

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC,
BANAHAATI.**

Present: Reshma. K. Goni. B.A., LL.B.,

This, the 19th day of April 2018

L.A.C. No.01/2018

Claimant/s in LAC: 01/2018	1.	Siddappa S/o Nagappa Kunchanur R/o Asangi, Tq: Jamkhandi, Dist: Bagalkot.
(By Sri.H.R.Patwardhan, Advocate)		
V/s.		
Respondents	1.	The Special Land Acquisition Officer, Hipparagi Project, Athani.
	2.	The Executive Engineer. Karnataka Niravari Nigham Niyamit Limited, R & R, HBC, Hipparagi Division No.2.
By Asst. Govt. Pleader		

DETAILS

<i>Notification U/Sec.4(1) of L.A. Act and its publication in the gazette.</i>	<i>LAQ/JSR/320/2007-08 02-04-2009.</i>
<i>Date of pronouncement of award by SLAO.</i>	<i>22-10-2012.</i>
<i>Date of notices U/Sec.12(2) of L.A. Act.</i>	<i>13-06-2013.</i>
<i>Date of reference petitions filed before the opponent.</i>	<i>13-08-2013</i>
<i>Date of institutions</i>	<i>14-03-2018</i>
<i>Date of Judgment</i>	<i>19-04-2018</i>
<i>Duration.</i>	<i>Years Months Days 00 01 05</i>

J U D G M E N T

1. The SLAO, Hipparagi Project, Athani i.e., the respondent No.1 herein acquired the following lands of claimant for the purpose of back water of Hipparagi Dam Project through a notification dated: 02-04-2009 under section 4(1) of Land Acquisition Act (here in after called as the L.A. Act). Final notification U/sec.6(1) of the said Act was issued on 16-09-2010. The respondent No.1 has passed award dated 22-10-2012. In the award he observed that, acquired is wet land and granted compensation of Rs.1,42,942/- per acre.

Particulars of Lands:

Sl.No.	Case No.	Sy.No.	Acquired area (A – G)	Respondent's findings
1	01/2018	124/4L	0-23	wet

2. Feeling dissatisfied by the quantum of compensation awarded by respondent No.1, the claimants had filed their protest petition U/sec.18(1) of the Land Acquisition Act by urging certain grounds for determination amount of compensation, the respondent No.1 in turn referred the matter to this court U/sec.18(3)(a) of the Land Acquisition Act for determination of market value.
3. Grounds urged in the protest petitions are that, the respondent No.1 did not give sufficient opportunity of hearing to the

claimants, the method adopted by the respondent No.1 in determining the market value was improper and unscientific and the claimant was getting annual net income of Rs.1,00,000/- per acre and as such the value of the property was more than Rs.10,00,000/- per acre.

4. Learned AGP appeared for respondents and filed his statement of objections. In their objections it is *inter-alia* contended that, the Sales Statistics Method one adopted by respondent No.1 was scientific and proper, the claimant only in order to get more compensation have exaggerating the yield and income of the land without placing any materials, that the valuation made by the respondent No.1 is fair and proper and hence his award may be confirmed.
5. The claimant Siddappa S/o Nagappa Kunchanur has examined as PW-1 for himself and got marked Ex.P-1 to P-4 documents and closed his side. Respondents have not adduced any oral evidence but marked Ex.R-1 award copy and Ex.R-2 notice U/sec.12(2) of L.A.Act.
6. Heard arguments on both the sides.
7. The following points arise for consideration;

POINTS

- 1) Whether the reference is within limitation?
 - 2) What was the proximate and fair market value of the properties acquired as on the date of publication of notification U/sec.4(1) of the Land Acquisition Act?
 - 3) What order?
8. Findings to the above points are as follows:-

Point No.1:- In the Affirmative.

Point No.2:- Rs.6,23,750/-per acre.

Point No.3:- As per final order for the following reasons;

REASONS

POINT No.1:-

9. SLAO pronounced the award on 22-10-2012. The notice U/sec.12(2) of Land Acquisition Act (Karnataka Amendment) issued on 13-06-2013. The claimant that on 13-08-2013 filed their protest applications. The date of service of notices is not available in the records. As per sec.18(3) of Land Acquisition Act the S.L.A.O., shall refer the petitions to the Civil Court within 90 days from the date of receipt of application. In this case SLAO referred the case to the court on 14-03-2018. If the SLAO failed to make reference, the claimant by invoking sec.18 (3) (b) of the Land Acquisition Act may approach the Civil Court seeking direction to the SLAO to make the reference. As held

by our Hon'ble High Court in Special Land Acquisition Officer V/s. Gurappa Channabasappa Parmaj reported in ILR 1991 KAR 1109 an application before the Court has to be made within 3 years after the expiry of 90 days from the date of the application. In the present case, though the SLAO referred the matter to this court after expiry of 90 days, (but within 3 years) in the light of the said decision it can be conveniently said that, the present petition is well within the period of limitation.

POINT No.2:-

10. The acquired land is situated at Asangi village of Jamakhandi taluka. The acquisition of lands and publication of notification and other facts are not in dispute. The claimants are only challenging the quantum of compensation awarded by the respondent No.1.
11. Claimant examined as PW-1 for himself by reiterating the contents of protest petitions. Ex.P-1 is the reference petition, Ex.P-2 is the RTC extract. Ex.P-3 is the price list issued by Nandi Sugar Factory discloses that, the price of the sugarcane for the year 2009-10 was Rs.2495.97. Ex.P-4 is the certified copy of yield certificate issued by Asst. Director, Agriculture Department, Jamkhandi.

12. Ex.R-1 is the award copies and Ex.R-2 is the notices U/sec.12(2) of Land Acquisition Act.
13. Ex.P-2 discloses that, the land is irrigated land. Learned SLAO in his award observed that when he visited the spot he noticed the marks of cultivation of irrigated crops the claimant has produced the RTC Extract documents it came to the conclusion that, the land is wet land. In the RTC it is clearly mentioned that the nature of the land is irrigated. Record of right attaches with presumptive value, unless the contrary is proved the contents of the R of R shall presumed to be true. The respondents have not examined any of its officials so as to disprove the contents of R of R. By these observations this court is of the considered opinion the acquired land was wet land and having potentiality to grow sugarcane.
14. The Spl. Land Acquisition Officer has followed the sales statistics method to assess the market value. The claimant proposed to adopt crop capitalization method to determine the market value. The crop capitalization method is well recognized by the Superior Courts of this land. The respondents have not

assigned any reason to show that why the crop capitalization method shall not be adopted.

15. As this court inferred sugarcane was the crop during the relevant period, the court can conveniently take the sugarcane crop to assess the market value on Capitalization Method.
16. As can be seen from the Ex.P-4 the average yield of the sugarcane is 50 tons per acre. The Hon'ble High Court of Karnataka in *Narayan Hanamant Satwik and Others Vs. The S.L.A.O., [MFA No.20464/2012] (LAC)* has assessed the market value taking into account of sugarcane yield at 50 tons per acre and the multiplier 10 was adopted by the Hon'ble High Court of Karnataka.
17. The price list marked as Ex.P-3 indicates that, the price of the sugarcane per metric ton for the year 2009-10 was Rs.2,495.97/-. As held by Hon'ble Supreme Court in *Chimmanlal Hargovind Das Vs. S.L.A.O., Puna (AIR 1988 SC 1652)* the claimant shall be in the position of plaintiff who has to show that, the price offered for his land in the award is inadequate on the basis of materials produced in the court. On the basis of materials placed and proved by both the sides the market value of the land under acquisition has to be determined as on the crucial date of publication of the

notification U/sec.4 of the Land Acquisition Act. The Hon'ble Supreme Court clearly held that, the dates of notification U/sec.6, 9 are irrelevant. In the present case the notification U/sec.4(1) was published on 02-04-2009. Sugarcane season starts from the month of September. Hence the price for the year 2009-2010 is relevant. The price of the sugarcane per metric ton for the year 2009-10 was Rs.2,495.97/-.

18. As can be seen from Ex.P-4 the yield of the sugarcane is 50 tons per acre. $\text{Rs.}2495 \times 50 \text{ tons} = 1,24,750$. 50% shall be deducted towards cultivation costs and multiplier 10 is applicable. $(1,24,750 - 50\% \times 10 = 6,23,750)$. Thus the cost of the land per acre would be Rs.6,23,750/-. In view of determination of market value, the claimants are entitled for statutory benefits provided under the law.

POINT No.3:-

19. In view of findings on points No.1 and 2, this court proceeds to pass the following:-

ORDER

The reference petition filed U/sec.18(1) of Land Acquisition Act is hereby allowed in part with costs.

The claimant has satisfactorily proved that the land acquired is wet land and having potential to grow sugarcane.

The market value fixed by SLAO at the rate of Rs. 1,42,942/- per acre for wet land is hereby enhanced to Rs.6,23,750/-. (Rupees Six Lakh Twenty Three Thousand Seven Hundred and Fifty only) per acre excluding the pot-kharab area if any.

The claimant is entitled to have 30% solatium on the enhanced market value U/sec.23(2) of the Act.

The claimant is entitled to 12% per annum additional market value U/sec.23 (1-A) of the Act on the enhanced compensation from the date of 4(1) notification till the date of award or till the date of dispossession, whichever is earlier.

The claimant is entitled to the interest at the rate of 9% per annum U/sec.28 of the Act on the enhanced compensation for a period of one year from the date of dispossession, and

thereafter at the rate of 15% per annum for the subsequent period till the date of payment or deposit.

The amount of compensation already paid, if any, shall be deducted from the enhanced compensation.

Draw the award accordingly

(Dictated to the Stenographer, transcribed by her directly on the computer, corrected by me and then pronounced in the open court on this the 19th day of April 2018)

Sd/-19-04-2018
(Reshma. K. Goni.)
Senior Civil Judge & JMFC,
Banahatti.

ANNEXURES

1) List of witnesses examined on behalf of the claimants:-

PW-1 : Siddappa S/o Nagappa Kunchanur.

2) List of documents marked on behalf of the claimants:-

Ex.P-1 : Reference petition
Ex.P-2 : RTC Extract
Ex.P-3 : Certified copy of price list issued by Nandi
Sugar Factory
Ex.P-4 : Certified copy of yield certificate issued by Asst.
Director, Agriculture Department, Jamkhandi.

3) List of witnesses examined on behalf of the respondents:-

: - N I L -

4) List of documents marked on behalf of the respondents:-

Ex.R-1 : Award copy
Ex.R-2 : Notice U/sec.12(2) of L.A.Act.

Sd/-19-04-2018
Senior Civil Judge & JMFC,
Banahatti.

