

**IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH**

DATED THIS THE 12<sup>TH</sup> DAY OF SEPTEMBER, 2017

PRESENT

**THE HON'BLE MR.JUSTICE L. NARAYANA SWAMY**

AND

**THE HON'BLE DR.JUSTICE H.B. PRABHAKARA SASTRY**

MFA No.23383/2013 (LAC)

C/W

MFA No.103156/2014

IN MFA No.23383/2013

BETWEEN:

H.M.SHARANABASAVARAJ S/O LATE VEERAYYA,  
AGED ABOUT 57 YEARS, OCC: AGRICULTURE,  
R/O KUDITHINI VILLAGE,  
TALUK: BELLARY, DIST: BELLARY.

...APPELLANT

(BY SRI.SADIQ N.GOODWALA, ADV.)

A N D :

1. THE LAND ACQUISITION OFFICER CUM  
ASSISTANT COMMISSIONER, BELLARY,  
BELLARY REVENUE SUB-DIVISION, BELLARY.
2. THE EXECUTIVE ENGINEER,  
ZILLA PANCHAYAT ENGINEERING DIVISION, BELLARY.
3. THE DEPUTY COMMISSIONER,  
BELLARY.

...RESPONDENS

(BY MISS.H.R.AMARAVATHY, HCGP FOR R1 & R3,  
SRI.SHIVARAJ HIREMATH, ADV. FOR R2)

THIS APPEAL IS FILED UNDER SECTION 54(1) OF LA ACT, 1894, AGAINST THE JUDGMENT AND AWARD DATED 26.04.2013 PASSED IN LAC NO.4/2011 ON THE FILE OF THE FIRST ADDITIONAL SENIOR CIVIL JUDGE, AT BELLARY, PARTLY ALLOWING THE REFERENCE PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA No.103156/2014

BETWEEN:

THE EXECUTIVE ENGINEER,  
ZILLA PANCHAYATH ENGINEERING DIVISION,  
(RURAL WATER SUPPLY & SANITATION DIVISION),  
HOSPET ROAD, 2<sup>ND</sup> GATE, COWL BAZAR,  
BALLARI – 583 102.

...APPELLANT

(BY SRI.SHIVARAJ HIREMATH, ADV.)

AND:

1. SRI.H.M.SHARANABASAVARAJ  
S/O LATE VEERAYYA  
AGED ABOUT 58 YEARS,  
R/O KUDITHINI VILLAGE,  
BALLARI TALUK, BALLARI DISTRICT.
2. THE LAND ACQUISITION OFFICER  
CUM ASSISTANT COMMISSIONER, BELLARY,  
BELLARY REVENUE SUB-DIVISION,  
OFFICE OF DEPUTY COMMISSIONER COMPOUND,  
BALLARI-583101.
3. THE DEPUTY COMMISSIONER,  
BALLARI- 583 101.

...RESPONDENTS

(BY SRI.RAVI V.HOSAMANI, ADV. FOR R2 AND R3,  
SRI.SADIQ N.GOODWAWLA, ADV. FOR R1)

THIS APPEAL IS FILED UNDER SECTION 54(1) OF THE L.A., ACT, 1894 AGAINST THE JUDGMENT AND AWARD DATED 26.04.2013, PASSED IN LAC NO.4/2011 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE, BELLARY AWARDED COMPENSATION OF RS.12 LAKHS PER ACRE.

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, L. NARAYANA SWAMY J., DELIVERED THE FOLLOWING:

**JUDGMENT**

The appeal in MFA No.23383/2013 is filed by the owner of the land with a prayer to modify the judgment and award dated 26.04.2013 passed in LAC No.4/2011 by enhancing the compensation to Rs.13,00,000/- per acre, whereas the appeal in MFA No.103156/2014 is filed by the Executive Engineer, Zilla Panchayath, Ballari seeking to set aside the ex-parte judgment and award passed in LAC No.4/2011 dated 26.04.2013.

2. In the appeal filed by the owner where the enhancement is sought has taken a specific ground that the reference Court, i.e., the First Additional Senior Civil Judge, Ballari has not examined Exs.P6 to P8, which show the particulars with regard to market value of the land which was acquired by respondent No.1. Ex.P6-sale deed discloses that, an acre of dry land bearing Sy.No.670/B2 was sold for Rs.25,00,000/- by sale deed dated

02.02.2010, i.e., prior to the 4(1) Notification dated 12.07.2010. He also relied upon an order passed in LAC No.30/2013 and connected matters by the First Additional Senior Civil Judge, Ballari dated 01.03.2016, wherein in respect of the lands similarly situated close to the land, which was acquired in the instant case, in which it was enhanced to Rs.30,00,000/- per acre. Hence, the submission of the learned counsel for the owner is for enhancement of the compensation to Rs.30,00,000/- per acre.

3. In the appeal filed by the Executive Engineer, Zilla Panchayath, Ballari, the grounds taken are that, in Ex.P5 dated 20.07.2011, the order passed under Section 11(1) of the Land Acquisition Act in No.43/2008-09 in respect of Sy.No.670/B2 kushki land, Rs.25,00,000/- has been the sale amount by the sale deed dated 02.02.2010, which was referred by the owner, as against the same, Rs.12,00,000/- has been awarded. However, in respect of

Sy.No.608/A, which was also a kushki land measuring 1 acre 25 guntas, the sale consideration is Rs.1,25,000/- in the sale deed dated 06.02.2010. Similarly, in respect of Sy.No.620/B5 kushki land measuring 3 acres, Rs.2,00,000/- per acre was the sale consideration in the sale deed dated 04.05.2010 and lastly, in Sy.No.412/B3 kushki land measuring 1 acre, Rs.2,00,000/- per acre was the sale consideration in the sale deed dated 04.09.2010. When these are all the instances which were available, the reference Court has considered only the sale deed dated 02.02.2010, which was four days prior to the 4(1) Notification, but it has not considered the subsequent sale deeds dated 06.02.2010, 04.05.2010 and 04.09.2010. There cannot be a geometrical difference between Rs.25,00,000/- to Rs.1,25,000/-, Rs.2,00,000/- in respect of the land which was close in proximity. This shows that the learned Judge has not applied his mind.

4. It is further submitted that after acknowledging the notice from the reference Court, there was an internal communication between the higher officials, during this process, the reference proceedings were closed by placing the Executive Engineer, Ballari as ex-parte. Hence, the learned counsel submitted that the judgment and award is required to be set aside and an opportunity be given to the respondents to place their case before the reference Court.

5. The learned Government Pleader who supports the prayer of the Executive Engineer, Zilla Panchayath, Ballari submitted that immediately after service of notice steps have been taken, but before making their appearance, the proceedings were disposed of by placing them ex-parte.

6. Heard the learned counsel appearing for both the parties.

7. Primarily in respect of placing these official respondents as ex-parte, it is an hour to make an observation. In the case of this nature where an enhancement is sought by the owner on various grounds and for the purpose of enhancement, on many occasions, a sale deed of the adjoining lands, yield certificate or some certificates showing sale price would be produced. Unless it is properly examined by the beneficiary or by the Government, it would result in awarding the compensation in an artificial manner. It must be the one such case, we are coming across, in the instant case.

8. For the purpose of enhancement, the owner has relied upon Exs.P5 and P6. Ex.P6 is the sale deed which has taken place on 02.02,2010 where Rs.25,00,000/- was the sale consideration in respect of a land in Sy.No.670/B2, which is kushki land. Ex.P6 is dated 02.02.2010 whereas the 4(1) Notification was issued on 12.07.2010, the difference between them is about five

months. It is a kushki land. Since the said land value seems to be higher, this has to be compared with other materials on record.

9. Rs.25,00,000/- is in respect of one acre of land in Sy.No.670/B2, whereas in other similar lands in Sy.No.608/A, 620/B5 and 412/B3, the value per acre ranges from Rs.1,25,000/- to Rs.2,00,000/-. It is not coming out from the appellant who has approached this Court for enhancement as to what is the reason for this huge difference between the land similarly situated. Whoever approaches this Court, he should approach this Court with clean hands and whoever seeks equity, he should make out a case for equitable relief. The appellant seeks Rs.30,00,000/-, for which he refers an order passed in LAC No.30/2013 passed by the First Additional Senior Civil Judge, Ballari and he has not made submission as to why the similarly situated lands fetch only meager amount of Rs.1,25,000/- to Rs.2,00,000/-. The person who



approaches the Court through the learned counsel and who is the officer of the Court, he should place all the materials and he should not hide anything from the Court. It is the maxim which applies squarely to the facts and circumstances, i.e., *suppressio veri, expressio falsi*, namely, who have suppressed any material, which is to be termed as expressly falsehood.

10. When Ex.P5 was relied upon despite of the fact that respondents were placed ex-parte, it is the fundamental duty of the learned Judge to go into all the aspects of the matter. It is presumed that he must have gone through all the materials, since all the materials have been placed in Ex.P5, but he focused only Sy.No.670/B2 instead of going further. That itself is not an occasion for us to interfere against the order of the learned Judge. However, it is expected that, when a document is relied on by a party, the party should rely on the same on its wholeness and he should not confine to the smaller

extent, which is in his favour. The learned Judge also wherever a document is sought to be looked into, he should look into in its wholeness and not in respect of one particular entry. Unless this is done, the things would not have happened as it is happened in the instant case.

11. With these observations, we have to continue our expressions made in the earlier occasions. If the official of the respondents who served and placed ex-parte, had they really made attempts to appear immediately after service of notice, this would not have happened. This is happened only because they placed ex-parte. Placing ex-parte or restraining them from entering appearance for different reasons, may be to help out the petitioner who approached the Court or out of negligence. In case of enhancement as it is made in the instant case, these official respondents in their personal capacity, they would not lose anything. However, the State has to pay from the public money again it is loss to the State Exchequer.

Under these circumstances, in case wherever the respondents are served and unrepresented or placed ex-parte or any other reasons, any enhancement is made, they have to pay the enhanced amount from their personal capacity for their negligence from appearing before the Court and the State shall not be burdened from making heavy payment.

12. With these observations, the appeal filed in MFA No.103156/2014 is allowed and judgment and award passed in LAC No.4/2011 is set aside and the matter is remanded to the reference Court. The reference Court is further directed to pass an appropriate order after affording an opportunity to both the parties at the earliest not less than six months from the date of receipt of a copy of this order. Both the parties are directed appear before the reference Court without awaiting further notice on 16.10.2017.

The appeal filed by the owner in MFA No.23383/2013 is disposed of.

Ordered accordingly,

In view of the disposal of the appeal, I.A.No.2/2015 filed in MFA No.103156/2014 does not survive for consideration.

The Court fee is directed to be refunded to both the parties.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

MBS/-