

IN THE HIGH COURT OF KARNATAKA AT BENGALURUDATED THIS THE 4TH DAY OF MARCH, 2016

:PRESENT:

THE HON'BLE MR. JUSTICE N.K. PATIL**AND****THE HON'BLE MRS. JUSTICE RATHNAKALA**M.F.A.No. 1568 of 2012 (LAC)Between:

1. Andanappa,
Aged about 62 years,
S/o. K. Rangaiah,
No.96/A, Sharada Colony,
Basaveshwara Nagara,
Bangalore-75.
2. R. Huchanna,
Aged about 60 years,
S/o. K. Rangaiah,
No. 96/A, Sharada Colony,
Basaveshwara Nagara,
Bangalore-75.
3. R. Ravikumar,
Aged about 35 years,
S/o. Late K. Boraiah,
No.669, 12th Cross,
5th Main, M.C. Layout,
Vijayanagar, Bangalore-40.

....Appellants

(By Sri. P.V. Chandrashekar, Advocate)

And:Land Acquisition Officer,
Bangalore Development Authority,

Kumara Park West,
Bangalore-20.

....Respondent

(By Sri. Mari Gowda, Advocate)

This M.F.A. is filed under Section 54(1) of Land Acquisition Act, against the judgment and award dated 26/09/2011, passed in L.A.C. No.75/2009, on the file of the II Additional City Civil and Sessions Judge, Bangalore (CCH No.17), allowing the reference petition for enhanced compensation.

This M.F.A. coming on for Hearing this day, **N.K. PATIL J**, delivered the following:

:J U D G M E N T:

This appeal by the claimants/appellants is directed against the judgment and award dated 26/09/2011, passed in L.A.C. No.75/2009, by the II Additional City Civil and Sessions Judge, Bangalore (CCH No.17), (hereinafter referred to as 'Reference Court' for short), so far as it relates to rejecting the claim made under Section 18 of L.A.Act for higher compensation.

2. It is the case of the appellants that, Land bearing Sy.No.43, measuring 01 acre situate at Laggere village, Yashwanthapura Hobli, Bangalore North Taluk,

belonging to them has been notified and acquired by the Land Acquisition Officer, Bangalore Development Authority, for the purpose of 'widening of outer ring road' vide Preliminary notification dated 27.12.2000 under Section 17(1) of B.D.A. Act, published in the Karnataka Gazette dated 13.12.2001, followed by Final Notification dated 14.08.2002 issued under Section 19(1) of Bangalore Development Authority Act. Thereafter, the Land Acquisition Officer has passed the award on 24.9.2004, fixing the market value at ₹9,25,000/- per acre. Being not satisfied with the same, the Appellants have filed a petition under Section 18 (3) (b) of L.A. Act, which came to be allowed in LAC 140/2006 directing the Land Acquisition Officer, to refer the matter to Civil Court both under Sections 18,30 and 31 (2) of the said Act. Accordingly, it has been referred to II Additional City Civil and Sessions Judge, Bangalore and numbered as LAC 75/2009.

3. The said matter had come up for consideration before the Reference Court, which in turn, after

appreciating the oral and documentary evidence and other materials available on file, taking into consideration the purpose for which the land has been notified and acquired, has allowed the reference under Sections 30 and 31(2) of the Land Acquisition Act and rejected the claim under Section 18 of the Land Acquisition Act for higher compensation. Being aggrieved by the said judgment and award, the appellants, have presented this appeal.

4. We have heard learned counsel appearing for appellants and learned counsel appearing for respondent.

5. The only principal submission canvassed by the learned counsel appearing for appellant Sri. P.V.Chandrashekhar is that, the reasoning given by the Reference Court in para-12 of its judgment cannot be sustained and is liable to be set aside at threshold. To substantiate the said submission, he quick to point out taking through the relevant provisions of Section 23(1) of L.A. Act, that the determination of compensation of

the market value of the land is from the date of publication of the notification under Section 4(1) of L.A.Act i.e. under Section 17(1) of Bangalore Development Act. But this aspect of the matter has not been appreciated, considered or looked into by the Reference Court. Therefore, he submitted that the reasoning given by the Reference Court for rejecting the claim made by the appellants under Section 18(1) of L.A.Act, cannot be sustained and is liable to be set aside.

6. Per contra, learned counsel appearing for respondent, inter-alia, contended and submitted that Section 23(1) of L.A. Act has not been looked into or considered by the Reference Court. Therefore, he submitted that the appropriate orders may be passed to decide the matter in consonance with Section 23(1) of L.A.Act and all the contentions urged by both the parties may be left open.

7. After careful considerations of the submissions made by learned counsel appearing for both the parties

and after perusal of the grounds urged in the memorandum of appeal, including the impugned judgment and award, it emerges that, there is no dispute in the land in question has notified and acquired and award has been passed by the Land Acquisition Officer. It is also not in dispute that, the petition filed under Section 18(3)(b) of the LA Act came to be allowed in LAC No.140/2006 directing the Special Land Acquisition Officer to refer the matter to Civil Court and accordingly, it is referred to II Additional City Civil and Sessions Judge, Bangalore and numbered as LAC 75/2009 and the reference made under Sections 30 and 31(2) of the Land Acquisition Act has been rightly allowed by the Reference Court and erred in rejecting the claim made under Section 18(1) of L.A. Act, for enhancement. Therefore, the only question that remains for consideration as rightly pointed out by the learned counsel appearing for appellants is, whether the Reference Court is justified in rejecting the claim of the appellants under Section 18(1) of L.A. Act, is

sustainable in law?. It is significant to note that, as per Section 23 (1) of L.A. Act, the relevant date for determination of compensation is, the publication in the official gazette and not the date of notification. In the instant case, the publication of notification in the Gazette is 13.12.2001. But this aspect of the matter has not been considered or appreciated by the Tribunal. Therefore, we are of the considered view that the reasoning given by the Reference Court for rejecting claim made under Section 18 of L.A. Act cannot be sustained and is liable to be set aside.

8. For the foregoing reasons, the appeal filed by the appellants is allowed in part.

The impugned judgment and award dated 26/09/2011, passed in L.A.C. No.75/2009, by the II Additional City Civil and Sessions Judge, Bangalore (CCH No.17), is hereby set aside and the matter stands remitted back to the jurisdictional Reference Court for reconsideration afresh, with a direction to pass appropriate order, in consonance with Section 23(1) of

L.A. Act, and dispose of the same, after affording reasonable opportunity of hearing to the appellants and respondent personally or through their counsel and dispose of the same, as expeditiously as possible.

The appellants and respondent are directed to appear before the Reference Court either personally or through their counsel on **2nd April 2016 at 11.00 a.m** to take further dates of hearing.

Office is directed to refund court fee paid by the appellants on the memorandum of appeal in accordance with law.

Further, the office is directed to return the entire original records to the jurisdictional Reference Court immediately.

SD/-
JUDGE

SD/-
JUDGE

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