NC: 2024:KHC:51888
MSA No. 29 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS SECOND APPEAL NO. 29 OF 2023 (LA)

BETWEEN:

MAHADEVA,
S/O GOWDAIAH, AGED ABOUT 49 YEARS,
R/AT KADAVEKATTEHUNDI VILLAGE,
YADAKOLA POST, VARUNA HOBLI,
MYSURU TALUK - 570 010.

...APPELLANT

(BY SRI. MANJUNATH N.D, ADVOCATE)

AND:

1. THE SPECIAL LAND ACQUISITION OFFICER,
KABINI RESERVOIR PROJECT,
MYSORE - 570 001.

Digitally signed by PAVITHRAB
Location: HIGH COURT OF KARNATAKA

2. CAUVERY NEERAVARI NIGAMA LTD.,
ANAND RAO CIRCLE,
BENGALURU-560 009,
REP. BY ITS MANAGING DIRECTOR.

...RESPONDENTS

(BY SRI. RAJENDRA K.R, AGA;
SRI. B.R.PRASHANTH, ADV. FOR R2)

THIS MSA IS FILED UNDER SECTION 54(2) OF THE LAND ACQUISITION ACT AGAINST THE JUDGMENT AND AWARD DATED 19.01.2015 PASSED IN LAC APPEAL No.73/14 ON THE

FILE OF THE V ADDITIONAL DISTRICT JUDGE, MYSURU, ALLOWING THE APPEAL AND MODIFYING THE JUDGMENT AND AWARD DATED 20.11.2022 PASSED IN LAC No.380/05 ON THE FILE OF THE I ADDITIONAL CIVIL JUDGE (SR.DN) AND CJM, MYSORE, ALLOWING THE REFERENCE PETITION FILED UNDER SECTION 18 OF THE LAND ACQUISITION ACT.

THIS APPEAL, COMING ON FOR FURTHER ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

This Miscellaneous Second appeal is filed by the claimant challenging the judgment and award dated 19.01.2015 in L.A.C.Appeal.No.73/2014 passed by V Additional District Judge at Mysuru, and judgment and award dated 20.11.2007 in LAC.No.380/2005 passed by the I Addl. Civil Judge (Sr.Dn.) at Mysore, seeking enhancement of compensation.

2. Heard the argument of learned counsel from both side and perused the records.

3. It is the case of the claimant that the claimant is the absolute owner of the land bearing Survey No.306/4, measuring 0.03 guntas, situated at Yadakola Village, Varuna Hobli, Mysore Taluk.

4. The relevant details of the compensation awarded to the claimant are as under:

1	Preliminary Notification issued under Section 4(1) of Land Acquisition Act, 1894	19.07.2001
2	Award of SLAO	Rs.48,400/- per acre

5. Being aggrieved by inadequate compensation, reference was made under Section 18(1) of the Act and the Reference Court has awarded compensation of Rs.2,24,939/- per acre.

6. Upon appeal before the first Appellate Court, the compensation for the land was enhanced to Rs.3,90,000/- per acre.

7. Learned Counsel for the appellant submitted that the compensation awarded by both the Courts below are on the lower side. He referred to the judgment in various other cases passed by the Reference Court, First Appellate Court and by this Court in respect of the very same project and prays for enhancement of compensation. Therefore, he submitted that in the present case also, the appellant/claimant is entitled for enhancement of compensation on the ground of parity.

8. On the other hand, learned Counsel for respondent No.2 submitted that second respondent is the beneficiary of the land acquisition, but it was not made a party both in the Reference Court as well as First Appellate Court and second respondent was deprived of taking contention before both the Courts below. Therefore, he opposed the enhancement of compensation by contending that compensation is to

be assessed on the basis of nature of soil, situation of land, distance between nearest town or city, whether the land is abutting to any highway or situated at distance from the highway, whether highway is a state highway or national highway or district road, what are the ages of trees situated on the land, how much quantity of trees are fruit bearing etc. are to be adduced in evidence and then only a determination of proper compensation would be arrived at. But the second respondent who was not a party before the courts below was straightaway impleaded as a party in this appeal. Therefore, he prayed for remanding the matter to the Reference Court so as to enable second respondent to cross-examine the witnesses of the claimant and also to adduce evidence.

9. Upon hearing the rival contentions, the points that arise for consideration are as follows:

i. Whether under the facts and circumstances of the case, the second respondent who is a

beneficiary of the land acquisition is a necessary and proper party before the Reference Court in the land acquisition proceedings?

ii. What orders?

10. The land owner is claiming that he is the owner of the land and his land was acquired for formation of Varuna Nala. Being dissatisfied with the quantum of compensation awarded by the first respondent-the SLAO, the claimant made the application under Section 18(1) of the Act and SLAO referred the case to the Reference Court. The claimant has prosecuted the case before the Reference Court without making the second respondent as a party, though the second respondent is beneficiary to land acquisition. Even in the appeal before the First Appellate Court, second respondent was not made a party. The second respondent is the beneficiary of the

land acquisition and first respondent is only the acquiring authority but not the beneficiary. The first respondent being acquiring authority has initiated land acquisition proceedings for the purpose of formation of Varuna Nala on behalf of the beneficiary and ultimately, beneficiary is entitled to take over the land acquired by the first respondent and form the project and therefore, compensation would be given by the beneficiary party, but not by the first respondent. Therefore, in this context, the beneficiary on whose behalf of the land is acquired is a proper and necessary party. Though the proceedings can be adjudicated in the absence of proper party. But necessary party is that in whose absence, there could not be effective adjudication between the parties. Therefore, second respondent beneficiary is not only proper party, but also necessary party.

11. Order I Rule 10 of CPC stipulates regarding filing of suit in the name of wrong plaintiff and the Court may strike out or add parties dealing with necessary and proper party in the suit.

> *"A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court.*
>
> *If a "necessary party" is not impleaded, the suit itself is liable to be dismissed.*
>
> *A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.*
>
> *Distinction between necessary and proper parties.*
>
> *The distinction between the two terms can be noted as follows:*

NECESSARY PARTY	***PROPER PARTY***
Necessary party is the party whose presence is indispensable for the suit to be adjudicated upon	*In case of proper parties, the presence or absence is no ground for determining whether the suit should be dismissed or not*
Necessary party is the party which is essential for an order to be passed, since the order is based upon the relief asked for by such party	*The passing of a decree is not dependent on the demands of proper parties. (However, the decree is applicable upon proper party as well)*
For example: In a suit	*For Example: In a suit*

regarding partition of land or property, all the people who have a share in the property are necessary parties; In a suit regarding selection and appointment, all those who have been selected or appointed are considered as necessary parties.	*between landlord and tenant, a sub - tenant would be a proper party (though he is affected by the decree, his presence is not indispensable) In a suit regarding land or property acquisition between a father and son, the other relatives, like grandfather, uncle, aunt etc. would be proper parties.*

In Gurmit Singh Bhatia v. Kiran Kant Robinson, (2020) 13 SCC 773 : 2019 SCC OnLine SC 912 at page 778, the Supreme Court has observed:

It is further observed and held by this Court that two tests are to be satisfied for determining the question as to who is a necessary party. The tests are: (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject-matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and

possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.

In U.P. Awas Evam Vikas Parishad v. Gyan Devi, (1995) 2 SCC 326 at page 343, the Supreme Court has observed:

21. The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.

In Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.,(2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1 : 2012 SCC OnLine SC 616 at page 413, the Supreme Court has observed:

41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters

and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

12. The second respondent being the beneficiary on whose behalf lands are acquired for formation of some projects, therefore, beneficiary will take control over the lands acquired and every title, right and interest would be vested with the beneficiary and ultimately, while determining the compensation, beneficiary must be heard by giving opportunity to the beneficiary. Therefore, without making beneficiary a party, determining compensation and thereafter

directing the beneficiary to pay compensation is violation of principles of *audi alteram partem.* Therefore, beneficiary on whose behalf land is acquired is a necessary party and in whose absence, there could not be effective adjudication. Without making the beneficiary as a party in the proceedings, determining the compensation and compelling the beneficiary to pay compensation is nothing but violation of principles of natural justice as ultimately, it is beneficiary who has to pay compensation to the claimants/land loosers.

13. The Special Land Acquisition Officer who is the acquiring authority has been vested with power by the Government to acquire the land for the purpose of some projects of the Government on behalf of the beneficiary. After acquisition, the beneficiary shall hold, control, supervise, monitor and use the said land

for the purpose of carrying out the project. Therefore, the beneficiary will become owner of the said land for the purpose of carrying out the project after completion of the acquisition proceedings. Then the role of the beneficiary will start. It is actually the beneficiary is interested party. Thus, he is taking over right to participate in the acquisition proceedings and in the process of adjudication determining compensation where the claimants are claiming compensation based on the nature of soil, potentiality of the land whether it is vicinity to the town and city and whether it is adjacent to National Highway/State Highway/District Road, whether in the surrounding any potential commercial activities are there, fertility of the land, standing trees thereon, fruit bearing yield of trees, age of trees etc., are to be considered by both the claimants and beneficiaries. Therefore, the beneficiary is a necessary party. Ultimately, the

beneficiary is disbursing compensation to the claimants/land loosers. Therefore, the beneficiary is not only proper party, but also necessary party. In this regard, I place reliance on the judgment of the Hon'ble Supreme Court in the case of ***U.P.AWAS EVAM VIKAS PARISHAD VS. GYAN DEVI (DEAD) BY LRS. AND OTHERS***[1]***,*** wherein at paragraph Nos.21 and 22 observed as follows:

> **"***21. We may now come to the stage of the proceedings before the court in a reference under Section 18 of the L.A. Act made at the instance of a person having interest in the land being acquired. At this stage also Section 50(2) of the L.A. Act envisages that the local authority has a right to appear and adduce evidence before the court. This right is independent of the right that is available to the local authority to appear and adduce evidence before the Collector. Even though the local authority had failed to appear before the Collector in spite of notice or had appeared in response to notice and had adduced evidence, the local authority may consider it necessary to adduce evidence to rebut the evidence adduced by the person who has sought the reference and to defend the award made by the Collector. Failure to give notice at this stage would*

[1] (1995) 2 SCC 326

result in denial of the said right of the local authority. Before we consider the remedy that is available for seeking redress against the denial of this right we may examine whether the local authority has a right to be impleaded as a party in the proceedings before the reference court. That raises the question whether the local authority can be regarded as a necessary or a proper party. The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue.) A local authority for whom land is being acquired has a right to participate in the acquisition proceedings in the matter of determination of the amount of compensation while they are pending before the Collector and to adduce evidence in the said proceedings. While it is precluded from seeking a reference against the award of the Collector it can defend the award and oppose the enhancement of the amount of compensation sought before the reference court by the person interested in the land. Moreover the local authority has a right to appear and adduce evidence before the reference court. Having regard to the aforesaid circumstances, we are of the opinion that the presence of the local authority is necessary for the decision of the question involved in the proceedings before the reference court and it is a proper party in the proceedings. The local authority is, therefore, entitled to be impleaded as a party in the proceedings before the reference court.

> *22. In case the amount of compensation has been enhanced by the court and no appeal is filed by the Government the local authority if adversely affected by such enhancement may file an appeal with the leave of the court. This right of the local authority does not depend on its being impleaded as a party in the proceedings before the reference court. Even if the local authority is not impleaded as a party before the reference court it can file an appeal against the award of the reference court in the High Court after obtaining leave if it is prejudicially affected by the award. In case the Government files an appeal against the enhancement of the award the local authority is entitled to support the said appeal and get itself impleaded as a party. When the person having an interest in the land files an appeal in the High Court against the award of the reference court and seeks enhancement of the amount of compensation the local authority should be impleaded as a party in the said appeal and it is entitled to be served with the notice of the said appeal so that it can defend the award of the reference court and oppose enhancement of the amount of compensation before the High Court. The same will be the situation in case of an appeal to this Court from the decision of the High Court."*

14. Further, in these proceedings, if the compensation is enhanced by referring to judgments and awards rendered in other cases, what would be the difference in factual matrix in those cases and

present case are to be ascertained. Though reference is made of the awards/orders passed in other cases by contending that lands are similarly situated as in the present case, but the evidence adduced in those proceedings are to be considered regarding ascertainment of nature of land, standing trees thereon, quantum of fruit bearing trees according to age of the trees, whether there are state highway or national highway abutting to the land, what is the distance between aforesaid land and near by town or city, potentiality of land etc. Therefore, in this regard, the beneficiary must be made as party and opportunity of tendering evidence is to be given and shall be heard and in the absence of beneficiary, determining the compensation is not correct. Therefore, when the compensation is determined without beneficiary but ultimately, beneficiary is liable to pay compensation, then without making beneficiary

a party amount to denial of right to the beneficiary at the time of determining the compensation.

15. The Government has also issued Circular bearing No.RD 04 LCA2024(E-1351620) dated 07.03.2024 stating that on whose behalf land is acquired, they must be made a party in the proceedings. When the Courts have determined the compensation and execution of said awards are made, unnecessarily, there will be orders from the Courts attaching the movable properties of SLAO/State authorities. But the SLAO/State authorities are only acquiring authority and ultimately, the compensation will have to be paid by the beneficiaries but they are not made as parties. This would cause unnecessary delay in executing the award, affecting right of the claimants/land owners. Therefore, in this way,

beneficiary will have to be made as a party in the acquisition proceedings.

16. Therefore, for the aforesaid reasons and in view of the principle of law laid down by the Hon'ble Supreme Court in ***U.P.AWAS EVAM VIKAS PARISHAD***'s case (stated supra), the point is answered in the affirmative holding that beneficiary must be made a party in the land acquisition proceedings while determining the compensation as beneficiary is not only proper party, but also necessary party. But in the present case, second respondent beneficiary was not made party in the Reference Court as also before the First Appellate Court and straightaway second respondent is made a party in this appeal by way of impleadment. Therefore, this court is of the opinion that the matter must be is remanded to the Reference Court and impugned award passed by the Reference

Court and the First Appellate Court will have to be set aside. The second respondent beneficiary will have to be made as a party in the Reference Court and parties are to be given opportunity to adduce their further evidence, if they are so advised, either oral, documentary or both.

17. Hence, I pass the following:

ORDER

i) Miscellaneous Second Appeal is ***allowed***;

ii) The order of the First Appellate Court dated 19.01.2015, passed in L.A.C.Appeal.No.73/2014 and the order of the Reference Court dated 20.11.2007 in LAC No.380/2005 are set aside and the matter is remanded to the Reference Court for fresh disposal in accordance with law;

iii) Second respondent herein shall be made as a party in the Reference Court;

iv) Liberty is reserved to both parties to adduce evidence in further if they are so advised, either oral, documentary or both.

v) All parties in the case shall be present before the Reference Court on **28.02.2025**;

vi) The Reference Court shall decide the case and pass appropriate orders within six months from **28.02.2025.**

vii) All contentions of parties are kept open.

viii) Court fee paid by the claimant in this appeal shall be refunded to the claimant with proper identification.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

KA
List No.: 1 Sl No.: 24
CT: BHK