this, the reference court is directed to implead the beneficiary *suo moto* as per the Supreme Court's dictum in *Neyveli Lignite Corporation Limited v. Special Tahsildar (Land Acquisition),* AIR (1995) 1 SCC 221.

After impleading the beneficiary, the reference court shall allow the parties to adduce additional evidence and decide the matter afresh.

The Claimant/Appellant is not entitled to interest from the date of the award until the filing of the present appeal.

The parties are directed to appear before the reference court on 04.12.2024 without expecting fresh notice.

Draw award accordingly.

The office is directed to send a copy of this judgment and award to the reference court for compliance and return the LCR forthwith.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in the open Court, on this the 5th day of November 2024)

(**Ravikumar.H.R**)
5th Additional District & Sessions
Judge, Hassan.