

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024

PRESENT

THE HON'BLE MRS JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

MFA NO.4373 OF 2020 (LAC)

BETWEEN:

THE CHIEF OFFICER,
TOWN MUNICIPAL COUNCIL
HOLENARASIPURA -573211,
HASSAN DISTRICT

...APPELLANT

(BY SRI KESAVAREDDY M, ADVOCATE)

AND:

1. C MOHAMMAD FIROZ,
S/O LATE C ABDUL HAMEED,
AGED ABOUT MAJOR,
2. C FIYAZ AHAMED,
S/O LATE C ABDUL HAMEED,
AGED ABOUT MAJOR,
SINCE DEAD BY LR'S.
- 2(a) MADDI TASMIYA KOUSER,
W/O LATE C FIYAZ AHAMED,
AGED ABOUT 47 YEARS.
- 2(b) C FAIQA TASKEEN,
D/O C FIYAZ AHAMED,
AGED ABOUT 29 YEARS.
- 2(c) C CHINNAPAKKIR MOHAMMAD NABEEL

FARAZ,
S/O LATE C FIYAZ AHAMED,
AGED ABOUT 28 YEARS.

2(d) C CHINNPAKKIR ANIQA FARHEEN,
D/O LATE C FIYAZ HAMED,
AGED ABOUT 24 YEARS.

3. C SHABEER AHAMED,
S/O LATE C ABDUL HAMEED,
AGED ABOUT MAJOR,

ALL ARE RESIDENTS OF
HOLENARASIPURA TOWN,
KASABA HOBLI,
HOLENARASIPURA TALUK-573211,
HASSAN DISTRICT.

4. ASSISTANT COMMISSIONER
AND LAO, HASSAN-573128.

...RESPONDENTS

(BY SRI PRATHEEP K C, ADV. FOR R1, R3 & R2(A-D)
SMT AZRD J DUNDGE, AGA FOR R4)

THIS MFA IS FILED UNDER SECTION 54(1) OF THE LAND ACQUISITION ACT, AGAINST THE JUDGMENT AND AWARD DATED 30.01.2020 PASSED IN LAC.NO.180/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, HOLENARASIPUR, PARTLY ALLOWING THE REFERENCE PETITION FILED UNDER SECTION 18(1) OF LAND ACQUISITION ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 26TH MARCH, 2024 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **ANANT RAMANATH HEGDE J.**, PRONOUNCED THE FOLLOWING:

JUDGMENT

The Town Municipality, Holenarasipur, the beneficiary of land acquisition is before this Court challenging the judgment and award dated 30.01.2020 passed by the Senior Civil Judge, Holenarasipur in LAC No. 180/2013.

2. The appellant apart from raising a contention that the reference is barred by limitation, has also raised a plea that the compensation awarded by the court is on the higher side.

3. The appellant contends that the reference in LAC No.180/13 is beyond 3 years 90 days permitted under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'). To substantiate the contention on limitation, an application is also filed to incorporate a few additional facts as well as grounds in the appeal memo.

4. A memo is also filed along with additional documents to substantiate the plea relating to the limitation.

5. Certain admitted facts are as under:

- The land bearing Sy.No.92/2 having Municipal Katha No.4722/4442 measuring 13 guntas was the subject matter of land acquisition vide Section 4(1) notification dated 12.01.2007

under the Act of 1894. The award was passed on 20.07.2009. The award also takes note of the objection filed by a third person who also claimed a share in the compensation. The Special Land Acquisition Officer in his award has observed that the objections will be considered on merits or the amount will be deposited before the Civil Court. Later, the Special Land Acquisition Officer under Section 30 of the Act of 1894, referred the matter to the Court for adjudication.

6. The Reference Court vide order dated 12.04.2013 rejected the application by the third party and held that contesting respondents are entitled to compensation. Thereafter, the land loser on 22.05.2013 sought a reference seeking enhancement of compensation. The Reference Court partly allowed the claim for enhancement of compensation.

7. Aggrieved by the enhancement, the beneficiary is before this Court.

8. Learned counsel appearing for the appellant/beneficiary would urge that the reference was barred by limitation. The reference Court having held that the reference is filed beyond 3 years 90 days, could not have held that the petition is in time by applying Section 14 of the

Limitation Act, 1963 (for short, the 'Act of 1963') to exclude the time spent in a proceeding under Section 30 of the Act of 1894.

9. On the question of quantum, the learned counsel for the appellant urged that the reference Court erred in applying the valuation determined in another proceeding where Section 4(1) notification was published 2 years 10 months after the land acquired in the present case.

10. In support of his submission, the learned counsel for the appellant has relied on the following judgments:

1. Commissioner, Madhya Pradesh Housing Board and others vs. Mohanlal and Company reported in (2016) 14 SCC 199.

2. Bachan Singh vs. Dhian Das and others reported in (1973) 2 SCC 109.

3. Yeshwant Sahakari Kamgar Bank Ltd. vs. Assistant Provident Fund Commissioner, Solapur, and another reported in 2006 SCC Online Bom 1218.

4. True Zone Buildwell Pvt Ltd vs. Ved Pal FAO(OS) 169/2019 and CMS. APPEAL 39617/2019 & 47430/2019.

5. Janak Datwani vs. Kishin Datwani CS (OS) 155/2021 I.A.s 3707/2021.

6. State of Punjab and Another vs. Satinder Bir Singh reported in (1995) 3 SCC 330.

7. Kajari Lal Agarwala vs. The Union of India & Others reported in AIR 1966 SC 1538.

8. Mohammed Hasnuddin vs. The State of Maharashtra reported in AIR 1979 SC 404.

9. State of Karnataka vs. Laxuman reported in (2005) 8 SCC 709.

10. Annu Alias Kallappa vs. Sheshu Gundappa reported in AIR 1970 MYS 318.

11. Yeshwant Deorao Deshmukh vs. Walchand Ramchand Kothari reported in 1950 SCR 852.

12. Zafar Khan & Others vs. Board of Revenue, U.P & Others reported in 1984 (Supp) SCC 505.

13. Ajab Enterprises vs. Jayant Vegoiles And Chemical Pvt. Ltd reported in 1990 SCC Online Bom 28.

11. Learned counsel for the claimants defending the award would submit that the cause of action to file the petition seeking reference arose only after the disposal of the proceeding under Section 30 of the Act of 1894. The reference petition is filed within 90 days from the date of disposal of the proceeding under Section 30 of the Act of 1894.

12. The learned counsel for the claimants further submitted that the application for amendment of the appeal memo raising the contention of limitation and furnishing the details relating to the alleged service of notice of the award is not maintainable at the appellate stage.

13. It is also his submission that the documents sought to be produced along with the memo cannot be looked into as no application is filed making grounds under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

14. On the question of quantum, the learned counsel urged that the land acquired in LAC No.79/2012 referred to by the Reference Court was agricultural land whereas the land belonging to claimants of this case was non-agricultural land. Thus, he urged that the Reference Court is justified in placing reliance on the said award, though the land involved in the said case was acquired 2 years and 10 months later.

15. Learned counsel for the claimants has relied on the following judgments:

1. Madan and another vs. State of Maharashtra reported in (2014) 2 SCC 720.

2. Special Land Acquisition Officer vs. Fakirappa Yallappa Pujari reported in ILR 1996 KAR 951.

3. Raja Harish Chandra Raj Singh vs. Deputy Land Acquisition Officer and another reported in AIR 1961 SC 1500.

4. B L Sreedhar and others vs. K M Munireddy (dead) & others reported in (2003) 2 SCC 355.

5. K Lakshminarayana Sastry vs LAO reported in ILR 1994 KAR 2119.

16. This Court has considered the contentions raised at the bar. The following points arise for consideration:

(a) Whether the Reference Court justified in applying Section 14 of the Act of 1963 to hold that the reference is within the time limit prescribed?

(b) Whether the cause of action to file the reference petition arose after the disposal of the proceeding under Section 30 of the Act of 1894.

(c) Whether the appellant has made out grounds for allowing amendment and production of additional documents.

(d) Whether the Reference Court is justified in basing its judgment on the valuation determined in LAC No.79/2012 where land was acquired 2 years and 10 months after the acquisition of the land in question in the present case.

17. To decide the question of limitation, it is necessary to refer to Section 14 of the Act of 1963.

14. Exclusion of time of proceeding bona fide in court without jurisdiction -

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

2. In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such

proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

18. On perusal of the aforementioned provision, it is evident that Section 14 of the Act of 1963 can be applied if:

- (a) the plaintiff has been prosecuting with due diligence in good faith in another civil proceeding;
- (b) against the same defendant;
- (c) relating to the same matter in issue;
- (d) relating to the same relief;

19. As can be readily noticed, the relief sought in the Section 30 proceeding and the relief sought in the present proceeding are entirely different. Section 30 of the Act of 1894 proceeding deals with the rival claim relating to the compensation awarded whereas the proceeding under Section 18 of the Act of 1894 is for enhancement of compensation. It is also evident that the parties to both proceedings are different. More importantly, the appellant is not a party to the proceeding under Section 30 of the Act of 1894. Thus, Section 14 of the Act of 1963 has no application to the facts of the case. The judgments relied by the appellant namely,

1. *Commissioner Madhya Pradesh Housing Board and others vs. Mohanlal and Company reported in (2016) 14 SCC 199.*
2. *Bachan Singh vs. Dhian Das and others reported in (1973) 2 SCC 109.*

apply to the present case. Hence Section 14 of the Act of 1963 has no application to the present case.

20. Now the question is whether the reference petition is in time. Section 18 of the Act of 1894 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 land, the amount of 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 within Ninety days from the date of service of the notice from the Deputy Commissioner under sub-section (2) of section 12."

(3)(a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under sub-section(1), make a reference to the Court;

(b) if the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct

the deputy Commissioner to make the reference within such time as the Court may fix.

21. Learned counsel for the claimants submits that notice of the award under Section 12 of the Act of 1894 is not served on the land loser. In Ex.P.1 which is said to be the notice of the award dated 20.07.2009 the endorsement relating to service of notice is not found. In the award dated 08.06.2009, the objection of one Mirza Farman Ali is noted.

22. Admittedly, the Land Acquisition Officer has not adjudicated the claim of the objector. The Land Acquisition Officer has referred the dispute to the Court invoking Section 30 of the Act of 1894. The Reference Court has decided the claim vide judgment dated 12.04.2013 and held that the present respondents are entitled to compensation. The reference is sought within 90 days from adjudication under Section 30 of the Act of 1894.

23. Referring to the judgment of the Apex Court in **MADAN AND ANOTHER** supra, it is urged that the cause of action arises only after the adjudication under Section 30 of the Act of 1894 and not earlier than that. Paragraph 11 of the said judgment reads as under:

11. A cursory glance at the provisions of Sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the court. But, a closer scrutiny would indicate that the two sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the award is objected to by a beneficiary thereunder, Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the award would crystallise after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in the reference under Section 30 or in the civil suit, as may be.

24. In the said paragraph, the Hon'ble Apex Court has held that the right to receive the compensation under the award would crystallise only after apportionment is made in favour of a claimant. Only thereafter, the reference under Section 18 of the Act of 1894 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed.

25. Though, Section 18 of the Act of 1894 refers to service of notice under Section 12(2) of the Act of 1894 as the date to reckon the period of limitation, the effect of Section 30 proceeding under the Act of 1894 cannot be overlooked. This is more so in view of the language of Section 12 of the Act of 1894, which reads as under:

12. Award of Deputy Commissioner when to be final-(1) Such award shall be filed in the Deputy Commissioner's office and shall, **except as hereinafter provided, be final and conclusive evidence**, as between the Deputy Commissioner and the persons interested, whether they have respectively appeared before the Deputy Commissioner or not, of the true area and value of the land and apportionment of the compensation among persons interested.
(2) The Deputy Commissioner shall give immediate notice of his award to such of the persons interested as are not present personally or by the representatives when the award is made.

(Emphasis supplied)

26. Under Section 12 referred to above, the award once filed shall be final and conclusive evidence between the Deputy Commissioner and the persons interested. However, the expression "***except hereinafter provided be final and conclusive evidence***" in Section 12 of the Act of 1894 points to the inevitable conclusion that the finality of the award is made subject to other provisions of the Act of 1894.

27. The Act of 1894 enables reference challenging any portion of the award, be it to the measurement, apportionment, or compensation. If such an application is filed, under Section 30 of the Act of 1894, the Deputy Commissioner has to refer the application for adjudication to the Court. In such an event the award will attain finality subject to the decision of the Court.

28. The Act of 1894 though was enacted to enable the State to acquire the land by following the procedure; the Act also seeks to provide just compensation on account of the *compulsory acquisition* of land. The right to property though not a fundamental right is nevertheless a constitutional right under Article 300A of the Constitution of India. *Though the Act of 1894 is a pre-constitution law, in interpreting the provisions of the Act of 1894, the Court must bear in mind, the right to property guaranteed under Article 300A of the Constitution of India. Thus, the right to seek reference under Section 18 of the Act of 1894 must be understood keeping in mind Sections 12 and 30 of the Act of 1894, as well.*

29. It is also relevant to note the land loser's right to claim compensation was under the cloud as the third-party

objection was referred to the Court for adjudication. Thus, the award had not yet attained finality.

30. Though, it is urged that the land loser could have simultaneously lodged a claim under Section 18 of the Act of 1894 seeking enhancement, the land loser's entitlement under the award would attain finality only after the disposal of the application under Section 30 of the Act of 1894 filed by the third party. When the dispute on apportionment is referred to the Court under Section 30 of the Act of 1894, if the limitation to file an application seeking enhancement of compensation is reckoned from the date of the notice of the award, it will result in injustice to the party who is waiting for the final adjudication on the award which is the subject matter of a dispute.

31. *Sections 18 and 30 of the Act of 1894 have benevolent and remedial flavors ingrained in them. These provisions must be read into Section 12 of the Act of 1894 to reckon the starting point of limitation to seek reference. The said provisions have to be construed harmoniously to achieve the benevolent purpose imbibed in the said provisions. It is also relevant to keep in mind that the acquisition of land is a compulsory acquisition against the will of the land loser. This being the position, the expression "the award" referred to in*

Section 12 of the Act of 1894 has to be read as an 'award that has attained finality' to reckon the starting point of limitation to seek reference. If the land acquisition officer in his award itself takes into consideration the objection filed by a third party and thereafter refers the matter to the Court for adjudication under Section 30 of the Act of 1894, then the cause of action to seek reference must be construed to have arisen only after the disposal of the proceeding under Section 30 of the Act of 1894.

32. Thus, to compute the limitation for seeking reference under Section 18 of the Act of 1894, the expression "*within ninety days from the date of receipt of an application under sub-section (1), make a reference to the Court;*" appearing in Section 18(3)(a) of the Act of 1894, which refers to the objection to the "award" filed under Section 12 of the Act of 1894 has to be understood as the '**award which has attained finality**'. The conjoint reading of Sections 12, 18, and 30 of the Act of 1894, leads to the conclusion that the cause of action to seek reference under Section 18 of the Act of 1894 will arise only after the conclusion of the proceeding under Section 30 of the Act of 1894 initiated if any.

33. At this juncture reference should also be made to the law laid down by the Hon'ble Apex Court in **CHIMAN LAL**

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(1988) 3 SCC 751. The relevant portion in paragraph No. 4 reads as under.

4. The following factors must be etched on the mental screen:

- (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court..*
- (2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. **It is merely an offer made by the Land Acquisition Officer** and the material utilised by him for making his valuation cannot be utilised by the court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.*
- (3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.*

XXXX

(Emphasis supplied)

34. In the case on hand the Land Acquisition Officer himself has referred the third party claim for adjudication by the Court under Section 30 of the Act of 1894. In other words his "offer on compensation" is referred to Court for final adjudication. This being so, the interpretation that cause of action has arisen to seek reference once the award is pronounced or served on the land loser under Section 12 of the Act of 1984, aims at defeating the right guaranteed under Article 300A of the Constitution of India. Thus, the said interpretation is not accepted. And for the reasons recorded above this Court is of the view that there is a compelling reason to harmoniously construe the interplay among Sections 12, 18 and 30 of the Constitution of India to ensure that the right to property guaranteed under Article 300 A of the Constitution does not become illusory.

35. In the backdrop of the discussions supra if the judgment of the Apex Court in **MADAN AND ANOTHER** *supra* is considered, the ratio in the said case can be extended to the present case as well. This Court is conscious of the fact that in the case of **MADAN** *supra*, the Apex Court was dealing with a case where a right to compensation of a person was adjudicated in terms of a decision under Section 30 of the Act

of 1894 whereas here the right of the contesting respondents in respect of the compensation was adjudicated under Section 12 of the Act of 1894. However, the said award was put to test invoking Section 30 of the Act of 1894 by a third party. Admittedly, compensation was not released in favour of contesting respondents because of the pendency of a dispute under Section 30 of the Act of 1894. Thus, the right to seek reference must be held to have arisen only after the disposal of the proceeding under Section 30 of the Act of 1894.

35. This being the position, the reference is in time, though this Court does not agree with the reasoning in the impugned judgment of the Reference Court which applied Section 14 of the Act of 1963 to hold that the reference is in time.

36. More importantly, as noticed there is no endorsement relating to service on the land loser on the notice at Ex.P.1 said to have been issued under Section 12(2) of the Act of 1894. The appellant though has produced few documents to show that the respondents have admitted the service of notice, it is relevant to note that the said documents are not accompanied by the application under Order XLI Rule 27 of the Code making valid grounds for delayed production.

37. As far as the application for an amendment to raise additional grounds and additional facts relating to service of notice on the land loser is concerned, this Court is of the view that the respondents are justified in contending that the contention cannot be allowed to be raised at this belated stage. Valid grounds are not made out to allow the application for amendment. No documents are placed before the Reference Court to substantiate the contention that the notice was served under Section 12(2) of the Act of 1894. Even before this Court, an application is not filed under Order XLI Rule 27 of the Code seeking permission to produce additional documents. Even if the application is allowed, same will not change the course of this judgment as this Court is of the view that the reference is in time as the cause of action arose after the adjudication under Section 30 of the Act of 1894.

38. As far as the valuation of the land, the Special Land Acquisition Officer has awarded Rs.22,36,028/- for 13 guntas of land which included all consequential benefits. The Reference Court awarded Rs.650/- per square foot excluding consequential benefits.

39. The reference Court based its valuation on the value determined to similar land in LAC No.79/2012. However, in LAC

No.79/2012, the Court had determined the valuation of the land which was acquired 2 years 10 months after the land was acquired in question. Thus, the learned counsel for the appellant urged that 15% de-escalation should have been provided before arriving at a valuation.

40. Learned counsel for the claimants urged that the land in question in the present case was converted for non-agricultural use whereas in LAC No.79/2012 the land was not converted for non-agricultural use. Thus, it is urged that though de-escalation is not made for the differential period, the conversion for non-agricultural use should obviously fetch much more value to the land than what is determined for the acquired land.

41. Though in LAC No.79/2012- the land acquired was agricultural land, it was acquired for non-agricultural use. Thus, the Reference Court determined the value of the land keeping in mind its potential non-agricultural use. Thus, for determination of valuation, it was treated as a converted land. Thus, not providing for de-escalation while determining the value of the land cannot be upheld and there has to be de-escalation.

42. The learned counsel for the appellant urged that 15% de-escalation be considered for each year, which submission is based on the judgment in MFA No.22727/2013.

43. The learned counsel for the claimants relied on the judgment of the co-ordinate bench of this Court in MFA No.200778/2018 and MFA No.200436/2014 and connected matters to contend that only 5% de-escalation is to be made to arrive at the market value of the land.

44. This Court has considered the judgments in MFA No.22727/2013 and MFA No.200436/2014 and also the judgments cited in the list of authorities produced. When it comes to escalation or de-escalation of market value, there is no hard and fast rule as to the percentage of de-escalation. Each case has to be decided based on facts obtained in the said case. It is also relevant to note that in MFA No.200436/2014, the co-ordinate bench of this Court has taken a view that in the facts and circumstances of that case, the de-escalation cannot be less than 10%.

45. However, in the present case, because the land was already converted before it was acquired and it is only 300 feet from the land in question in LAC No.79/2102, this Court is of the view that 10% de-escalation per year would be appropriate

and there is no justification either 15% or 5% de-escalation. Thus, applying 10% de-escalation for each year with cumulative effect for 2 years and 3 months, the value of the land would be Rs.482.62 per square foot. The same is rounded off to Rs.483/square feet.

46. For the reasons recorded, the judgment and award under appeal are to be modified and accordingly, the appeal is allowed in part. The respondents/claimants are entitled to Rs.483/- per square foot for the land acquired with all consequential benefits. The application for amendment of the appeal memo is rejected.

47. Hence, the following:

ORDER

- (i) The appeal is ***allowed in part.***
- (ii) The impugned judgment and award dated 30.01.2020 in LAC No.180/2013 on the file of the Senior Civil Judge, Holenarasipura are modified.
- (iii) The market value of the land acquired is Rs.483 per square foot. The claimants are also entitled

to all the consequential benefits under the Land
Acquisition Act, 1894.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BRN/CHS