



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 103570 OF 2023 (LA-RES)

BETWEEN:

1. SMT. SUVARNA W/O AMAREGOUDA GOUDAR
@ HUCHANUR
AGE: 53 YEARS, OCC: AGRICULTURIST,
R/O REVADIHAL VILLAGE,
HUNAGUND TALUKA,
BAGALKOTE-587125.
2. AKSHATA W/O RAMESH SOBARAD,
AGE: 32 YEARS,
OCC: AGRICULTURIST
R/O REVADIHAL VILLAGE,
HUNAGUND TALUKA
BAGALKOTE-587125.
3. ROHINI W/O RACHAPPA SOBARAD,
AGE 31 YEARS, OCC. AGRICULTURIST,
R/O REVADIHAL VILLAGE,
HUNAGUND TALUKA
BAGALKOTE-587125.
4. VIJAYKUMAR S/O AMAREGOUDA GOUDAR
@ HUCHANUR
AGE: 27 YEARS, OCC: AGRICULTURIST,
R/O REVADIHAL VILLAGE,
HUNAGUND TALUKA,
BAGALKOTE-587125.
5. AJAYKUMAR S/O AMAREGOUDA GOUDAR
@ HUCHANUR





AGE: 25 YEARS, OCC: AGRICULTURIST,
R/O REVADIHAL VILLAGE,
HUNAGUND TALUKA,
BAGALKOTE-587125.

...PETITIONERS

(BY SRI. MANJUNATH A. KARIGANNAVAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS SECRETARY TO THE REVENUE DEPARTMENT
VIKAS SOUDHA, DR. AMBEDKAR VEEDHI,
BENGALURU-560001.
2. DEPUTY COMMISSIONER
BAGALKOTE-587104.
3. THE ADDITIONAL SPECIAL
LAND ACQUISITION OFFICER
UKP NO.1, NAVANAGAR,
BAGALKOTE-587103.

...RESPONDENTS

(BY SRI. HANAMANTHARAYA LAGALI, AGA)

THIS WP IS FILED UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA PRAYING TO

A) ISSUE A WRIT OF CERTIORARI QUASHING THE
ENDORSEMENT BEARING NO.LAQ/CR-50/11-12/3974 DATED
27-02-2023 ISSUED BY RESPONDENT-3 VIDE ANNEXURE-G.

B) ISSUE A WRIT OF MANDAMUS DIRECTING RESPONDENTS
TO REFER THE PETITION FILED UNDER SECTION 28A OF THE
LAND ACQUISITION ACT, 1984 BEFORE APPROPRIATE COURT
VIDE ANNEXURE-E.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

**ORDER**

The land bearing Sy.No.19/2 situated at Revadihal village, Hunagunda Taluka, Bagalkote district measuring 2 acres 28 guntas out of 9 acres 7 guntas was proposed to be acquired for the purpose of Ramthal (Marol) Lift Irrigation Canal, which culminated in passing an award determining the market value of the subject land at Rs.60,000/- per acre. Being dissatisfied, the petitioners filed a petition under section 18(2) of the Land Acquisition Act, 1894 (for short, hereinafter referred to as 'the Act') on 14.03.2014 before the respondent No.3. However, the reference application was not referred to the Reference Court as stated under Section 18(3)(b) of the Land Acquisition Act, 1894.

2. Pending consideration of the reference application, the Reference Court enhanced the market value of the land, which was acquired under the very same notification at Rs.6,43,806/- per acre by treating it as an irrigated land. The award was passed by the Reference Court on 11.01.2021. The petitioners filed an application under Section 28A of the Act, 1894 on 06.02.2021 with respondent No.3 for redetermination of the compensation on the basis of the enhanced compensation awarded in L.A.C.No.7/2020. Respondent No.3 issued the impugned endorsement dated 27.02.2023, rejecting the application filed by the petitioners under Section 28A of the Act, 1894 stating that the petitioners have not filed miscellaneous application under Section 18(3)(b) of the Act, 1894, for referring the petition to the Reference Court, and



therefore, the provisions of Section 28A of the Act, 1894 are not applicable.

3. Learned counsel for the petitioners submits that filing of a reference application is not a condition precedent for claiming benefits under Section 28A of the Act, 1894. In support, he places reliance on the decision of the Hon'ble Supreme Court in the case of ***Bir Wati and Others vs. Union of India and another*** reported in ***AIR 2017 SC 4069***.

4. On the other hand, learned Additional Government Pleader for the State would submit that the petitioners having filed reference application and having not chosen to file a miscellaneous application for referring the application to the Reference Court as stated under Section 18(3)(b) of the Act, 1894 is not entitled for the benefit under Section 28A of the Act, 1894. Therefore, respondent No.3 has rightly issued the endorsement, and the same does not warrant any interference by this Court.

5. Considered the submissions made by learned counsel for the parties.

6. It is undisputed that the petitioners had filed a reference application on 14.03.2014 with respondent No.3 and respondent No.3 did not refer the application to the Reference Court within 90 days and the petitioners also did not make any effort to file an application under Section 18(3)(b) of the Act, 1894 for referring the application to the Reference Court. Meanwhile, one of the land losers whose land was acquired



under the very same notification filed a reference petition under Section 18 and the Reference Court re-determined the market value of the land acquired under the same notification at Rs.6,43,806/- per acre by treating it as an irrigated land.

7. Section 28A of the Act, 1894 deals with redetermination of the amount of compensation on the basis of the award of the Court, and it states that where an award is passed under this Act, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under Section 11, the persons interested in all other lands covered by the same notification under Section 4(1) and were also aggrieved by the award of the collector, may notwithstanding that they had not made an application to the collector under Section 18 by written application to the collector within three months from the date of the award of the Court, requires that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by this Court and proviso to the said Section states that, the application should be made within three months from the date, on which the award was pronounced, and the time requisite for obtaining a copy of the award shall be excluded. In the instant case, the petitioners submitted an application within the limitation prescribed.

8. The Hon'ble Supreme Court in the case of ***Bir Wati*** (supra), while dealing with the question whether a land loser whose application for reference has been dismissed on the ground of delay or who has not filed an application under



Section 18 for reference, has held that when an application of a landowner under Section 18 is dismissed on a ground of delay, then the said landowner is entitled to make an application under Section 28A, if other conditions prescribed therein are fulfilled. It was further held that receipt of compensation with or without protest person to the award of the land acquisition collector is of no consequences for the purpose of making a fresh application under Section 28A of the Act. Further held that, if a person has not filed an application under Section 18 of the Act, to make a reference, then irrespective of the fact, whether he has received the compensation awarded by the collector, with or without protest, he would be a person aggrieved within the meaning of Section 28A and would be entitled to make an application, when some other landowner application for reference is answered by the Reference Court.

9. Therefore, what emerges from the provisions contained in Section 28A of the Act, 1894 and the legal principles established by the Apex Court with reference to the Section is that, irrespective of the fact, whether the landlord has filed an application for reference under Section 18 of the Act, is entitled for making an application under Section 28A of the Act, or if the application for reference is dismissed on the ground of delay, even nonetheless, he is entitled to make an application to claim the benefit under Section 28A of the Act. Therefore, the impugned endorsement issued by respondent No.3 is contrary to the provisions contained in Section 28A of the Act, 1894. Accordingly, I proceed to pass the following:



ORDER

- i) The petition is ***allowed***.
- ii) The impugned endorsement dated 27.02.2023 issued by respondent No.3 at Annexure-G is hereby quashed.
- iii) Respondent No.3 to refer the petition filed by the petitioners under Section 28A of the Act, 1894 to the appropriate Court within a period of two months from the date of receipt of the certified copy of this order.

Sd/-
JUDGE

BKM,SSP
CT:GSM
List No.: 2 Sl No.: 12