

KAMS010065512022



**IN THE COURT OF THE I ADDITIONAL DISTRICT &
SESSIONS JUDGE AT MYSURU**

Dated this the 7th day of June 2024

Present: Sri D.Puttaswamy, B.A., LL.B.
I Addl. Dist. & Sessions Judge
Mysuru.

:LAC(APPL)/444/2022:

Appellant/s: Basavegowda S/o Girigowda,
aged about 77 years, R/o
Hosahundi Village, Kasaba Hobli,
Mysuru Taluk.
(By Sri. Rajesha M., Adv.)

Respondent: V/s.
The Special Land Acquisition
Officer, K.R. Project, Andholana
Circle, Ramakrishna Nagara,
Mysuru.

(By learned DGP)

J U D G M E N T

The appellant has filed this appeal U/sec.54 of the
Land Acquisition Act, calling in question the legality and
correctness of the Judgment and award dated 30.06.2007

passed in LAC No.430/2005 on the file of I Addl. Senior Civil Judge, Mysuru.

2. There was a delay of 4715 days in preferring the instant appeal and appellant has filed an application U/sec.5 of Limitation Act, seeking condonation of delay and the said application was allowed by separate order disentitling the appellant for interest for the said delay.

3. The appellant was claimant and respondent was the respondent in LAC No.430/2005 before the Reference Court which was filed by the claimant U/sec.18 of Land Acquisition Act, seeking enhancement of compensation awarded by the respondent with respect to acquisition of his land. Thereafter, he has preferred this appeal.

4. The brief facts of the Claimant case are that, the Claimant was the owner of land measuring 25 guntas in Sy.No.115 of Hadajana Village, Varuna Hobli, Mysuru Taluk. The respondent acquired the said land for the purpose of formation of Varuna Canal under preliminary Notification dated: 20.03.1997. The respondent without taking into consideration the potential, the actual market value of the land and yield, awarded meager compensation. Being dis-

satisfied with the said award, the Claimant sought reference U/sec.18 of Land Acquisition Act, seeking proper adjudication with respect to the quantum of compensation.

5. On receipt of the reference, the same was numbered as LAC No.430/2005 before the I Addl. Senior Civil Judge, Mysuru. After receipt of notice, the respondent entered appearance through ADGP. The learned I Addl. Senior Civil Judge & CJM, Mysuru by clubbing the LAC Nos.426 to 430/2005, 432 and 437/2005, recorded the common evidence.

6. The Claimant in 426/2005 got examined as PW1 and got marked Ex.P1 and 2. The respondent not chosen to adduce oral evidence, but got marked the documents at Ex.R1 to 22.

7. After hearing the arguments on both sides, the Reference Court formulated the following points for consideration;

1. Whether the reference applications are in time?

2. Whether the compensation awarded by the LAO is inadequate?

3. If so, what is the compensation to be fixed?

4. What order?

8. After appreciating the oral and documentary evidence available on record, the learned Reference Judge answered Point No.1 and 2 in the Affirmative and awarded compensation of Rs.2,35,331/- per acre with all other statutory benefits, by passing common Judgment.

9. Being aggrieved by the said Judgment and decree passed by the Reference Court the appellant has preferred the instant appeal before this Court assailing the Judgment and decree passed by the Trial Court on the following and among other grounds:

a) That the Judgment and Decree passed by the Trial Court is not in accordance with law and is against the facts and principles of natural justice.

b) That the Trial Court has failed to consider the real market value of the acquired land at the

time of fixing the market value to the land of the appellant.

c) The land of the appellant acquired under 4(1) notification on 20.03.1997 and the Trial Court has fixed the market value at Rs.2,35,331/- per acre. The III Addl. Senior Civil Judge, Mysuru has awarded the compensation at the rate of Rs.6,33,980/- per acre, with all statutory benefits in LAC No.269/2012 dt:06.12.2014. The land of the appellant and the land of the claimant in LAC No. 269/2012 are situated at same Village and acquired for the same purpose. The land of appellant was acquired under 4(1) notification dt:20.03.1997 and the land of claimant in LAC No. 269/2012 was acquired under 4(1) notification dt:20.03.1997. When such being the case, appellant is also entitled for enhanced compensation with all statutory benefits. Hence, the award passed in favour of appellant has to be modified.

On the above grounds, the appellant has prayed to set aside the judgment and decree passed in LAC No.430/2005 dt:30.06.2007 on the file of I Addl. Senior Civil Judge, Mysuru and thereby to modify and fix the market value at Rs.6,33,980/- per acre, to his acquired land along with all other statutory benefits by allowing the appeal.

10. After registration of the appeal, notice was ordered to the respondent and the respondent appeared through DGP and filed objections to I.A.No.II contending that, the documents produced by the appellant is not material document and it is a created one. It is not required to determine the case on hand. In order to drag on the matter, the appellant filed this appeal without any valid ground. Therefore, he sought to dismiss the application.

11. The Trial Court records were secured. Heard arguments of learned counsel appearing for appellant & DGP and written arguments have been filed on both sides. Perused the Trial Court records.

12. In view of the submissions made by the learned counsel for the appellant and the respondent and on perusal of the Trial Court records, the following points that arise for my consideration are:-

1. Whether the I.A.No.II filed U/o 41 Rule 27 R/w.Sec.151 of CPC by the appellant deserves to be allowed?
2. Whether the appellant proves that the compensation awarded by the Reference Judge with respect to the land is inadequate?
3. Whether the appellant proves that the impugned Judgment and award needs to be modified?
4. What order?

13. My answer to the above points are as under;

Point No.1 : In the **Affirmative**.

Point No.2 : In the **Affirmative**.

Point No.3 : In the **Affirmative**.

Point No.4 : As per final order for the following:

REASONS

14. **Point No.1 to 3:** These points are taken up together for discussion to avoid repetition. The instant appeal is filed by the appellant seeking for an order to set-aside the Judgment and decree dated 30.06.2007 passed in LAC No.430/2005 on the file of learned I Addl. Senior Civil Judge, Mysuru and to modify and fix the market value of his acquired land at the rate of Rs.6,33,980/- per acre, with all other statutory benefits.

15. The learned counsel for appellant argued that, the learned III Addl. Senior Civil Judge, Mysuru in LAC No.269/2012 determined & fixed the market value of the land at Rs.6,33,980/- per acre, the land involved in the said case and the land in the present case are situated adjacent to each other in the same village and have been acquired for the same purpose. Judgment and decree passed in LAC No.269/2012 has been attained finality. Therefore, it is prayed to determine and fix the value of land of appellant at Rs.6,33,980/- per acre. Under I.A.No.II, the appellant has produced certified copy of Judgment & decree in LAC No.269/2012 dt:06.12.2014.

16. In the written arguments, learned DGP has contended that, the appellant has already received the just and proper compensation amount fixed by the Trial Court for the acquired land and as such, he is not entitled to claim higher compensation, the additional evidence not relevant to this appeal and the appellant has not paid sufficient Court fee on the basis of higher enhancement sought to be claimed.

17. I have perused the Judgment and award passed in LAC No.269/2012. The learned III Addl. Senior Civil Judge, Mysuru, basing on the Judgment and award passed in LAC No.148/2009 has fixed the market value of acquired land at the rate of Rs.6,33,980/- per acre as both the lands were acquired under same notification dt:20.03.1997 and for the same purpose.

18. The learned III Addl. Senior Civil Judge, Mysuru in LAC No.269/2012 dt:06.12.2014 by taking note of the fact that, the land of petitioner therein and the land in LAC No.148/2009 are similarly situated and have been acquired for the same purpose under same Notification and by relying on the decisions reported in

ILR 2003 SC 4382 and ILR 2004 KAR 2371 (SLAO V/s. Fakirappa Moogabasappa and others) has enhanced the compensation and fixed at Rs.6,33,980/- per acre. As the land involved in this case and the land in LAC No.269/2012 are similarly situated and have been acquired for the same purpose, the Judgment and decree passed in LAC No.269/2012 can be made applicable to the case in hand. Moreover, it is not the case of respondent that, said Judgment is stayed or set-aside by higher Courts.

19. There is no dispute that, the land of appellant herein and the land in LAC No.269/2012 are situated in the same Village and have been acquired for the same purpose i.e., for formation of Varuna Canal under same Notification. In the present case, appellant land has been acquired under preliminary Notification dated 20.03.1997, whereas the land in LAC No.269/2012 has been acquired under 4(1) Notification dated 20.03.1997. Since both the lands have been acquired under same notification, I feel that, the market value fixed at Rs.6,33,980/- per acre in LAC No.269/2012 would be just, proper and reasonable for the acquired land in the present case.

20. Looking to the facts and circumstances and the submission made on both sides, I am of the opinion that the Appellant has urged and accordingly, made out valid grounds before this Court to interfere with the award and to enhance the compensation as sought and consequently, the impugned judgment and decree under challenge in this appeal deserves to be modified. For these reasons, I answer **Point Nos.1 to 3** in the **Affirmative**.

21. **Point No.4**: For the reasons stated and findings given to Point Nos.1 to 3, I proceed to pass the following:

ORDER

I.A.II filed U/o.41 Rule 27 R/w.Sec.151 CPC is allowed.

The Appeal filed by the appellant is hereby allowed.

The Judgment and decree passed by the I Addl. Senior Civil Judge & CJM, Mysuru in LAC No.430/2005, dated:30.06.2007 is modified.

The market value of the land acquired from the claimant in this case is fixed at the rate of **Rs.6,33,980/- per acre (Rupees Six lakh thirty three thousand nine hundred and eighty only)** along with additional statutory benefits as per sections 23(1)(a), 23(2) of Land Acquisition Act, with interest U/s.28 of the Act, on the enhanced compensation amount.

The appellant is not entitled for the interest for the period of delay of 4715 days in preferring this appeal.

Draw Award, if Court fee paid is correct.

Send back the records along with copy of this Judgment to the Trial Court forthwith.

[Dictated to the Stenographer on Computer, corrected and then pronounced by me in the open Court on this the 7th day of June 2024]

[D.Puttaswamy]
I Addl. Dist. & Sessions Judge,
Mysuru.