

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 8TH DAY OF FEBRUARY 2013

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MR. JUSTICE H.G.RAMESH

**M.F.A.No.31998/2011 c/w M.F.A.Nos.31996/2011,
31999/2011, 32000/2011 & 30132/2012 (LAC)**

BETWEEN:

ASHOK S/O BASAPPA RESHMI
R/O NIDAGUNDI, AGED ABOUT 50 YEARS
BASAVAN BAGEWADI TALUK
BIJAPUR DISTRICT

... APPELLANT
in M.F.A.No.31998/2011

VEERABHADRAPPA KARAVEERAPPA KUPASTA
R/O NIDAGUNDI, AGED ABOUT 30 YEARS
BASAVAN BAGEWADI TALUK
BIJAPUR DISTRICT

... APPELLANT
in M.F.A.No.31996/2011

CHANNAPPA MAHALINGAPPA MUCHANDI
R/O NIDAGUNDI, AGED ABOUT 65 YEARS
BASAVAN BAGEWADI TALUK
BIJAPUR DISTRICT

... APPELLANT
in M.F.A.No.31999/2011

GANGAPPA S/O IRAPPA GOURI
R/O NIDAGUNDI, AGED ABOUT 45 YEARS
BASAVAN BAGEWADI TALUK
BIJAPUR DISTRICT

... APPELLANT
in M.F.A.No.32000/2011

MANASURASAB S/O GIDDUSAB SALIMANI
R/O NIDAGUNDI, AGED ABOUT 37 YEARS

BASAVAN BAGEWADI TALUK
BIJAPUR DISTRICT

... APPELLANT
in M.F.A.No.30132/2012

(BY SRI HARSHAVARDHAN R MALIPATIL, ADV.)

AND:

THE SPL. LAO
UKP, ALAMATTI

... RESPONDENT
COMMON

(BY SRI MANVENDRA REDDY, GOVT. ADV.)

THESE APPEALS ARE FILED U/S 54(1) OF L.A. ACT AGAINST THE COMMON JUDGMENT AND AWARDS DT: 17.6.2011 PASSED IN LAC NO.22/2010, NO.21/2010, 25/2010, 27/2010 & 26/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE AT BASAVANA BAGEWADI, PARTLY ALLOWING THE REFERENCE PETITIONS AND SEEKING FOR ENHANCEMENT OF COMPENSATION.

THESE APPEALS COMING ON FOR HEARING, THIS DAY, **N.KUMAR J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

As the lands, which are the subject matter of these appeals, are situated in the very same village and acquired under the same notification and a common judgment is passed by the Reference Court, all these appeals are taken up for consideration together and disposed of by this common judgment.

2. The subject matter of the acquisition proceedings is the lands bearing Survey No.279/2 measuring 28 guntas, Survey No.71 measuring 1 acre 31 guntas,

Survey No.209 measuring 37 guntas, Survey No.271/1 measuring 12 guntas and Survey No.270 measuring 18 guntas. The said lands are situated in Nidagundi village, Basavana Bagewadi Taluk, Bijapur. The preliminary notification was issued on 24.07.2006 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short) proposing to acquire the said lands for construction of left bank distributory canal in Upper Krishna Project. The Special Land Acquisition Officer awarded a sum of Rs.45,013/- per acre by his award dated 22.10.2009. The claimants protested and each of them sought for a reference under Section 18(1) of the Act. On reference filed by them, the Reference Court has awarded a sum of Rs.6,02,770/- per acre by its judgment and awards dated 17.06.2011. Aggrieved by the said awards, the claimants are in appeal.

3. Learned counsel for the appellants assailing the impugned awards contends that the acquired lands have N.A. potential. The claimants had produced sale deeds – Exs.P26 to P32 which showed the sites adjoining the

lands were sold @ Rs.62/- per sq.ft. In fact, some other sale deeds shows the value at Rs.85/-, Rs.169/- and Rs.175/- per sq.ft. The claimants had also produced Exs.P18 to Exs.P25 roughly showing conversion in respect of 44 lands from agricultural to non-agricultural purposes. The Reference Court, ignoring this very valuable evidence on record, has chosen to rely on Ex.P36 - the judgment in LAC No.41/2006 and connected matters which bases on the judgment of this Court in M.F.A.No.2576/2003 and other connected matters which were disposed of on 12.01.2007. He further submits that the acquired lands are situated very close to financial institutions, schools, hospitals, societies, which fact has not been properly appreciated by the Reference Court. In addition to that, adjoining these lands, 10 rehabilitation centres have been established by the Government from the years 1983 to 2006. The lands are also very near to NH13. Therefore, the Reference Court committed a serious error in not awarding just compensation treating them as N.A.

potential lands taking into consideration the market value in the registered sale deeds which are very proximate to the preliminary notification.

4. Per contra, learned Government Advocate submits that the sale deeds produced in this case cannot be acted upon as rightly pointed out by the Reference Court. Not a single sale deed in the village has been produced. In fact, the lands in question have no N.A. potential at all because the Reference Court relied on its judgment passed earlier which was affirmed by this Court where the lands situated in Nidagundi village were treated as having N.A. potential, we also have to proceed in this case on that basis. In fact, in the judgment referred in this case, the award of the Reference Court was found fault with for deducting 65% towards development charges and reduced to 50%, whereas in the latest judgment of the Apex Court, it could be up to 75%. He also contended that what is acquired is only a small bit of lands owned by the claimants where the said lands are used for the purpose of forming a distributory canal.

Therefore, he submits that the awards passed by the Reference Court is just and equitable and cannot be found fault with.

5. In the light of the aforesaid facts and the rival contentions, the point that arises for our consideration is whether a case for enhancement of compensation is made out?

6. The facts are not in dispute. All the subject lands are agricultural lands. They are acquired under a notification dated 24.07.2006 for formation of a distributory canal under Upper Krishna Project. All these lands are situated in Nidagundi village. The material on record discloses that when Almatti Dam was constructed, some of the villagers lost their houses and lands. There was urgent need to rehabilitate them. The rehabilitation started from the year 1983. Therefore, this village was chosen to rehabilitate the villagers who lost their lands. Therefore, 10 rehabilitation centres are formed in the village. The evidence on record also shows

that the population of the village is about 30,000 providing some margin for extension. The evidence on record shows that in the village there is a post office, a Nationalised Bank, a Co-operative Society, a petrol bunk, a primary school, high school and even a college and all modern amenities are available in the village. Now an attempt is made to get the lands also converted for non-agricultural purposes. The map shows that near the village the Upper Krishna Project canal passes through. In order to provide water to the adjoining agricultural lands in the villages, they had to construct distributory canals. It is for that purpose the lands of the claimants are acquired. The canal, which is formed, passes through these appellants' lands. On either side of the canal, all these claimants continued to own their lands and cultivate their lands. All these are very fertile and irrigated lands and very valuable also. But the claimants are claiming compensation on the ground that they have N.A potential. In support of their case, they produced before the Reference Court an award passed by the said

Court in respect of the very same village, which was affirmed by this Court. The Reference Court has also proceeded on an assumption that the lands in question have N.A. potential. Thereafter, it is noticed in respect of lands which are acquired under 4(1) notification on 08.08.1996, the Reference Court has awarded a sum of Rs.4,01,845/- as compensation and in respect of lands which are acquired under the notification dated 17.08.2000 under Section 4(1), adding 5% for each year a sum of Rs.5,22,870/- per acre was awarded as compensation. In the instant case, the Reference Court taking note of the fact that 10 years have been lapsed from the notification dated 08.08.1996 has taken 5% as the escalation and has awarded Rs.4,01,845/- as the market value of the lands acquired. Though the claimants have produced the registered sale deeds, which if believed would show that the land is sold @ Rs.62, Rs.85/-, Rs.169/- and Rs.175/- per sq.ft., the Tribunal did not act on the said sale deeds. The reason being all the sale deeds pertains to the sites formed in

the rehabilitation centres. We have gone through the said sale deeds. The doubt expressed by the Reference Court appears to be sound. We also have our own apprehension whether these documents really represent the market value or are they created for the purpose of creating evidence in the acquisition proceedings to get market value. If we adopt the value mentioned in those sale deeds as representing the market value then the cost of the land would come to Rs.40 to Rs.70 lakhs which by no stretch of imagination would be the market value in the said village. The map discloses that the entire area is now irrigated by Almatti Dam. The main canal passes through the land itself, to irrigate the lands which are situated on the either side of the main canal, these distributory canals are to be constructed. It is for that purpose the lands are acquired. In other words, all these lands are now irrigated lands and strictly speaking they have no N.A potential. The very object of constructing these canals, dams and distributory canals would be disrupted if the Deputy Commissioner of

District were to grant conversion orders without properly appreciating the location, irrigation facility and the purpose of constructing the huge reservoir. Be that as it may. The Reference Court has proceeded on the assumption that they have N.A. potential. Even this Court has proceeded on the assumption that the lands in Nedungadi village have N.A. potential. As pointed out earlier, the Reference Court has deducted 65% towards development charges. This Court interfered with the order and reduced to 50% and it is on that basis, the award is passed and that award is followed by the Reference Court. In the recent judgment of the Apex Court, which has application to the facts of this case as it is from the Gulbarga District, it has observed as under:

“21. *As far back as in 1982, this Court in Brig. Sahib Singh Kalha case held, that the permissible deduction could be up to 53%. This deduction was divided by the Court into two components. For the “first component” referred to in the foregoing paragraph, it was held that a deduction of*

20% should be made. For the “second component”, it was held that the deduction could range between 20% to 33%. It is therefore apparent that a deduction of up to 53% was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by this Court to balance the differential factors between the exemplar land and the acquired land. Recently, however, this Court has approved a higher component of deduction.

23. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing four paragraphs, we are of the view that there is no discrepancy on the issue in the recent judgments of this Court. In our view, for the “first component” under the head of “development”, deduction of 33 1/3% can be made. Likewise, for the “second component” under the head of “development”, a further deduction of 33 1/3% can additionally be

made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of “development”, the applied deduction should not exceed 67%. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds $33\frac{1}{3}\%$, the two components under the head of “development” put together, should not exceed the upper benchmark.

25. *Illustratively, a deduction could be made keeping in mind the waiting period required to raise infrastructure, as also, the waiting period for sale of developed plots and/or built-up areas. This nature of deduction may be placed under the head “waiting period”. Illustratively again, deductions could also be made in cases where the exemplar sale transaction is of a date subsequent to the publication of the preliminary notification. This nature of deduction may be placed under the head “de-escalation”. Likewise, deductions may*

be made for a variety of other causes which may arise in different cases. It is however necessary for us to conclude, in the backdrop of the precedents on the issue, that all deductions should not cumulatively exceed the upper benchmark of 75%. A deduction beyond 75% would give the impression of being lopsided, or contextually unreal, since the land-loser would seemingly get paid for only 25% of his land. This impression is unjustified, because deductions are made out of the market value of developed land, whereas, the acquired land is undeveloped (or not fully developed). Differences between the nature of the exemplar land and the acquired land, it should be remembered, is the reason/cause for applying deductions.

26. *Another aspect of this matter must also be kept in mind. Market value based on an exemplar sale, from which a deduction in excess of 75% has to be made, would not be a relevant sale transaction to be taken into consideration, for determining the compensation of the acquired land. In such a situation the exemplar land and the*

acquired land would be incomparable, and therefore, there would be no question of applying the market value of one (exemplar sale) to determine the compensation payable for the other (acquired land). It however needs to be clarified, that even though on account of developmental activities (under the head “development”), we have specified the upper benchmark of 67%, it would seem, that for the remaining deduction(s), the permissible range would be up to 8%. That however is not the correct position. The range of deductions, other than under the head “development”, would depend on the facts and circumstances of each case. Such deductions may even exceed 8%, but that would be so only, where deductions for developmental activities (under the head “development”) is less than 67% i.e. as long as the cumulative deductions do not cross the upper benchmark of 75%. We therefore hold that the range for deductions for issues other than developmental costs, would depend on the facts and circumstances of each case, they may be 8%, or even the double thereof, or even further more, as long

as, cumulatively all deductions put together do not exceed the upper benchmark of 75%.”

If the said principle enunciated by the Apex Court is applied to the instant case, in fact, the compensation awarded by the Reference Court would be on the higher side. However, in the absence of any appeal from the State challenging the said compensation, the question of interfering with the said awards would not arise. At the same time, when the entire judgment is based on the market value determined on 08.08.96 and 5% escalation is given, the question is as to whether it is a proper escalation. Over a few decades, the value of the agricultural lands did not appreciate radically. Now in the entire country, in particular in the State of Karnataka, the land has become gold. There is a mad rush for purchasing these agricultural lands not only by the locals but also from the outsiders. In this backward District of Bijapur where huge dam like Almatti dam is constructed, irrigation facility has been provided to lakhs of acres of lands, dry land has been

converted into irrigated land, not only lot of agricultural activities is going on but because of this economic development, we also see industries and other commercial activities. Therefore, taking 5% as escalation for a period of 10 years, in the aforesaid circumstances, may not be proper. Therefore, we are of the view that on the facts of the case, having regard to the location of the lands which are acquired coupled with the fact that for a period of ten years, we do not have any sale deeds which depict a true market value of the property and coupled with the fact that the Reference Court and this Court has been awarding compensation by adopting this process of escalation, we deem it appropriate to award escalation at 10% in the place of 5%. That in our view would meet the ends of justice. Similarly, as could be seen from the extent of lands, which are now acquired, it is small bits of lands. This canal though helpful to the public at large has certainly caused damage to these claimants. Section 23 of the Act deals with matters to be considered in determining compensation. It provides that in

determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from the other land and also by reason of the acquisition injuriously affecting other properties, movable or immovable in any other manner. When a distributory canal is formed in these claimants' lands certainly cultivation of the lands cannot be made as before the formation of a canal. It thus acts as a hindrance particularly when the cost of cultivation has considerably increased. In fact, this distributory canal formed between NH13 and the lands, this acts as an obstruction to some other portion of the lands. Taking into consideration this aspect of the matter, we are of view that 5% of the amount of compensation has to be awarded towards compensation for the damage caused in the aforesaid lands. In all other aspects, the awards passed by the Reference Court are legal and valid and do

not call for interference. Hence, we pass the following order:

The appeals are partly allowed. The awards passed by the Reference Court are modified enhancing the compensation i.e. the market value of the lands in addition to what has been awarded by the Reference Court as under:

- a) market value shall be determined at 10% escalation from 08.08.1996 on Rs.4,01,845/- till the date of preliminary notification i.e. 24.07.2006;
- b) 5% of the total amount of compensation awarded shall be awarded as damages for severance and other inconvenience caused due to the acquisition of lands;
- c) the claimants would be entitled to all statutory benefits on the enhanced market value also.

Appeals partly allowed with proportionate costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

hkh.