

IN THE COURT OF THE III ADDL. DISTRICT & SESSIONS JUDGE
AT: KALABURAGI.

Dated this the 14th day of November - 2018

Present: **Sri.Jagadeesh.V.N., B.A., M.L.,**
III Addl. District and Sessions Judge,
Kalaburagi.

LAC Appeal Nos.1/2018, 2/2018, 3/2018 & 4/2018

Appellant in LACA No.1/2018:

Shivaraj S/o Maruti Age: 34 years Occ: Agriculture
R/o Bhusnoor, Tq: Aland Dist: Kalaburagi.

(By Sri. Sidramayya.S.Hiremath., Advocate)

Appellants in LACA No.2/2018:

1. Prabhu S/o Somanna Age: 53 years
Occ: Agriculture.
2. Laxman S/o Somanna, Age: 50 years
Occ: agriculture.
3. Jayamma W/o late Shivaraya, Age: 40 years
Occ: Agriculture.

All R/o village Bhusnoor Tq: Aland Dist: Kalaburagi.

(By Sri. Sidramayya.S.Hiremath., Advocate)

Appellants in LACA No.3/2018:

1. Srimanth S/o Siddappa, Age: 69 years
Occ: Agriculture
2. Shivaraj S/o Maruti, Age: 42 years Occ: Agriculture
Both R/o village Bhusnoor, Tq: Aland Dit:
Kalaburagi.

(By Sri. Sidramayya.S.Hiremath., Advocate)

Appellant in LACA No.4/2018:

Ashok S/o Yallayya, Age: 48 years Occ: Agriculture
R/o village Bhusnoor, Tq: Aland Dist: Kalaburagi.

(By Sri. Sidramayya.S.Hiremath., Advocate)

//Versus//

Common Respondents in all cases.

1. The Deputy Commissioner, Kalaburagi.
2. The Chief Engineer, KNNL., IPC Zone, Kalaburagi.
3. The Executive Engineer, KNNL Amarja Division, Kalaburagi.
4. The Special Land Acquisition Officer, M & MIP, Vikas Bhavan, Kalaburagi.

(R1 & R4 by Sri.Additional Government Pleader
(R.2 & 3 by Sri S.G. Puranikmath., Advocate)

COMMON JUDGMENT

1. These appeals have been filed U/Sec.54 of the Land Acquisition Act R/w Order 41 Rule 1 of CPC by respective claimants / appellants for enhancement of compensation by modifying the Judgment and award dated 22.1.2015, 28.1.2015, 25.9.2014 & 28.1.2015 respectively made in LAC No.15/2013, 20/2013, 23/2013, & 36/2013 respectively passed by the learned Senior Civil Judge at Aland.
2. These appeals are arising out of separate Judgments passed by the Reference Court in relation to acquisition of respective lands of the appellants by the respondents by issuing common

notification U/Sec. 4(1) of L.A.Act on 24.7.2008 for the purpose of construction of distributor right bank canal (RBC) under the Amarja Project. Since these appeals arising out of separate Judgements under common notification U/Sec.4(1) of L.A.Act, in order to avoid repetition of facts and re-appreciation of evidence on record, the same are taken up together and disposed off by this common Judgment.

3. Particulars of lands of the claimants acquired by the respondents in the aforesaid cases are as under;

LAC No.	Land Sy.No.	Extent	Nature of land	Village
15/2013	121/3	00A-28G	Dry	Bhusnoor
20/2013	134/5,7,9	00A-13G	Dry	Bhusnoor
23/2013	135/8	00A-08G	Dry	Bhusnoor
36/2013	153/4 & 153/5	00A-24G	Dry	Bhusnoor

4. It is the case of the appellants / claimants that their lands were situated in Bhusnoor village, Tq: Aland District Gulbarga and their respective properties had been acquired by the respondents for the purpose of construction of Distributor Right Bank Canal (RBC) under the Amarja Project by issuing common notification U/Sec.4(1) of L.A.Act dated 24.7.2008. The Special Land Acquisition officer had passed an award dated 10.3.2011 fixing the market value of the lands at the rate of Rs.62,000/- per acre

for dry lands. The claimants had filed protest petitions before the SLAO U/Sec.18(1) of L.A.Act with a request to refer the matters to the reference Court for re-determination of award. Accordingly, the SLAO referred the same to reference Court. The reference Court after considering the evidence on record enhanced the compensation from Rs.62,000/- to Rs.1,75,000/- per acre for dry lands. Aggrieved by order passed by the Special Land Acquisition officer and Judgement and award of the Reference Court, these present appeals are filed.

5. This court issued notice to the respondents. In response, the respondents in all these cases appeared through their respective counsels and submitted that the award passed by the Land Acquisition Officer and Reference Court are in accordance with law and there is no need for enhancement of compensation. The lands of the claimants were acquired for the public purpose way back in the year 2008, at this stage, the appellants are not entitled any enhancement. Therefore, the appellants in all cases are not entitled any enhancement of compensation before this Court. Hence, they prayed to reject the claim petitions of appellants in all cases.
6. This court secured the Lower court records. I have heard the arguments on both sides. Having heard the learned counsels for

the parties and perusing the written arguments and other materials on record, the following points that arise for my consideration are as follows;

1. Whether the appellants prove that the market value determined by the Reference Court at the rate of Rs.1,75,000/- per acre for dry lands in respective lands of the claimants is on the lower side, needs for enhancement?
 2. Whether the common Judgment & award passed by the Reference Court calls for interference?
 3. What order?
7. My answers to the above points are as under;
1. In the affirmative.
 2. In the affirmative.
 3. As per final order.

REASONS

8. Point Nos.1 & 2:- Since both points are inter-linked, they are taken up together for consideration.
9. It is specific case of the appellants that the respondents had issued notification U/Sec.4(1) of L.A.Act on 24.7.2008 for acquisition of various lands for the purpose of construction of

- Distributor right bank canal (RBC) under the Amarja Project. Thereafter, the Special Land Acquisition officer passed an award on 10.3.2011 fixing the compensation at the rate of Rs.62,000/- per acre for dry lands. The appellants herein and other several land losers had submitted protest petition before the SLAO and sought for Reference to the Civil Court for re-determination of compensation on the ground that the award passed by the Special Land Acquisition Officer is very meagre and Special Land Acquisition Officer fixed the market value without applying his mind, without enquiry and without considering the actual market value of the property as on the date of the of the notification. Before the Lower Court the appellants / claimants have examined themselves as PW.1 in all cases and got marked documents at Exs.P.1 to 3 respectively. On the other hand, on behalf of respondents in all cases no evidence lead but got marked Ex.R.1.
10. The respective claimants / PW.1 in all cases have deposed about fertility of their acquired lands and consist of deep black cotton soil. Further deposed that the acquired lands are dry lands and they used to grow dry crops like Jawar, Tur, Green Gram, Teel etc and used to get yield of 10 to 15 quintals per acre and at the time of acquisition, the value of acquired lands was more than Rs.8,00,000/- per acre and they used to gets Jawar fodder of not

less than 8 to 10 cart loads per acre and the costs of Jawar fodder weighing Rs.2500/- to Rs.3500/- in the year 2008 etc. Ex.P2 is the yield certificate and Ex.P3 is the price list for determination of the market value. Though there is sufficient documents, the Reference Court has not taken into consideration all these facts and thereby committed an error. The appellants have produced various documents before the Reference Court to show the crops, which were growing on their lands. Though, the prices of the crops as on the date of issuing of notification and also other materials on record, inspite of them, the Reference Court fixed the meagre compensation of Rs.1,75,000/- per acre for dry lands, which is too meagre. Hence, they prayed to enhance the market value. On the other hand, the respective counsels of respondents supported the respective Judgment passed by the Reference Court.

11. During the course of arguments, the learned counsel for the appellants also produced certified copy of the common Judgment passed by this court in LACA Nos.354 to 369/2017 decided on 2.1.2018. On perusal of the aforesaid common Judgment, this court fixed the market value of the land at the rate Rs.3,14,457/- per acre for dry lands. The counsel for the respondents submits that each case has to be considered with applicable facts and circumstances of the said case.

12. The learned counsel for the appellants argued that the lands acquired in the present appeals and land acquired in the said LACA by the respondents for the same purpose i.e., for the purpose of construction of Right Bank Canal under Amarja Project. In the said LACA the 4(1) notification was published on 24.7.2008 and in the present cases the 4(1) notification was issued on 24.7.2008. Hence, the learned counsel for the appellants in all cases prayed to fix the market value as fixed in the aforesaid LACA, as the lands acquired under same notification.
13. I have perused the aforesaid common Judgment passed by this court and also Reference Court records. It is a settled principle of law that lands of adjacent villages / same villages can be made basis for determining the fair market value of the acquired lands as per law laid down in (2010) 5 SCC 708 (Special Land Acquisition Officer Vs. Karigouda and others).
14. Admittedly, the lands involved in the present appeals situate at Bhusnoor village of Aland Taluka of Kalaburagi District. The land involved in the said appeals situate in the same village i.e., Bhusnoor village of Aland Taluka. Both lands acquired by the respondents for the same purpose i.e., construction of distributor right bank Canal under the Amarja Project. Hence, there is no

hindrance to follow the common Judgement passed by this court while determining the compensation to the instant appeals.

15. The lands in the present appeals acquired by issuing preliminary notification U/sec.4(1) of L.A. Act dated 24.7.2008 and lands involved in the said LACA acquired by issuing a preliminary notification U/sec.4(1) of L.A. Act on 24.7.2008. Looking to the acquisition of both there is no gap between acquisition of both lands. In the said LACA this Hon`ble court fixed the market value at Rs.3,14,457/- per acre for dry lands. In the instant appeals the lands acquired by the respondents are also dry lands. Hence, without much discussion and also by taking into consideration of the facts and circumstances of the each case, I am of the view that the appellants herein in all cases are entitled enhanced compensation of Rs. 3,14,457/- per acre for dry lands.

16. In these appeals, the appellants restricted their claim for Rs.2,42,160/- per acre for dry lands and paid the Court fee. It is well-settled proposition of law that the enhancement of compensation should not be restricted to the claim made in the claim/appeal. The Hon`ble Supreme Court in the case of (Bhag Singh and others Vs. Union of Territory of Chandigarh) held that denial of benefit to the claimants merely because the claimants have restricted the claim or have not paid proper Court fee, is not correct. Though the appellants are entitled market value at

the rate of Rs.3,14,457/-per acre for dry lands but the appellants have restricted claim for Rs. 2,42,160/-. In view of ratio lay down by the Hon'ble Apex Court in the aforesaid Judgment, the appellants are entitled just and reasonable compensation. Therefore, the appellants may be directed to pay deficit Court fee within prescribed period. Hence, I answer point Nos. 1 & 2 in the affirmative.

17. Point No.3: In view of aforesaid reasons, I proceed to pass the following;

ORDER

The appeals filed by the respective appellants U/Sec. 54 of Land Acquisition Act R/w Order 41 Rule 1 of CPC are hereby allowed with costs.

The judgment and award of the Reference Court passed in LAC No.15/2013 dated 22.1.2015, LAC No.20/2013 dated 28.1.2015, LAC No.23/2013 dated 25.9.2014 & LAC No.36/2013 dated 28.1.21015 respectively by the Senior Civil Judge Aland are hereby modified.

The market value of the appellants / claimants' lands in all cases are fixed at the rate of Rs.3,14,457/- per acre for dry lands with all statutory benefits thereon deducting the

amount of compensation, which the appellants have already received as per the award of the SLAO and also the respective judgment and award of Reference Court.

The appellants in all cases are directed to pay deficit Court fee within four weeks from today, failing which the appellants are entitled to get the market value at the rate on which they have paid the Court fee.

It is made clear that the appellants in all cases are not entitled interest for the delay period of 1022, 1016, 1144 & 1016 days respectively.

The respondents are directed to deposit the above said compensation within eight weeks from the date of receipt of copy of this common judgment and award.

Office to draw award accordingly.

Keep original Judgment in LACA No.1/2018 and be kept its copies in connected appeals.

Return LCR along with copy of the common Judgment to the Reference Court.

[Directly dictated to the Judgement Writer on computer, common Judgment corrected on computer and then pronounced by me in the Open Court on this the 14th day of **November-2018**].

(Jagadeesh.V.N.,),
III Addl. District & Session Judge,
Kalaburagi.

*Vsh.

ORDER ON IA NO.I

The present applications U/Sec.5 of the Limitation Act have been filed by the appellants in all cases to condone the delay of 1022, 1016, 1144 & 1016 days respectively in preferring the appeals.

The respective claimants / appellants have filed their respective affidavits in support of applications. It is stated in the affidavits that their lands acquired by the respondents by virtue of notification for public purpose by fixing meager compensation. The appellants have lost their valuable lands and they were entirely depending on the aforesaid lands. After acquisition, the SLAO awarded meager compensation. It is submitted that they have filed protest petitions to refer the matter to the civil Court for enhancement of compensation. The Reference Court enhanced the compensation. However, the Reference Court has not taken into consideration the several aspects of the matter.

The appellants are uneducated and they are poor agriculturists. They are not aware of legal proceedings. Hence, they could not file appeal within time. It is also stated in the affidavits that they are residing in the remote place.

I have perused the affidavits in support of applications. It is stated in the applications that several land losers in connection with the same notification have preferred appeal before this Court and they have been allowed by this Court by enhancing compensation. If the case is having good merit, the case should not be thrown

out on the ground of delay and latches. As set out in the affidavits that this Court in various appeals condoned the delay in filing the appeals and allowed the claims made by the claimants by enhancing the compensation. The right to property is fundamental right as envisaged in Constitution of India. It is not in dispute that the respondents have taken possession of the appellants through due process of law, at the same time the claimants has to be compensated by just and reasonable compensation. Considering all these aspects of the matter, I am satisfied with the cause shown in the affidavits to condone the delay. Hence, I proceed to pass the following

ORDER

IA No.I filed U/Sec.5 of the Limitation Act by the appellants in all cases is hereby allowed. The delay of 1022, 1016, 1143 & 1016 days respectively in preferring the appeals are hereby condoned.

It is made clear that the appellants in all cases are not entitled interest for the said delay periods.

III Addl. District & Session Judge,
Kalaburagi.

Common Judgment pronounced in the open court vide common Judgment.

ORDER

The appeals filed by the respective appellants U/Sec. 54 of Land Acquisition Act

R/w Order 41 Rule 1 of CPC are hereby allowed with costs.

The judgment and award of the Reference Court passed in LAC No.15/2013 dated 22.1.2015, LAC No.20/2013 dated 28.1.2015, LAC No.23/2013 dated 25.9.2014 & LAC No.36/2013 dated 28.1.21015 respectively by the Senior Civil Judge Aland are hereby modified.

The market value of the appellants / claimants' lands in all cases are fixed at the rate of Rs.3,14,457/- per acre for dry lands with all statutory benefits thereon deducting the amount of compensation, which the appellants have already received as per the award of the SLAO and also the respective judgment and award of Reference Court.

The appellants in all cases are directed to pay deficit Court fee within four weeks from today, failing which the appellants are entitled to get the market value at the rate on which they have paid the Court fee.

It is made clear that the appellants in all cases are not entitled interest for the delay period of 1022, 1016, 1144 & 1016 days respectively.

The respondents are directed to deposit the above said compensation within eight weeks from the date of receipt of copy of this common judgment and award.

Office to draw award accordingly.

Keep original Judgment in LACA No.1/2018 and be kept its copies in connected appeals.

Return LCR along with copy of the common Judgment to the Reference Court.

III Addl. District & Session Judge,
Kalaburagi.