

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

DATED THIS THE 30TH DAY OF NOVEMBER, 2017

BEFORE

THE HON'BLE MRS. JUSTICE S.SUJATHA

M.F.A.No.101137/2015 (LAC)

BETWEEN:

KARNATAKA NEERAVATI NIGAM LTD.,
REPTD. BY ITS EXECUTIVE ENGINEER,
HBC DIV., ATHANI, DIST:BELAGAVI.

... APPELLANT

(BY SRI.RAMESH N.MISALE, ADV.)

A N D :

1. THE SPECIAL LAND ACQUISITION OFFICER,
HIPPARAGI PROJECT, ATHANI.
2. SRI APPASAB S/O BALASAB DESAI,
DEAD BY HIS LR_s
- 2A) SRI.TATESAB S/O APPASAB DESAI,
AGE:MAJOR, OCC:AGRICULTURE,
R/O HALINGALI-587315,
TQ:JAMAKHANDI, DIST:BAGALKOT.
- 2B) SRI.RAMAGOND S/O APPASAB DESAI,
AGE:MAJOR, OCC:AGRICULTURE,
R/O HALINGALI-587315,
TQ:JAMAKHANDI, DIST:BAGALKOT.
3. SRI.JAYAPAL S/O BABASAB DESAI,
AGE:MAJOR, OCC:AGRICULTURE,
R/O HALINGALI-587315,
TQ:JAMAKHANDI, DIST:BAGALKOT.
4. SRI.RAVASA S/O BABASAB DESAI,
AGE:MAJOR, OCC:AGRICULTURE,
R/O HALINGALI-587315,

TQ:JAMAKHANDI, DIST:BAGALKOT. ...RESPONDENTS

(BY SRI.ANAND K.NAVALAGIMATH, AGA FOR R1,
SRI HARISH MAIGUR, ADV. FOR R2 (A) TO R4,

THIS APPEAL IS FILED UNDER SECTION 54 (1) OF LA ACT, 1894, AGAINST THE JUDGMENT AND AWARD DATED 25.08.2014, PASSED IN LAC NO. 179/2013 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, JAMKHANDI, AWARDED THE COMPENSATION OF RS.5,36,500/- PER ACRE AND ETC.,

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is directed against the judgment and award passed by the Addl. Senior Civil Judge, Jamkhandi, in L.A.C.No.179/2013.

2. Facts in brief are that respondent Nos.2 to 4 are the owners of land in Sy.No.100/1C measuring 17 guntas and Sy.No.100/2C measuring 2 acres 16 guntas of Halingali village. The preliminary notification under Section 4 (1) of the Land Acquisition Act, 1894, (for short 'the Act') was notified in the Gazette on 16.07.2009. The Special Land Acquisition Officer passed the award dated 24.12.2011 fixing the market value of the acquired lands at

Rs.1,41,882/- per acre. Being aggrieved, the claimants preferred reference application. The Reference Court enhanced the compensation to Rs.5,36,500/- per acre along with statutory benefits. Being aggrieved, the beneficiary is in appeal.

3. The learned counsel appearing for the appellant would contend that the Reference Court failed to consider the sale transaction mentioned in the award as well as the failure on the part of claimants in not producing the particulars of the sale transaction of their village. The Reference Court taking the yield at 50 tonnes based on Ex.P.15, yield certificate, determined the market value of the acquired lands which is contrary to the judgment of the Hon'ble Apex Court in the case of ***HIRABAI AND OTHERS VS. LAND ACQUISITION OFFICER-CUM-ASSISTANT COMMISSIONER [(2010) 10 SCC 492]***. It is further submitted that the Reference Court failed to note the yield of sugarcane which is not more than 40 tonnes

per acre at the relevant point of time as revealed from the scientific data given by the Director of Economics and the determination of market value based on such data being upheld by the Hon'ble Apex Court in the case of ***Hirabai*** supra, the determination of compensation by the Reference Court is excessive. Thus, the learned counsel submits that the compensation now determined fixing the market value at Rs.5,36,500/- per acre is exorbitant and contrary to the law laid down by the Hon'ble Apex Court in the case of ***Hirabai*** supra.

4. Learned counsel Shri Harish S.Maigur appearing for the claimants justifying the judgment and award impugned herein, submitted that the Reference Court has fixed the market value based on the yield certificate and price list produced at Ex.P.15 and Ex.P.16 respectively and the actual market price of the sugar cane excluding cultivation cost and transportation charges. The market value fixed by the Reference Court on capitalization

method is in conformity with the division bench judgment of this Court in the case of ***Karnataka Neeravari Nigam Ltd., Vs. Shoukat and others*** in ***M.F.A.No.21965/2010 (DD 03.03.2015)***. It was argued that even if the compensation now fixed before the Lok Adalath is considered fixing the market value at Rs.3,69,000/- per acre for irrigated lands with statutory benefits, 10% escalation deserves to be extended in fixing the market value for the lands acquired on 16.07.2009. Further, the learned counsel placed reliance on the judgment of this Court in ***Sudarshan Sangamesh Wali Vs. The Special Land Acquisition Officer and another*** in ***M.F.A.No.100384/2015 (DD 08.11.2017)*** to contend that the claimants are entitled to the escalation of 10% per annum.

5. Heard the learned counsel for the parties and perused the material on record.

6. It is perspicuous from the material on record that the lands in question were acquired by issuing preliminary notification under Section 4 (1) of the Act, gazetted on 16.07.2009. The Reference Court mainly placing reliance on Ex.P.15 and Ex.P.16, has determined the market value. Ex.P.15 is the yield certificate issued by the Assistant Director of Agriculture, Jamkhandi and Ex.P.16 is the price list issued by the Nandi Sahakari Sakkare Karkhane Niyamit, which discloses that sugarcane yield was 50 tonnes per acre and price was Rs.2,495.97 per tonne including the cutting and transportation charges.

7. It is beneficial to refer to the judgment of the Hon'ble Apex Court in **Hirabai's** case wherein it is categorically held that when the yield certificate shown to have been issued by the Assistant Director of Agriculture, but the Assistant Director himself was not examined nor anybody from his office was examined to indicate as to under what circumstances the aforesaid certificate was issued and

what is the basis of giving such certificate and also to show what is the method of calculation to arrive at the aforesaid statistics, then it is not safe to rely on such certificates without the author of the said certificate being produced for testing the veracity of the certificate and the contents thereof. It is further observed that while calculating the market value of the land on the basis of capitalization method of valuation, the government document published by the Director of Economics and Statistics pertaining to the relevant year would be a reliable document. However, it remains clear that the Reference Court erred in placing reliance on the certificate issued by the Assistant Director of Agriculture, the author of the said document not being examined to prove the veracity of the document. Hence, determination of market value based on the certificate of Assistant Director without examining the author is perverse and cannot be sustained.

8. Even, if the yield is considered at 45 tonnes in terms of the division bench judgment of this Court in M.F.A.No.21965/2010, the compensation amount would work out on a lesser side considering the average price of three years as per the price list submitted by the claimants marked at Ex.P.16. The market value fixed by the reference Court at Rs.5,36,500/- per acre for the irrigated land appears to be on the higher side.

9. It is brought to the notice of the Court by the learned counsel appearing for the beneficiary that good number of cases are disposed of before the Lok Adalath after settlement, fixing the market value for irrigated land at Rs.3,69,000/- per acre with statutory benefits relating to the year, 2004-2005 notification and 5% escalation per year thereafter for similarly situated lands acquired for Hipparagi project based on the judgment of the Hon'ble Apex Court dismissing SLP No.8107/2016 filed by the beneficiary challenging the order of this Court in

M.F.A.No.23768/2013 whereby the market value of acquired lands was fixed at Rs.3,69,000/- along with statutory benefits as far as irrigated lands are concerned.

10. It is hardly required to be recorded that the claimants settling the matter before the Lok Adalath are placed on the same pedestal as that of the claimants contesting the matter before this Court. The nature of the land, the purpose for which the lands were acquired and the situation of the land being identical, same parity has to be maintained amongst such lands acquired.

11. It was an endeavour made by the learned counsel for the claimants that 10% escalation per year would be reasonable though sounds attractive in order to maintain parity and consistency in the orders, 5% escalation per year is awarded, considering the identical circumstances. Thus, this Court finds it appropriate to fix the market value at Rs.3,69,000/- per acre with 5% escalation per year with statutory benefits for the irrigated land.

Accordingly, the claimants shall be entitled for Rs.4,61,250/- per acre for the lands acquired in Sy.No.100/1C and Sy.No.100/2C with all statutory benefits, interest and costs (Rs.3,69,000+Rs.92,250 with 5% escalation for five years) considering the date of issuance of notification under Section 4 (1) of the Act, i.e., 16.07.2009.

12. For the reasons aforesaid, the judgment and award passed by the Reference Court is modified and reduced to Rs.4,61,250/- per acre for the lands acquired in Sy.No.100/1C and Sy.No.100/2C with all statutory benefits, interest and costs.

Appeal stands partly allowed as indicated above.

Award shall be drawn accordingly.

Sd/-
JUDGE

Jm/-