

KAMS010065522022

LAC(APPL)/380/2023

**IN THE COURT OF THE VI ADDL. DISTRICT AND
SPECIAL JUDGE, MYSURU**

Dated this the 27th day of August 2024

:PRESENT:

**Sri. P.J.Somashekar, B.A. LL.M.,
VI Addl. District & Special Judge
Mysuru**

LAC(APPL)/380/2023

Appellant

Mahadevu,
S/o Kuntananamadaiah,
Aged about 57 years,
R/at Koodanahalli Village,
Varuna Hobli,
Mysuru Taluk.

(By Sri.Vivek, Advocate)

Vs

Respondent

The Special Land Acquisition
Officer, K.R.Project,
Andholana circle,
Ramakrishna Nagara,
Mysuru.

(By learned ADGP.,)

JUDGMENT

This is a memorandum of Appeal U/s 54 of the Land Acquisition Act filed by the appellant / claimant, sought for to set aside the judgment and decree passed in L.A.C. 175/2005 on the file of I Addl. Civil Judge & CJM., Mysuru dated 28/06/2007 and remand the case to the trial court to lead fresh further evidence and for production of documents and re-fixing the market value of the land which acquired by the Respondent with all other statutory benefits.

2. Nut shell of the appeal are as under:

The appellant being the claimant in L.A.C. 175/2005 has filed the instant appeal on the ground that who is the owner of the land bearing re-sy.No.49 measuring 0.04 guntas of Koodanahalli village, Varuna Hobli, Mysuru Taluk, has been acquired by the respondent for the purpose of formation of Varuna Channel and had received the award amount under protest and filed application U/s 18 of the Land Acquisition Act before the respondent and on the said application, the respondent has sent the reference to the I Addl. Civil Judge & CJM., Mysuru and the same has been re-numbered as L.A.C. 175/2005 and had appeared before the court through his Advocate and adduced evidence and the

said court passed the award on 28/06/2007 by awarding a sum of Rs.2,61,479/- per acre, so feeling aggrieved by the said award, has filed the instant appeal for the following:

GROUND

1. The Judgment and Decree which passed by the court below is not in accordance with law and the same is against to the principles of natural justice and failed to consider the real market value of the acquired land at the time of fixing the market value of their land.
2. The court below failed to appreciate the oral and documentary evidence in a perspective manner and erred in coming to conclusion that the market value of the acquired land is at Rs.2,61,479/- per acre which is not just and proper.
3. The I Addl. Civil Judge & CJM., Mysuru, awarded the compensation at the rate of Rs.6,58,400/- per acre with all other statutory benefits in L.A.C.43/2017 on 27/04/2000 and his land is situated at Koodanahalli village, Varuna Hobli, Mysuru Taluk and the land of the claimant in LAC 43/2017 is also situated at Koodanahyalli, Varuna Hobli, Mysuru Taluk and his land and the land of the claimant in LAC 43/2017 were acquired under the same 4(1)

Notification on 27/04/2000 and both the lands were acquired for the same purpose, thereby they are entitled to get enhanced compensation, which not taken into consideration by the court below.

4. After disposal of LAC 43/2017, the respondent deposited the entire amount and the Judgement and decree passed in LAC 43/2017 has attained finality in nature and prays to allow the appeal.

3. The appellant also filed an application under Order 41 Rule 27 r/w sec. 151 of CPC with affidavit of appellant and sought for permission to produce additional documents, on the ground that the I Addl. Civil Judge and CJM., Mysuru, awarded the compensation at the rate of Rs.6,58,400/- per acre with all statutory benefits in L.A.C.43/2017 on 30/08/2019 and his land and the land which involved in L.A.C.43/2017 are situated in the same village and were acquired under same 4(1) Notification on 27/04/2000 and acquired for the same purpose. Therefore, it is necessary to accord permission to produce the additional evidence.

4. In response to the notice, the respondent has appeared through learned ADGP and filed objections to the application filed under Order 41 Rule 27 r/w sec. 151 of CPC stating that the application is not maintainable either in law or on facts and it is frivolous and misconceived and

deserved for dismissal and the facts which alleged in the affidavit are totally false which are created to file the instant appeal. The documents which produced by the appellants are not the material documents which is not reflecting neither the same notification nor entitled to higher enhancement and the alleged document is a created one behind the back and the appellants in order to drag on the matter, have filed the application without any valid grounds and they have not produced the said document earlier, that itself is clear the appellants have filed the application only with an intention to drag the proceedings and the averments made in the affidavit are totally false and prays to reject the application.

5. Heard the arguments on both sides.

6. The points that arise for court consideration are as under:

1. Whether the appellant has made out grounds to accord permission for production of additional evidence in view of the order 41 rule 27 r/w Sec. 151 of CPC?

2. Whether the appellant has made out the grounds that the market value of which fixed by the court below in respect of their land is not fair and reasonable?

3. Whether the appellant has made out the grounds that he is entitled for enhancement of compensation?

4. Whether the appellant has made out the grounds that the judgment and award which passed by the court below is warranted for interference of this court?

5. What order?

7. My answer to the above points are as under:

Point No.1: Affirmative

Point No.2: Affirmative

Point No.3: Affirmative

Point No.4: Affirmative

Point No.5: As per final order for the following:

REASONS

8. Point No.1: The appellant who is said to be the claimant in L.A.C.175/2005 has approached the court on the ground that the claimant was the owner of the land bearing re-sy.No.49 measuring 0.04 Guntas of Koodanahalli village, Varuna Hobli, Mysuru Taluk, has been acquired by the respondent for the purpose of Varuna Channel and the claimant had received the award amount under protest and

thereafter filed application U/s 18 of the Land Acquisition Act which was referred to the Civil court, but while passing the award, the court below fixed the market value at Rs. 2,61,479/-per acre, but not taken into consideration of the present market value as on the date of the notification, so feeling aggrieved by the said award, the claimant has filed the instant appeal.

9. The learned counsel for the appellant in his arguments submitted that the appellant who is the claimant in L.A.C. 175/2005, has filed the appeal as the land bearing re-sy.No. 49 measuring 0.04 guntas belonging to the claimant is situated at Koodanahalli village, Varuna Hobli, Mysuru Taluk, has been acquired by the respondent for the purpose of Varuna Channel under 4(1) Notification on 27/04/2000 and the appellant is the owner of the land situated at Koodarahyalli village, Varuna Hobli, Mysuru Taluk and the lands of the claimant in L.A.C.43/2017 are situated in the same village i.e., Koodarahalli Village, and the land of the appellant and the lands of the claimant in L.A.C.43/2017 have been acquired for the same purpose i.e., Varuna channel under same 4(1) Notifications and the reference application has been sent to I Addl. Civil Judge (Sr.Dn) & CJM., Mysuru, which was numbered as L.A.C.175/2005 and the market value has been fixed at Rs.2,61,479/-, But whereas in LAC 43/2017, the market value was fixed at

Rs.6,58,400/- per acre. But the land which acquired by the respondent has been fixed at Rs.2,61,479/- per acre. There is a lot of difference between the lands which acquired for the purpose of Varuna Channel. Therefore this fact was came to the knowledge of the appellant and the appellant has filed the instant appeal. If the market value is not modified with statutory benefits, the appellant will be put to irreparable loss and injustice and prays to allow the appeal by considering the additional evidence without remanding the case to the court below by taking judicial notice on the judgment which produced along with the application.

10. Per contra, the learned ADGP apart from the written arguments has submitted that the appeal is not maintainable in law or on facts since the appellant has already received the enhanced compensation in L.A.C. 175/2005, so question of enhancing the compensation by re-fixing the market value with statutory benefits does not arise as the respondent had acquired the property of the appellant to the extent of 17 guntas of Kodanahalli village, Varuna Hobli, Mysuru Taluk and fixed the market value would be appropriate at the time of acquisition and during the pendency of the trial had given enough opportunity to the appellant to adduce additional evidence, but he did not do so and the earlier judicial orders fixing the market value, is the appropriate as per the then market value and the court below fixed the market value

which acquired by the respondent, so question of re-fixing the market value as sought for, does not arise and the appellants are not entitled to claim enhanced compensation and the appellant have not approached the court with clean hands and they have not made out any prima facie case to consider the relief as sought for and prays to reject the appeal.

11. So, before considering the arguments which advanced by both the parties, it is just and necessary to consider the legal aspects first for the proper appreciation as the appellants has filed the instant appeal U/s 54 of Land Acquisition Act 1894 and sought for enhancement of the compensation by relying the judgments which passed by the I Civil Judge (Sr.Div.) and CJM. Thus this court drawn its attention on Sec.54 of the Land Acquisition Act which reads like thus:

"54. [Appeals in proceedings before Court *[Substituted by Act 19 of 1921, Section 3.]*

.Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal

shall lie to [the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 (5 of 1908), and in Order XLV thereof.]”

The above provision is very much clear subject to the provisions of the CPC, an appeal shall lie from the award or from any part of award of the court in any proceedings under the act. So the words “in any proceedings” under the Act occurring in sub section (1) of the section reveal that the necessary intendment of that sub section is that if the proceeding before the court in which the award was made is a proceeding under the Act and the value of the subject matter of that proceeding does not exceed Rs.10,000/- , the appeal lies to the court of the District Judge. Therefore the old right of appeal to prefer appeals to the High Court is no longer available. Thus as per Sec. 54 of the Act empowers this court to entertain the appeal which filed by the appellants. Now the question arises what are the main factors to be taken into consideration while determining the compensation in respect of the land which acquired for the public purpose. Thus this court drawn its attention on Sec.23 of Land Acquisition Act which reads like thus:

“23. Matters to be considered in determining compensation

(1)In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into considerationfirst , the market value of the land at the date of the

publication of the [notification under section 4, sub-section (1)] *[Substituted by Act 38 of 1923, Section 7, for " declaration relating thereto under section 6" .];*secondly , the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collectors taking possession thereof;thirdly , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of severing such land from his other land;fourthly , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;fifthly , if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly , the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collectors taking possession of the land.[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

The above provision is verymuch clear in determining the amount of compensation to be awarded, for the land acquired under the Act, shall take into consideration of the market value of the land as on the date of publication and consider the damage sustained by the person interested by

taking of any by reason of the taking of any standing crops or trees which may be on the land at the time of the Collectors taking possession and also to consider the damages of the interested person who are in the possession of the said property at the time of taking of possession and also consider the damage to the persons who are interested at the time of taking of possession and also consider diminution of the profits of the land between the time of the publication of the declaration under section 6 of Land Acquisition Act in addition to the market value of the land, the court has to consider all other facts while determining the compensation. So keeping the provisions which referred in mind, now let met know the oral and documentary evidence on record and the arguments advanced by both parties.

12. The learned ADGP while canvassing his arguments has much argued that the appellant has filed the instant appeal after lapse of time, on this ground alone, the appeal is not maintainable and the appellant is not entitled the relief as sought for. It is an admitted fact, the appellant has also filed the application to condone the delay in filing the instant appeal and the said application was came to be allowed on 01/06/2024, but the reasons best known to the respondent has not challenged the orders passed by this court on I.A.1 U/s 5 of the Limitation Act to show that the respondent has

challenged the said orders nor obtained the stay order. In the absence of the materials from the respondent's side, it is clear the respondent has not challenged the orders passed by this court on I.A.1 which remained unchallenged.

13. The learned counsel for the appellant while canvassing his arguments has submitted that the land which involved in L.A.C.43/2017 is situated at Koodanahalli vilalge, Varuna Hobli, Mysuru Taluk and the land which involved in the present appeal is situated in the same village and acquired under the same notifications. But the respondent has not disputed the said facts as alleged in the grounds of appeal which are remained unchallenged as the lands of the present appellant and the land of the claimant in LAC 43/2017 are situated in the same village and acquired under same notification for the same purpose and the appellant filed the application U/s 18 of the Land Acquisition Act which was referred to Civil court, wherein the matter was adjudicated and the I Addl. Civil Judge (Sr.Dn) & CJM., Mysuru, enhanced the compensation, feeling aggrieved by the said award, has filed the instant appeal. So, one thing is clear the respondent has not disputed the properties which are acquired by the Government in respect of the property which involved in L.A.C.43/2017 and the property which belongs to the appellant. So one thing is clear one Koodanahalli village, Varuna Hobli, Mysuru Taluk and the land which involved in

L.A.C.175/2005 are situated in the same village which were acquired under the same notification, wherein in L.A.C.43/2017 the market value was fixed at Rs.6,58,400/- but in L.A.C. 175/2005 the market value fixed at Rs.2,61,479/- per acre which apparently clear that there is lot of difference inbetween the market value which fixed by the court below and the claimant who is from the adjoining village. Thereby he has filed the instant appeal for enahncing the compensation. On perusal of the materials on record, it is clear the land which involved in L.A.C.43/2017 has been acquired under 4(1) Notification for the purpose of varuna channel and the property which involved in the present appeal was also acquired under the same notification for varuna channel, which clearly reflects both the lands are acquired for similar purpose and the appellant has drawn the court attention on the judgment which passed by the III Civil Judge court, Mysuru. Now the question arises whether this court can draw its attention on the Judgment which passed by the I Civil Judge (Sr.Div.) & CJM., Mysuru, for the purpose of re fixing the market value of the property which acquired by the Respondent for public purpose. Thus this court drawn its attention on the **judgment of the Hon'ble High Court of Karnataka passed in 1983(2) Karnataka Law Journal 234 inbetween the Spl. LAO Vs Chief Officer**. In the said judgment, his Lordship held that the judgment of

the court in earlier cases can be relied upon by the court, to determine the market value for the lands in question. In the instant case also, the appellant has produced the judgment which passed by the I Civil Judge, Mysuru, in L.A.C. 43/2017 in which the market value of the property has been re-fixed at Rs.6,58,400/-. So in view of the judgment which referred above and considering the lands which involved in L.A.C.175/2005, it is just and necessary to fix the market value at Rs.6,58,400/- per acre as the property which involved in the present appeal and the property involved in L.A.C 43/2017 are situated in the same village and comes within the same hobli and taluk. Therefore, it is just and necessary to accord permission to the appellant for production of the additional evidence and the additional evidence which placed on record is the judgment of I Civil Judge Sr. Div. And CJM., Mysuru. Thus the court can take judicial notice, thus question of remanding the case for fresh adjudication to the Court below does not arise. Hence I am of the opinion that point No.1 is answered in the affirmative.

14. Point No.2 to 4: The appellant being the claimant in L.A.C. 75/1999 has approached the court for enhancement of the compensation on the grounds that the I Addl. Civil Judge (Sr.Dn) & CJM., Mysuru, had fixed the market value at Rs.2,61,479/- per acre instead of fixing Rs.6,58,400/- per acre as per the market value fixed in L.A.C.43/2017 on the

ground that the property which involved in the present appeal and the property which involved in L.A.C.43/2017 are situated in the same village and acquired under same notification and for the same purpose.

15. The learned counsel for the appellant while canvassing his arguments has submitted that the I Addl. Civil Judge and CJM., Mysuru in L.A.C. 43/2017 fixed the market value at the rate of Rs.6,58,400/- per acre. Therefore it is just and necessary for enhancement of the compensation by fixing the market value as per the judgment and award passed in L.A.C.43/2017. Therefore one thing is clear the respondent has not disputed the market value which fixed at Rs.6,58,400/- in L.A.C.43/2017 and the property which involved in the present appeal and the properties which involved in the above case are situated in the same village, hobli and taluk and acquired for same purpose. So the market value which fixed by the I Addl. Civil Judge and CJM., Mysuru in L.A.C.43/2017 and the property involved in the present case, have been acquired for the same purpose which comes under varuna hobli, Mysuru taluk under same notifications. Thus this court drawn its attention on the **judgment of the Hon'ble High Court of Karnataka, passed in ILR No.2003 Kar. 236 in between State of Karnataka by Spl. LAO and others Vs Mallappa and others**. In the said judgment his Lordship held that

enhancement of compensation made by the 1st Appellate court is sought to be challenged by the State. Enhancement was made on the basis of the judgment and award made by the court in similar other cases, wherein the similar natures of lands of adjoining villages acquired under the same notification and for the same purpose inform rate compensation for all the acquired lands which are similarly situated to the adjoining villages cannot be faulted liable to be confirmed. In the instant case also, the land which involved in the present appeal and the lands which involved in the similar other case are situated in the same village. Therefore the judgment which referred above is directly applicable to the case on hand.

Thus this court drawn its attention on the **judgment of the Hon'ble High Court of Karnataka passed in 1983(2) KLJ 234** in the said judgment, his Lordship held that the Judgment and decree of a court awarding compensation to the similar land can be relied upon to determine the market value of the land in question. In the instant case also the land in question involved not only in the present appeal but also in the similar case come within the same hobli and taluk which are situated in the same village. Therefore considering the market value which fixed by the I Addl. Civil Judge and CJM., Mysuru, it is just and necessary to consider the market value of the property which involved

in the instant case at Rs.6,58,400/- per acre otherwise the losers of the land will be put to irreparable loss and injustice. Therefore considering the materials which placed on record and the records in the LCR, the appellant is entitled to enhanced compensation.

16. It is an admitted fact the I Addl. Civil Judge passed the judgment and award in L.A.C. 175/2005 on 28/06/2007 and the appellant were filed the instant appeal on 14/09/2022. Therefore the appellant is not entitled interest for the period from the date of the judgment in L.A.C. 175/2005 till the date of filing the present appeal. It is an admitted fact the appellant in the petition filed under section 54 of Land Acquisition Act though sought for remand of the matter, but considering the judgment which placed on record, court can take judicial notice. Therefore there is no need to remand the matter for fresh consideration. But considering the materials on record it is just and necessary to enhance the compensation with statutory benefits. Hence I am of the opinion that points 2 to 4 are answered in the affirmative.

17. **Point No.5:-** In view of my answer on the above points as stated above, I proceed to pass the following:

ORDER

I.A.2 filed under Order 41 Rule 27 r/w 151 of CPC is hereby allowed.

The memorandum of appeal filed U/s 54 of the Land Acquisition Act is hereby allowed. Consequently, the judgment and award passed by the I Addl. Civil Judge and CJM., Mysuru in L.A.C.175/2005 dated 28/06/2007, is hereby modified.

The market value of the land belonging to the appellant is fixed at Rs.6,58,400/- per acre.

The appellant is entitled for additional benefit of 12% p.a. on the market value of the land acquired from the date of preliminary notification till date of award or taking possession of the land whichever is earlier.

The appellant is entitled for solatium at the rate of 30% of the market value as prescribed U/s 23(2) of Land Acquisition Act.

The appellant is entitled for interest at

the rate of 9% per annum of enhanced compensation from the date of preliminary notification for the period of one year and afterwards they are entitled for interest at the rate of 12% p.a.

The appellant is not entitled the interest for the period from the date of Judgment in L.A.C.175/2005 till the date of filing of the instant appeal.

No order as to cost.

Draw decree (award) accordingly.

Office is hereby directed to send back the lower court records along with copy of judgment forthwith.

(Dictated to the Stenographer Grade-I, transcribed by her and then corrected by me, signed and pronounced in the Open Court this the 27th day of August 2024).

(P.J. SOMASHEKHAR)

VI Addl. Prl. District & Special
Judge, Mysuru.

