

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28th DAY OF JUNE, 2019

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

MISCELLANEOUS FIRST APPEAL NO.2397 OF 2016 (LAC)

The State of Karnataka

v/s.

Arthur G. Pereira

JUDGMENT

The appellants, the State of Karnataka and two others have taken an exception to the Judgment and Award dated 20th December, 2013, passed by the learned First Additional Senior Civil Judge at Mangaluru in LAC. No. 66/2007 in a reference under Section-18 of the Land Acquisition Act, 1894 (for short "the said Act"). The property subject matter of acquisition was measuring 5.55 acres in survey No.70/1, 70/2 and 167/2D, situated in Malavoor village of Mangaluru Taluk.

2. The notification under sub-section (1) of Section-4 of the said Act was issued on 27th May 2005. The declaration under Section 6 of the said Act was made on 17th October 2005 and an award under Section 11 of the said Act was declared on 3rd July

2006. The possession of the acquired land was taken over on 31st July 2006. The respondents are the claimants. The Special Land Acquisition Officer offered market value at the rate of Rs.1,500/- per cent of land i.e., Rs.1,50,000/- per acre. The respondents-claimants did not accept the award and sought a reference under Section 18 of the said Act, claiming enhancement of market value at the rate of Rs.30,000/- per cent (Rs.30,00,000/- per acre) in respect of area of 2.01 acres. In respect of remaining land measuring 3.54 acres, additional compensation was prayed for as, the said portion of the acquired land was embedded with minor minerals. Additional compensation was claimed towards injurious damage caused on account of severance of the land measuring 11.40 acres.

3. In the reference, the respondents-claimants examined Mr. Arthur J. Pereira, the first respondent as PW1, Mr. Ravindranatha, a Civil Engineer and an approved valuer as PW2 and Dr.H.N. Udaya Shankar, a Geologist as PW3. The respondents mainly relied upon sale instances in the form of two sale deeds which are produced as exhibits P1 and P3. For supporting the award made under Section-11 of the said Act, the appellants examined Mr.S.Krishnamurthy, Assistant Commissioner cum-Land Acquisition Officer, Mangaluru, as RW.1 and Dr.B.M. Ravindra, the Deputy Director of Mines and Geology as RW.2. The appellants mainly relied upon the

certified copy of the sale deed which is at exhibit R.5.

4. By the impugned judgment and award, the learned Reference Court held that market value of area of 3.70 acres was at the rate of Rs.30,000/- per cent of land. He deducted a sum of Rs.4,500/- being 15% towards the cost of development and fixed the net market value of the land at Rs.25,500/- per cent of land for the said area of 3.70 acres. In respect of remaining area of 1.85 acres of land, which had minor mineral deposits, the market value was determined at the rate of Rs.25,500/- per cent of land. After deducting 33% on account of minus factors of mining and after adding net value of minor mineral (laterite) at the rate of Rs.37,328/- per cent of land, the net value was fixed at Rs.52,920/- per cent of land. In addition, statutory benefits such as solatium under sub-section (2) of Section-23, interest at the rate of 12% under Section 23-1(A) and interest under Section-28 of the said Act, were granted to the respondents-claimants. The Reference Court held that the area of land severed on account of acquisition was to an extent of 11.40 acres. As the possession of the acquired land under Section 17 of the said Act was taken over on 31st July 2006, the market value of severed land as on that date was taken. The escalation was calculated on the basis of market value reflected from the sale deeds at Exhibits P1 & P3 for a period of one year and eight months at the rate of 12% per

annum and that is how, the market value at the rate of Rs.35,400/- per cent of land was arrived at in respect of severed land. Deduction of 25% amounting to Rs.8850/- per cent of land was made on account of development charges. Thus, the net market value of the severed land as on the date of taking possession of the acquired land was arrived at the rate of Rs.26,550/- per cent of land. 33% of the market value was granted as compensation for denying access to the property on account of acquisition and ultimately, the compensation for severed portion of the land was granted at the rate of Rs.8762/- per cent of land.

5. Learned Additional Government Advocate, in support of the appeal, urged that the market value fixed by the Reference Court is exorbitant, as it is not supported by the evidence on record. Secondly, he submitted that the deduction taken on account of development charges is on the lower side. He submitted that as regards compensation towards severance of land, the learned judge of the Reference Court has committed an error by fixing the market value of the severed land at the higher rate of 33% of the market value. He urged that both the sale instances produced by the respondents-claimants were not of comparable lands and hence, such sale instances were not relevant and therefore, there was no evidence produced by the respondents about the market value. He submitted that there is

absolutely no basis for the Reference Court for fixing market value of the lands with minerals separately. Learned AGA submitted that 12% escalation taken has no basis.

6. The learned counsel appearing for the respondents-claimants has supported the award and contended that in fact the amount of compensation granted by the Reference Court may not be adequate. She relied upon the decision of the Apex Court in the case of ***General Manager, Oil and Natural Gas Corporation Limited –vs- Rameshbhai Jivanbhai Patel and another (2008) 14 Supreme Court Cases 745***. She would submit that no interference is called for with the impugned judgment and award.

7. We have given our careful consideration to the submissions. We have perused the notes of evidence of the witnesses, the sale instances and various documents on record.

8. It is well settled that the determination of market value of the acquired lands under the provisions of the said Act, always involves an element of guess work. But, the determination of the market value has to be made by adopting well recognized methods. In the present case, market value of the acquired land has been fixed by the learned Reference Court by using comparison method, placing reliance on the sale instances of two

registered sale deeds in respect of adjacent comparable land. The comparison method is a very well accepted method.

9. For determination of market value of the acquired land, several factors are required to be taken into consideration. The purpose for which the acquisition is made cannot be altogether ignored. In this case, the public purpose of acquisition is extension/expansion of Runway of Bajpe International Airport, Mangaluru and construction of Terminal Complex building and Taxi stand for Mangalore International Airport. It is necessary to note here that on the relevant date i.e., on the date of publication of the notification under sub-section (1) of Section-4 of the said Act, the Airport was already in existence. The acquisition of the lands of the respondents-claimants was for the purpose of expansion of the existing Airport. The Respondent No.1 who has been examined as PW.1 deposed before the Reference Court about the location of the acquired land. He deposed that the acquired land is adjacent to the existing Airport and that the acquired land is at the distance of 15 KMs from Mangaluru city. He deposed that three Industrial Estates are located at the distance of 5-6 Kilometers and Special Economic Zone (SEZ) is located at the distance of 3 to 4 kilometers from the acquired land. He deposed that within the radius of 4 to 5 Kilometers of the acquired land, there were major Educational Institutions like Shree Devi Institute of Technology, Shree Devi

Collage of Pharmacology, Beasant College of Management, Sapthagiri College of Hotel Management, and St. Joseph Engineering College etc. Perusal of cross-examination of PW1 shows that his evidence as regards the location of the acquired land, the presence of industrial estates and SEZ as well as major educational institutions has remained unshaken. The land was classified in the revenue record as a dry land. But the evidence on record indicated that there was all-round development in the vicinity of the acquired land.

10. Considering the close proximity of the acquired land to the existing Airport, establishment of major educational institutions, industrial estates and SEZ within the vicinity of the acquired land, the purpose for which it was acquired and the surrounding developments, the learned Reference Court has rightly held that the acquired land had a commercial potential.

11. The law is well settled that an award made under Section-11 of the said Act is in the nature of only an offer to the land owners. However, the statements made therein are binding on the State Government. In the award dated 3rd July 2006 passed in LQ.SR.2/2005-06 (Award No.2/06-07), the Land Acquisition Officer has noted that basic civic amenities like drinking water, road, transportation and electricity are available close to the acquired land. He also noted that the entire acquired land is adjacent to the existing Airport. Thus, the

finding recorded by the learned Reference Court that the acquired land had a commercial potential is consistent with the evidence on record. The first respondent has produced Google Satellite map and the Google images taken on 22nd November 2004 in respect of the acquired land, as at Ex.P.23 and 23 (a). The said images show that the entire acquired land had maximum frontage to public roads.

12. The two registered sale deeds Ex.P1 and P3 relied upon by the respondents-claimants are of 12th November 2004. The said sale deeds have been executed about seven months prior to the date of the notification issued under Section 4(1) of the said Act. The first sale deed is in respect of land measuring 12.5 cent for a sum of Rs.3,75,000/- and the second sale deed is in respect of 12 cent for Rs.3,60,000/-. Thus, the rate per cent of land, as reflected from the said sale deeds was Rs.30,000/- about seven months before acquisition. Both the sale deeds are in respect of converted land from the same Malavoor village of Mangaluru taluk. Though the sale deeds were in respect of the lands which are not acquired earlier, they pertain to the land situated in close proximity of the acquired land. In the award passed under Section-11 of the said Act, there is a reference/observation that the land subject matter of the sale deed at Ex.P.1 was situated in nearby locality having similar advantages. Therefore, the Reference Court was

justified in accepting sale transactions reflected from Ex.P.1 and P3 as the sale transactions in respect of comparable lands for determination of the market value of the acquired land and it is difficult to find fault with the said approach.

13. The Special Land Acquisition Officer relied upon a copy of sale deed marked as Ex.R5. We have carefully perused the said sale deed. The recital on page-3 of the sale deed records that the bargain took place in 1995, when price of the property was fixed at the rate of Rs.1,500/- per cent of land. The same recital records that such a lower price was agreed, considering the fact that the land was on a steep hillock without any motarable access and considerable investment will be necessary to make it suitable for any useful purpose.

14. Here, we are dealing with a case, where market value as on May, 2005 will have to be determined. The sale deed Exhibit R.5 relied upon by the Land Acquisition Officer, reflects the value of a land of the year 1995 and that also in respect of a land which was not at all useful for any residential or commercial purposes, without spending considerable amount on improvements. Therefore, by no stretch of imagination, the said sale deed could be considered as a comparable sale instance. Therefore, the said sale deed will have to be kept out of consideration. The appellants have not relied upon any other documents for determination of market value of the acquired

land. Therefore, the market value will have to be determined on the basis of the sale deeds at Exhibits P1 and P3.

15. As noted earlier, as far as a part of the acquired land is concerned, there was a presence of minor minerals (laterite) below the soil surface of the land. The respondents examined PW.3, Dr.H.N. Udaya Shankar, a Geologist. He along with PW.2 Mr. Raveendranatha, a qualified Civil Engineer and an approved valuer, visited the site for the purpose of submitting valuation report with regard to minor minerals (laterite) available in the acquired land. His valuation report is at exhibit P-7. He was of the opinion that though the entire property was having laterite base, extraction of good quality laterite is possible only in the area of 3.54 acres. He opined that volume of minor minerals which could be extracted is 3,00,825 cubic meters. He was of the view that cutting and other wastages will be to the extent of 50% and therefore, net volume available after deduction was approximately 1,50,000 cubic meters. As on 12th May 2005, according to him, the cost of one standard size laterite stone was Rs.4/- per cubic meter. Therefore, he valued the net value of the minerals which could be extracted from the area of 3.54 acres of land as Rs.3,52,94,118/-. Again, from the said amount, he deducted total expenses which would have been incurred in the course of extraction. According to him, the total expenditure would have been of Rs.2,20,80,000/-. After deducting the expenditure, according to him, the cost of 50% of

the minerals extracted would come to Rs.1,32,14,118/-.

16. We have carefully examined the cross-examination of PW.3. There is not even a suggestion given in his cross-examination for challenging the credentials of the witness as a Geologist and the report submitted by him. In response to a question put in the cross-examination, he stated that the entire Bajpe area consists of mineral deposits. He has stated that in the entire area of 3.54 acres, minor mineral deposit can be seen on the surface itself. He accepted that he cannot say with certainty, that there is a mineral deposit in the entire 3.54 acres of land. There is no question asked in the cross-examination on the contents of the report submitted at exhibit P-7. There is no suggestion given as regards the price of the minor minerals mentioned in the said report.

17. Perusal of the impugned judgment will show that notwithstanding the report at Ex.P-7, the learned Judge of the Reference Court has taken an area of only 1.85 acres from which minor minerals (laterite stone) could be extracted. Therefore, he proceeded to value the area of 3.70 acres from out of 5.55 acres of acquired land as normal land having no potential for extraction of minor minerals and he treated the remaining area of 1.85 acres as the land from which laterite mineral stone could be extracted. Thus, out of the area of 3.54 acres having laterite mineral deposits as mentioned in the expert's report at Ex.P7, he

took slightly more than half of the said area as fit for excavation of laterite stone. Perhaps, the respondents could have made a grievance about this approach, but they have not done so. Thus, the learned judge of the Reference Court valued the area of 3.70 acres as a normal land.

18. As far as the cost of development is concerned, there are various decisions of the Hon'ble Apex Court which indicate that the cost of development, can be anywhere between 10% to 70% depending on the facts of each case. In the case on hand, considering the fact that acquisition was for the purpose of expansion of Airport and adjacent area was already acquired for Airport and also considering the fact that the land was a dry land having commercial potential, the cost of development is taken at 15%. We have already quoted what is mentioned in the award made under Section 11 of the said Act, about the commercial potentiality of the acquired land. Therefore, it is difficult for us to find fault with the finding recorded by the learned judge of the Reference Court as regards the cost of development at 15%. Thus, he has arrived at net market value of the land at Rs.25,500/- per cent of land after deduction of the cost of development.

19. As regards the area of 1.85 acres of land, from which it was possible to extract minor mineral (laterite stone), the learned Judge has considered the net market value of the minor

minerals at Rs.37,328/- per cent of land which is based on the report submitted by the Geologist at exhibit P-7. The learned Judge as made further deduction of 33% from Rs.25,500/- and has arrived at the market value of the area of 1.85 acres at Rs.17,085/- per cent of land. To that, he has added the net value of minor minerals at Rs.37,328/- per cent of land. This calculation is rightly based on the report marked as exhibit P-7 which is not at all challenged by the appellants in the cross-examination of PW.3.

20. Now, we come to the compensation granted on account of severance of land. For that purpose, it is necessary to note the evidence of Mr. Arthur J. Pereira (PW.1). In paragraph-3 of his affidavit, in lieu of examination-in-chief, he has stated thus:

“3. I say that abutting to the portions of the acquired lands referred above, we also own, possess and enjoy a compact block of a land comprised in Survey No.152/3Ap2, 117/1Ep2, 1Ep1, 1Dp2, 1Dp1, Survey No. 70/7p2, 7p1, 6p3, 6p2 and 6p7 in all measuring 11.40 acres in extent of Malavoor village, which are now totally cut off from the road approach which existed earlier. The aforesaid block of lands contain cashew plantation, green manure, forest growth, timber trees, fruit bearing mango trees etc. The RTC pertaining to the above said lands clearly establish the existence of cashew plantation. The acquisition authority was requested to make

due provision for road access from any point of public road belonging to us, as referred above, so that its utility by us is not deprived in any way.
The Acquisition Authority has failed to consider the above referred objections and did not make any provision for road access as requested for.
On account of the same, we are deprived of the utility of the entire block of land of 11.40 acres.
We have lost the incomes from those lands. In view of segregation of the entire block of land measuring 11.40 acres belonging to us, we are to be compensated for deprivation of the aforesaid lands also by awarding compensation at least at the same rate at which we have made our claim as set out above.

(underlines supplied)

21. We have carefully perused the cross-examination of PW.1. There is no serious challenge to the aforesaid statements made by PW.1 in his cross-examination. Further examination-in-chief of PW.1 was recorded. In his further examination-in-chief, he has specifically stated that the Land Acquisition Officer has taken possession of the land on 31st July 2006 and since then, the respondents were unable to reach the property and carry out agricultural activities/work, as the road access was not provided by the Land Acquisition Officer, as requested. Even this part of the additional examination-in-chief has gone unchallenged.

The Land Acquisition Officer-cum-Assistant Commissioner has been examined by the appellants as RW.1. He accepted the fact that the respondents might have given information about severed land at the initial stage of acquisition and that they had submitted their claim statement, claiming compensation for severed lands. When he was shown/confronted with the sketch exhibit P8(a) by pointing out that it was produced by the respondents-claimants along with the application dated 23rd September 2006, his response was that the respondents might have enclosed the said sketch exhibit P8(a), but he has not considered the said sketch. The said sketch clearly indicates as to how the remaining land was severed due to the lack of the road accessibility.

22. If the oral and documentary evidence is considered, it is not possible for us to find fault with the finding recorded by the learned judge of the Reference Court that the land measuring 11.40 acres owned by the respondents was severed and its access from the road was no longer available due to the acquisition. There is no dispute about the ownership of the respondents in respect of the said area, as the claim of ownership is supported by the entries made in the RTC extract marked as exhibit P.26. The learned judge of the Reference Court has held that Ex.P.24, the Google Image taken through satellite on 27th May 2013 clearly indicates that the severed land

forming one compact has been cut off from the access to the road. That is how the Reference Court has rightly held that the respondents were entitled to compensation on account of severance and injurious affection caused to the compact of land measuring 11.40 acres. The compensation on the said counts is payable as per clauses thirdly and fourthly under sub-section (1) of Section 23 of the said Act.

23. The severance took place on 31st July 2006 and therefore, the market value as on that date was rightly considered by the Reference Court for arriving at the compensation. Though the entire land measuring 11.40 acres was landlocked, the learned Reference Court has made further deductions from market value. As on May, 2005, as observed earlier, the market value was fixed at Rs.30,000/- per cent of land. For determining the market value as on 31st July 2006, escalation is taken at 12% for a period of one year and eight months. This escalation is taken on the market value as found from the date of sale deeds Ex.P1 and P3. Considering the fact that the acquired land was adjacent to the existing Airport, it was an urban area for all purposes.

24. In the case of ***General Manager, Oil and natural gas Corporation limited –vs- Rameshbhai Jivanbhai Patel & another (2018) 14 Supreme Court Cases 745***, the Apex Court dealt with an issue of calculating market value by considering escalation per year. The Apex Court held that increase in the

market value in urban and semi urban area is between 10% to 15% and the calculation has to be made on cumulative basis. In the case on hand, the rate of escalation of market value at 12% per annum taken by the Reference Court cannot be faulted with especially when it was not cumulatively calculated.

25. Thus, he arrived at the net market value as on 31st July 2006 at the rate of 35,400/- per cent of land. As the landlocked area was fairly large, the cost of development was taken at 25%. Thus, he took the net value of the land at Rs.26,550/- as on 31st July 2006 when actual severance took place. Though the entire area of 11.40 acres has become landlocked due to non-availability of access to road, its entire net value not has been awarded as compensation. Only 33% of Rs.26,550/- per cent of land has been awarded as compensation which comes to Rs.8762/- per cent of land. The said approach is very reasonable.

26. As regards the acquired land, the Reference Court has granted statutory benefits of interest under Section 23-1(A), Solatium under Section 23(2) and interest under Section 28 of the said Act. As regards the value of the severed land at the rate of Rs.8,762/- per cent, interest under Section 23-1 (A) has not been granted. However, other statutory benefits, namely, solatium under sub-section 2 of Section 23 of the said Act and interest under Section-28 of the said Act have been rightly

granted. The Reference Court also granted costs of Rs.1,500/- being Advocate's fees. Taking over all view of the matter, the findings recorded and compensation granted by the Reference Court is perfectly in accordance with law and we find no error apparent on the face of the record. Accordingly, we pass the following order:

The appeal is dismissed.

There will be no order as to the costs.