

**Executive Engineer and Another Vs. S.N. Jayaram and Another**

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**Court :** Karnataka

**Decided On :** Mar-01-2014

**Judge :** N.K. Patil & the Honourable Mrs. Justice Rathnakala

**Appeal No. :** M.F.A.No. 29 of 2013 (LAC) c/w M.F.A. No. 10774 of 2012 (LAC)

**Appellant :** Executive Engineer and Another

**Respondent :** S.N. Jayaram and Another

**Judgement :**

(Prayer: This M.F.A. is filed under Section 54(1) of CPC, against the judgment and award dated 28/07/2012 passed in LAC.NO.2/2003 on the file of the Senior Civil Judge and JMFC., Chintamani, sitting at Sidlaghatta, allowing the Reference Petition filed U/s. 18 of the Land Acquisition Act for enhanced compensation and to modify the same.)

(Prayer: This M.F.A. is filed under Section 54(1) of Land Acquisition Act, against the judgment and award dated 28/07/2012 passed in LAC.NO.2/2003 on the file of the Senior Civil Judge and JMFC., Chintamani, sitting at Sidlaghatta, allowing the Petition for enhanced compensation and seeking further enhancement of compensation.)

1. These two appeals by the State- Executive Engineer, Minor Irrigation, Kolar and by the claimant are directed against the same judgment and award dated 28/07/2012 passed in LAC.NO.2/2003, by the Senior Civil Judge and JMFC,

Chintamani, sitting at Sidlaghatta.

2. The Reference Court, by its judgment and award, has enhanced compensation in respect of the lands in question at Rs.41,79,000/- for six acres, with all statutory benefits as envisaged under L.A. Act. Being aggrieved by the said judgment and award, the State has filed an appeal contending that the compensation awarded by the Reference Court is on higher side and is liable to be reduced and the claimant has filed an appeal contending that the Reference Court has erred in not awarding any compensation towards loss of crops from 1.4.1963 to 25.6.2001 and therefore, it is liable to be awarded.

3. The undisputed facts of the case are:

Claimant is the owner cum kathedar of the land bearing Sy.Nos.64/3 and 66 of Neralamaradahalli village, Sadali Hobli, Sidlaghatta Taluk. It has been notified and acquired by the State on account of submergence as the tank bund of Sadali new tank of Sadali village came to be raised, vide Preliminary Notification dated 22.12.1999 issued under Section 4(1) of Land Acquisition Act, followed by Final Notification dated 10.7.2001 issued under Section 6(1) of the Act. Thereafter, notices under Sections 9 and 10 were issued inviting objections and claim from the notified kathedars and the Land Acquisition Officer has passed the award on 22.6.2002, fixing the market value at Rs.50,000/- per acre. Being not satisfied with the market value fixed by the Land Acquisition Officer, the claimant has filed an application under Section 18(1) of L.A. Act seeking enhancement and requested the Land Acquisition Officer to refer the matter to the jurisdictional Reference Court. Accordingly, it has been referred to Senior Civil Judge and JMFC, Chinthamani and numbered as LAC No.2/2003. The said matter had come up for consideration before the Reference Court on 28/7/2012. The Reference Court, after appreciating the oral and documentary evidence and other materials available on file, taking into consideration the purpose for which it has been notified and acquired, has allowed the same in part and enhanced the market value at Rs.72,000/- per acre vide order dated 4.4.2009. Against which, claimant has preferred M.F.A.No.7606/2009 before this Court, which was allowed and the matter was remitted back to the Reference Court with a direction to reconsider and

pass appropriate order in accordance with relevant provisions of L.A. Act by giving opportunity of hearing to the both counsel. Thereafter, the matter had come up before the Reference Court on 28/7/2012. The Reference Court, after hearing both the parties and after perusing the materials available on file and in compliance of the directions issued by this Court, taking into consideration the value of the site measuring 60 x 60 ft. on the basis of Ex.P1, sale deed and the report of the commissioner and after assigning valid reasons in para-15 of its judgment, has determined the compensation at Rs.8,71,200/- and after deducting 20% towards development charges, has determined the compensation at Rs.41,79,200/- for six acres with all statutory benefits as envisaged under Section 23 of L.A. Act. Being aggrieved by the said judgment and award, the State and the claimant have presented these appeals.

4. The submission of the learned Government Pleader appearing for State, at the outset is that, the Reference Court has committed an error much less material irregularity in deducting 20% towards development charges in respect of 6 acres of land notified and acquired placing reliance on the decision reported in (2012) 5 Supreme Court Cases 432 (Mehrawal Khewaji Trust (Registered), Faridakot and others Vs. State of Punjab and others) and therefore, it is liable to be modified. To substantiate the said submission, she submitted that in the said case, only a small extent of land has been acquired for extension of existing grain market at Faridkot in the State of Punjab and that will not be a basis for deducting 20% towards development charges in respect of 6 acres of land notified and acquired by the State and atleast 40% has to be deducted towards development charges by modifying the impugned judgment and award passed by the Reference Court.

5. Further she submitted regarding the claim made by the claimant in M.F.A.No.10774/2012 that he is entitled for compensation towards loss of crops which he suffered from 1963 on the ground that, the possession was alleged to have been taken by the authorities on 1.9.1963 that, the authorities, after following the due procedures has taken possession only on 25.6.2001 and in view of the well settled law laid down by the Apex Court and this Court in catena of judgments, claimant is not entitled to file an appeal and if he has got any grievance, he has to establish that he has been dispossessed on 1.9.1963 before

the competent authority as envisaged under the relevant provisions of the Land Acquisition Act and not before this Court or the Reference Court. Therefore, she submitted that the appeal filed by the claimant in this regard may be dismissed.

6. Per contra, learned counsel appearing for the claimant, inter-alia, contended and submitted that the appeal filed by the claimant in M.F.A. No.10774/2010 may be dismissed as withdrawn, reserving liberty to the claimant to work out his remedy before the appropriate Legal Forum, as envisaged under the relevant provisions of the Land Acquisition Act.

7. After careful consideration of the submission made by learned counsel for both the parties and after going through the impugned judgment and award passed by the Reference Court, it emerges that, the lands in question have been notified and acquired by the State through Land Acquisition Officer and after completion of acquisition process, award has been passed by the Land Acquisition Officer, determining the market value at Rs.50,000/- per acre. Not satisfied with the same, claimant has filed his application under Section 18(1) of L.A. Act, seeking enhancement, with a request to refer the same to the jurisdictional Court and accordingly, it has been referred to the jurisdictional Court. The Reference Court, after considering the oral and documentary evidence has allowed the said petition on 4.4.2009 against which, claimant preferred an appeal before this Court in M.F.A.No.7606/2009, which was allowed by this Court by setting aside the award and the matter was remitted to the Reference Court. After the remand, the Reference Court after going through the materials available on file and in light of the directions issued by this Court, placing reliance on Ex.P1 and after deducting 20% towards development charges in view of the law laid down by the Apex Court, has re-determined the compensation at Rs.41,79,000/- for 6 acres with all statutory benefits.

8. As rightly pointed out by the learned Government Pleader appearing for the State, the Reference Court has erred in deducting only 20% towards development charges instead of 40% placing reliance on the judgment of the Apex Court in respect of a small extent of land which was notified and acquired for the purpose of extension of existing grain market in Faridakot Town, State of Punjab, for the

reason that, in the instant case, large extent of lands have been notified and acquired in view of submergence as the tank bund of Sadali New tank came to be raised which are situated nearby the Milk Chilling Centre and State Highway. There is some substance in the submission made by the learned Government Pleader for State. Taking into consideration the submission of the learned Government Pleader for State, the grounds urged in the memorandum of appeal and also taking into consideration that, in fixing market value of the acquired land, which is undeveloped or under developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired following the law laid down by the Apex Court in the case of *Kasturi Vs. State of Haryana* (2003) 1 SCC 354, wherein, the Court has held that, it is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally, 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the lots for residential or commercial purpose. Therefore, in view of the law laid down by the Apex Court as stated supra and taking into consideration the nature of soil of the lands in question, its potentiality and development in and around the said lands, we are of the considered view that, if 1/3rd amount of compensation is deducted towards development charges instead of 20% as deducted by the Reference Court, it would meet the ends of justice. Accordingly, we deduct the same from the compensation determined by the Reference Court. If 1/3rd of Rs.8,71,200/- i.e. .Rs.2,90,400/- is deducted towards development charges out of the market value fixed by the Reference Court at Rs.8,71,200/- per acre, the remaining amount comes to Rs.5,80,800/- per acre and for six acres it works out to Rs.34,84,800/- instead of Rs.41,79,000/- as awarded by the Reference Court. There would be a reduction of Rs.6,94,200/-.

9. Having regard to the facts and circumstances of the case as stated above, the appeal filed by the State in M.F.A.No.29/2013 is allowed and placing the submission made by the learned counsel for claimant on record, the appeal filed

by the claimant in M.F.A.No.10774/2010 is dismissed as withdrawn, reserving liberty to the claimant to work out his remedy before the appropriate Legal Forum, as envisaged under the relevant provisions of L.A. Act, if so advised or if need arises. All the grounds urged in this appeal are left open.

The impugned judgment and award dated 28/07/2012 passed in LAC.NO.2/2003 on the file of the Senior Civil Judge and JMFC., Chintamani, sitting at Sidlaghatta, is hereby modified, by awarding the compensation of Rs.34,84,800/- for 6 acres of lands with all statutory benefits as envisaged under Section 23 of L.A. Act.

Registry is directed to refund the court fee paid by the claimant/ appellant on the memorandum of appeal as provided under Section 66 of the Karnataka Court Fees and Suits Valuation Act, 1958.

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