

Parvati And Ors Vs. The Assistant Commissioner And Ors

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Court : Karnataka Kalaburagi

Decided On : Dec-05-2023

Judge : M.G.S.Kamal

Appeal No. : MFA 201826/2017

Appellant : Parvati And Ors

Respondent : The Assistant Commissioner And Ors

Advocate for Def. : Sri. S.S. Halalli

Judgement :

- 1 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE5H DAY OF DECEMBER, 2023 BEFORE THE HON'BLE MR. JUSTICE M.G.S. KAMAL MISCL. FIRST APPEAL NO20182/2017 (LAC) BETWEEN:

1. PARVATI W/O MAHADEVAPPA JAGASHETTY, AGE:

57. YEARS, OCC: HOUSEHOLD WORK, R/O BASAVANAGAR, MURANKERI, VIJAYAPUR2 SHIVALINGAPPA S/O MAHADEVAPPA JAGASHETTY, DECEASED, BY LRS:

2. A. MAHADEVI W/O SHIVALINGAPPA JAGASHETTY, AGE:

35. YEARS, OCC: HOUSEHOLD WORK, R/O BASAVANAGR, MURANKERI, VIJAYAPUR. 2.B. LAXMI D/O SHIVALINGAPPA JAGASHETTY, AGE:

14. YEARS, MINOR BY M/G HER NATURAL MOTHER CLAIMANT NO.2-A, - 2 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 R/O BASAVANAGAR, MURANKERI, VIJAYAPUR.

3. MUTTAPPA S/O MAHADEVAPPA JAGASHETTY, AGE:

34. YEARS, OCC: AGRICULTURE, R/O BASAVANAGAR, MURANKERI, VIJAYAPURA.

4. NEELAKAKANTH S/O MAHADEVAPPA JAGASHETTY, AGE:

31. YEARS, OCC: AGRICULTURE, R/O BASAVANAGAR, MURANKERI, VIJAYAPUR. APPELLANTS (BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE) AND:

1. THE ASSISTANT COMMISSIONER, VIJAYAPURA-586101.

2. THE COMMISSIONER, BIJAPUR URBAN DEVELOPMENT AUTHORITY, VIJAYAPUR-586101.

3. THE DEPUTY COMMISSIONER, VIJAYAPURA-586101. RESPONDENTS (BY SMT. ARATI PATIL, HCGP FOR R1 & R3; SRI S.S. HALALLI, ADVOCATE FOR R2) - 3 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 541) OF LA ACT, PRAYING TO ALLOW THIS APPEAL AND MODIFY THE

JUDGMENT

AND AWARD PASSED BY THE II ADDITIONAL SENIOR CIVIL JUDGE, VIJAYAPUR DATED 13/07/2017 IN LAC NO.28 OF 2010 AND FIX MARKET VALUE AT THE RATE OF RS.500/- PER SQ FT. AND AWARD ALL STATUTORY

BENEFITS. THIS APPEAL, COMING ON FOR

ORDER

S, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1 This appeal is filed by the appellants who were claimants in LAC No.28/2010 on the file of II Additional Senior Civil Judge, Vijayapura(herein after referred to 'reference Court'), being aggrieved by the judgment and award dated 13.07.2017, whereby the reference Court has dismissed the reference petition filed by the appellants under Section 18 of the Land Acquisition Act, 1894.

2. Brief facts of the case are that; a. Lands belonging to the appellants bearing Survey Nos.304/2A and 304/2B totally measuring 11 acres 24 guntas of Mahalbagayat, Vijayapura, Vijayapura - 4 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 District were sought to be acquired vide notification dated 22.05.2000 is issued under Section 4(1) of the Land Acquisition Act, 1894 (herein after 'LA Act') for the purpose of formation of a residential layout known as Vijayapura-Basavana Bagewadi Road Stage-2 by the Bijapura Urban Development Authority-respondent No.2 (herein after 'respondent-BUDA'). On 05.09.2003 the Land Acquisition Officer passed general award Under Section 11 of LA Act determining compensation payable in respect of the aforesaid lands at Rs.90,000/- per acre. Being dissatisfied with the same, the appellants sought for reference of the matter by filing Misc.P.No.23/2008 which was allowed on 09.04.2010. Accordingly, reference was registered as LAC No.28/2010. b. The appellants in their reference petition had contended that the award had been passed without giving them an opportunity of filing their objections and no notice was issued to them as required under - 5 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 LA Act. That the acquired lands are situated within the City Corporation and within the limits of BUDA. That the acquired lands ought to have been considered as residential lands and not as agricultural lands since the same are situated amidst residential colonies with all the amenities and surrounded by Zilla Panchayath Office, Balbhavan, High

School, Marriage Halls, other offices etc. The lands are situated within the limits of Ward No.7. The neighboring lands after converting into the non- residential purposes have been sold at the rate of Rs.400 to Rs.500/- per sq.ft. That even as in the year 2000-01 private land developers had sold the sites in the neighboring land at the rate of Rs.500 per sq.ft. That the respondent-BUDA ought to have determined the compensation on square foot basis. c. That the City Municipal Council and the BUDA itself had auctioned the property at Rs.350 per sq.ft on 15.08.2000 which is situated near the acquired lands.-. 6 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 Hence, it was contended that the appellants were entitled for higher amount of compensation.

3. Statement of Objections was filed on behalf of the respondent-BUDA, contending that: a. That the general award was passed by the Land Acquisition Officer on 05.09.2003, fixing the compensation at Rs.90,000/- per acre taking into consideration of three years Sale Statistics and that the appellants have received the total compensation of Rs.18,28,632/- in respect of the entire lands from the Land Acquisition Officer. b. It is further contended that subsequently in order to avoid litigation with regard to quantum of compensation, the respondent-BUDA intended to resolve the matter amicably, as such respondent- BUDA on 03.08.2005 issued notices, calling upon the appellants to appear on 09.08.2005 at about 3.00 p.m., for the purpose of passing of award by mutual - 7 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 consent. By further notices dated 22.08.2005 and 23.08.2005 appellants were called upon to appear for the settlement. Upon service of said notices a meeting was conveyed under the Chairmanship of the Deputy Commissioner as well as the President of the respondent-BUDA and local MLA and the Commissioner in which the appellants were personally present in the Office of respondent-BUDA. That it was resolved in the said meeting that the appellants would withdraw the writ petition filed by them before the High Court of Karnataka, challenging the acquisition and that they would execute their consent on stamp papers agreeing to resolve the matter with the respondent-BUDA. c. It is further contended that, in furtherance to above meeting the respondent-BUDA had intimated the appellants on 10.10.2005 that a

compensation of Rs.10,00,000/- per acre along with one site measuring 30ft X40t per acre would be given to the - 8 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 appellants and that appellants would relinquish their rights in favour of the respondent-BUDA towards full and final settlement of their claims. It is also contended that the appellants had assured that they would not file any application for enhancement of compensation before the Land Acquisition Officer, Bijapur. It is contended that the said settlement was to be given effect to after obtaining approval by the State Government. d. It is further contended that on 29.03.2006, the appellants who had filed Writ Petitions in WP Nos. 46642/2004 and 47328/2004 challenging the notification for acquisition got their writ petitions dismissed and the Deputy Commissioner had also sent the proposal on 24.10.2005 to the State Government seeking sanction. That, the State Government by Order dated 16.02.2006 conveyed its approval by fixing the compensation in a sum of Rs.10,00,000/- per acre and providing site measuring - 9 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 30ft X40t per acre which was communicated by the appellants by the respondent-BUDA by issuing letters. e. That thereafter, the appellants on 30.06.2006 had executed registered power of attorney in favour of one Gullappa Sidappa Shettigar to deal and to look after the matter. Accordingly, a letter was also written by the said power of attorney holder to the respondent-BUDA to make the payment as per the Government Order. That the said power of attorney holder had also submitted an affidavit agreeing to accept the Government Order, in addition the appellants had submitted the acceptance letters and affidavits assuring that they would not claim any enhancement of compensation towards the acquired land. That the respondent-BUDA had paid a sum of Rs.46,46,368/- on 05.07.2006 and Rs.36,00,000/- on 05.07.2006 to the appellants which was duly accepted by the appellants. Thus, it is contended that - 10 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 the appellants had accepted the settlement by receiving the amount, contended as above. f. It is further averred that the filing of reference petition by the appellants under Section 18 of LA Act

without making the authority as necessary party was a suppression of fact and misleading the Court. It is further contended that the appellants have not disclosed the settlement which was arrived at between them and respondent-BUDA and the payment made by the respondent-BUDA to the appellants. On these grounds dismissal of the petition was sought.

4. It is necessary to note that respondent-BUDA being aggrieved by the Order dated 09.04.2010 passed in Misc.P.No.23/2008 had preferred a Civil Revision Petition No.2005/2011, which was disposed-off by this Court on 15.03.2012. In the said civil revision petition it was - 11 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 specifically contended by the respondents-BUDA that the order of reference passed in Misc.P.No.23/2008 was unsustainable inasmuch as after passing of the general award dated 05.09.2003 by the Land Acquisition Officer, respondent-BUDA entered into a settlement with the land owners and they were even paid monies as agreed by them. Taking note of the said submission, this Court while disposing of the above civil revision petition had opined that to examine the aspect of settlement evidence of parties was necessary, as such, keeping open all the contentions of the respondents-BUDA (who was petitioner in the said Civil Revision Petition) to be adjudicated by reference Court in the pending proceedings, at Paragraph 8 had held as under:

"8. To examine the aspect of settlement, the evidence of the parties is necessary. However, in the interest of justice, it is necessary to keep all contentions of the petitioner-BUDA open to be adjudicated by the Reference Court in the proceedings, which is stated to be pending now in LAC No.28/2010. It is open to the BUDA to adduce evidence in the said proceeding to show that the land owners have received the increased amount as agreed, over and above - 12 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 the award passed by the Land Acquisition Officer, pursuant to the settlement arrived at between the parties. If that is established by the BUDA, it is needless to state that the land owners will not be entitled for any higher compensation in the reference proceeding. It is also open to the petitioner to show that the reference made is not a valid reference in law. As all contentions of the BUDA are kept open to be adjudicated by the

Reference Court, there is no need to interfere with the impugned order. The revision petition stands disposed of in the above terms.

5. The reference Court framed point for consideration and recorded the evidence One Neelakantappa Mahadeva Jagashetty has been examined as PW-1 and exhibited 33 documents marked as Ex-P1 to Ex-P33. One Basavaraja Veerabadrayya Hiremath has been examined as RW-1 and exhibited 48 documents marked as Ex-R1 to Ex-R37.

6. The reference Court taking note of the contentions of the parties, oral and documentary evidence and as well as the aforesaid Order of this Court in CRP.No.2005/2011, by the impugned Order dated 13.07.2017 dismissed the reference petition of the appellants by holding that petition was not maintainable - 13 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 on the premise that there was a settlement between the appellants and respondent-BUDA and that the appellant had received amounts from the respondent-BUDA. Being aggrieved by the same, the appellants are before this Court.

7. Sri. Harshavardhan R Malipatil, learned counsel for the appellants reiterating the grounds urged in the memorandum of appeal submits that; a. The reference court grossly erred in rejecting the petitions filed under Section 18 of the LA Act without adverting to the factual and legal aspect of the matter. He submits that the reference Court failed to take into consideration that once general award was passed there was no scope for passing of any consent award at the behest, either of the appellants or of the respondent-BUDA. b. He submits that assuming there was a settlement, the reference Court ought to have seen, if the same - 14 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 was in accordance with law or was it entered into in a manner known to law. He refers to Section 35 and 36 of the Karnataka Urban Development Authorities Act, 1984('KUDA Act' for short) and submits that if the respondent-BUDA wanted to acquire the land, it could have acquired the land by entering into agreement with the prior approval of the Government as provided under Section 35 of the KUDA Act. Since that was not

the case, he adds that the only recourse that the respondent-BUDA had in this case is seeking acquisition of land under Section 36 of the KUDA Act. He submits that once the authority has opted to acquire land under Section 36 of the KUDA Act, the question of reverting to the provisions of Section 35 of the KUDA Act would not arise. Further, he refers to section 53 of the LA Act and submits that settlement otherwise could have been entered into in terms of provisions of Civil Procedure Code ('CPC' for short) which is made applicable to the proceedings under provisions in - 15 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 terms of section 53 of the LA Act. He submits that plain reading of said provision would indicate that the provisions of CPC would be applicable save to the extent inconsistent with the provisions of LA Act and that the settlement if any, had to be arrived at, was to be in terms of provisions Order 23 of CPC in which event the reference Court ought to have satisfied itself with regard to the terms of the settlement, lawfulness of the consideration and the enforceability of the agreement. He submits that the reference Court without taking into consideration of the statutory provisions of law has affixed with seal of approval to the settlement as claimed by the respondent-BUDA and has consequently dismissed the reference petitions without adverting to the merits of the claim made by the appellants resulting in miscarriage of justice. c. He further submits that as regards the allegation of suppression of facts made by the respondent-BUDA - 16 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 is concerned there is no dispute of the fact that a sum of Rs.10,00,000/- was received by each of the appellants under protest. He submits that though the respondent-BUDA had contended and which contentions has been accepted by the reference Court that entire sum of Rs.11,50,000/- was paid, the respondent-BUDA before this Court by their own admission have stated that only a sum of Rs.10,00,000/- was paid. He submits that the sites which were purported to have been given to the appellants as part of the settlement package have never been allotted to the appellants in the manner known to law. The appellants have not received any such sites. d. Thus, he submits that it was incumbent on the part of the reference Court to have adverted to the terms of settlement if any, and also ought to have satisfied itself that

whether the alleged terms of settlements were performed/adhere to by the respondent-BUDA.-. 17 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 Without compliance with these aspects of the matter which the reference Court was duty bound has erroneously rejected the applications. Hence, seeks for allowing of the appeal.

8. Sri S.S. Halalli, learned counsel for the respondent-BUDA vehemently submits that: a. The appellant cannot be allowed to take advantage of their own act and conduct. He submits that admittedly after passing of the General Award settlement proceedings were conducted under the Chairmanship of President of the respondent-BUDA duly participated by the appellants and appellants had given consent letters in the form of affidavits, that they would be satisfied with the award of Rs.11,50,000/- per acre and as per agreed terms of the settlements the appellants have received a sum of Rs.10,00,000/- each. As such they cannot now be heard to say that they have been coerced in entering - 18 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 into the agreement. He further submits that as promised and represented eleven sites have been transferred in the names of the appellants in terms of the letter dated 17.07.2008 and mutation of the names of the appellants have been effected in the revenue records. Thus, he submits that in view of these concluded terms of the agreement that was lawfully entered into between respondent-BUDA and the appellants, the appellants had no locus-standi to file and pursue the petition under Section 18 of LA Act which has been rightly dismissed by the reference Court warranting no interference. b. He refers to Rule 8 of the Karnataka Urban Development Authorities (Incentive Scheme for Voluntary Surrender of Land) Rules, 1991 (herein after 'Rules 1991') and submits that in terms of the provisions of the said Rules 1991, the respondent- BUDA is well within its power to enter into settlements by allotting incentive sites which has been done in the - 19 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 instant case. Thus, he submits there is no illegality and irregularity of any nature on the part of respondent- BUDA and reference Court has rightly taken same into consideration all these aspects while rejecting reference application warranting no interference. Hence, seeks for

dismissal of the appeal.

9. Heard. Perused the records.

10. Before adverting to the rival contentions urged by the learned counsel for the parties, it is necessary at this juncture to refer to certain provisions of LA Act, 1894, KUDA Act, 1987 and CPC to the extent applicable to the facts of the case. Since admittedly subject lands are sought to be acquired for the purpose of formation of layout know as Vijayapura-Basavana Bagevadi Layout Stage 2, by the respondent-BUDA, the option for acquisition that was available for the respondent-BUDA was by having recourse to the provision of Chapter IV of the KUDA Act. In that Section 35 provides for authority - 20 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 to acquire the land by agreement, the said provision reads as under:

"35. Authority to have power to acquire land by agreement.- Subject to the provisions of this Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land or any interest therein, situated within the urban area for the purchase of such land.

11. Admittedly, the respondent-BUDA has not resorted for acquisition of the land under Section 35 of the KUDA Act. Instead it has resorted to acquire the land in terms of Section 36 of the KUDA Act (as stand/prior to its amendment on 16.12.2017), which reads as under:

"36. Provisions applicable to the acquisition of land other-wise than by agreement.- (1) The Acquisition of land under this Act otherwise than by agreement within or without the urban area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894. (2) For the purpose of 1 [sub-section (2) of section 50 of the Land Acquisition Act, 1894, the authority shall be deemed to be local authority concerned.-. 21 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 (3). After the land vests in the Government under 16 the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Authority agreeing

to pay any further cost which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority.

12. Thus, notification dated 22.05.2000 came to be issued under Section 4(1) of the LA Act. Needless to state once the land was sought to be acquired in terms of the provisions of the LA Act the provisions contained thereunder become applicable and same required to be complied with. Though, the appellants have contended that they were not issued with the notice, providing opportunities for filing objections and had questioned the validity of the notification for the acquisition by filing writ petitions in W.P.No.46642/2004 and 47328/2004, the said contention may not survive for consideration at this juncture, in view of the fact that the appellants have withdrawn the said writ petitions.-. 22 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 13. The Land Acquisition Officer apparently on consideration of the matter had passed the general award under Section 11 of the LA Act, determining the compensation payable at Rs.90,000/- per acre. It is appropriate to refer the Section 13A of the LA Act which reads as under: "13A correction of clerical errors, etc., (1). The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority: Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter. (2). The Collector shall give immediate notice of any correction made in the award to all the persons interested. (3). Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue.]" - 23 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 Thus, once general award has been passed the Land Acquisition Officer would become functus officio and in terms of provisions of Section 13A of LA Act except carrying out clerical or arithmetical mistakes if any in the award, there cannot be any further re-consideration of the same.

14. It may be relevant to refer Section 18 of the LA Act which reads as under: "18 Reference to Court (1). Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. (2). The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire." - 24 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 15. As noted above, admittedly the award was passed by the Land Acquisition Officer on 09.03.2003. In terms of Section 18 of the LA Act any person interested and who has not accepted the award, may by written application to the Collector require the matter to be referred for the determination of the Court. Thus, once the general award was passed under Section 11 of the LA Act, the appellants who were not satisfied with the award had indeed sought for reference of the matter under Section 18 of LA Act. The matter was accordingly referred. As such there is no other provision either under the Land Acquisition Act, 1894 or the Karnataka Urban Development Authority Act, 1987 providing for reconsideration, settlement, agreement or compromise in matter of acquisition or compensation after passing of the general award. Therefore, the very question that requires to be considered is the basis on which the respondent- BUDA resorted entering into agreement/settlement with - 25 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 the appellants after passing of the general award and particularly when the matter was being referred for consideration under Section 18 of LA Act.

16. Sri S.S. Halalli, learned counsel for the respondent pressed into service Rule 8 of Rules, 1991 and submitted that the said Rule enables the respondent-BUDA to enter into settlement with the land owners for the purpose of expediting the acquisition process. He submits that the entire settlement process in the instant case has been undertaken, under and pursuant to the said Rules 1991. The reference Court seem to have accepted this submission of respondent-BUDA. It is necessary at this juncture to refer to the relevant provisions of the said Rules, 1991. Aforesaid Rules 1991 have been implemented on and from 29.01.1994. Rule 3 of the said Rules 1991 reads as under:

3. U AaP.- PIP Ug P gU (U AaP) AiU, 1991 g gz V K MUrzg v 4 Aiz GAzsUU MI Pg s - 26 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 DdAi vjvU z Az F AiUU j z CAzsU P g s iPU vPV.- (i) s Cd CAi, 1894g 9 P gtz gU qz nU GvgV C Z Az P gz gV zj CAiz gU q n Pg CfPVg sAi Aiiz Evg DPuUAz v Aiiz CP v itAz PVg v P gz vU zj sAi qn Pg P Mz; Cx (ii) CAiz 35 P gtz gU C sAi P g rPAq, U AZz: gAv, CAX sAi AAzsz Eg Cx Z QU dAnAiiV iPv Az, F AiUU CgV CAX J QU E Z Az vAi Pl gv, Cg Q Aiigj UU AaPAi CvAi U. gu.- F AiU g APs AZ s vAi PAq M QAi J CP v itUAz PV v P AAzsl J DPuU, CAX DPuU AiiAiz g Cx Eg AvU zPAq vgAi CAX sAi vAi CAX gAsz vgAi Z Az PngAz svPz .

17. A perusal of the aforesaid Rule 3 of Rules 1991 would reveal that an option is given to the land owner to surrender the land sought to be acquired without objection by entering into settlement in response to the - 27 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 notice received under Section 9 of LA Act, 1894 by agreeing to accept incentive site, in addition to the compensation. The other possibility of entering into said settlement is, if the acquisition of land was initiated by the authority pursuant to the Section 35 of the KUDA Act which is already extracted herein above. Thus the stage of Section 9 of LA Act and section

35 of KUDA Act is obviously prior to passing of the general award.

18. Rule 8, Rules 1991 which is heavily relied upon by the learned counsel for the respondent reads as under:

"8. E Z Az IP qz.- AaP q z , AaPAi vgAi Aiiz Pz, P gAz v U AaPAiiz IP qz U IP I zsz Az , zj z Ai AAzsz AaP qz P gP AzAi irz J UU g AzAi iqv P z ..

19. The Rule 8 does not apply to the facts and situation of the matter. A holistic reading of the aforesaid rules would reveal that the provisions for allotment of incentive sites are introduced to expedite the process of acquisition and same need to be exercised at a stage prior - 28 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 to passing of the general award. Thus, the contention that the settlement arrived at in the instant case by the respondent-BUDA with the appellants in exercise of power under Rule 8 of Rules 1991 cannot be countenanced, more particularly when the substantive provisions of law, either under the Land Acquisition Act, 1894 or under the Karnataka Urban Development Authority Act, 1987, do not provide for such a settlement to be arrived at after passing of the general award.

20. The other aspect of the matter to be looked at is the application of provisions of CPC as contemplated under Section 53 of the Land Acquisition Act, 1894 said provisions read as under:

"53. Code of Civil Procedure to apply to proceedings before Court. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall apply to all proceedings before the Court under this Act."

- 29 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 21. The reference to the word 'Court' in the said Section is defined under Section 3(d) of the Act, which reads as under:

"the expression 'Court' means a principal Civil Court of original jurisdiction, unless the[appropriate Government]. has appointed (as it is hereby empowered to do) a

special judicial officer within any specified local limits to perform functions of the Court under this Act

22. The aforesaid provisions makes it clear that applicability of CPC is enabled in respect of proceedings before the 'Court' in the proceedings under Section 18 of the Land Acquisition Act, 1894. It may be appropriate to refer to the Order 23 Rule 3 of CPC, it provides for the compromise of the suit, the said provision is extracted here under:

"3. Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties]., or where the defendant satisfies the - 30 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit].: [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.].

23. The aforesaid provision of CPC mandates that the Court which is considering the issue of compromise shall ensure that the agreement or compromise is in writing and signed by the parties and that it is satisfied with regard to the terms thereof and shall pass the decree in accordance there with.

24. It is trite law that a compromise or agreement which is unlawful or terms of which are unenforceable - 31 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 cannot be accepted. The Court cannot be oblivious of its duty in recording the satisfaction of the terms of the

compromise. Admittedly, there is no agreement or compromise in writing and signed by the parties filed before the Court as required under Order 23 Rule 3 of CPC. No Such compromise is entered into between the parties before the reference Court.

25. The facts of the case would reveal that the respondent-BUDA heavily relied upon the Ex-R1, the proceedings dated 23.08.2005 and 22.04.2006 and the affidavits, letters and receipts purportedly issued by the appellants as per exhibits produced at Ex-R2 to EX-R8, Ex- R12 to Ex-R20, Ex-R23-Ex-R25, Ex-R30-Ex-R33, Ex-R39- Ex-R45 and Ex-R48. The reference Court relying upon the said documents has come to the conclusion that the said documents would establish the settlement between the appellants and the respondent-BUDA. The reference Court has also referred to the Order dated 15.03.2012 passed by this Court in CRP.No.2005/2011, which is extracted herein - 32 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 above and has concluded the respondent-BUDA has established the settlement having been arrived between the appellants and the respondent-BUDA.

26. Though at the first blush, it appears that the documents relied upon the respondent-BUDA would justify its stand of there having been a settlement arrived at between the appellants and the respondent-BUDA, a further probe in the matter would reveal that the said settlement cannot be termed as a settlement in eye of law. Firstly as already noted above, no such settlement is permissible in any of the provisions of law referred to hereinabove after passing of the general award. Secondly, though the respondent-BUDA contended before the reference Court that the agreed sum of Rs.11,50,000/- was paid to the appellants, admittedly only a sum of Rs.10,00,000/- was paid and which was received by the appellants under protest. Thirdly, incentive sites have not been allotted to the appellants in the manner known to law - 33 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 and there is no allotment conveying right, title and interest in favour of the appellants in the eye of law.

27. It may be relevant at this juncture to refer to the process of alleged allotment of incentive sites by the respondent-BUDA. Any allotment of sites by an authority can be done in the manner provided under the relevant provisions of law/rules in that regard. The allotment generally is preceded by an order/resolution of the concerned Authority for allotment followed by issuance of letter of allotment and thereafter execution and registration of necessary deed of conveyance with or without conditions in favour of the allottees in accordance with law. Right, title and interest in respect of allotted site would vest in favour of the allottees only on compliance of these requirements. Admittedly, no such procedures have been followed or adhered to by the respondent-BUDA in the instant case while allegedly allotting the sites in favour of appellants.-. 34 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 28. Learned counsel for the respondent-BUDA refers to letter dated 17.07.2008 produced at document No.20 and 21 along with memo 11.09.2023 produced before this Court. A perusal of the said documents would reveal that the same is a communication issued by the Commissioner of respondent-BUDA addressed to the Tahildar, Vijayapur. In terms of which, instructions have been given to the Tahildar to mutate the names of the appellants in respect of the sites mentioned therein. Learned counsel for the respondent-BUDA also refers to documents produced at document No.12 which is mutation register extracts produced along with the memo dated 27.07.2023 before this Court and submits that the said documents would establish the allotment of the sites in favour of the appellants and the same stands in compliance with the provisions of the law.

29. As already noted, allotment of the sites merely by mutating the names of the allottees in the revenue records without causing execution and registration of - 35 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 deeds of conveyance would not meet the requirements of conveying the right, title and interest in the immovable property as contemplated under the provisions of the Transfer of Property Act, 1882 and Indian Registration Act, 1908. Moreover, the aforesaid documents which are produced before this Court were also not made available before the reference

Court.

30. The reference Court without adverting to these legal aspect of the matter has apparently swayed away by the fact of appellants admitted to have received Rs.10,00,000/- per acre as the compensation of the land acquired. That alone could not have been a factor for the reference Court to have dismissed the reference without adverting into merits of the case as the appellants are claiming the compensation in a sum of Rs.350/- to Rs.500/- per sq.ft. Non-adverting to these factual and legal aspect of the matter warrants interference by this Court.-.

36 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 31. It may also be necessary to note at this juncture this Court on 27.07.2023 taking note of the facts of the case had passed the following Order, which read as under:

"This is a classic case where the development authority has entertained a busybody to claim compensation on behalf of the land losers based on a General Power of Attorney. The claim of the land losers is that the authority had resolved to allot one site measuring 30 x 40 sq.ft. per acre as an incentive for the voluntary surrender of the land. The land losers claim that these incentive sites were never allotted to them. However, the learned counsel for the authority initially submitted that a sum of Rs.1,50,000/- being the value of each site was paid to the land losers, but now made a 'U' turn claiming that the incentive sites were indeed allotted to the land losers. The learned counsel for the authority, though has placed on record some mutation extracts in this regard, has not furnished the letters of allotment and the deeds of conveyance of allotted sites to the concerned land losers. It is now stated at the bar that the power of attorney of the land losers was the erstwhile chairman of the authority and he had misused his acquaintances in the authority for personal gain by obtaining a power of attorney from the land losers.-. 37 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 Therefore, it appears on the face of it, that these incentive sites were gobbled up by the power of attorney leaving the land losers in the lurch. Therefore, this is a fit case where this Court should thoroughly examine the process adopted by the authority in awarding the

compensation as well as in allotting the incentive sites to the land losers. After all, the land losers would have volunteered to hand over possession of their lands in the fond hope that they would be allotted the incentive sites and that they would have a roof over their heads. In that view of the matter, learned counsel for the authority is directed to place the complete material to establish that the incentive sites were indeed allotted to the land losers and appropriate deeds of conveyance were executed in their favour. This would help the Court in issuing further directions to the authority. Until the aforesaid exercise is done, the authority shall not allot any sites to any allottee, in any layout, formed by it. In the event of violation of this directive, the Commissioner of the authority shall personally be held responsible for all the consequences. List on 07.08.2023."

In furtherance, thereon on 30.10.2023 passed the following Order, which read as under: - 38 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 "In response to order dated 27.07.2023 passed by this Court, Sri S.S. Halalli, learned counsel appearing for the Corporation fairly submits that there has been no allotment of incentive sites to the appellants/land losers. He however, referring to the documents produced along with the memo dated 11.09.2023 submits that a communication dated 17.07.2008 was issued by the Vijayapura Urban Development Authority to the Tahsildar to mutate names of the appellants in respect of the site Nos.53, 54, 55, 56, 57 and 58. He further submits that in furtherance to the communication dated 17.07.2008, mutation entries have already been effected. Thus he submits, except the said communication and mutation entries there has been no other records available in the office of the Vijayapura Urban Development Authority with regard to the allotment of incentive sites to the appellants. Be that as it may. As this Court taking serious note of the entire process of allotment of sites adopted by the Authority had specifically directed to place complete material before this Court to establish that the incentive sites indeed were allotted to the appellants/land losers and the appropriate deeds of conveyance had been executed in their favour. The material produced by the Authority and being relied upon before this Court hardly meets the said requirements. As there has been admittedly neither any resolution nor letters of allotment nor deeds of conveyance having been executed in favour

of the appellants/land - 39 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 losers, a communication as that of the one produced as document No.20 along with the memo dated 11.09.2023 and purported mutation thereof, cannot be countenance to be the lawful allotment of incentive sites to the appellants/land losers. In that view of the matter, the respondent authority is directed to furnish the description of sites that are available and to be allotted to the appellants/land losers by the next date of hearing. It is needless to state that since admittedly there has been no allotment of sites to the appellants, the respondent authority shall initiate process of allotting the site forming part of the layout for which their land was acquired. It is made clear that, Authority is at liberty to initiate steps to retrieve the sites purported to have been allotted by the respondent authority in terms of document No.20 and the consequent mutation made thereof. Compliance by 15.11.2023. List on 15.11.2023.

32. In response to the aforesaid orders, Sri. S S Halalli, learned counsel for the respondent-BUDA filed a memo providing the details of the sites which are available and which could be allotted to the appellants subject to approval by the Board of the respondent-BUDA and the - 40 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 Government. The fact narrated hereinabove would reveal that the respondent-BUDA appears to have not discharged its statutory obligation of disbursing the compensation or allotting the sites in the manner known to law.

33. As already noted by this Court in the Orders referred hereinabove, there appears to be some mischief played by some middlemen in collusion with the persons in the Authority. It is the lookout of the respondent-BUDA to take such steps, initiate such actions in accordance with law to recover/retrieve the sites which are purportedly allotted in the manner referred hereinabove in terms of the document Nos.20, 21 and 12. The said allotment not being in accordance with the law, cannot be held to the allotment in favour of the appellants.

34. For the aforesaid reasons and analysis this Court is of the considered view that the reasoning and conclusion arrived at by the reference Court regarding the settlement and consequent impugned Order is not - 41 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 sustainable and the same is required to be set aside by remanding the matter to the reference Court to hear the parties afresh and pass appropriate Orders on the claim of the appellants for enhancement of compensation after affording sufficient opportunities in accordance with law. It is made clear that the amounts which have already been paid by the respondent-BUDA and admittedly received by the Appellant may also be taken into consideration while determining the claim for enhancement.

35. With the above observation and for the foregoing reasons, following:

ORDER

a) The appeal is allowed. b) The impugned Order passed in LAC No.28/2010 dated 13.07.2017 on the file of II Additional Senior Civil Judge, Vijayapura is set aside.-. 42 - NC:

2023. KHC-K:9018 MFA No.201826 of 2017 c) The matter is remanded to the reference Court. d) All contentions with regard to determination of compensation payable to the appellants are kept open to be urged before the reference Court. e) Since, the parties are represented by their learned counsels they shall appear before the reference Court on 20.01.2024 and the reference Court after affording sufficient opportunities to the parties shall dispose-off the matter within an outer limit of six months thereafter. Sd/- JUDGE SBS, RL

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