

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE V.SRISHANANDA

MISCELLANEOUS FIRST APPEAL No.10313/2018(LAC)

Dated:02-07-2021

SRI.C.KRISHNAPPA vs. SPECIAL LAND ACQUISITION OFFICER and  
Another

J U D G M E N T

**B. VEERAPPA**

This is claimant's Miscellaneous First Appeal for enhancement of compensation filed against the judgment and award dated 18.09.2018 made in LAC No.139/2007 on the file of the II Additional City Civil and Sessions Judge, Bengaluru (CCH No.17), awarding compensation of ₹1653/- per square feet as against ₹1,200/- per square feet awarded by the Special Land Acquisition Officer/respondent No.1, towards acquisition of 800 square feet of land of the appellant/claimant, for formation of road.

I Facts of the Case

2. It is the case of the appellant/claimant that he is the owner of the land measuring 800 sq.ft. in property No.13/A, Sy.No.340/1, Kempapura village, Ward No.40, situated within the limits of Bengaluru Mahanagara Palike, presently Bruhath Bengaluru Mahanagara Palike, and the same was acquired by the Special Land

Acquisition Officer, Bengaluru, for formation of a road connecting two approved layouts i.e., Income Tax Employees' Housing Co-operative Society Limited and Binny Mill Employees' Housing Co-operative Society Limited, Attiguppe Main Road, Chandra Layout, Vijayanagara, Bengaluru-560 080. For the purpose of the said acquisition, the respondents issued the preliminary notification dated 09.06.2006 under Section 4(1) of the Land Acquisition Act published in the Karnataka State Gazette dated 16.06.2006 and final notification under Section 6(1) of the Land Acquisition Act on 04.12.2006 published in the Karnataka State Gazette dated 05.12.2006. The Special Land Acquisition Officer, by the award dated 15.03.2007 awarded the compensation fixing the market value of the land at ₹1,200/- per square feet with statutory benefits.

3. Being not satisfied with the compensation awarded by the SLAO, the claimant filed protest petition dated 02.07.2007 under Section 18 of the Land Acquisition Act, contending that the market value fixed by the SLAO is less and inadequate. Consequently, sought reference under Section 18 of the Land Acquisition Act to the Civil Court for fixation of fair market value of the acquired land. To substantiate his claim, the claimant got examined himself as P.W.1 and got marked the documents Exs.P.1 to P.16. The respondents neither adduced evidence nor produced any documents.

## II Findings of the reference Court

4. The reference Court formulated two points for consideration and considering both oral and documentary evidence on record, answered the points in the affirmative holding that the reference application filed was valid and in time and claimant proved that the market value fixed by the SLAO in respect of the acquired land of the claimant is unjust, inadequate and therefore, claimant is entitled to enhanced compensation. Accordingly, by the impugned judgment and award, awarded compensation at ₹1,653/- per square feet.

5. The respondents have not filed any Appeal challenging the impugned judgment and award passed by the Reference Court.

6. We have heard the learned counsel for the parties to the lis.

### III Arguments advanced by the learned counsel for the Appellant

7. Sri M.Sreenivasa, learned counsel for the appellant/ claimant contended with vehemence that the impugned judgment and award passed by the Reference Court awarding ₹1,653/- per square feet is inadequate and requires to be enhanced. He would contend that the property in question is a corner site having road on three sides, situated very close to Mysuru Road, Outer Ring Road and West of Chord Road. The entire surrounding area is completely developed. The property in question is a commercial site as declared by the BBMP, acquired for widening and connecting two layouts. The

residential buildings, non residential complexes, several Kalyana Mantapas, schools, colleges, post office, nursing homes, metro station, several commercial establishments and also Central and State Government Offices are situated within the vicinity. The value and potentiality of the acquired property is very high in the locality. As on the date of issuance of the preliminary notification, the open market value was more than ₹4,500/- to ₹5,000/- per square feet.

8. Learned counsel further contended that the SLAO, without determining the real and actual market value and without taking into consideration the potentiality of the acquired property, awarded meager compensation of ₹1,200/- per square feet. On reference, the Reference Court, without considering the evidence of P.W.1 and the documents produced as per Exs.P.1 to P.16, in proper prospective has proceeded to award only ₹1,653/-per square feet and the same is very meager, without any basis and contrary to the material on record and therefore, the compensation is liable to be enhanced by modifying the impugned judgment and award.

9. Learned counsel for the appellant further contended that Ex.P.1-registered sale deed dated 28.04.2006 depicts that the site measuring 30 feet x 40 feet situated in the same locality was sold for a sum of ₹30,00,000/-, though it was not a corner site and situated in commercial area. Even if the said sale deed is taken into consideration as the basis for awarding compensation, the claimant is entitled to ₹3,000/- per square feet, since claimant's property is a corner site having road on three sides of the site. The said aspect has not been considered by

the reference Court. He further contended that Ex.P.15-notification dated 17.04.2007 issued by the Department of Stamps and Registration depicts that the market value of the property in question i.e., Attiguppe area is ₹3,500/- per square feet. Since the impugned award is passed after issuance of Ex.P.15, the Reference Court ought to have fixed the market value at ₹3,500/- per square feet. He further contended that the Reference Court has not considered the fact that the evidence of P.W.1 and the material documents are not disputed by the respondents. After P.W.1 led his further evidence, he was not cross-examined. The respondents have not disputed the guidelines issued by the Department of Stamps and Registration fixing the market value of the area in which the property in question is situated at ₹3,500/- per square feet. Therefore, he sought to allow the Miscellaneous First Appeal.

#### IV Arguments advanced by the learned Counsel for Respondents 1 & 2

10. Per contra, Smt.A.R.Sharadamba, learned Additional Government Advocate for the respondent No.1-SLAO, while justifying the impugned judgment and award passed by the Reference Court, contended that, taking into consideration the entire material on record and the evidence of P.W.1, the Reference Court has rightly awarded ₹1,653/- per square feet and the same is just and proper and this Court cannot interfere with the same and therefore, sought to dismiss the Appeal.

11. Sri K.N.Puttegowda, learned counsel for respondent No.2-BBMP, while justifying the impugned judgment and award passed by the Reference Court, contended that, taking into consideration

the actual market value prevailing in the locality and the potentiality of the land in the locality, the SLAO has rightly fixed the market value and the same does not require further enhancement. However, the Reference Court has awarded ₹1,653/- per square feet which is just and proper and therefore, sought to dismiss the Appeal.

#### V The point for Determination

12. In view of the rival contentions urged by the learned counsel for the parties, the point that would arise for our consideration is:

“Whether the appellant/claimant has made out a case for further enhancement of compensation in respect of the land acquired, on the basis of Exs.P.1 to 16 and the evidence of P.W.1, in the facts and circumstances of the present case?”

#### VI Consideration

13. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material including original record, carefully.

14. It is undisputed fact that the claimant's property measuring 800 sq.ft. in property No.13/A, Sy.No.340/1, Kempapura village, Ward No.40, is situated within the BBMP limits was acquired by the State Government by issuing the preliminary notification dated 09.06.2006 under Section 4(1) of the Land Acquisition Act

published in the Karnataka State Gazette dated 16.06.2006 and issued the final notification under Section 6(1) of the Land Acquisition Act on 04.12.2006 published in the Karnataka State Gazette dated 05.12.2006 for the formation of a road connecting two approved layouts i.e., Income Tax Employees' Housing Co- operative Society Limited and Binny Mill Employees' Housing Co- operative Society Limited, Attiguppe Main Road, Chandra Layout, Vijayanagara, Bengaluru-560 080. The Special Land Acquisition Officer, by the award dated 15.03.2007 fixed the market value of the land at ₹1,200/- per square feet with statutory benefit. Being aggrieved by the same, the claimant made reference and the reference Court proceeded to hold enquiry.

15. In order to prove his case, the claimant examined himself as P.W.1 and filed affidavit in lieu of oral evidence and specifically stated that he acquired ownership to the property in question by way of gift deed dated 27.04.2005 and the ownership is not in dispute, as his name has been shown in the preliminary and final notifications issued by the State Government. He further deposed that the property in question is a corner site having road on three sides and is very close to Mysuru Road, Outer Ring Road and West of Chord Road. The surrounding area is fully developed. The property in question is a commercial site as declared by the BBMP. Both residential buildings, non residential complexes, several Kalyana Mantapas, schools, colleges, post office, nursing homes, metro station, several commercial establishments and also Central and State Government Offices are situated within the vicinity. The P.W.1 further deposed that the open market value of the property as on the date of final notification was ₹4,500/- to ₹5,000/-. He has produced certified copy of the sale deed to prove the same. He further deposed that the award

passed by the SLAO is inadequate and the same has been passed without proper appreciation of the material on record. In the cross-examination, P.W.1-claimant has deposed that whatever he has stated in the examination-in-chief is true and correct. The acquired property is in residential area. The Mysuru road is within 100 metres from the acquired land, from there, Chord Road is within 100 metres and denied the suggestion that the road is beyond 100 metres from the property. He further denied the suggestion that residential buildings, non residential complexes, several Kalyana Mantapas, schools, colleges, post office, nursing homes, metro station, several commercial establishments and also Central and State Government Offices are not situated in the vicinity. He also denied the suggestion that the value of the property is not ₹4,500/- to ₹5,000/- per sq.ft. and further denied that the property is 5 kms away from Vijayanagara.

16. Nothing has been elicited in the evidence adduced by P.W.1 to disprove that the site in question is very close to Mysuru outer ring road, Chord road and the area is surrounded by residential buildings, non residential complexes, several Kalyana Mantapas, schools, colleges, post office, nursing homes, metro station, several commercial establishments and also Central and State Government Offices and the value and potentiality of the property is very high in the locality. It is also relevant to state at this stage that the appellant has filed additional affidavit dated 03.03.2016 with some more documents in support of his case as further evidence. In the affidavit, it is stated that the property acquired has road on three sides and is situated in commercial area and prayed to enhance the compensation by modifying the award passed by the SLAO and



marked the documents Exs.P.9 to 16. Unfortunately, the respondents have not cross-examined the claimant in respect of the further evidence and the documents Exs.P.9 to 16. In order to disprove the claim of the claimant, the respondents have neither adduced any oral evidence nor produced any documentary evidence.

17. On careful perusal of the entire material on record, it is not in dispute that the claimant is the owner of the property acquired, the SLAO fixed the market value of the property at ₹1,200/- per sq. ft and the Reference Court enhanced and fixed the marked value at ₹1,653/- per sq.ft. The grievance of the appellant/claimant is that the property is situated in highly potential area and has roads on three sides surrounded by commercial establishments and the open market value of the land is more than ₹4,500/- to ₹5,000/- per sq. ft. The Reference Court has not considered the material document Ex.P.1-registered sale deed dated 28.04.2006 and Ex.P.15-guidelines dated 17.04.2007 issued by the Government. The said documents are not considered by the Reference Court. Admittedly, the respondents have not disputed the fact that the State Government by the notification dated 17.04.2007 fixed ₹3,500/- per sq. ft. in respect of the property in question.

18. The Reference Court in categorical terms recorded a finding as under:

“The P.W.1 in his evidence, in-many-words has deposed that the acquired land is having road on three sides of his acquired site. The said fact is also mentioned in gift deed marked at Ex.P.2. The PW1 though cross-examined in length, on behalf of respondent No.2, but

nothing has been elicited from his mouth to disbelieve or discard his evidence that the acquired land is having road on its three sides and it was non-agricultural residential site, even could be used for commercial purpose. This apart, when the PW.1 tendered his further chief-examination on 03.03.2016 and got marked the documents at Exs.P.9 to 16. the respondents have not at all cross-examined the PW.1. Approximately the value of the site and building sold under Ex P.1 comes to Rs.2,362/- Per sq.feet. The PW.1 in his chief-examination, in-many-wards has stated that Mysore road, outer ring road and chord road are existing near to the acquired land and the acquired land was fully developed area. This apart, the PW.1 has also stated in his Chief-examination that the residential complexes, apartments, Several kalyana mantapas, schools and colleges, post office, nursing homes and petrol bunks, hotels, nursing homes and several Commercial establishments, Banks and several central and State Government offices are situated very close to the acquired site. The PW.1 during cross-examination on behalf of the respondent No.2, deposed that the acquired site in question was developed in the layout formed with permission of BDA. The PW.1 during cross-examination deposed that at the time of sale of property under Ex.P.1, house was existing thereon. Though the PW.1 cross-examined, but his evidence in chief-examination that the acquired land is situated in a very developed area as surrounding area is fully developed and the Government offices, residential buildings were existing near to the acquired land, has not been shakened in the cross-examination. Therefore, there is no hesitation to hold that the acquired land was

having commercial potentiality having all facilities of developed area situated within BBMP limits.”

19. It is also not in dispute that the property in question is acquired for formation of road connecting Income Tax Employees' Housing Co-operative Society Limited and Binny Mill Employees' Housing Co-operative Society Limited and without acquiring the land of the claimant, it was impossible to form the said road. Acquired property was thus absolutely necessary for forming the road for connecting two layouts. Acquiring authority was thus in dire need of acquired property. The claimant has contended that the property in question is surrounded by residential buildings, non residential complexes, several Kalyana Mantapas, schools, colleges, post office, nursing homes, metro station, several commercial establishments and also Central and State Government Offices. It is also not in dispute that the State Government has issued Ex.P.15 fixing the market value of the land in question at ₹3,500/- per sq.ft. The reference court, without referring to the documents relied upon by the learned counsel for the appellant, basing on sale consideration amount under Ex.P.1, after deducting 30% of the said consideration towards building constructed thereon, awarded ₹1,653/- per sq.ft. The assessment and calculation made by the Reference Court is based on Ex.P.1. The property in Ex.P.1 is a pure residential site whereas, the property in the present appeal is a site surrounded by roads on three sides. Admittedly, without acquisition of the present bit of land, it would not be possible to form the road connecting two layouts as mentioned supra. Therefore, the property had high potentiality with all facilities within BBMP limits to be treated on par with any other commercial property though not converted

to commercial use.

20. Admittedly, the further evidence adduced by P.W.1 by producing Exs.P.9 to 16 has not been cross-examined and the categorical statements of the P.W.1 in his examination in chief has remained unshaken. In the absence of any material documents produced by the respondents to disprove that the property is situated in a highly potential area, the Reference Court ought to have awarded just and proper compensation as contemplated under Section 23 of the Land Acquisition Act. The Reference Court erroneously proceeded to award ₹1,653/- per sq.ft. ignoring the material documents Exs.P.1 to P.16. The authenticity of the documents produced by the claimant as per Exs.P.1 to P.16 has not been disputed by the respondents. Therefore, Reference Court is not justified in awarding ₹1,653/- per sq.ft and the claimant has made out a case for enhancement.

21. It is also relevant to state at this stage that 2<sup>nd</sup> respondent-BBMP has neither filed objections nor adduced any evidence or produced documents. The respondent No.1-SLAO has not cross-examined the claimant on his additional evidence.

22. In the absence of any contra material documents produced by the respondents, taking into consideration the fact that the property is having high potentiality, situated in a developed area in the midst of well connected roads, within the limits of BBMP, surrounded by commercial complexes, several Kalyana Mantapas,

schools, colleges, post office, nursing homes, metro station, several commercial establishments and also Central and State Government Offices, the claimant is entitled to further enhancement of compensation.

## VI Conclusion

23. Admittedly in the present case, on the basis of the evidence of P.W.1 and the material documents Exs.P.1 to 16, the claimant claimed ₹4,500/- to ₹5,000/- per square feet on the ground that the property acquired is situated in the midst of well developed area and all facilities are available within the vicinity. In the absence of any contra material produced by the respondents and taking into consideration the material documents Exs.P.1 to 16 and the oral evidence of P.W.1, in particular, Ex.P.1 dated 28.04.2006 and Ex.P.15-guidelines dated 17.04.2007 issued by the Department of Stamps and Registration, wherein the State Government fixed the market value at ₹3,500/- per sq.ft. in respect of the property in question and surrounding area and since the property has high potentiality, we are of the considered opinion that ₹3,000/- per square feet would be just and reasonable compensation.

24. In this regard, our view is fortified by the dictum of the Hon'ble Supreme Court in the case of U.P.Awas Evam Vikash Parishad vs. Asha Ram (D) Thr.Lrs and others reported in 2021 SCC Online SC 250, at paragraph 30, held as under:

“The potentiality of the acquired land is one of the primary factors to be taken into consideration to

determine the market value of the land. Potentiality refers to the capacity or possibility for changing or developing into the state of actuality. The market value of a property has to be determined while having due regard to its existing conditions with all the existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not primarily depends upon its condition, situation, use to which it is put or its reasonable capability of being put and also its proximity to residential, commercial or industrial areas/institutions. The existing amenities like water, electricity as well as the possibility of their further extension, for instance whether near about town is developing or has prospects of development have to be taken into consideration. It also depends upon the connectivity and the overall development of the area.”

25. For the reasons stated above, the point raised for consideration in the present Miscellaneous First Appeal has to be answered in the affirmative holding that the appellant/claimant has made out a case for further enhancement of compensation.

## VII Result

26. In view of the above, we pass the following:

### ORDER

- (i) The Miscellaneous First Appeal is allowed in part.
- (ii) The impugned judgment and award dated 18.09.2018 made in LAC No.139/2007 on the file of the II Additional City Civil and Sessions Judge, Bengaluru (CCH No.17), is hereby modified.

(iii) The appellant/claimant is entitled to compensation at the rate of ₹3,000/- per square feet with all statutory benefits including interest.

Ordered accordingly.