

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE &
JMFC, GOKAK.**

**Present: Mrs. Vimal R. Nandagaon B.A.,L.L.M
Prl. Senior Civil Judge & JMFC.,**

Dated this 8th day of July 2019.

L.A.C.No.01/2018

CLAIMANT : Babanna S/o.Basappa Kudarimani
Age:65 years, Occ:Agriculture,
R/o:Aralimatti, Tq:Gokak, Dist:Belgaum.
(By Sri.M.C.M., Adv)

-Vs-

RESPONDENTS : 1. The Special Land Acquisition Officer
Hidkal Dam.
2. The Executive Engineer,
Karnatak Niravari Nigam Ltd.
GRBC Div.No.5 Koujalagi
(R-1 By: Ld.Asst. Govt. Pleader)
(R-2 By:Sri.A.V.Hulagabali., adv)

**Mrs. Vimal R. Nandagaon
Prl. Senior Civil Judge, Gokak.**

*** * * * ***

// J U D G M E N T //

This is reference U/sec.18 of Land Acquisition Act on the application submitted by the claimant. After receipt of the reference notices were issued, parties put in appearance.

2. Nutshell of the petition is as under;

To an extent of 13 guntas of land in Sy.No.60/1A of Aralimatti village was acquired by S.L.A.O for the purpose of Ghataprabha project. S.L.A.O has fixed the land value at

Rs.31,818/- per acre with tree valuation at Rs.14,46,499/- & awarded total compensation of Rs.24,54,005/-. Claimant feeling dissatisfied with the quantum of compensation made an application before S.L.A.O contending that, his land was fertile he was growing sugarcane, grapes, banana thereby he is getting annual income of Rs.5 lakh per acre PA. So, the compensation awarded by S.L.A.O is an adequate & prayed to refer the matter to Civil Court for enhancement so, the reference is now before this Court.

3. On service of notice of this petition, respondent-1 & 2 have appeared through Learned AGP and counsel, have filed separate objections resisting the said application that, the petition is time barred, valuation made by S.L.A.O is reasonable hence, prayed to dismiss the petition.

4. Claimant is examined as PW-1 by marking Ex.P-1 to 26 documents closed his side. Respondents have not led any evidence.

5. Heard both the sides.

6. In view of the above controversy, the points that would arise for my consideration are;

: POINTS :

1. Whether the reference filed by the claimant before the LAO and its reference by the LAO before this court are in time?

2. Whether the market value arrived by and the compensation awarded by the LAO is just and proper?

3. Whether claimant is entitled for enhanced compensation? If so, what amount?

4. Whether claimant is entitled for statutory benefits like solatium, additional amount and interest thereon?

5. What order?

7. My findings to the above points are as follows;

POINT No.1 : In the Affirmative.

POINT No.2 : In the Negative.

POINT No.3 : In the Affirmative.

POINT No.4 : Partly in the Affirmative.

POINT No.5 : As per final order for the following:

:: REASONS ::

8. **POINT NO.1:-** Respondent took up a contention that the reference is barred by limitation. Along with the reference the L.A.O has also sent the particulars regarding the service of notice U/Sec.9(2) and 12(2). Notice U/Sec.12(2) was served on 25-03-2014 to the claimant. In the annexures the date of application the date of application for reference is shown as 26-09-2014. So, the application for reference was filed within 90 days from the date of service of notice, hence Respondents could not have been held as barred by limitation. Moreover,

Respondents have not entered the witness box to substantiate their defence. Under these circumstances, it can be held without any hesitation that, claimant has made application for reference within stipulated time and hence reference is also within time. For the reasons I answer Point No.1 in the Affirmative.

9. POINT NO.2 TO 4:- To avoid repetition of facts and for the sake of convenience I have taken these points together for common discussion. Claimant in his examination in chief has submitted that, the award amount was received under protest for acquisition of 13 guntas of land in Sy.No.60/1A of Aralimatti village. Said land was fertile, petitioner was growing Banana, Grapes & Sugarcane thereby getting Rs.5 lakhs per acre PA income after deducting all costs. He has lost 5 teak wood trees each worth Rs.1 lakh. He has constructed house in acquired land by spending Rs.30 lakhs. The SLAO has not taken into consideration the value of big bunds, the bore wells & the pump sets situated in the acquired land. Without visiting the land respondents' officials have prepared the award hence, the claimant is put to loss by the least award fixed by the respondents.

10. Ex.P-2 Sec.4(1) notification though would clearly disclose that, one house, 2 bore wells, 10 coconut, 5 mango, 5 Prosopis Juliflora (jaali), 5 teakwood and 2 neem trees inducted in 13 guntas of land was acquired by the Government, without taking note of it, it is suggested to P.W.1 during cross-examination that house and bore wells were not situated in acquired land. The relevant cross-examination at page 9 para

9 and 10 reads as follows; “ನಾನು ಹಾಜರಿಸಿದ ಉತಾರನಲ್ಲಿ ಮನೆಯ ಪಂಚಾಯತಿಯ ನಂಬರ ಇದ್ದು ಸರ್ವೆ ನಂ. ಇಲ್ಲ ಎಂದರೆ ನಿಜ. ಅರಳಿಮಟ್ಟಿ ಗ್ರಾಮದಲ್ಲಿ ನನಗೆ ಸೇರಿದ ಮನೆ ಇದ್ದರು ಇಲ್ಲ ಎಂದು, ಆ ಮನೆಯ ಉತಾರನ್ನು ಹಾಜರಿಸಿ ಅದು ಈ ಜಮೀನಿನಲ್ಲಿ ಇದೆ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆಂದರೆ ಸುಳ್ಳು. ಈ ಜಮೀನಿನಲ್ಲಿ ಕೊಳವೆ ಬಾವಿಗಳು ಇರದಿದ್ದರೂ ಇದ್ದವು ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆಂದರೆ ಸುಳ್ಳು.” The document further discloses market value of land fixed at Rs.31,818/- and that of trees at Rs.14,46,499/-. Ex.P-4 award of SLAO does not disclose the valuation of the house and two bore wells situated in acquired land. Ex.P-5 property extract disclose property No.128 & measurement 40x40 feet. Ex.P-8, 12 & 11 HESCOM sanction & feasibility certificates disclose supply of electricity to the motor inducted to the bore well situated in acquired land. Ex.P-9 & 14 estimation of bore well disclose the cost at Rs.1,03,395/-. Ex.P-10 Drilling report of bore well disclose remark as good. Ex.P-13 endorsement of Village accountant disclose no objections to provide electricity supply to bore wells situated in acquired land. Ex.P-15 to 19 cane payment details disclose payment of sugarcane bills in favour of claimant by Godavari Biorefineries Sameerwadi for 2006-2007 to 2010-2011 season. Ex.P-20 to 23 cane weigh slips disclose survey number of acquired land. These documents are not disputed except putting bare suggestions. The suggestions have not taken away the trustworthiness of these documents.

11. Of course claimant has not produced document to show the income he used to get from the acquired land as stated in his chief examination. At this juncture it is very pertinent to note Ex.P-25 the judgment of LAC No.23/2011 in respect of land bearing Sy.No.60/1A measuring 25 guntas. In respect of

this document it is suggested to P.W.1 that, land in said judgment was acquired in 2006-07. He further admitted that, he has not produced the permission obtained from concerned department to draw water to his land, had not produced 1997-98 to 2002 RTC extracts, APMC price list produced in said case. Well these suggestions will not take away the quality of the land in question in said case and award is enhanced by the court. It is pertinent to note that, instant acquired land and land in said case are of same survey number belong to this claimant. The court after taking note of the condition of the land, the crop grown over land in said case and the decisions of Hon'ble High Court of Karnataka reported in 2011 (1) KCCR 242 Spl. LAO Hidakal Dam Vs. Sri.Vasant Dattatreya Patil and others, 2011 (2) KCCR 970 Spl. LAO UKP Athani Vs Rayappa Dharamanna Nemagoud and another, 1998 (1) LACC 234 Spl. LAO Khed Vs.Vasudev Chanrashekhar and another, 2002 SAR (Civil) 47 (SC) Siddappa Vasappa Kuri and another Vs. Spl. Land Acquisition officers and another, 2009 (1) KLJ 189 Sunandamma (since deceased) by Lrs. Vs. Spl. LAO KIADB Bangalore & KLJ 347=ILR 2008 Karnataka 2386 B.S.Patil Sidagouda and others Vs. A.C. Chikkodi. Belguam District has enhanced market value at Rs.2,20,000/- per acre.

12. Ex.P-6 RTC extract of acquired land bearing Sy.No.60/1A would disclose crop as sugarcane. Taking note of growth of said crop in LAC No.23/2011 the court has enhanced market value of the land. Other than sugarcane in the instant petition claimant has pleaded that, from grapes, banana he is getting annual income of Rs.5 lakhs per acre PA. However, it is not

substantiated by any document. The claimant is required to establish that as on the date of 4(1) notification he was raising grapes, banana in the said property. 4(1) notification in the instant case is published on 14/05/2009. Therefore, the market value of the property has to be assessed during the 2009-10. In fact the Land Acquisition Officer at the time of spot inspection noticed raising of sugarcane in the property acquired by the Land Acquisition Officer which is evident at Sl.No.6(3) page No.4 of the award produced & marked at Ex.P-4. Said observation corroborates the contention of the claimant that he was raising sugarcane in the property acquired by the Land Acquisition Officer. Even the ROR at Ex.P-6 support the contention of the claimant. Therefore, it could be safely held that the claimant was raising sugarcane in the land acquired by the Land Acquisition Officer.

13. At the cost of repetition Ex.P-2 Sec.4(1) notification would clearly disclose that, one house, 2 bore wells, 10 coconut, 5 mango, 5 Prosopis Juliflora (jaali), 5 teakwood and 2 neem trees were existed in 13 guntas of land acquired by the Government. Ex.P-4 is Award and statement. At Sl.No.3 of statement for trees, building and bore wells situated in acquired land the Government has awarded in all Rs.11,59,390/-. Except say of claimant there is no document to show that, other than the price fixed by Government the building, trees existed over acquired land fetches more value. So the valuation made by the Government is required to be accepted.

14. Claimant has stated that, he was getting 70 to 80 quintal

jaggery from per acre, thereby was receiving Rs.2,40,000/- income. After deducting 25% cost was getting Rs.200,000/- profit. He has further stated that, by growing Banana, maize, brinjal, chilly, onion etc., was getting income of Rs.3 to 5 lakhs his domestic animals were fed sufficiently by the fodder available in the land. However, except his say there is no documentary evidence is placed to that effect.

15. PW-1 was cross examined by the learned counsel for the respondents & nothing favorable to the defence was elicited from the mouth of the PW-1. All the suggestions have been denied. Except suggesting so in the cross examination, there is no searching cross examination of PW-1 as to the nature of the crop & the income from the said property. The respondents have not chosen to lead any material evidence to substantiate their defence. Mere suggestions in the cross examination do not par take the character of legal evidence. P.W.1 has stated that, by production of jaggery he was getting income. But no document to that effect is filed except Ex.P-24 is price list of jaggery for different years. In this regard it is necessary to note the decision of Hon'ble High Court reported in;

2011(1) KCCR 242 (DB)

Spl. LAO HIDAKAL DAM

Vs.

SHRI.VASANT DATTATREY PATIL AND OTHERS.

Hon'ble High Court held;

“Since, this Court has consistently taken the view that, yield of sugarcane is 40 tonnes per acre and a tonne of sugarcane will yield

a quintal jaggery, the Reference Court is justified in arriving at a conclusion that 40 quintal of jaggery could be produced from Sugarcane grown in one acre of land. In terms of the price list Ex.P-10 for the period 1997-98 the price of a quintal of jaggery was Rs.1,500/-. As already held additional expenditure of Rs.200/- has to be incurred for the manufacture of one quintal of jaggery. As such the compensation available to the claimants per acre would be as follows;

***40 quintal x 1,500 = Rs.60,000/-.
Out of this, not only 50% of cost of cultivation of Sugarcane is to be deducted, but also the cost of production of jaggery at the rate of Rs.200/- per quintal. Thus, total income the claimant would be making is Rs. 60,000/- less 50%=Rs.30,000/- less Rs.8,000/- (40x200) which comes to Rs.22,000/-. Applying the multiplier of 10, the total amount would be Rs. 2,20,000/- per acre.***

Consequently, it has to be held that, the Reference Court is not justified in determining the market value of the acquired land at Rs.3,00,000/- per acre, which requires to be modified to Rs.2,20,000/- per acre and hence, the impugned award requires to be modified accordingly”.

The claimant has produced yield certificate of the sugarcane from the year 2008 to 2019. As aforesaid the market value of the property has to be assessed as on the date of 4(1) notification. The yield of sugarcane for the year 2009-2010 is

54.310 tonnes per acre. It is taken at 54 tonnes per acre. For 13 guntas of land subject matter in issue, it would be 17.55 tonnes yield. Yield of jaggery is not substantiated by document. As per decision 40 quintal of jaggery could be produced from Sugarcane grown in one acre of land. Ex.P-24 is the price list of jaggery for the year 2009-2019. The rate of jaggery per quintal is Rs.3,017/- for the year 2009-2010. If Rs.3,017/- is multiplied by 17 quintals, the gross income would be Rs.52,948/-. Additional expenditure of Rs.200/- has to be incurred for the manufacture of one quintal of jaggery. 17 quintal x 3,017 = Rs.51,289/-. Out of this, not only 50% of cost of cultivation of Sugarcane is to be deducted, but also the cost of production of jaggery at the rate of Rs.200/- per quintal. Thus, total income the claimant would be making is Rs.51,289/- less 50%=Rs.25,644/- less Rs.3,400/- (17x200) which comes to Rs.22,244/-. Applying the multiplier of 10, the total amount would be Rs.2,22,440/- entire 13 guntas. Accordingly, Point No.2 is answered in the Negative & Point No.3 & 4 Partly in the Affirmative.

16. **POINT NO.5:-** In view of the discussion made in the paras supra, I proceed to pass the following;

:: O R D E R ::

1. The reference application is hereby partly allowed.

2. The claimant is entitled for compensation at the rate of Rs.2,22,440/- in respect of the land bearing Sy.No.60/1A measuring 13 guntas situated at Aralimatti village Gokak tq.

less the compensation already received by the claimant under the said award.

3. Claimant in the above reference application is entitled for all the statutory benefits available under the Karnataka Land Acquisition Act.

4. Advocate fee is fixed at Rs.500/- each.

5. Draw award accordingly.

(Directly typed by ME on LAPTOP, corrected and then pronounced in the open court on this 8th day of July 2019).

**(Mrs. Vimal R. Nanadagaon)
Prl. Sr. Civil Judge & JMFC., Gokak.**

: ANNEXURE :

WITNESSES EXAMINED FOR CLAIMANT:

P.W.1 : Sri.Mallappa Babanna Kudarimani.

WITNESSES EXAMINED FOR RESPONDENTS:

-NIL-

DOCUMENTS EXHIBITED FOR CLAIMANT:

Ex.P-1 : Special power of attorney.
Ex.P-2 & 3: Notices.
Ex.P-4 : Order copy.
Ex.P-5 : Property extract.
Ex.P-6 : Record of rights.
Ex.P-7 : Borewell certificate.
Ex.P-8 : HESCOM certificate.
Ex.P-9 : Estimate.
Ex.P-10 : Borewell certificate.

Ex.P-11 & 12 : HESCOM certificate.
Ex.P- 13 : Certificate from village accountant.
Ex.P-14 : Estimate.
Ex.P-15 to 19 : Cane payment details.
Ex.P-20 to 23 : Cane weighment slips.
Ex.P-24 : APMC price list.
Ex.P-25 : C/C of judgment.
Ex.P-26 : C/C of decree.

DOCUMENTS EXHIBITED FOR RESPONDENTS:

Nil

Prl. Sr. Civil Judge & JMFC.,Gokak.