



**IN THE COURT OF THE VII ADDL. DISTRICT JUDGE,
TUMAKURU**

Dated this the 15th day of June 2024

Present

Sri. T.P.RAMALINGE GOWDA,
B.Sc., LL.M., M.B.A.
VII Addl. District Judge,
Tumakuru.

LAC(APPL)/147/2022

Appellant :

1. Honnagangappa, Dead by LRs,
 - 1(a). Umadevamma,
W/o. Late Honnagangappa,
Aged about 70 years,
 - 1(b). Yathiraju,
S/o. Late Honnagangappa,
Dead by LRs,
 - 1(b1). Gowramma, W/o. Late Yathiraju,
Aged about 42 years,
 - 1(b2). Chandrika Y, D/o. Late Yathiraju,
Aged about 20 years,
 - 1(c). Basavaraju K.H.,
S/o. Late Honnagangappa,
Aged about 50 years,
 - 1(d). Mohan Kumar,
S/o. Late Honnagangappa,
Aged about 47 years,
2. Rajanna, S/o. Late Linganna,
Aged about 72 years,



All are R/at. Gollahalli Village,
Hebbur Hobli, Tumakuru Taluk
& District.

[By : Sri. D.M.Lokesh, Advocate]

V/s.

Respondents : Special Land Acquisition Officer,
Hemavathi Canal Zone,
Tumakuru Division, Tumakuru.

[By Sri. J.K. Anil, advocate]

Date & nature of : Appeal against the Judgment and
appeal Award in L.A.C.No.39/1998 dated
9/12/2015 on the file of learned Prl.
Senior Civil Judge, Tumakuru.

Date of institution of :
appeal 09/11/2022

Date of pronouncing :
of judgment 15/06/2024

Duration of appeal	:	Year/s	Month/s	Day/s
		01	07	06

JUDGMENT

This is an appeal under Section 54(1) of Karnataka Land
Acquisition Act r/w Section 96 of C.P.C. filed by the claimant before



the Reference Court, against the Judgment and Award dated 09.12.2015 passed by the learned Prl. Senior Civil Judge, Tumakuru, in L.A.C No.39/1998.

2. For the sake of convenience, in the course of this judgment, the parties are referred as per their rank in the reference Court.

3. The case of the claimants in brief is that, the land bearing Sy.No. 9/2 measuring 1.00 guntas consisting 46 Coconut trees, 11 Neem trees, 6 Honge trees, 21 Jack fruit trees, 40 Eucalyptus trees and 8 Bamboo trees situated at Gollahalli village, Hebburu Hobli, Tumakuru Taluk, was in possession and ownership of the appellants. The respondent acquired the land in the aforesaid survey number for formation of Hemavathi Channel and passed the meager compensation in respect of acquired land. The appellants had received the said award under protest and subsequently filed a reference petition before respondent seeking for sending the same to Civil Court for proper adjudication and for enhancement of compensation. Accordingly, the respondent sent the reference petition to the Prl. Senior Civil Judge, Tumakuru and on receipt of



reference, registered a case in LAC No.39/1998. Thereafter the reference Court on the basis of evidence adduced and the documents produced, passed the impugned judgment and award dated 9.12.2015 and enhanced the compensation.

4. Aggrieved by the said judgment and award, claimants/appellants have come up with this appeal contending that the impugned enhancement of compensation made by the reference Court is erroneous, opposed to law, facts and probabilities of the case. The reference Court has not at all considered the proper and actual market value of the land and standing trees and awarded meager amount without considering the actual price of the land and trees and has not adopted capitalization method in calculating the loss of future income from the acquired land with standing trees. The trial court has not properly assessed the value of the land and trees while assessing and erred in not placing reliance on the evidence of PW.3 and documents at Ex.P1 to P13. As such, the impugned judgment and award is perverse, capricious and liable to be set aside. Accordingly, it is prayed to enhance the compensation awarded by the respondent.



5. Along with appeal memorandum the appellant has also filed IA.No.1 under Section 5 of the Limitation Act, seeking condonation of delay of 6 years 10 months and 28 days, in filing the present appeal.

6. After institution of the appeal, notice has been issued and served upon the respondent. Initially the respondent remained absent and placed ex-parte. Subsequently, he appeared through his counsel by filing an application and filed objections to I.A.

7. The reference Court records are secured.

8. The counsel for appellants has filed notes of arguments with memo and documents. Heard the arguments of learned counsel for respondent. I have perused the records and notes of arguments of counsel for appellants.

9. Having considered the materials available on record, the following points arise for my consideration :-



1. *Whether the appellants have made out grounds to condone the delay in filing the appeal under Section 5 of the Limitation Act?*
 2. *Whether the impugned judgment and award calls for any interference from this Court?*
 3. *What order?*
10. My answer to the above Points are as under:-
- Point No.1 : **In the negative**
- Point No.2 : **In the negative**
- Point No.3 : As per final order
for the following :-
- REASONS**
11. **Point No.1 & 2 :-** As these points are interrelated, they are taken up together for common discussion in order to avoid repetition of facts.
12. By keeping in mind the arguments canvassed by both side, I have carefully perused the materials available on record. At the

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outset it is pertinent to note that, as could be seen from the reference petition, land bearing Sy.No.9/2 measuring 2 acres 18 guntas was belongs to the claimants and out of which, 1 acre of dry land and 8 guntas of wet land consisting of valuable trees, well and IP set were acquired by the respondent by awarding compensation of Rs.2,86,155/-. Whereas in the appeal memorandum, it is stated as 1 acre of land was acquired comprising of 46 Coconut trees, 11 Neem trees, 6 Honge trees, 21 Jack fruit trees, 40 Eucalyptus trees and 8 Bamboo trees. As such, in the reference petition, absolutely there is no reference regarding number of trees and types of trees grown in the said acquired land.

13. In view of the same, I have carefully scrutinized the copy of award available in the case file. Wherein except stated as, ಮರ ಕಟ್ಟಡ ಬಾವಿ ಇತ್ಯಾದಿಗಳಿಗೆ ಪರಿಹಾರ - ರೂ.1,36,854.00, absolutely nothing is specifically stated regarding number and nature of trees standing in the acquired land. As such, absolutely there is no corresponding pleading in the reference petition in respect of the number and type of trees said to be grown in the acquired land as pleaded in the appeal memorandum. On what basis, the appellants have pleaded



the particulars regarding the said trees is not at all forthcoming in any documents except the appeal memorandum.

14. It is pertinent to note that the 2nd claimant Rajanna, who is none other than 2nd appellant herein has examined himself as PW.1 and given his partial oral evidence before the reference court. Though he was bind over for further chief examination at the request of his counsel, he never bothered to give his further evidence and to offer himself for cross-examination by the other side. As such, neither his oral evidence is completed nor he was subjected for cross-examination. It is needless to mention that as per the well settled principles of law, if the witness is not tendered for cross-examination, his chief evidence is required to discarded. But this legal aspect is not at all considered by the reference court while appreciating the case. Under these factual scenario, absolutely nothing is placed on record to appreciate the case of the claimants. At the same time, it is worthy to note that the respondents have not preferred any appeal assailing the legality and correctness of the judgment. As such, as per the settled



position of law, impugned judgment cannot be varied in the absence of appeal from the respondents.

15. Under these facts and circumstances, the application filed by the appellants is not deserves to be allowed. Consequently the application filed under Section 5 of the Limitation Act as well as appeal being *sansmerit* are liable to be rejected. **Accordingly point No.1 and 2 are answered in the Negative.**

16. **Point No.3** : In view of my findings on point No.1 and 2, I proceed to pass the following :-

ORDER

I.A. filed by the appellant under Section 5 of the Limitation Act is hereby dismissed. In the result, Appeal is not admitted.

Consequently, the impugned Judgment and Award dated 09.12.2015 passed by the learned Prl. Senior Civil Judge, Tumakuru, in L.A.C No.39/1998, is hereby confirmed.

Draw the Award accordingly.

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Send back the judgment along with TCR to the trial Court.

(Dictated to the Stenographer Grade-I on line, the transcript revised, signed and then pronounced by me on this the 15th day of June, 2024)

[T.P.RAMALINGE GOWDA]

VII Addl. District Judge,
Tumakuru.