

**IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, AT KOLLEGALA.**

Dated this the 09th day of November 2018

:PRESENT:

Sri. S.J. KRISHNA., B.Sc, L.L.B
Senior Civil Judge and J.M.F.C.,
Kollegala.

L.A.C. No.01/2018

<u>Claimants:</u>	1	Shivappa Since deceased represented by LRs (Deleted as per Order dated 12.10.2018)
	2	Smt.Mallamma Uruf Sannamma W/o Late Shivappa. (Deleted as per Order dated 12.10.2018)
	3	Nagarajappa S/o Late Shivappa. (Deleted as per Order dated 12.10.2018)
	4	Smt.Indramma W/o Late Nagarajappa,
	5	Basammannamma D/o Late Shivappa,
	6	Sri.Subbappa S/o Late Shivappa,

	7	Rathnamma D/o Late Shivappa,
	8	Shivamma D/o Late Shivappa,
	9	Parvathamma D/o Late Shivappa,
	10	Bhagyamma D/o Late Shivappa,
	11	Mangalamma D/o Late Shivappa, All are R/at Theramballi Village, Kollegala Taluk, Chamarajanagara District.
Sri.N.Madhusudan, Advocate, Mysuru		

Vs

<u>Respondents:</u>	1	The State of Karnataka, Vidhana Soudha, Bengaluru By its Chief Secretary.
	2	The Chief administrative Officer, Cavery Neeravari Nigam, Varuna Bhavana, Mysuru.
	3	The Deputy Commissioner, Mysuru District, Mysuru
	4	The State The Spl. LAO Kabini Reservoir Project, Kabini and U.R.P. Mysuru.
Respondents by AGP, Kollegala		

J U D G M E N T

This petition is referred by the Land Acquisition Officer,
Kabini Irrigation Project, Chamarajanagara (now Spl. LAO,

Mysuru) under section 18 of the Land Acquisition Act (hereinafter referred as to the Act) for enhancement of compensation in respect of the land acquired by them.

2. The brief facts of the case which leads to this petition are as follows:

The Predecessor-in-interest of the claimants was the owner in possession and enjoyment of the land bearing survey. Nos.62/1 and Sy.No.65/D totally measuring 0A 87 Cents situated at Theramballi Village, Kollegala Taluk. The respondent No.4 had acquired the aforesaid land for the purpose of Kabini Project. The Respondent No.4 has published Preliminary Notification under Section 4(1) of the Act for the acquisition of the said land in Karnataka Gazette dated 29.10.1992. The Respondent awarded compensation at the rate of Rs.13,500/- per acre in respect of the said acquired land as per the General Award No. LAQ/KO/10:89-90 and as per Extract of Payment Register. The Predecessor-in-interest of the claimants had received a sum of Rs.39,131/-. The Predecessor-in-interest of the claimants being aggrieved by the aforesaid award of compensation accepted the same under protest and filed application U/s 18 (1) of the Act praying to send the reference to Civil court by contending that the above said acquired land is more fertile and it would easily fetch

higher market value. The Predecessor-in-interest of the claimants was growing 5 crops of mulberry in the land acquired and was getting Rs.4,000 per crop per year, totally Rs.20,000/- net income was derived from all the five crops per year excluding the agricultural expenses. But, the Respondent has not taken into consideration, the fertility, yield etc., while awarding compensation to the said land and passed an award by awarding meager amount of compensation. It is further contended that the Predecessor-in-interest of the claimants are entitled to get higher compensation than the amount awarded by the respondent. Therefore, it is prayed to determine the market value of the acquired land by the Civil Court.

3. The Respondent No.4 submitted the reference. After receipt of reference, the matter was numbered as LAC No:223/1996 on the file of Hon'ble Ist Addl., Civil Judge, Mysuru. During the pendency of the proceedings the original claimant passed away. Hence, the matter was referred back to the Spl.LAO to bring the LRs on record. However, the Spl.LAO has sent the reference with a new modification to this Court only on 24.11.2017.

4. After the receipt of reference the case is numbered as LAC 01/2018 and the notices were issued to the parties

Sri.NMS Advocate, appeared for the claimants and filed a memo with death certificates of Smt.Mallamma and Nagarajappa. The L.A.O., appeared in person and deleted the names of deceased Shivappa, Mallamma and Nagarajappa as per order dated 12.10.2018.

5. The Learned AGP has not filed objections to the reference and submitted that the award made by the L.A.O., is in accordance with law and sufficient amount has been awarded to the claimant.

6. Sri.Subbappa S/o deceased Shivappa has adduced his evidence as PW1 and exhibited Ex.P1 and P2. The learned AGP has submitted that the respondents have no evidence. By Consent of parties Ex.R1-General Award, Ex.R2-Extract of Payment Register were exhibited by respondents.

7. I have heard the arguments, perused the evidence documents and other materials on record. The following points will arise for my consideration.

POINTS

1. Whether the reference petition filed by the claimant under section 18(1) of Land Acquisition Act is barred by limitation?

2. Whether the compensation awarded by the Respondent is inadequate? If so, to what compensation claimant is entitled?

3. What Order?

8. My findings to the above points are as follows:

Point No.1: In the Negative.

Point No.2: In the Partly Affirmative.

Point No.3: As per my final order for the
Following-

REASONS

9. **Point No.1:** The Respondent has submitted this reference on the basis of the application filed by the deceased claimant Shivappa Under section 18(1) of the Land Acquisition Act for fixation of the market value of the land acquired by the respondent No.4 belonging to him bearing Sy. No.62/1, and Sy.No.65/D, totally measuring 0.87 Cents situated at Theramballi Village, Kollegala Taluk for Kabini project. The general award was passed by the respondent No.4 on 29.10.1992 in LAQ/KO:10:89-90 for fixing the value of compensation for the land acquired by him which was belonging to the deceased claimant and others. As per the said Award compensation of Rs.13,500/- per acre was fixed for acquired land. The deceased claimant not being satisfied with

the said compensation amount, has received the amount of Rs.39,131/- from the respondent No.4 under protest and filed the application under section 18(1) of the Land Acquisition Act on 21.11.1994. This fact is evident from the reference submitted by respondent. In the reference, the date of payment of compensation amount to the petitioner is shown as 30.11.1994. After considering the aforesaid dates, it is clear that, the application under section 18(1) of the Land Acquisition Act is submitted by the claimant within in the period of 90 days from the date of payment. Hence, the application under section 18(1) of the Land Acquisition Act is within the period of limitation from the date of payment. Accordingly, I answer Point No.1 in the **NEGATIVE**.

10. **Point No.2:** Upon considering the General Award passed by the Land Acquisition Officer and also the documentary evidence on record, it appears that the Land Acquisition Officer has collected general market value of the landed properties, concerned to three years before regarding the dry lands, and thereafter fixed the market value after taking average 3 years market value of the land and awarded the compensation. It further appears that a full opportunity was not given to the claimant so as to put forth his claim by furnishing the latest market value as on the date of 4(1)

Notification. On account of not giving the said scope to the claimant, certainly it appears that the compensation fixed by the Land Acquisition Officer appears to be lesser and not in accordance with law. Therefore, I hold that the compensation awarded by the respondent is in-adequate and not reasonable one.

11. In order to fix the market value of the acquired land, the Court has to consider the sales statistics of the bonafide transactions, on the basis of capitalization method. LR.No:6 of the deceased claimant has adduced his evidence as PW-1 and he has exhibited Ex.P2 copy of award dated: 30.04.2015 passed by this Court in LAC No:48/2015.

12. It is the contention of the claimants that the compensation awarded does not represent the market value of the lands. The reasons assigned for assessing the market value in the award are not justifiable and much less sustainable. It is also contended that considering the location, feasibility, fertility of the lands acquired is more valuable than the amount granted as compensation. It is further contended that since the acquired lands are fertile lands they would have easily fetch higher market value. It is also contended that the deceased claimant was growing 5 crops of mulberry and thereby he was earning net income of Rs.20,000/- per year.

13. Ex.P2 produced by PW-1 is the certified copy of judgment and decree passed in LAC No:48/2015 dated 30.04.2015. The said judgment was passed on the reference for enhancement of compensation of land acquired within the jurisdiction of Theramballi Village. It is pertinent to note that the petitioner has not produced any yield certificate or any other certificate from concerned Officers. No doubt, after perusing all the records, it shows that petitioner was growing non-irrigated crops in the acquired land.

14. The 4(1) Notification under Ex.P2 was made on 29.10.1992. The 4(1) Notification in the case on hand was made on 29.10.1992. Upon perusing the Judgment Ex.P2, it shows that the market value of the land is considered at Rs.83,130/- per acre. Hence, I am of the view that same compensation amount as awarded in Ex.P2 may be awarded in this case without any appreciation or depreciation. It is pertinent to note that the petitioner has also not produced the relevant sale deeds showing the market value prevailing at the time of 4(1) Notification for the acquisition of the land under dispute. The documentary evidence on record clearly shows that the acquired land was not irrigated and accordingly, I propose to fix the market value at Rs.83,130/- per acre to the land under acquisition of this case. Hence, I answer Point No.2 **partly in the affirmative.**

15. **Point No.3**: In the result, I proceed to pass the following:-

ORDER

The LR's of deceased claimant are entitled for the compensation of Rs.83,130/- per acre in regard to acquired land in survey. No.62/1 and Sy.No.62/D totally measuring 0.87 Cents at Theramballi village, Kollegala Taluk after deducting the compensation amount already paid to claimant.

The LR's of deceased claimant is entitled for additional market value @ 12% p.a. on the enhanced compensation amount from the date of Preliminary Notification till the date of award as provided under section 23(1-A) of the Land Acquisition Act.

The LR's of deceased claimant is entitled for solatium at 30% on the enhanced compensation amount.

The LR's of deceased claimant is entitled for the interest at the rate of 9% during the first year from the date of Preliminary Notification and there afterwards 15% per annum till the date of realization on the enhanced compensation amount awarded by this Court, under all the three heads of section 23 of Land Acquisition Act.

Advocate Fee is fixed at Rs.1,000/-

Draw award accordingly.

(Directly dictated to the Stenographer, computerized by her, revised, corrected and then pronounced by me in the open Court, this the 09th day of November 2018)

(S.J. KRISHNA)
Senior Civil Judge and
Judicial Magistrate First Class,
Kollegala.

:ANNEXURE:

List of witnesses examined for the claimant/petitioner:

PW1: Sri. Subbappa

List of documents exhibited for the claimant/s:

Ex.P1: Certified copy of Order Sheet of LAC 223/1996

Ex.P2: Certified copy of judgment passed in LAC No.48/2015

List of witnesses examined on behalf of the Respondent/s:

- NIL -

List of documents marked on behalf of the Respondent/:

Ex.R1: Certified copy of General Award

Ex.R2: Extract of Payment Register

(S.J. KRISHNA)
Senior Civil Judge and
Judicial Magistrate First Class,
Kollegala.

