



Presented on : 01-08-2023
Registered on : 08-08-2023
Decided on : 07-11-2024
Duration : 1 year 2 months 30 days

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

Dated this the 7th day of November -2024

Present: Sri.Mohamed Mujeer Ulla C.G.
B.A.,LL.B.,
III Addl. Sessions Judge,
Kalaburagi.

LAC(APPL) No.325/2023

Appellants:

1. Kallyanamma W/o Kallyanappa
Since deceased by LR
Melagiri S/o Late Kalyanappa by LR
a) Anand Kumar S/o late Melagiri
Age: 55 years, Occ: Agriculture
2. Mahadewamma W/o Sugappa
Since deceased by LR
a) Neelakanthappa Desai S/o late Sugappa
Age: 67 years, Occ: Agriculture
Both R/o village Madri Tq: Jewargi
Dist: KALABURAGI.
(By Sri G,A,Patil., Advocate)

//VERSUS//

Respondents:

1. The Special Land Acquisition Officer



UKP, Awarad, Tq: Jewargi,
Dist: Kalaburagi
Now at Bhimarayangudi
Tq: Shahapur, Dist: Yadgir

2. The Deputy Commissioner
Mini Vidhan Soudha, Kalaburagi.
3. Managing Director, KBJNL,
Liason Office, PWD Offices,
Annexe Building IIIrd Floor K.R. Circle
Bangalore 560 001.

(For R.1 by Spl.GP ., Advocate)
(For R.2 by ADGP)
(For R.3 by Sri GVV., Advocate)

JUDGMENT

1. The appellants have filed instant appeal U/Sec.54 of Land Acquisition Act (L.A.Act) R/w Sec. 41 Rule 1 of CPC for modification of the judgment and award dt: 30.10.2001 passed by the then Prl. Civil Judge (Sr.Dn.) Gulbarga in LAC No.64/1997 and to award enhanced compensation to the acquired land by redetermining its market value.
2. The undisputed facts of the case are as under;
 1. The claimant No.1 late Kallyanamma and claimant No.2 late Mahadewamma were the owners of dry land in Sy.No.92/3 measuring 2 acre 09 guntas situate at



Madri village, Tq: Jewargi, Dist:
Kalaburagi.

2. The 1st respondent i.e., the Special Land Acquisition Officer UKP, Awarad, Tq: Jewargi, Dist: Kalaburagi, now at Bhimarayangudi, Tq: Shahapur, Dist: Yadgir acquired the above land by issuing preliminary notification dated 30.4.1992 U/Sec. 4(1) of L.A. Act for Upper Krishna Project.
3. The Spl.LAO passed the award dt: 22.11.1993 fixing the market value of the acquired land at Rs.7000/- per acre.
4. Claimant No.1 Kallyanamma and claimant No.2 Mahadewamma after receipt of award notice filed protest application dated: 12.10.1994.
5. After reference by SLAO, LAC No.64/1997 was registered in the court of the then Prl. Civil Judge (Sr.Dn.) Gulbarga.
6. Claimant No.1(a) Melagiri was examined as PW.1 and produced documents marked at Ex.P.1 to 6.
7. The then Prl. Civil Judge (Sr.Dn.) Gulbarga under the impugned judgment by applying the crop capitalization method has determined the market value of the acquired land at Rs.28,200/- per acre with statutory benefits.
8. After the death of claimant No.1 Kallyanamma, her grandson and claimant No.2 Mahadewamma, her son the appellants filed the instant appeal on 01-08-2023 which was came to be registered on 08.08.2023 for modification of the impugned judgment and to enhance the



compensation amount by redetermining the market value of acquired land at Rs.40,000/- per acre.

9. Claimant No.1 Kallyanamma and claimant No.2 Mahadewamma died after passing of the award by the reference court. Therefore, their grandson and son, the appellants filed the instant appeal along with IA No.2 & 3 U/Sec. 146 of CPC seeking permission to file the appeal in their capacity as legal heirs of claimants 1 & 2.
10. Along with appeal, appellants filed IA No.I under section 5 of the Limitation Act for condoning the delay of 7203 days in filing the appeal.
11. After service of notice, Spl.GP appeared on behalf of R.1, ADGP appeared on behalf of R.2 and Sri GVV Advocate appeared on behalf of R.3 and filed objections to I.A.No.I.

3 Heard the arguments on both side on IA I to III and also on merit. The learned counsel for the appellants in addition to submitting oral arguments has filed written argument with documents.

4 The following points would arise for consideration;

1. Whether the appellants can be permitted to file the instant appeal?



2. Whether the delay of 8276 days in filing the appeal can be condoned ?
3. Whether the appellants are entitled for enhanced compensation as prayed for?
4. What order?
5. My findings on the above points are as under;
 1. In the Affirmative.
 2. In the Affirmative.
 3. In the Affirmative
 4. As per final order for the following;

REASONS

6 **Point No.1**: The impugned Judgment is dated 30.10.2001.

A perusal of record would show that after passing of the impugned Judgment claimant No.1 Kallyanamma died on 12.01.2009 and claimant No.2 Mahadewamma died on 1.2.2022. As I have already stated above, the grandson and son of late claimants 1 & 2 filed the instant appeal along with applications U/sec. 146 of CPC. As per Sec.146 of CPC the legal heir of a party to the legal proceedings would have right to continue the legal proceedings by filing appeal, revision or any application if he accrue right over the subject



matter of the proceedings. The appellant 1(a) being the grandson and appellant No.2(a) being the son of claimant No.1 late Kallyanamma and claimant No.2 late Mahadewamma as class-I legal heirs would succeed to their estate. When such is the case, it would be just and proper to permit the appellants the legal heirs of claimants 1 & 2 to prosecute the instant appeal for the benefit of all the legal heirs of claimants 1 & 2. Accordingly, **I answer point No.1 in the Affirmative.**

7. Point No.2: The Hon`ble Supreme Court of India in the ruling reported in **1987 (2) SCR 387 (Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji & others** while considering the delay condonation application in filing the LAC appeal has laid down certain guidelines and they are as under;

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned



the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. In the land acquisition case, the appellant will not be benefited due to delay in filing the appeal. On the other hand, he would sustain loss. When such is the case having regard to the facts stated by appellant No.1 (a) in the affidavit



annexed to the application the court is of the opinion that the delay in filing the instant appeal is not intentional, on the other hand it is for the bonafide reasons stated in the affidavit annexed to the application.

9. The Hon`ble Supreme Court of India in the recent judgment in the case of ***Mohar Singh (dead) others Vs. State of Uttar Pradesh by Lrs and others*** has held that the delay in filing the appeal in the land acquisition case even if it is inordinate is not perse fatal as the rights and equities between the parties can be well balanced by denying the statutory benefits such as interest for the delayed period.

10. In the instant case in the affidavit annexed to the application the appellant NO.1 (a) has stated that the appellants will not claim interest on enhanced compensation during the period of delay. When such is the case, I am of the opinion that to decide the instant appeal on merit if the delay of 7203 days in filing the appeal is condoned subject to the condition that the appellants will not entitle for interest during the period of delay it will meet the ends of justice and



would balance the right and liabilities of either parties. In view of the above ***I answer point No.2 in the Affirmative.***

11. **Point No.3:** The learned counsel for the appellants has strenuously contended that in the Judgment in LACA No.846/2018 dated 11-01-2019 this court has awarded enhanced compensation of Rs.3,08,308/- per acre as against Rs.24,750/- per acre determined by the reference court in LAC No.668/1996. The appellants produced the copy of the judgment passed in LAC(Appl) No.846/2018 dated 11.01.2019, Government order dated 29.06.2024 and village map. The SLAO not disputed the above documents. Therefore, on 12.09.2024 the above documents were marked at Ex.P.7 to 9 by consent. A perusal of Ex.P.8 GO would show that the Spl.LAO decided not to file the appeal against Ex.P.7 Judgment.

12. A perusal of Ex.P.7 judgment would show that it is in respect of the land acquired under the preliminary notification dated 14.05.1992. The land in question in the instant appeal was acquired under the preliminary



notification dated 30.4.1992. Thus, the land of the appellants was acquired 14 days before acquisition of the land in question Ex.P.7 Judgment. The land of the appellants and the land in question in Ex.P.7 Judgment were the dry lands situate in Jewargi Taluk, Kalaburagi District.

13. The land in question in Ex.P.7 judgment situate at Naribole village, Jewargi Taluka, Kalaburagi District. A perusal of Ex.P.7 Judgment would show that the reference court by applying crop capitalization method has determined the market value of the dry land situate in Naribole, Jewargi Taluk, Kalaburagi District acquired under the preliminary notification dt: 14.05.1992 at Rs.24,750/- per acre. The reference court under the impugned judgment by applying the crop capitalization method has determined the market value of the dry land of the appellants situate in Madri village, Jewargi Taluka acquired under the preliminary notification dated 30.04.1992 at Rs.28,200/- per acre. Thus, on comparison of the market value determined by the reference courts in the above two cases would show that in



the year 1992 the market value of the dry land of the appellants of the instant appeal situate in Madri village, Jewargi Taluka of Kalaburagi District was more than the value of the land in question in Ex.P.7 Judgment. A perusal of Ex.P.9 village map would show that Madri and Naribole villages are the neighbouring villages in Jewargi Taluka. Both the lands were acquired in the year 1992 within a gap of 4 days for the same purpose. The Hon`ble Supreme Court of India in the case of **Special Land Acquisition Officer Vs Karigouda and others** reported in (2010) 5 SCC 708 has held that the market value of the acquired land can be determined on the basis of the market value of the lands situate in the same village or adjacent villages. When such is the case, in view of my aforesaid findings the market value of the acquired land of the appellants can be redetermined on the basis of Ex.P.7 Judgment which reached finality.

14. In the instant appeal, the appellants prayed to enhance compensation at Rs. 40,000/- per acre. When such is the case, the point for consideration is whether the court



has to award enhance compensation at Rs.40,000/-per acre as claimed by the appellants or can award compensation more than what the appellants claimed in the instant appeal by directing them to pay additional court fee.

15. The Hon`ble Supreme Court of India in the case of **Ashokumar and another Vs. State of Hariyana** in Civil Appeal Nos. 2714 – 2721/2012 (DD on 18.2.2016 and in the case of **Narendra and others Vs. State of Uttar Pradesh and others** reported in (2017) 9 SCC 426 has held that the Appellate Court can award compensation at the higher rate than claimed by the appellant if he is entitle by directing him to pay deficit court fee. When such is the case in view of my aforesaid findings I am of the opinion that by placing reliance on Ex.P.7 judgment in LAC (Appl) No.846/2018 dated 11.01.2019 which reached finality, the market value of the acquired land of the appellants can be redetermined at **Rs.3,08,308/-** per acre with statutory benefits except interest on the enhanced market value, solatium and additional market value from the date of passing of the award



by the reference court till the date of filing the instant appeal subject to the appellants paying the deficit court fee. In view of the above, I answer point No.3 as appellants are entitled for enhanced compensation of **Rs.3,08,308/-** per acre. Accordingly, **I answer point No.3 in the affirmative.**

15. **Point No.4:** A perusal of the impugned Judgment would show that before the reference court the Spl.LAO UKP Awarad was made as sole respondent. The Special LAO is the employee of the State Government. Therefore as per Sec. 79 & 80 of CPC, the Deputy Commissioner of Kalaburagi is made as 2nd respondent in the appeal. The appeal memo is silent regarding on what ground or basis the appellants made respondent No.3 as party who was not the party before the reference court. As per the provisions of L.A.Act the Government can acquire the private property for public purpose. Therefore, when the Government acquires a private property for public purpose, it is the duty of Government to pay adequate compensation to the owner or occupier of the property whose property is acquired. Therefore, in the land



acquisition case the beneficiary is not the necessary party. It is the duty of the Government to collect the compensation amount from the beneficiary and to pay to the owner or occupier of property whose land is acquired. Therefore, in the judicial proceedings relating to the acquisition of the land the beneficiary is not a necessary party because, there is no privity between the owner or occupier of the property and the beneficiary. The appropriate Government which plays the role of intermediary between the owner of the property and beneficiary is responsible to pay the compensation amount to the property looser. When such is the case, I am of the opinion that the respondent No.3 who is the official of beneficiary of the acquired land cannot be made as party to the appeal. Filing of appeal against third person who is not the party before the trial court without stating any reason is unknown to law. In view of the above, I hold that the appeal is to be dismissed against respondent No.3. In view of the above and my reasons and findings on points 1 to 3, I pass the following;



ORDER

I.A.No.I filed by the appellants U/Sec. 5 of the Limitation Act and IA No.II & III U/Sec. 146 of CPC are allowed.

Appellants are permitted to prosecute the instant appeal on behalf of all the legal heirs of claimant No.1 late Kallyanamma and claimant No.2 Mahadewamma .

The delay of 7203 days in filing the appeal is condoned.

Appeal is allowed with cost.

The Judgment and award dt:30.10.2001 passed by the then Prl. Civil Judge (Sr.Dn.) Gulbarga in LAC No.64/1997 is modified.

The market value of the acquired dry land is enhanced at **Rs.3,08,308/-** per acre with all statutory benefits except interest on the enhanced compensation / market value, solatium and additional market value from date of passing of award by the reference court till the date of filing of the appeal subject to the appellants paying the deficit court fee.

Appeal against respondent No.3 is dismissed.



Draw award accordingly on payment of deficit court fee.

Return TCR along with the copy of the Judgment to the Reference Court.

(Directly dictated to the Sr. Sheristedar, typed by him, the same is corrected by me and then pronounced in the open Court on this the **7th day of November - 2024**).

(Mohamed Mujeer Ulla C.G.)
III ADDL. DISTRICT & SESSIONS JUDGE,
KALABURAGI

APPENDIX

List of witnesses examined on behalf of Appellants

Nil

List of witnesses examined on behalf of Respondents.

Nil

List of documents marked on behalf of appellants.

Ex.P.

7. Copy of judgment

8. Government order.

9. Village Map.

List of documents marked on behalf of Respondents

Nil

(Mohamed Mujeer Ulla C.G.)
III ADDL. DISTRICT & SESSIONS JUDGE,
KALABURAGI

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