

**(2019) 04 KAR CK 0019**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 32384 Of 2010 (Lac) C/W  
Miscellaneous First Appeal No. 1049 Of 2011 (Lac)

Commissioner

APPELLANT

Vs

Gurulingappa

RESPONDENT

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**Date of Decision :** 01-04-2019

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4(1), 18(1), 18(2), 23(A), 28

**Citation :** (2019) 04 KAR CK 0019

**Hon'ble Judges :** P.B. Bajanthri, J;P.G.M. Patil, J

**Bench :** Division Bench

**Advocate :** S.S.Halalli, Archana P. Tiwari, Ratna Shivayogimath, Shailaja

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## **Judgement**

1. These two appeals were allowed in part on 14.02.2013 by this Court, which was subject matter of Special leave to appeal (Civil) No.(s)19665-19666/2013 which was disposed on 15.04.2014 while setting aside judgment dated 14.02.2013 and remanding the matter back to this High Court with a request to restore the appeal on its Board and pass appropriate orders on merits after affording reasonable opportunity of hearing to both the parties.

2. In terms of the orders of the Supreme court dated 15.04.2014 matter was heard.

3. Brief facts of the case are claimants are owners of land bearing Sy.No.1035/1A to the extent of 3 acres 0 guntas of Mahal Bhagayat at Bijapur. The Bijapur Urban Development Authority (for short 'BUDA') issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for brevity Act, 1894) dated 07.10.1982. Aforesaid land was acquired for the purpose of formation of residential layout. Proposed acquisition was not opposed by the claimants. Consequently, final notification came to be issued on 23.05.1985. The Land Acquisition Officer passed an award awarding a sum of Rs.7,000/- per acre as compensation. Under protest, claimants sought for a reference under Section 18 (1) of the Act, 1894. When the reference was ordered, they approached the Civil Court under Section

18 (2) of the Act, 1894 for a direction to the authorities to make a reference, application was allowed, accordingly, reference was also made. Before the Reference Court, the claimants sought for compensation at the rate of Rs.80/- per sq.ft. on the fact that acquired land has a non-agricultural potential. The matter was contested. In support of claimants' case, first claimant was examined as PW-1 and furnished 46 documents, which were marked as Exs.P-1 to P-46. On the other hand, on behalf of BUDA, an official by name Shri Bheemaraya was examined as RW-1 and furnished 16 documents which were marked as Exs.D-1 to D-16. Reference Court, after considering the contentions of both the parties and documents and evidence determined the market value of the land acquired at Rs.9.90/- per sq.ft. while relying on Ex.P- 41. Accordingly, it has awarded a sum of Rs.4,31,244/-per acre for the acquired land with all consequential statutory benefits by its judgment and award dated 28.08.2010 passed in LAC No.157/1996.

4. Dissatisfied and aggrieved by the award of the Reference Court dated 28.08.2010 both BUDA and claimants have preferred appeal and cross objection respectively. On 14.02.2013 this Court decided both MFA and MFA Crob and appeal was allowed in part while reducing compensation of Rs.4,31,244/- per acre to that of Rs.50,000/- per acre. Claimants filed petition before the Supreme Court questioning the validity of the judgment dated 14.02.2013 which was disposed of on 15.04.2014 while setting aside the judgment dated 14.02.2013 and remanded the matter back to this Court to pass appropriate orders on merits after affording reasonable opportunity of hearing to both the parties.

5. Learned counsel for the BUDA submitted that claimants were heard in the matter. The Reference Court committed an error in awarding compensation of Rs.4,31,244/- per acre as it has not appropriately dealt with Ex.P-41 and Ex.D-10. These two documents are relevant for assessment. It was further contended that Ex.D-1 is an award by Reference Court in LAC No.1276/1986, the subject matter of the land therein is Sy.No.310/1 which land is adjoining the land in question. It measures 6 acres 10 guntas and it is part and parcel of Mahal Bagayat. Only difference is few months. Even in that matter Reference Court enhanced the compensation from Rs.7,000/- to Rs.36,250/-which has attained finality before this Court. Thus, Reference Court has erred in enhancing exorbitant sum of Rs.4,31,244/- per acre. Learned counsel for the BUDA cited a decision of the Hon'ble Supreme in the case of Pehlad Ram and others vs. Haryana Urban Development Authority and others reported in 2014 AIR SCW 11 (paras-13 and 14).

6. Per contra, learned counsel for the claimants vehemently contended that there is no error committed by the Reference Court in awarding Rs.4,31,244/- per acre. On the other hand, claimants are entitled for further enhancement having regard to documentary evidence and factual aspects of the matter. In this regard, she has pointed out Ex.P-2 which is a Government notification dated 28.06.1976 whereby claimants' subject land was held to be part and parcel of

Bijapur city (Bijapur Municipal Limits). Further she has made reference to paras-18, 27 and 31 of the Reference Court order to contend that under which circumstances Reference Court has come to the conclusion that claimants are entitled to compensation at Rs.9.90/- per sq.ft., which would be Rs.4,31,244/- per acre. Hence, there is no infirmity whatsoever so as to interfere with the award of compensation by the Reference Court. For enhancement of compensation it was contended that subject land was in the heart of the Bijapury city nearer to National Highway. It has potentiality of non-agriculture, since subject land is surrounded by residential properties and main roads. In view of these facts and circumstances, it was contended that claimants are entitled to further enhancement of compensation with reference to Reference Court award of Rs.4,31,244/- per acre that is at Rs.9.90/- per sq.ft.

7. Heard the learned counsel for the parties. Perusal of the Comprehensive Development Plan (for short 'CDP') of Bijapur city vide Ex.D-16 to the present case we are able to understand the location and topography of the city where the fort is situated, which is part referred to as Mahal Bagayat, so also, Ex.P-2 dated 28.06.1976 Government notification. CDP reveals that the city has grown considerably towards northern side of the town. Reasons appears to be a National Highway No.13 which is through adjoining the northern side of the road and besides the Solapur, which is one of the prime city in the State of Maharashtra. Both on the southern side and western side there is no much growth of the city. Even on the north western side the land continues to be agricultural land. The CDP reveals back to the year 1992 whereas value of the land situated in Mahal Bagayat in the year 1982 is required to be examined. Therefore, Ex.P-41 itself cannot be the basis for awarding compensation. Only when the acquired land and the land in respect of which already award is passed or situated adjacent and the lands are comparable with each other, then in such circumstances an award either passed by the Land Acquisition Officer or by the High Court would be basis for awarding compensation, otherwise not. Reference Court has proceeded on an assumption that both the lands which are situated in Mahal Bagayat, compensation awarded in a case is made the basis for awarding compensation in another case.

8. In this backdrop, let us analyze and find out what would be the market value in the instant case. Reference Court has awarded compensation on the basis of Ex.P-41. The lands which are subject matter of Ex.P-41 are R.S.No.421/1 measuring 30 guntas, R.S.No.421/2 measuring 5 acres 10 guntas situated in Mahal Bagayat, Bijapur. These lands were also acquired by BUDA for the purpose of forming residential layouts. The preliminary notification was notified on 07.05.1984. It bases LAC Nos.359 and 360 of 2001. Perusal of the reference Court award and compensation awarded therein is on the basis of award passed in LAC No.148/1988, which is marked as Ex.P-37. Ex.P-37 is in respect of land bearing R.S. No.1042/2 which is also part and parcel of Mahal Bagayat, Bijapur measuring 4 guntas of land. The preliminary notification issued to acquire the land was dated 27.02.1986, which land is adjacent to NH-13 and it was acquired

for formation of by-pass road. The reliance was placed on an agreement of sale entered into by the claimant to sell an area of 300 sq.ft. to M/s Raj Service Centre at the rate of Rs.25/- per sq.ft. and giving deduction to 53% it would be Rs.13.25/- per sq.ft. which was awarded as compensation in the aforesaid case. Relying on the said exhibit which is of the year 1986, deducting about 10% and also taking note of the fact that the subject matter of Ex.P-41 is surrounded by grave yards of Hindu and Muslim community, the Reference Court awarded a compensation of Rs.9.90/- per sq.ft. Whereas, the Reference Court in the said case enhanced the compensation to Rs.11/- per sq.ft. which amount was further enhanced by this Court to Rs.11.85/- per sq.ft. and that was made the basis of awarding Rs.9.90/- per sq.ft. in the instant case. As is evident from the aforesaid factual aspects that 4 guntas of land is adjoining National Highway No.13, which is situated towards north of Mahal Bagayat was the subject matter of acquisition. Sy.No.421 is to the south of Mahal Bagayat but nearer to the Bijapur City. These two lands were not comparable since near Sy.No.421 no National Highway passes though, which is in the heart of the Bijapur city. Now this land acquisition is towards south of Sy.No.421, which is subject matter of Ex.P-41. Hence, Sy.No.421 is also not comparable to Sy.No.1035 which land is under acquisition. In fact, it is a triangular piece of land situated to the south of the Hubli-Solapur Railway line and it is land locked. Absolutely there is no access to the said land. To the north of that land Sy.Nos.310/1 and 310 are situated, to the south is Sy.No.1035, to the south is Sy.No.489 whereas land bearing Sy.No.421 and sub-numbers are adjoining Manguli road, Bijapur. In other words, it is abutting the aforesaid road and it has frontage to the road and the said land is situated near Bijapur. Whereas the land under acquisition is far away from Bijapur City to south Mahal Bagayat. Therefore, in our view the Reference Court committed error in blindly adhering the judgment of Ex.P-41 relating to Sy.No.421 while enhancing 10% without examining the identical of the lands and without realising that they are not comparable in nature. It also erred in fixing market value of the land in question at Rs.9.90/- per sq.ft.

9. Other than Ex.P-41 BUDA authority relied on Ex.D-10 which is a sale deed dated 15.05.1982, which relates to Sy.No.310/2A abutting the acquired land under which BUDA had purchased 4 acres of land at the rate of Rs.12,000/- per acre. The date of sale consideration being 15.05.1982, whereas in the present case preliminary notification was notified on 07.10.1982, which is proximate as the lands are adjoining to each other, which is proximate and comparable. If these issues are taken into consideration, the market value of the acquired land would work out for about 27 paise per sq.ft.

10. At this juncture, we have to take note of one more evidence namely Ex.D-2, which is an award passed in LAC No.1276/1986 and the subject matter of the land therein is Sy.No.310/1, again the land adjoining the land in question which measures 6 acres 10 guntas. It is also situated in Mahal Bagayat. The preliminary notification in the aforesaid case is dated 12.03.1982, which is about 7 months earlier to the instant notification dated 07.10.1982. Special Land

Acquisition Officer had awarded a sum of Rs.7,000/-per acre as compensation. On reference, it was enhanced by the Reference Court to a sum of Rs.36,250/- per acre and an appeal was preferred by the BUDA to the High Court wherein BUDA suffered an order. Consequently, claimant has not filed any appeal. For the purpose of awarding of compensation in the instant case, what is required to be taken into consideration is sale deed relating to BUDA purchasing property adjoining the land in question and whether it has compulsorily acquired the property under the Act, 1894 where Reference Court has fixed the market value of the property at the rate of Rs.36,250/- per acre and both the lands are adjacent and abutting the land in question and almost they are similar. Among the sale deed and award which is passed on the other material on record, we are inclined to act on the award passed by the Civil Court as it is more beneficial to the claimants in the absence of any other evidence for the reasons that Rs.36,250/- was fixed by the Reference Court as compensation in respect of notification issued on 12.03.1982. Certainly in this background we have to add some more amount to the aforesaid amount. One cannot ignore the factual aspect of the matter in respect of sale deed and acquired land adjoining the said land on 15.05.1982 for the purpose of formation of residential layout. Therefore, we are of the view that taking into consideration the value mentioned in Ex.D- 10 as Rs.12,000/- per acre, the award as per Ex.D-2 the value would be Rs.36,250/- whereas the notification in the present case is subsequent to both of them, coupled with the fact that the acquisition and the sale deed, the entire character of the land and the area changed from agricultural to non-agricultural use, in particular, for residential use, in our view it would be appropriate to take the market value as on the date of the notification namely 07.10.1982 at Rs.50,000/- per acre, which would meet the ends of justice.

11. Counsel for the BUDA authority cited a decision of the Hon'ble Supreme Court which is relevant for the purpose of considering the potentiality of the land and other factors. No doubt, Reference Court has not appraised the factors like adjoining property of the land in question and other factors like whether the land is in the heart of the city or adjacent to National Highway. On the other hand, subject land was near to Manguli road to Bijapur. Thus, Reference Court has erred. Claimants' counsel has not appraised this Court for the purpose of enhancement and she relied on only Ex.P-2. Ex.P-2 speaks of declaring Mahal Bagayat as a part of Bijapur city (Municipal limits). Relevant factor for the purpose of award of compensation is required to be with reference to the date of acquisition. In view of the above factual aspects, Reference Court has committed serious error in awarding compensation for a sum of Rs.4,31,244/- per acre which is exorbitant. In the result, we proceed to pass the following:

#### ORDER

- (i) MFA No.32384/2010 filed by the BUDA is allowed in part.
- (ii) MFA Cross Objection No.1049/2011 filed by the claimant is rejected

(iii) The amount of compensation awarded by the Reference Court is reduced from Rs.4,31,244/-per acre to Rs.50,000/- per acre.

(iv) The claimants would be entitled to 30% solatium on the said market value apart from all other statutory benefits flowing under Section 23(A) as well as under Section 28 of the Act, 1894.

(v) No order as to costs.