

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
PRINCIPAL J.M.F.C., TARIKERE**

***Present : SRI M.C. NANJE GOWDA, B.A.L., LL.M.,
SENIOR CIVIL JUDGE & PRL. JMFC.,
Tarikere.***

Dated this 22nd February 2021

L.A.C.NO.8/2013

PETITIONER/S :

B.N. Shivaprakash S/o
Nanjundappa, aged about 52 years,
Agriculturist, R/o Bettathavarekere
village, Amruthapura Hobli, Tarikere
Taluk.

(Reptd. By : Sri B.P. Rajashekar, Advocate.)

- Vs -

RESPONDENT/S:

1. Assistant Commissioner/Land
Acquisition Officer, Upper Bhadra
Project, Tarikere.
2. Assistant Executive Engineer,
Upper Bhadra Project, Tarikere

**(Respondent No.1 By Addl. Govt. Pleader
and Respondent No.2 By Sri. K.M.
Jayaram, Advocate)**

J U D G M E N T

This reference for enhancement of compensation has been arisen out of an application filed by the petitioner-Shivaprakash against the award dated 27/5/2013 before the respondent No.1 under section 18(1) of the Land Acquisition Act 1894.

2. The case of the petitioner in brief is that:

The petitioner is the owner of the land bearing Sy.No.28/1 measuring 4 acres 21 guntas of Bettathavarekere village, Amruthapura Hobli Tarikere Taluk. The respondent No. 1 has acquired the said land for Upper Bhadra Project of respondent No.2 and awarded total compensation of **Rs.25,22,546/-**. But the said compensation is inadequate. The 1st respondent has awarded compensation of **Rs.1,85,163/-** in respect of the land. But he has considered only the Sub-Registrar value fixed by the Government while passing the award. The respondent No.1 **has not considered the actual market value of the property acquired.** He has not

considered the sale statistics in the provincial area of the land acquired. The market value of the acquired property as on the date of preliminary notification was more than Rs.25,000 per gunta.

3. It is further case of the petitioner that the **solatium paid at the rate of 30% on Rs.1,85,163/- is incorrect** and it should have been calculated on the entire award amount/total compensation. The amount awarded on **yielding trees is inadequate and it should have been calculated by income capitalization method.** The **interest calculated is also incorrect** and same should have been calculated on entire award amount and not on the compensation awarded in respect of the land acquired alone. The petitioner has grown/raised mango and neelagere trees in the property acquired. The mango trees grown in the property are aged **about 12 years** and each tree is worth of Rs.40,000/-. Niligere trees were aged about 8 years and they were totally worth of Rs.3,00,000/- and

400neelagiri trees of 8 years worth of Rs.15,00,000/-.
The trees were fetching an annual income of **Rs.3,00,000/-** to the petitioner. The compensation awarded by the respondent No.1 is too low, meager, inadequate and not according to law and the respondent has not followed the dictum of Hon'ble Apex Court held in its various judgments while passing the impugned award.

4. It is further case of the petitioner he has got sentimental feelings with the property acquired as he has succeeded to the property from his ancestors. Hence, same cannot be compensated in terms of money. Since from the date of preliminary notification issued under Sec.4(1) of Land Acquisition Act, the income/profit accrued is diminished. The petitioner is put to heavy loss since the date of 4(1) notice till the date of final award notice. The Karnataka State Government has filled up the tanks of Bettathavarekere village under a irrigation scheme called Amruthapura – Ubrani Lift Irrigation Scheme by lifting the water from Bhadra Dam.

Under the said scheme the tanks abutting to Bettathavarekere village are also filled up. After the said lift irrigation scheme, the value of the properties of Bettathavarekere village has been appreciated and fetching more value. Therefore, the petitioner is entitled for enhanced compensation.

5. After receipt of records, the notices of the reference were issued to both parties. The petitioner and respondents appeared through their respective advocates. The respondent No.1 is represented by Additional Government Pleader. The respondent No.2 is represented through Advocate Sri. KMJ. The respondent No.1 filed the objections to the petition and respondent No.2 adopted it by filing a memo.

6. The respondents in the objections have contended that a compensation paid by the respondents on the land of the petitioner is correct and reasonable. The petitioner in order to get wrongful gain has filed a false petition without any evidence and proof. The

respondents have further denied the entire averments of the petition / application and sought for dismissal of the reference petition.

7. The petitioner in order to prove that he entitled for enhanced compensation has got examined himself as PW.1 and marked 40 documents as Ex.P.1 to 40. The respondent No.1 by name Saroja got examined herself as RW.1. However, she has not produced any document.

8. Heard arguments of both sides. Both filed the written arguments also.

9. Now the points that arise for the determination of this court are :

:- POINTS :-

- 1) Whether petitioner proved that the reference is in time?
- 2) Whether the petitioner proved that the market value of the land in question fixed by the respondent No.1 is not proper and adequate?

- 3) Whether petitioner proved that the compensation paid by the respondent No.1 in respect of yielding trees and horticulture product is not correct?
- 4) Whether petitioner proved that solatium paid is not correct?
- 5) Whether petitioner proved that interest paid is not correct?
- 6) Whether the petitioner/applicant is entitled for enhanced compensation?
- 7) What order?

10. My findings on the above points are as follows:

Point No.1 : In the Affirmative.

Point No.2 : In the Negative,

Point No.3 : In partly Affirmative,

Point No.4 : In the Affirmative,

Point No.5 : In the Affirmative.

Point No.6 : In partly affirmative.

Point No.7 : As per the final order;

for the following:

REASONS

POINT No.1:

11. The first and foremost objection of the respondent to this petition is that the reference is not made within the statutory period prescribed under the land acquisition act. It has been referred by the respondent No.1 after 90 days time prescribed under section 18(3) of land acquisition act. Therefore, the petition is barred by the limitation and hence the petition is not maintainable and liable to be dismissed. In this regard he also relied upon a decision reported in **AIR 2006 SC 24** rendered in case of **State of Karnataka Vs Laxuman** and sought for dismissal of the application.

12. But this contention of the respondents is not acceptable. With huge respect to the decision relied upon by the respondents, in the humble opinion of this court, the said decision is not applicable the case on hand and it is distinguishable. Because, it is not in

dispute that the respondent No.1 has passed final award on **27/5/2013** and the present petitioner has filed the reference application before him on **09/7/2013** itself. It is also not in dispute that the present reference is made by the respondent No.1 in the **year 2013** itself to this court. It should be noted that by filing reference application before the respondent No.1 within 90 days, the petitioner has complied **section 18(1) and its proviso** of land acquisition act. Once the application for reference is made before respondent No.1, nothing would remain to be done by him. Thereafter, it is for the land acquisition officer/respondent No.1 to refer the matter to the court. Moreover, it should be noted that in the decision relied upon by the respondent No.2 itself, it is specifically mentioned that the right of the claimant to have reference gets extinguished and right to have enhancement becomes unenforceable only after expiry of 3 years 90 days and not mere expiry of 90 days after the petitioner making application before the land acquisition officer or deputy commissioner for reference. In the

present case 3 years 90 days time would expire on 26/8/2016. Respondent No.1 as mentioned above in the present case has referred the matter to this court in the year 2013 itself. Therefore, under these circumstances, the version of the respondent No.2 that the claim/reference of the petitioner is barred by time is not acceptable. Therefore, this court is of the opinion that the reference is in time and maintainable. **Hence, the point No.1 is held in the affirmative.**

POINT No.2:

13. The petitioner in the application filed u/s 18(1) of the Land Acquisition Act has specifically contended that the market value of the land paid by the respondent No.1 is inadequate. The land acquisition officer has considered the Sub-Registrar value of the Government. But he has not considered the actual market value of the property under acquisition. The actual market value of the property as on the date of 4(1) notification was Rs.25,000/- per gunta. Therefore, the market value

awarded by the respondent No.1 on the land under acquisition is inadequate.

14. At the out set, before embarking upon the evidence on record led by the parties, in order to appreciate the evidence on record in better manner and fix an appropriate, just and fair compensation to the land acquired in question, it is worth to note certain provisions of law and the precedents governing the field of law for enhancement of compensation in land acquisition. It is to be noted that though the power of state to acquire property of its subjects is derived from the provisions of the constitution, a corresponding duty/obligation is also casted upon the state to award a just, fair and proper compensation under Article 300A of the Constitution. As such, though the sovereign power of the state to acquire the land is unquestionable, there are certain limitations under which such power can be questioned by way of a writ petition before the Hon'ble High Courts and Supreme Court of India. With regard to the enhancement of the compensation, the provisions of

law to be followed by the Land Acquisition Officer and the Reference Court are contemplated in Sec.23 to 25 and 28 of Land Acquisition Act,1894. Sec.23 to 25 are in-fact a complete code for the guidance to the courts. Sec.23 of the Act lays-down the matters to be considered by the Land Acquisition Officer as well the Reference Court in determining the compensation. Sec.24 of the Act lays-down the matters to be neglected while determining the compensation. However, it should be noted that section 23 is not exhaustive as it does not prohibit other matters from being considered in special cases. But such matters are always subject to the restriction referred to in Sec.24 of the act. Sec.25 of the Act lays-down a direction that the amount of compensation awarded by the reference court shall not be less than the amount awarded by the collector. Section 28 empowers the court to direct the deputy commissioner to pay the interest on the enhanced compensation.

15. It is pertinent to note that the claim for compensation has to be made under **all the possible heads referred to in section 23 of the act** as there can only be one enquiry and one compensation in respect of a land. **Section 23(1)** of the land Acquisition Act lays down as follows:

(1) In determining the amount of compensation to be awarded for land acquired under this act, the court shall take into consideration:-

First, the **market value of the land** at the date of the publication of the notification under section 4, sub section (1)

Secondly, the **damage sustained by the person** interested, by reason of the **taking of any standing crops or tress** which may be on the land at the time of the Deputy commissioner taking possession thereof:

Thirdly, the **damage (if any)** sustained by the person interested, at the time of Deputy commissioner taking the possession of 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 deputy commissioner 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 Deputy commissioner, 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) bonafide 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 Deputy commissioner taking possession of the land.

16. It is also pertinent to note that claimant in whose favour reference made is **entitled to have that method of valuation which fetches him the best**

compensation. There are three methods of valuation which are generally recognized and adopted by the courts. They are (1) **Opinion of experts**, (2) prices paid within a reasonable time in bona-fide transactions of purchase or sale of land acquired or the land adjacent to those acquired possessing similar advantages which is known as **sale statistic method**, (3) number of years purchase of the actual or immediately prospective profits of the lands acquired which is known as **capitalization method** and (4) **previous judgments of courts** pertaining to similarly placed and same kind of lands. In the decision reported in **AIR SC 774** rendered in case of **LAO Vs Veerabhadrappa**, it is held that the **methods** said above are **not exhaustive** and they do not preclude the court from taking any **other special circumstances** into consideration in estimating the market value as the object is to find out the value of the acquired land as near as possible to the market value. In the decision reported in **AIR 1976 SC 651** rendered in case of **State**

of Madras Vs AM Nanjan, it is held that the awards passed by the LAO or by the court in respect of comparable lands will also be relevant for arriving at the market value even though such awards are not inter-parties. Even our Hon'ble High court in the decision reported in **ILR 2003 Karnataka page No. 2336** rendered in case of **Special land acquisition officer and others Vs Mallappa and others**, it is held that **the award made on the basis of uniform rate of compensation for all the acquired lands which are similarly situated to the adjoining villages and acquired for under the same notification cannot be faulted with and liable to be confirmed**. Even in the decision reported in **ILR 2004 Karnataka page No. 2371** rendered in case of **special land acquisition officer Vs Fakirappa and others** also, Hon'ble High Court has reiterated the similar opinion. However, it is relevant to note that, if the dates of preliminary notification under which the comparable lands and the

one evaluated or acquired are different, then the court can arrive at the market value of the land by taking in to account the appreciation value of such land in that locality during the period between the dates of those notifications. In respect of the annual appreciation to be adopted, there is no uniform rule as such and it has to be decided on the evidence adduced. Before going the aspect of valuation, the court should know the nature of land acquired, whether it is a agricultural land like dry, wet, garden, grove and Kharab land, land with buildings, lands with easement, lands with frontage, large extent of lands, having building potentialities, lands subject to lease and lands with plantation like areca, coconut, coffee and rubber and **the method of valuation would be different in each case.**

17. Hon'ble Supreme Court while deciding **Chaturbudh Pande and others Vs. Collector Rajgarh,** reported in **AIR 1969 SC page 255** opined that **the judges are not computers and are bound to call into**

aid their experience of life and test the evidence on the basis of probabilities. It is further held in the said decision reported in **AIR 1979 SC 869** rendered in case of **K.Y.B. Varma Vs. Special L.A.O**, that **an element of guess work is tenable in fixing the market value. The compensation granted must be just, proper and lawful. It can neither be arbitrary nor illusory. The reference court shall strike a balance between the claimants and the interest of the public exchequer.**

18. In the backdrop of provisions of law and case laws referred supra, it is just and necessary to examine the claim of the petitioner for enhanced compensation in respect of his land. The petitioner in order prove his case has got examined himself as Pw1 and has produced 40 documents as per Ex.P1 to 40. Ex.P-1 is the Tapasanapatti, Ex.P2 is the preliminary notice issued under section 4(1) of the act, Ex.P-3 is the notice, Ex.P4 is Final award Notice, Ex.P-5 and 6 are the joint measuring lists, Ex.P-7 to 32 are the final award, Ex.P33

is the letter issued by Senior Assistant Director of Horticulture, Department of Horticulture, Tarikere, Chikkamagaluru District dated 04.10.2016, Ex.P34 is the letter issued by HOP-COMS Lalbagh, Bangalore dated 26/8/2016, Ex.P-35 is the award notice, Ex.P-36 is the survey list, Ex.P-37 is the joint measurement list, Ex.P-38 is the document dated 30.09.2015, Ex.P-39 is the declaration and Ex.P-40 is the certified copy of order. The petitioner/Pw1 has reiterated his version of claim for enhancement in evidence in chief filed by way of an affidavit.

19. Coming to the enhancement of compensation under the head of **market value of the land** as provided under the **first clause** of section 23(1) of the land acquisition act, it is pertinent to note that the petitioner has contended in his evidence that the land acquired values more than **25,000/- per gunta** and hence he is entitled for more compensation under this head. The respondents on the other hand have denied that the

value of the acquired land was more than 25,000/- per gunta as on the date of preliminary notification and contended that the compensation awarded on the land is just and reasonable. But, it is pertinent to note that the petitioner to substantiate that the property acquired was valuing more than 25 thousand per gunta, except his oral say has not placed any document. He has not examined any person including an expert in support of his contention. He has not produced the earlier sale deeds to ascertain the prices paid within a reasonable time if acquired land or the land adjacent and possessing similar advantage. It is not his case that higher compensation is paid to the lands which are acquired under same notification. Therefore, there is nothing on record to form an opinion that the market value of the land was 25 thousand per guntas as on the date of preliminary notification. On the other hand, letters issued by Sub-registrar Tarikere dated 31/10/2017 produced by the petitioner disclose that in the year 2011-12 the government guidance value of Kushki land was

40,000/- per acre, value of Tari land was 80,000/-, value of Araca garden land was Rs.3,00,000/- and Coconut Garden land was Rs. 2,00,000/- in Bettathavare village. The Tapanasana Patti produced by the petitioner as per Ex. P4 disclose the nature of the land is Kushki. The final award produced by the petitioner disclose that the respondent No.1 has awarded a sum of **Rs.1,85,163/-** for total extent of **4 acre 21** gunts. If the said amount is calculated to acre wise, it comes to **Rs.42,760/- per acre**. This is more than the guidance value of the Sub-registrar. There are no contrary documents produced by the petitioner. Therefore, under these circumstances, in absence contrary documents, this court has no other option except to come to conclusion that the amount awarded by the respondent No.1 to land of the petitioner based on the guidance value is correct and hence he is not entitled for any enhancement of compensation under head of the **first consideration** shown in Sec.23(1) of the land acquisition Act.

20. The learned counsel for the petitioner in his arguments contended that for same Bhadra Upper project, the same land acquisition officer has acquired the land under the provision of new enactment i.e., Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act 2013 and awarded compensation equivalent to 4 times of land value. The petitioner is nothing to do with under which enactment it has been acquired. All that he need is same and equal compensation in respect of slimier lands and acquired for similar purpose. But this contention of the petitioner is not acceptable. Because, when an award has been passed under a particular enactment, the procedure and method mentioned/specified under the said enactment only has to be applied and award the compensation. This court being the reference court does not have such vast power to grant the compensation by invoking the provision of new enactment of 2013.

Accordingly, point No.2 is answered in the Negative.

Point No.3

21. The next and very important head under which the petitioner / claimant has sought for enhancement of the compensation is damage/loss caused to the petitioner / claimant by the respondents by reason of taking standing crops or trees existed on his land at the time of collector taking the possession as contemplated under **second clause of Sec.23(1) of the Act**. The petitioner under this head has seriously contested the petition and stated in his evidence that the compensation awarded by the Land Acquisition officer under this head is very meager. He has contended that the LAO has not calculated the compensation by adopting the **Net yield Income Capitalization method**. Therefore, amount awarded under this head is inadequate, improper and unreasonable. On the other hand, the respondents contended in the arguments that when the value is fixed on the whole land itself, the question of fixing the value again for yielding trees does not arise. There is no such method recognized under land acquisition act or any

other law for time being in force and hence compensation under the said head cannot be awarded. But this contention of the respondent is not acceptable. Firstly because, the land acquisition officer himself has divided the award into two divisions. First one is compensation for the land and second one is compensation for garden, trees, structure/building and well etc., When the respondent No.1 himself has awarded the compensation under two heads, the respondents cannot contend that the petitioner is precluded from claiming the enhancement under both the heads. Secondly because, as mentioned above, the **methods** discussed supra for ascertaining the value of acquired land are **not exhaustive** and they do not preclude the court from taking any **other special circumstances** into consideration. In recent decision reported in **(2010)5 SCC 708** rendered in case of **Special land acquisition officer Vs Karigowda, (By Hon'ble Justice R.V. Raveendran)**, Hon'ble Supreme court considered all its earlier decisions and held that the provisions provide a

limitation within which **the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefit. Keeping in view the scheme of the act and the interpretation which these provisions have received in the past, it is difficult even to comprehend that there is possibility of proving any straitjacket formula which can be treated as panacea to resolve all controversies uniformly in relation to determination of the value of the land acquired. This essentially must depend upon the facts and circumstances of each case.** It is further held that **the court is entitled to apply some kind of reasonable guesswork to balance the equities and fix just and fair market value in terms of parameters enumerated in section 23 of the act.** In another recent decision reported in **(2011) 11 SCC 639** rendered in case of **Shaik Imambi Vs Special Deputy Collector (Land acquisition) Telugu Ganga (By Hon'ble Justice R.V.**

Raveendran) Hon'ble Supreme court adopted yield net income capitalization method and awarded the compensation. In the said case Hon'ble Supreme court has calculated the annually income of each citrus tree at the rate of Rs.175/- and applied the multiplier 10 and enhanced the compensation of Rs.4,56,000/- with all statutory benefits provided under section 23 and 28 of the land acquisition act. Relying upon this judgment **Hon'ble High court of Karnataka** also in a recent unreported judgment rendered in **W.P. No. 39979/2013** in case of **Executive Engineer KPTCL and another Vs Doddakka**, adopted **net yield income capitalization method** and enhanced the compensation considerably in respect of coconut trees. In the said case Hon'ble High Court has considered the 103 coconuts per year and price of the coconut is fixed at Rs.5/- and by using the multiplier 10 in respect of 14 coconut trees granted Rs. 72,100/-. As such, from a careful perusal of the case laws referred supra, it is very clear that in case of fruit or nut bearing trees net income capitalization method can

be adopted and adhered to to assess the real market value and compensation of the land under acquisition.

22. It should be noted that in the present case, the petitioner has lost 180 valuable mango trees, 426 neelagiri and 70 silver trees. As Hon'ble Supreme court observed in **KARI GOWDA** case referred supra, in the present case also the petitioner has not only lost his agricultural land, but has also been deprived of seasonal income that was available to him from sale of mango fruits. Deprivation of livelihood is a serious consideration in this case. The yielding trees were deriving substantial income and they were the source of daily food for the petitioner. By removal of the valuable trees, which were grown by the petitioner with his hard efforts, very livelihood of the petitioner is taken away. The respondents in the cross examination or arguments have not disputed that the claimant had grown the mango trees in the land of the petitioner as on the date of acquisition. In fact, Tapasana patti produced by the petitioner as per Ex. P4 disclose that there were 90

mangoes trees in the land of the petitioner. It should be noted that Ex. P4 is not disputed by the respondents. In fact, they cannot dispute this document. Because of the reason that this document is prepared and issued by the respondent No.1 himself. Therefore, there is no dispute about the contents of the said document by the respondents. However, it was contended by them in the arguments that the mango trees grown by the claimant were nati mangoes and value of those mangoes is very less in the market and hence the petitioner is not entitled for any enhanced compensation under this head. But this contention of the respondents is not acceptable. Because, it is only the land owner who is right person to say what kind of mango trees he has planted in his land. The petitioner has specifically said in his evidence has stated that he has grown the **Badami** mango trees in his land. Except denial, the respondents have not elicited any contrary admission from the mouth of the petitioner/Pw1 in the cross examination. If at all those mango trees were ordinary or **nati** mango trees, nothing

had prevented the respondents to mention the same in Ex.P-4-Tapasanapatti. It should be noted that as mentioned above the said document is that of the respondents themselves. The respondents have not examined any witness nor produced any documents before this court. In the absence of such specific mention about the nature or kind of mango trees in their own document, the version of the respondents that the mango trees of the petitioner were ordinary mangoes/nati mangoes is not acceptable as it is not supported with any documents. Therefore, having regard to the oral evidence of the petitioner, Ex.P-4-Tapasanapatti and other circumstances, this court is of the opinion that the mango trees grown by the petitioner in his land are Badami mango trees and not the Nati mango trees as contended by the respondents.

23. The petitioner, in order to prove the yield of the mango tree, has produced a document/letter issued by the **Senior Assistant Director, Department of**

Horticulture, Tarikere dated 04.10.2016 under Ex.P-33.

In the said document, it is clearly mentioned that the mango trees would give fruits for period of 70-80 years and each tree would give about 50-300 kgs of mangoes per year. It should be noted that this document is also a public document issued by a public servant and hence it has got initial presumptive value under law. It is also pertinent to note that this document is marked without any objections. To rebut the contents of this document are incorrect, the respondents have not placed any document nor examined any witness. Therefore, there is no bar and impediment to rely upon this document. According to this document, a mango tree would give 50-300 kgs of mangoes per year and it can live for 70-80 years. The counsel for the petitioner in his oral and written arguments requested this court to consider an average of 200 kgs mangoes per year from each tree. But this quantum appears to be on higher side. Because, there will always be variation in the atmosphere and nature. So also in the quantity of mango yield. It is not

the case of the petitioner that he has irrigation facility to the mango plants in his land. There is no document if any produced in this regard. Therefore, it appears if an **average of 125kgs of mangoes per tree is considered per year**, same is justifiable and nearer to the value of the land. Therefore, yield from each tree is considered as **125kgs per year**.

24. Coming to the multiplier applicable to the fruit bearing trees, Learned counsel for the petitioner requested this court to consider the **economic life span of 70-80 years as multiplier and capitalize the net income**. On the other hand, the learned counsels for the respondents requested to consider **multiplier 8**. But in the opinion of this court contentions of both petitioner as well as respondents is not acceptable. With regard to the multiplier, it is again worth to refer the case law cited supra reported in **(2011) 11 SCC 639** rendered in case of **Shaik Imambi Vs Special Deputy Collector (Land acquisition) Telugu Ganga**. In the said case, Hon'ble

Supreme court has held in para 6 of the judgment that “**having regard to the consistent view taken by this court, we are of the view that the high court was right in holding that the multiplier should be 10. This court has repeatedly held that the standard multiplier should be 10 and in special circumstances based upon the nature, standard condition of the orchard, the court may apply the higher multiplier**”.

By following the said judgment Hon'ble High court of Karnataka also in the decision cited supra in **W.P. No. 39979/2013** rendered in case of **Executive Engineer KPTCL and another Vs Doddakka** adopted multiplier 10 and enhanced the award amount. In the present case also, there is no special evidence brought by the parties on record to take deviation from standard multiplier of 10. Therefore, multiplier 10 needs to be applied to the present case also.

25. In so far as **price of mangoes is concerned**, the learned counsel for petitioner in his arguments

contended that each kg of mango value more than Rs.70-80. In this regard, he has relied the document/letter issued by the **Executive Manager, HOPCOMS, Lalbagh, Bangalore as per Ex.P4**. The petitioner has obtained the said document under right information act. The said document has been marked without objections. As it is a public document it has initial presumptive value. The said document disclose the price of mangoes per 1kg as follows;-

1. **2010-11--Rs. 46.61,**
2. 2011-12--Rs. 52.42,
3. 2012-13--Rs. 55.41,
4. 2013-14--Rs. 44.67,
5. 2014-15--Rs.74.20 and
6. 2015-16--Rs.79.29.

26. The counsel for the petitioner in his arguments and written arguments requested this court at least to consider an average amount of **Rs. 55-41 per kg**. But, it should be noted that this court has to consider the price

of the mangoes when 4(1) notification was issued in the **year 2010** in the present case. Therefore, year **2010-2011** is the relevant year to be considered by this court. **In the year 2010-2011, the price for each kg of mango was Rs.46.61.** Therefore, per kg of mango **Rs.46.60** is considered. If an average amount of Rs.46.60 is taken, for 125kgs of mangoes, total amount comes to **Rs.5,825/-** per year ($125 \times 46.60 = 5,825$) and if **multiplier 10** is applied, it comes to **Rs.58,250/-** per tree in total ($5825 \times 10 = 58,250/-$). **If 50%** of cultivation and other incidental **charges are deducted, the balance comes to Rs.29,125/- per tree** ($58250/2 = 29,125$). Admittedly, there were **180 mango trees** in the land of the claimant. The total amount of 180 mango trees comes to **Rs.52,42,500/-** ($180 \times 29,125 = 52,42,500$). In the present case, the amount awarded under the head of compensation for trees, building and well etc., **is Rs.22,40,926/-**. If the said amount is deducted the balance comes **Rs.30,01,574/-**. Therefore, the petitioner

is entitled for the enhanced compensation to that extent under this head. However, it is pertinent to note that the petitioner had claimed amount of **Rs.14,17,50,000/- (Fourteen Crores Seventy Lakhs Fifty Thousand only)** in his oral evidence. But he is entitled for enhanced compensation of **Rs.30,01,574/-** only. **Therefore, the point No.3 is partly answered in the affirmative.**

POINT NOS.4 AND 5

27. Next question raised by the petitioner to challenge the award of the respondent No.1 is with regard to payment of the **solatium**. The learned counsel for the petitioner in his oral and written arguments contended that the respondent No.1 has paid the solatium only on compensation amount paid on the land. He has not paid the same on the compensation paid in respect of garden, trees, structure etc.,. Therefore, the solatium paid by the respondent No.1 is against the law. The respondents on the other hand contended that as per section 23(2), solatium payable is only on market

value of the **land**. It is not payable in respect of garden, trees, structure/building and well etc., Therefore, solatium paid is correct. But this contention of the respondents is not acceptable. Because, market value of the land does not exclude the valuable trees, building and wells etc., Since all these are embedded in the land, those things are also part and parcel of the land. It should be noted that value of the land depends on the value of trees, buildings and wells etc., attached on the land. It pertinent to note that when land is vacant its value normally would be less in the market. When it is attached with the trees, buildings and wells etc., its value would be more. Even the willing buyer who comes for purchase also would offer more consideration to the land consisting of trees, construction and well etc.,. He would not value of the land without valuing the tree or any structure thereon separately. By considering the income of those trees in the future and beneficial enjoyment of the buildings/structure and wells thereon he would decide the total value of the land and offer for purchase.

The same principle is applied in case of acquisition also. Therefore, the value of the land mentioned in section 23(2) of the act would include the value of all the things attached to the land such as building, trees and well etc.,. It should be noted that solatium is paid in consideration of compulsory nature of the acquisition. It is like offering a suitable apology for the loss caused to the owner. Therefore, the solatium cannot be separated from the compensation payable on the trees, structure, wells etc.,. In this regard we also may look to the operative portions of some of the decisions of Hon'ble Supreme court. In **Karigowda** case referred supra, the portion of the judgment of Hon'ble Supreme court reads that **“(ii) The claimant land owners would be entitled to get statutory benefits on the enhanced compensation under section 23 (1-a) and 23(2) of the act and interest in terms of section 28 of the act”**. Even in **Shaik Imambi case** referred supra also it runs as “ We accordingly allow this appeal in part **and increase the compensation awarded by the land acquisition**

officer by 4,56,600/- with statutory benefits under section 23(1-A) and 23 (2) and interest as per section 28 of the act.” In **Ramakrishna case** referred supra also it is ordered that “ The compensation for the land acquired i.e., 4 acres 38 cents is **determined as Rs. 9,45,000/- with solatium under section 23(2) of the act**”. A careful observation of these operative portions of the judgments of Hon’ble Supreme court its very clear that the Hon’ble Supreme Court has awarded Solatium on the whole compensation and not mere on the value of the land.

28. Similarly, the claimant in his arguments contended that the respondent No.1 has paid the interest only on compensation amount paid on the land. He has not paid the same on the compensation paid in respect of garden, trees, structure etc., and also on the Solatium. Therefore, the interest paid by the respondent No.1 is against the law. The respondents on the other hand contended that interest payable is only on market value

of the land. It is not payable on solatium. Therefore, interest paid is correct. But again this contention of the respondents is also not acceptable. Because, as mentioned above the solatium is part and parcel of the compensation granted to the value of the land including the trees, structure, well etc.,. Therefore, the interest shall be paid on solatium also. The award clearly disclose that the land acquisition officer has paid interest only in respect of market value of the land and not on solatium. In this regard, this court would also like to rely upon decision of **Hon'ble Apex Court** rendered in case of **Sunder Vs Union of India** reported in **(2001) 7 SCC 211**. This case was a reference case decided by **five judges**. While passing this decision, Hon'ble Supreme Court relied upon the observation of Hon'ble High court of Panjab and Haryana, where in it is observed that “**Once it is held as it inevitably must be that the solatium provided for under section 23(2) of the act forms an integral and statutory part of the**

compensation awarded to land owner, then from the plain terms of section 28 of the act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under section 28 therefore would include within its ambit both the market value and statutory solatium. It would thus evident that the provision of section 28 in terms warrant and authorize the grant of interest on solatium as well” By considering these observation of Hon’ble Panjab and Haryana High court, Hon’ble Supreme court held that “ **in our view the aforesaid statement of law is in accordance with the sound principle of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including**

solatium”. From the above discussion and case laws, it is very clear that solatium is payable on market value of the land as well as the Trees, structure, well etc., In the same manner, it is further clear that interest is payable on solatium also. Therefore, the respondents are liable to pay solatium accordingly. Hence, **point No.4 and 5 are answered in the affirmative.**

POINT NO.6

29. On over all appreciation of material available on record and application of law prevailing in the filed this court is of the opinion that the petitioner is entitled for enhanced compensation. But, it is pertinent to note that the petitioner has not established before this court that he is entitled for compensation under the other heads as provided under clause third to clause fifth of sub section (1) of section 23 of land acquisition act. However, the petitioner is entitled for 30% solatium on the compensation awarded by the land acquisition officer as well as on the enhanced compensation. He is also

entitled for additional market value at the rate of 12% per annum as contemplated under section 23(1A) of the land acquisition act from the date of 4(1) Notification to the collector taking possession. The petitioner is also entitled for interest at the rate of 9% from 28/11/2010 to 29/11/2011 and interest at the rate of 15% from 29/11/2011. However, though the petitioner claimed for a sum of **Rs.14,17,50,000/- (Fourteen Crores Seventy Lakhs Fifty Thousand only)**, he is only entitled for **Rs.30,01,574/-**. Therefore, the petition needs to be allowed in part. **Hence, Point No.6 is answered Partly in Affirmative.**

POINT NO.7:-

30. In view of my reasons and findings on points No.1 to 6, this court proceed to pass the following:

ORDER

The reference is partly allowed and petitioner is entitled for enhanced compensation of **Rs.30,01,574/-** in addition to what has been awarded by the land acquisition officer (R1).

The petitioner is entitled for statutory benefit of additional market value at the rate of 12% per annum as provided under section 23(1-A) and solatium at the rate of 30% as provided under Sec.23(2) and also interest at the rate of 9% per annum from the date of taking possession of the land by the respondent No.1 and thereafter at the rate of 15% per annum from the date of expiry of a period of one year till the payment of entire compensation by the respondents as provided under section 28 of the land acquisition act, 1894 on the compensation awarded by the LAO as well as enhanced compensation awarded by this court.

The petitioner is also entitled for cost of the litigation as provided under Sec.27 of the Land Acquisition Act,1894.

Advocate fee of Rs.1,000/- is fixed.

Draw award accordingly.

(Directly dictated to the stenographer, directly computerized by her, corrected and then pronounced by me in the open court on this the 22nd February 2021.)

Sd/-
(M.C. NANJE GOWDA)
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.

A N N E X U R E

List of witnesses examined for the petitioner/s:

PW.1 : Shivaprakash

List of witnesses examined for the respondent/s:

RW.1 : B. Saroja

List of documents marked for the petitioner/s:

Ex.P.1 : Tapasanapatt

Ex.P.2 : Notice

Ex.P.3 : Notice

Ex.P.4 : Award Notice

Ex.P.5-6 : Joint measurement lists

Ex.P.7-32 : Final award

Ex.P.33 : Letter issued by Senior Assistant
Director of Horticulture, Department
of Horticulture, Tarikere

Ex.P.34 : Letter issued by HOP-COMS
Lalbagh, Bangalore

Ex.P.35 : Award Notice

Ex.P.36 : Survey List

Ex.P.37 : Joint measurement list

Ex.P.38 : Document dated 30.09.2015

Ex.P.39 : Letter dated 16.03.2017

Ex.P.40 : Certified Copy of Order

List of documents marked for the respondent/s:

- Nil -

Sd/-

**SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.**

