



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL NO. 7879 OF 2016 (LAC)

Between:

Smt. Vishalakshamma
W/o Late Parameshwarappa,
Aged about 67 years,
Mylareshwara Nilaya,
2nd Cross, Durgigudi,
Shimoga City - 577 201.

Represented by Special
Power of Attorney Holder
P.Raju, aged about 45 years,
S/o Late Parameshwarappa,
Mylareshwara Nilaya,
2nd Cross, Durgigudi,
Shimoga City - 577 201.

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by VEERENDRA
KUMAR K M

Location: HIGH
COURT OF
KARNATAKA

...Appellant

(By Sri Sangamesh G.Patil, Advocate)

And:

The Special Land Acquisition Officer
Bhadravathi Urban Development Authority,
Vinobanagar, Shimoga City,
Shimoga Taluk, Shimoga District - 577 201.

...Respondent

(By Sri A.V.Gangadharappa, Advocate)



This MFA is filed u/s.54(1) of the Land Acquisition Act, against the judgment and award dated 15.07.2016 passed on LAC No.15/13 on the file of the Principal Senior Civil Judge & CJM, Shivamogga, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA, coming on for final hearing, this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

The claimant in LAC No.15/2013 on the file of the Prl. Senior Civil Judge, Shivamogga has preferred this appeal questioning the correctness of the judgment and award dated 15.07.2016.

2. Heard the arguments of Sri Sangamesh G Patil, learned counsel for the appellant and Sri A.V.Gangadharappa, learned counsel for the respondent.

3. The facts in brief are that by issuing preliminary notification on 12.11.1992 and final



notification on 24.05.1994, 9 acres 06 guntas of land in Sy.No.126 of Sominakoppa village, Kasaba Hobli of Shivamogga Taluk was acquired for the benefit of Shivamogga Urban Development Authority for the formation of residential layout. Initially the Land Acquisition Officer ('LAO' for short) fixed the compensation @ Rs.38,450/- per acre in respect of dry land and Rs.39,986/- per acre in respect of wet land. Not satisfied by the award, the claimant sought a reference to the Civil Court under Section 18 of the Land Acquisition Act ('Act' for short) and the reference court by passing the impugned judgment and award enhanced the compensation to Rs.65,000/- per acre. Still not being satisfied, the claimant had preferred this appeal.

4. Sri Sangamesh G Patil, learned counsel for the appellant submits that the Co-ordinate Bench of this court by its judgment dated



11.10.2022 in MFA Nos.1560/2014, 1662/2014, 1663/2014 and 1664/2014, set-aside the award passed therein and remanded the cases to the reference court for re-determination of the compensation by re-appreciating the evidence. Therefore it is his submission that this appeal also should be allowed by remanding the matter to the reference court.

5. But Sri A.V.Gangadharappa, learned counsel for the respondent submits that there is no case for remand as the question of maintainability of the reference petition is involved. He submits that the claimant did not seek reference within the prescribed time and when he made an application to the LAO, he rejected the application on the ground that it was time barred. Thereafter the claimant approached the Civil court for a direction to the LAO to make reference and on the basis of order passed by the Civil court, the reference was



made. Merely for the reason that there was a direction by the Civil court, reference court could not have entertained the reference petition as it was time barred and therefore question of maintainability is involved. He also submits that the award of Rs.65,000/- per acre was made following the awards passed in the other cases and if this court comes to conclusion that the reference petition was not time barred, compensation of Rs.65,000/- per acre can be confirmed.

6. We have perused the judgment of the Co-ordinate Bench in the connected appeals. It is the clear observation that the trial court has not appreciated the evidence in proper perspective and it has ignored the documents produced by the claimant. Paragraphs 15 and 16 of the judgment of the Co-ordinate Bench contain reasons for remanding the cases to the reference court. Since the Co-ordinate Bench has taken a view that the



cases are to be remanded, this case arising from the same notification, has to be adjudicated on lines with the cases which have been remanded to the reference court. However, we make it clear that the question of maintainability of the reference petition can be urged by the beneficiary though it has not preferred cross appeal against the impugned award. The submission made by Sri A.V.Gangadharappa with regard to maintainability falls within the scope of Order 41 Rule 22 of CPC and therefore notwithstanding cross objection being filed, this point can be urged in the appeal.

7. From the above discussion we pass the following:

ORDER

The appeal is allowed.

Impugned award is set-aside. Case is remanded to the reference court for re-determination of the award by applying its mind to the evidence available on record.



Parties are given liberty to adduce further evidence if necessary.

All contentions available to the parties including the question of maintainability of the reference petition is kept open.

Since the matter is remanded, the appellants are entitled for refund of court fee in terms of the provisions of Section 66 of the Karnataka Court Fee and Suits Valuation Act, 1958.

The parties shall appear before the reference court on 17.02.2025.

Copy of this order shall be forwarded to the reference court immediately.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**