



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 11TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD

AND

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO.100034 OF 2024 (LA-RES) C/W

WRIT APPEAL NO.100008 OF 2024 (LA-RES)

IN WRIT APPEAL NO.100034 OF 2024:

BETWEEN:

LATE DR. H. BASANNA
BY HIS LRS THE APPELLANTS 1 TO 3 HEREIN

1. SMT. H.B. SHAMBHAVI D/O. LATE DR. H. BASANNA,
(W/O. DR. JYOTHI PRADEEP), AGE: 59 YEARS,
OCC.: ASSOCIATE PROF., R/AT. "JYOTI" 1ST MAIN,
4TH CROSS, BASAVESHWARA NAGAR,
BALLARI-583101.
 2. DR. H.B. NAGARAJ S/O. LATE DR. H. BASANNA,
AGE: 58 YEARS, OCC.: PROFESSOR,
DEPT. OF CIVIL ENGINEERING BMSCE
#147, ROYAL LAKE FRONT RESIDENCY,
J.P. NAGAR, 6TH PHASE, BENGALURU-76.
 3. SHRI H.B. NATARAJ S/O. LATE DR. H. BASANNA,
AGE: MAJOR, OCC.: CHEMICAL ENGINEER,
R/O. NOW AT FLAT NO.22, BLD NO.46, BLOCK 10,
YOUSEF AL BADER STREET, SALMIYA, KUWAIT.
- APPELLANTS
- (BY SRI. ASHOK R. KALYANASHETTY, ADVOCATE)

AND:

1. THE BALLARI NAGAR PALIKE,
(BALLARI CITY CORPORATION)
BY IT'S COMMISSIONER, BALLARI-583101.





2. THE DEPUTY COMMISSIONER,
BALLARI DISTRICT, BALLARI-583101.
3. THE TAHSILDAR,
BALLARI TALUK, AT: BALLARI,
DIST. BALLARI-583101.
4. THE STATE OF KARNATAKA
BY IT'S COMMISSIONER AND SECRETARY
DEPT. OF MUNICIPAL ADMINISTRATION,
M.S. BUILDING, BENGALURU-560001.

- RESPONDENTS

(BY SRI. SHARANABASAVARAJ C., ADVOCATE FOR R1;
SRI. PRAVEEN K. UPPAR, AGA FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, SUITABLY MODIFY OR VARY THE ORDER DATED 3.11.2023 PASSED IN WP NO.102472/2022 AND ALLOW THE SAID WRIT PETITION BY GRANTING THE RELIEFS AS PRAYED FOR THEREIN IN ENTIRETY IN THE INTEREST OF JUSTICE AND EQUITY.

IN WRIT APPEAL NO.100008 OF 2024:

BETWEEN:

THE BALLARI NAGAR PALIKE
(BALLARI CITY CORPORATION)
AT. BALLARI-583101
REPRESENTED BY IT'S COMMISSIONER
BY SRI. KHALEEL SAB S/O GUDUSAB

- APPELLANT

(BY SRI. SHARANABASAVARAJ C., ADVOCATE)

AND:

LATE DR. H. BASANNA
BY HIS LRS THE PETITIONERS 1 TO 3:

1. SMT. H.B. SHAMBHAVI W/O DR. PRADEEP JYOTHI
AGE. 59 YEARS, OCC. ASSOCIATE PROFESSOR,
ASM COLLEGE (W), R/AT. "JYOTI", 4TH CROSS,
I MAIN, BASAVESHWAR NAGAR, BALLARI-583101.
2. DR. H.B. NAGARAJ S/O LATE DR. H.BASANNA,



AGE: 58 YEARS, OCC. PROFESSOR/HOD,
BMSCE COLLEGE, R/AT. 147, RLF RESIDENCY,
6TH PHASE, J.P. NAGAR, BENGALURU-560076.

3. SHRI H.B. NATARAJ S/O LATE DR. H.BASANNA
AGE: 55 YEARS, OCC. CHEMICAL ENGINEER
AT KUWAIT C/O PROFESSOR DR.H.B.NAGARAJ,
NO.147, RLF RESIDENCY, 6TH PHASE,
J.P. NAGAR, BENGALURU-560076.
4. THE DEPUTY COMMISSIONER,
DIST. BALLARI, BALLARI-583101.
5. THE TAHSILDAR,
TQ. BALLARI, AT BALLARI-583101.
6. THE STATE OF KARNATAKA
BY ITS COMMISSIONER OF SECRETARY
DEPARTMENT OF MUNICIPAL ADMINISTRATION,
M.S. BUILDING, BENGALURU-560001.

- RESPONDENTS

(BY SRI. ASHOK R. KALYANASHETTY, ADVOCATE FOR R1-R3;
SRI. PRAVEEN K. UPPAR, AGA FOR R4 TO R6)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW
THIS WRIT APPEAL AND SET ASIDE THE ORDER DATED
03.11.2023 PASSED IN WRIT PETITION NO.W.P.102472/2022
(LA-RES) & ETC.,

THESE WRIT APPEALS, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN
AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD
AND
THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD)

These cross *intra-court* appeals are by the petitioners and one of the respondents in W.P. No.102472/2022. The appeal by the petitioners is in W.A. No.100034/2024 and the appeal by the first respondent [*the Ballari Nagara Palike*] in the writ petition is in Writ Appeal No.100008/2024. These parties for reasons of convenience are referred to as the petitioners and the Corporation respectively.

2. The writ Court, by the impugned order dated 03.11.2023, has favoured the writ petition directing the Corporation to determine the market value to pay compensation for utilizing the petitioners' property in No.355, B3, measuring 40 ft. X 110 feet in Shastri Nagar, Ballari [for short, '*the subject property*'] under the Right to Fair Compensation in Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short, '*the Right to Fair Compensation Act*']. The writ Court has also directed the Corporation to pass such award taking into consideration the value of the subject property as of the year



2002. The Corporation is aggrieved by the direction to pass award to pay compensation, and the petitioners are aggrieved because the direction to pay compensation is not under the Right to Fair Compensation Act.

3. The undisputed facts and circumstances are that the petitioners' father instituted a suit against the Corporation in O.S. No.5/1994 for declaration of title to the subject property and for decree for possession alleging that the Corporation had utilized this property for formation of a metal road without paying any compensation. This suit is decreed on 02.12.2002 declaring the petitioners' father the owner of the subject property and for delivery of possession of this property to him. The civil Court has decreed the suit answering Issues such as whether the petitioners' father has proved his title to the subject property, whether the Corporation has illegally formed a metal road and whether the petitioners' father is entitled for possession of the property utilized for forming a metal road.



4. The petitioners' father has commenced execution proceedings in E.P. No.242/2006 for delivery of possession of the subject property in execution of such decree, but he has not prosecuted the same. The execution proceedings in E.P. No.242/2006 are closed for default. It is after the closure of these proceedings in the year 2014, the petitioners' father has filed the present petition for direction to the Corporation [*and the other respondents*] to determine the market value for the subject property and pay compensation in accordance with the provisions of the Right to Fair Compensation Act.

5. The writ Court, while answering the Corporation's defence that the petitioners [*who have continued the petition after the demise of their father*] have lost their right under the decree in O.S. No.5/1994 because the decree is not executed within 12 years from 02.12.2002, has opined that the petitioners may have lost the right to execute the decree to recover possession but the title to the subject property is not exhausted. The writ court has also opined that the Corporation, which has not called in



question the decree and accepted the civil Court's finding that the subject property is utilized for formation of a metal road, cannot deny the liability to pay compensation to the petitioners. On the question of the market value of the subject property, the writ Court has observed that even according to the petitioners the subject property is utilized way back in the year 1994 and the decree is in the year 2002 but they have not initiated any proceedings seeking compensation until the year 2022, and therefore, it would be just and reasonable directing to determine the market value as of the year 2002 for the purposes of passing an award.

6. Mr. Sharanabasavaraj C., the learned counsel for the Corporation who is supported by Ms. Ranjitha Alagawadi, submits that the proceedings in the E.P. No.242/2006 indicates that the petitioners' father did not prosecute the same because the decree could not be executed as one of the report by the bailiff is that the adjacent owners had encroached 8 feet on either side leaving only an area of 24 feet for the purposes of a road. The learned counsels also canvass that the Corporation has



recently traced documents that will show that the petitioners' father never held title to the subject property. This Court must observe that these submissions are in addition to the submissions that because the decree in O.S. No.54/1994 is not executed within 12 years these petitioners cannot seek any compensation.

7. Sri. Ashok R. Kalyanashetty, the learned counsel for the petitioners, on the other hand, submits that this Court must interfere to clarify the writ Court's direction to pass award must be for the purposes of compensation under the *Right to Fair Compensation Act* with all the statutory benefits admissible thereunder and unless there is such clarification, the Corporation will only determine the market value in a paltry sum. The learned counsel emphasizes that the writ Court's finding that the Corporation, which has accepted the civil Court's findings both on petitioners' title and that the subject property is utilized illegally for formation of a metal road, cannot deny the petitioners' right to receive compensation is unexceptional.



8. This Court is of the considered view that the Corporation, which has not called in question the judgment and decree in O.S. No.54/1994, is precluded in law from calling in question the petitioners' title to the subject property or that the subject property is utilized for formation of a metal road. As such, it would be of no avail to the Corporation to contend that it can demonstrate, either because of the proceedings in the execution case or because of some other documents, that the petitioners did not have title to the subject property. Similarly, it would be of no avail to the Corporation to deny the petitioners' case that the subject property is used for formation of a metal road.

9. This Court is not persuaded to interfere with the writ Court's opinion that the failure by the petitioners' father to prosecute the E.P. No.242/2006 for enforcement of the decree may foreclose the right to seek possession but will not eclipse the right to the title or to receive compensation for illegal utilization of such property. Consequentially, it is concluded that the direction to the Corporation to the compensation is well founded.



10. The writ Court has directed the Corporation to award compensation for utilization of the subject property taking the land value as it existed in the year 2002 without any further clarification. The petitioners propose to contend that they must be paid compensation under the Right to Fair Compensation Act, and the question whether they must be paid compensation under this Act, apart from all other factors and consequences in law, must be examined in the light of the undisputed fact that the petitioners' father [*way back in the year 1994*] contended that the Corporation had illegally formed a metal road utilizing the subject property and that he did not seek any direction for acquisition or payment of compensation until the present writ petition in the year 2022 and chose to prosecute suit to recover possession. These will be material circumstances and must be considered to answer the afore question.

11. This Court is of the considered view that if the possession of the subject property was taken way back in the year 1994 and no action was taken until the year 2022 to claim compensation, the writ Court is justified in opining



that the market value for the purposes of compensation must be as of the year 2002 [*the year in which the suit is decreed bringing to finality all questions inter se the petitioners' father and the Corporation*] and the compensation must be determined under the erstwhile Land Acquisition Act, 1894 with the petitioners being entitled to all statutory benefits but computed from the date of the decree in O.S. No.54/1994, viz., 02.12.2002. This clarification would be necessary to ensure that there is no precipitation and the petitioners' claim is settled quickly. Hence, the following:

ORDER

The writ appeals are disposed of directing the Corporation to determine market value of the subject property as of the year 2002 and pass award under the Land Acquisition Act, 1894 permitting the petitioners all statutory benefit computed with effect from 02.12.2002. The Corporation shall ensure that this award is passed in compliance with this Court's order within a period of eight [8] weeks, and it is needless to observe that if the petitioners are aggrieved by the award as aforesaid, they must pursue



their remedy as would be permissible under such enactment.

Sd/-
(B.M.SHYAM PRASAD)
JUDGE

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

BVV, CT:VP
LIST NO.: 1 SL NO.: 26