

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO.5170 OF 2020 (LAC)

BETWEEN:

ARTHUR PEREIRA
S/O LATE THOMAS PEREIRA
AGED ABOUT 63 YEARS
KARAMBAR BAJPE POST
MANGALURU TALUK-574 142

...APPELLANT

(BY SMT. MAITREYI KRISHNAN, ADVOCATE FOR
SRI. CLIFTON D ROZARIO, ADVOCATE)

AND:

1 . THE SPL. LAND ACQUISITION OFFICER
AND ASSISTANT COMMISSIONER
MANGALURU-575 001

2. R.J.R. NAZARETH
S/O LATE D. H. NAZARETH

(DELETED VIDE ORDER DATED 16.07.2021)

3 . R. V. NAZARETH
S/O LATE D. H. NAZARETH
R/AT KARANGALPADY
MANGALURU-3

Digitally
signed by
PAVITHRAN
Location
High Court
of Karnataka

4 . R. J. N. NAZARETH
S/O LATE D. H. NAZARETH
R/AT KARANGALPADY
MANGALURU-3

5 . R. B. NAZARETH
S/O LATE D. H. NAZARETH
R/AT KARANGALPADY
MANGALURU-3

...RESPONDENTS

(BY SMT. RADHA RAMASWAMY, AGA FOR R1;
R2 DELETED VIDE COURT ORDER DATED 16.07.2021;
R3 TO R5 - SD)

THIS MFA IS FILED UNDER SECTION 54(1) OF LAND ACQUISITION ACT, 1894, AGAINST THE JUDGMENT AND AWARD DATED 08.07.2020 PASSED IN LAC.NO.02/2014 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MANGALURU, DAKSHINA KANNADA, PARTLY ALLOWING THE REFERENCE PETITION FILED UNDER SECTION 18 OF LAND ACQUISITION ACT.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.07.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
AND
HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This appeal is filed against the judgment dated 08.07.2020 passed by the II Additional Senior Civil Judge and CJM, Mangaluru, Dakshina Kannada passed in LAC No.02/2014.

2. We have heard Smt. Maitreyi Krishnan, learned counsel appearing for the appellant and Smt. Radha Ramaswamy, learned Additional Government Advocate for respondent No.1.

3. It is submitted by the learned counsel appearing for the appellant that land measuring 1 acre in Sy.No.23, Malavoor Village, Mangalore Taluk was acquired by the State Government for the construction of the second Runway Terminal Tower for Mangaluru Airport vide Notifications dated 01.01.1990 and 20.10.1990 under Sections 4 and 6 of the Land Acquisition Act, 1894 ('1894 Act' for short). On 16.11.1992, an Award was passed by respondent No.1 determining the market value at Rs.250/- per cent. The total

compensation was computed as Rs.6,78,564/- including statutory benefits and interest. The land owner filed objections to the Award on 16/17.04.1993 and requested the Special Land Acquisition Officer ('SLAO' for short) to refer the matter to the Civil Court. An application was also filed before the Competent Court under Section 18(3)(b) of the 1894 Act in LAC No.24/1997 which was allowed by Order dated 12.10.2009 in LAC No.24/1997 and direction was issued to SLAO to send the reference to the City Civil Court. However, the SLAO did not make such a reference.

4. The appellant then filed W.P.No.11067/2014 before this Court seeking for a direction to SLAO to make reference to the Competent Court on 03.03.2014. During the pendency of the said writ petition, the Land Acquisition Officer on 11.03.2014 made the reference for enhancement of compensation. However, at the time of making the reference, no deposit of compensation was made. It was on 14.12.2015 that Rs.1,41,174/- out of the total compensation of Rs.6,78,564/-, was deposited before the Reference Court. Thereafter, the Reference Court vide judgment dated

08.07.2020 partly allowed the reference under Section 18 of the 1894 Act and enhanced the compensation from Rs.250/- per cent to Rs.7,000/- per cent. Aggrieved by the compensation awarded by the Reference Court, this appeal is filed seeking further enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the failure to make a reference for a period of more than 22 years despite repeated requests necessitates that the market value for the acquired land be determined as per market value of the property as on the date of Reference (11.03.2014). Further, it is contended that since even the un-enhanced compensation as awarded by the SLAO was not deposited till 14.12.2015, the acquisition could not be deemed to be lawfully made till the value of the land was deposited in Court. It is therefore contended that the value of the land has to be reckoned as on the date when the acquisition becomes legal by the tender of the compensation awarded in accordance with law. It is further contended that the date of deposit or the date of

reference has to be considered as the date of Preliminary Notification for calculation.

6. It is further contended that the Reference Court failed to consider the evidence placed by the appellant particularly Ex.P3 dated 12.11.2004 which shows that a part of Sy.No.8/31P2 which had been acquired for the same purpose, was sold at the rate of Rs.30,000/- per cent of land. This was accepted by the Reference Court by Award dated 20.12.2013 in LAC No.66/2007 and was upheld by this Court by Order dated 28.06.2019 in MFA No.2397/2016. Further, according to Ex.P5 - Sale Deed, properties in the adjacent village within 500 meters from the acquired lands were sold for Rs.1,41,000/- per cent. Therefore, these sale exemplars ought to be considered for the determination of the market value of the acquired land.

7. It is further contended that the cumulative escalation at a minimum rate of 10% per annum would have to be taken from the date of the sale exemplar to the date to which the date of Preliminary Notification is shifted for valuation. The Reference Court has also failed to take into

account the potential value of the acquired land. It is further contended that the land was acquired for a commercial activity, that is, construction of a Runway Terminal Tower for the Mangaluru Airport. Therefore, the acquired land is to be taken as commercial land.

8. It is further contended that the potential value of the land and its proximity to the airport, the various industrial complexes, educational institutions, Government offices and the State Highway etc., must be accounted for in the determination of the market value. Further, post notification developments establish the potential value of the acquired land, which has not been taken into consideration. It is further contended that the compensation for minerals has not been calculated.

9. The learned counsel appearing for the appellant placed reliance on the following judgments:-

- ***Dharnidhar Mishra (D) and Another v. State of Bihar and Others*, reported in (2024) 10 SCC 605;**
- ***Tukaram Kana Joshi and Others v. Maharashtra Industrial Development***

***Corporation and Others* reported in (2013) 1 SCC 353;**

- ***Bernard Francis Joseph Vaz and Others v. Government of Karnataka and Others*, reported in (2025) 7 SCC 580;**
- ***Special Land Acquisition Officer, UK Project v. Mahaboob and Another*, reported in (2009) 14 SCC 54;**
- ***Udho Dass v. State of Haryana*, reported in 2010 (12) SCC 51;**
- ***Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others* reported in (2024) 10 SCC 533;**
- ***Mehrawal Khewaji Trust (Regd.) Faridkot & Others v. State of Punjab & Others* reported in AIR 2012 SC 2721;**
- ***General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Another*, reported in (2008) 14 SCC 745;**
- ***Digamber & Others v. State of Mah Others Others* reported in AIR 2013 SC 3532;**
- ***Addl. Spl. L. A. Officer, Mangalore v. K.T.Alva*, reported in AIR 1976 Karnataka 99;**
- ***Prag Narain v. Collector of Agra* reported in (1932)34 BOMLR 885;**

- ***Sadashivaiah and Others. v. State of Karnataka and Others, reported in ILR 2003 KAR 5088;*** and
- ***The State of Karnataka & Ors. v. M/s. High Land Industrial & Commercial Enterprises, Mangalore and Another, by order dated 11.06.2021 in MFA 3528/2016.***
- ***The Land Acquisition Officer & Assistant Commissioner v. Rev. Fr. Ronald D. Souza, by order dated 22.04.2014 in MFA 4361/2011 and connected matters.***

10. The learned Government Advocate appearing for the respondents contended that the acquisition in question was one initiated in the year 1990 and the land value can be calculated only with reference to the date of the Preliminary Notification. Relying on the provisions of the 1894 Act, it is contended that there is no power either in the reference Court or in this Court exercising the appellate jurisdiction under the provisions of the said Act to direct the shifting of the dates for the purpose of calculating the land value. It is further contended by in affidavit dated 08.04.2026 that the amount of Rs.1,41,174/- was deposited before the Civil Court in LAC No.1/2024 on 14.12.2015 in respect of the

acquired land. It is further submitted that a sum of Rs.68,10,656/- has been deposited before the Civil Court on 25.09.2025 towards full satisfaction of the compensation as per the Award. It is further stated that the delay in deposit occurred due to the administrative and procedural reasons.

11. It is further submitted, on instructions, on specific query by this Court that the acquisition was made by the State and the land was made available free of cost to the Airports Authority for the construction of the Runway Terminal Tower.

12. We have considered the contentions advanced. The admitted facts are that the acquisition was initiated by a Preliminary Notification dated 01.01.1990, Final Notification was published on 20.10.1990 and the Award was passed on 16.11.1992, determining the market value at Rs.250/- per cent. The extent of the property acquired from the appellant was 1 acre. The appellant filed objections and requested the SLAO to refer the matter to the Civil Court as provided under Section 18 of the 1894 Act. The appellant had also

filed an application before the Competent Civil Court seeking direction to the SLAO to refer the case.

13. The said application was allowed by Order dated 12.10.2009. However, even thereafter, the reference was not made. The appellant approached this Court by filing W.P.No.11067/2014, that the reference was made on 11.03.2014. It is the specific contention of the writ petitioner that no deposit of compensation was made till 14.12.2015 and on that day, only an amount of Rs.1,41,174/- out of the total compensation awarded by the SLAO amounting to Rs.6,78,564/- was deposited. The Reference Court enhanced the compensation from Rs.250/- per cent to Rs.7,000/- per cent with statutory benefits. This amount also has not been deposited inspite of the fact that no appeal was preferred by the State. It was only on 25.09.2025 that the further amount of Rs.68,10,656/- was deposited. It is in these factual circumstances that the claim of the appellant for re-determination of land value has to be considered.

14. We notice that the right to property has been held to be not only a constitutional or statutory right, but also a human right, though it is no longer included as a fundamental right. Therefore, the very fact that the property has been acquired by the State without making the payment of the compensation to the land owner amounts to a travesty of justice. It is clear that there can be no acquisition of property without paying the due compensation to the land owner.

15. The Apex Court has repeatedly held that the acquisition and utilization of private property without paying compensation to the land owner is totally violative of the rights of the land loser. It is clear in the instant case that though an award was passed in the year 1992 and a request for reference was made well within time, the reference was made only on 11.03.2014, after orders were passed by this Court. Even as on that day, no amount was deposited as compensation and no tender was made of any compensation to the land losers. The appellant has placed the material on record to show that the market value of the land as on

28.01.2011 was Rs.2,50,000/-. Ex.P5 is a sale exemplar relied on for that purpose. Ex.P3 dated 12.11.2004 would show that the balance portion of the land which was acquired for the very same purpose was sold at the rate of Rs.30,000 per cent. This sale exemplar was accepted by the Reference Court Award in LAC No.66/2007, which was upheld in MFA No.2397/2016.

16. The Apex Court in ***Bernard Francis Joseph Vaz***'s case (supra), has clearly held that since there can be no acquisition without tender or at least deposit of the compensation, where there is undue and unexplained delay in the tender of the unenhanced compensation, such delay has to be taken into account for the purpose of fixing the compensation as well. The Apex Court has held the following:-

"46. Recently, this Court in the aforesaid case of Ultra-Tech Cement observed that the Government as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. It was further observed that the State cannot abdicate its constitutional and statutory responsibility of

payment of compensation by arguing that its role was limited to initiating acquisition proceedings. It was, therefore, observed that the delay in the payment of compensation, in accordance with law, to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300-A and the idea of a welfare State.

47. *In the aforesaid case of Ultra-Tech Cement, this Court further observed that acquisition of land for public purpose is undertaken under the power of eminent domain of the Government much against the wishes of the owners of the land which gets acquired. It was, therefore, observed that when such a power is exercised, it is coupled with a bounden duty and obligation on the part of the Government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.*

48. *It will also be appropriate for the purpose of the present discussion to refer to the judgment of this Court in K. Krishna Reddy v. Collector (LA), specifically in para 12, it was observed thus: (SCC pp. 166-67)*

"12. We can very well appreciate the anxiety and need of claimants to get compensation here and now. No matter what it is. The lands were acquired as far back in 1977. One decade has already passed. Now the remand means another round of litigation. There would be further delay in

getting the compensation. After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. If remand is imperative, and if the claim for enhanced compensation is tenable, it would be proper for the appellate court to do modest best to mitigate hardships. The appellate court may direct some interim payment to claimants subject to adjustment in the eventual award."

49. *It cannot be gainsaid that the appellants herein have been deprived of their legitimate dues for almost 22 years ago. It can also not be controverted that money is what money buys. The value of money is based on the idea that money can be invested to earn a return, and that the purchasing power of money decreases over time due to inflation. What the appellants herein could have bought with the compensation in 2003 cannot*

do in 2025. It is, therefore, of utmost importance that the determination of the award and disbursal of compensation in case of acquisition of land should be made with promptitude.

50. *We find that in the present case, the appellants were required to knock at the doors of the courts on number of occasions during the period of last twenty-two years. The appellants have been deprived of their property without paying any compensation for the same in the said period of last twenty-two years. As already discussed hereinabove, the appellants had purchased the plots in question for construction of residential houses. Not only have they not been able to construct, but they have also not been even paid any compensation for the same. As discussed hereinabove, though right to property is no more a fundamental right, in view of the provisions of Article 300-A of the Constitution of India, it is a constitutional right. A person cannot be deprived of his property without him being paid adequate compensation in accordance with law for the same.*

51. *In the present case, it can clearly be seen that there is no delay which can be attributed to the appellants in not getting compensation, but it was on account of the lethargic attitude of the officers of the State/KIADB that the appellants were deprived of compensation.*

52. *Only after the notices were issued in the contempt proceedings, the compensation was*

determined by the SLAO on 22-4-2019 taking guideline values prevailing in the year 2011 for determining the market value of the acquired land.

53. *No doubt that as already observed by us hereinabove, we do not find any error in the approach adopted by the learned Single Judge of the High Court in holding that the SLAO could not have shifted the date and it could have been done only by this Court in exercise of powers under Article 32/142 of the Constitution of India or by the High Court under Article 226 of the Constitution of India. However, the learned Single Judge of the High Court instead of relegating the appellants to again go through the rigours of determination by SLAO, ought to have exercised powers under Article 226 of the Constitution to do complete justice. Even the Division Bench of the High Court on a hypertechnical ground has non-suited the appellants.*

54. *In that view of the matter, we find that it is a fit case wherein this Court in exercise of its powers under Article 142 of the Constitution should direct shifting of the date for determination of the market value of the land in question of the appellants.*

55. *If the compensation to be awarded at the market value as of the year 2003 is permitted, it would amount to permitting a travesty of justice and making the constitutional provisions under Article 300-A a mockery."*

In ***Special Land Acquisition Officer, UK Project v. Mahaboob and Another***'s case (supra), the Apex Court has held the following:-

"12. *The total compensation as per the award of the LAO made in 1991, was Rs.5300/- (excluding statutory additions). Having lost his land, and consequently, the means of livelihood, the land-loser had to engage a lawyer and fight for a reasonable compensation by seeking reference to the court. The Reference Court determined the compensation as Rs.30,420/- per acre on 10-3-2005. This means an increase of about Rs.35,000/- in compensation (plus statutory additions) for the acquired land. But the land-loser was not given this amount.*

13. *The State Government filed a first appeal, then a second appeal and then an SLP. The result is except the paltry amount which he must have received when the LAO made the award, the land-loser has not received any compensation for nearly 17 years and had to fight the litigation before three courts for a total compensation of Rs.40,000/- (excluding statutory benefits). Apart from the fact that the land-loser would have spent virtually the entire amount for litigation, whatever amount he may ultimately receive will not get him even one-fourth or one-fifth of the extent of land which he lost by acquisition. Unless the process of acquisition gives him a reasonable compensation either at the time of or immediately after the dispossession, the compensation will be a mirage for most land-losers*

14. *Statistics show that most of the acquisitions relate to lands held by small farmers, whose livelihood depends upon the acquired land. The land is taken purportedly in accordance with law by resorting to acquisition proceedings. The Collector (LAO) is supposed to offer a fair compensation by taking all relevant circumstances relating to market value into account.*

15. *To safeguard the interests of the land-loser, the Act requires the Collector to make the award before the landowner is dispossessed. The intention is that the land-loser will immediately be able to draw compensation and purchase some other suitable land or make appropriate arrangements for his livelihood. But in practice the Collectors (LAOs) seldom make reasonable offers. They tend to err on the "safer" side and invariably assess very low compensation. Such meagre awards force the land-loser to seek reference to the civil court for increase in compensation in regard to almost every award made by the LAO. In fact, many a time, even the Reference Courts are conservative in estimating the market value and it requires further appeals by the land-loser to the High Court and the Supreme Court to get just compensation for the land.*

16. *We can take judicial notice of the fact that in several States the awards of the Reference Court or the judgments of the High Court and this Court increasing the compensation, are not complied with and the land-losers are again driven to courts to initiate time-consuming execution process (which also involves considerable expense*

by way of lawyer's fee) to recover what is justly due. Resultantly the land-losers seldom get a substantial portion of proper compensation for their land in one lump sum immediately after the acquisition."

In ***Kolkata Municipal Corporation and Another v. Bimal Kumar Shah***'s case (supra), the Apex Court held that Article 300-A of the Constitution of India comprises of seven sub-rights, including the right to compensation and the non-compliance of which would amount to violation of the right. The Apex Court has held as under:-

"28. *While it is true that after the 44th Constitutional Amendment [the Constitution (44th Amendment) Act, 1978], the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A, which declares that "no person shall be deprived of his property save by authority of law" has been characterised both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.*

29. *The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.*

30. *What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are:*

(i) The duty of the State to inform the person that it intends to acquire his property —the right to notice,

(ii) The duty of the State to hear objections to the acquisition — the right to be heard,

(iii) The duty of the State to inform the person of its decision to acquire — the right to a reasoned decision,

(vi) The duty of the State to demonstrate that the acquisition is for public purpose — the duty to acquire only for public purpose,

(v) The duty of the State to restitute and rehabilitate — the right of restitution or fair compensation,

(vi) The duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings — the right to an efficient and expeditious process, and

(vii) The final conclusion of the proceedings leading to vesting — the right of conclusion.

31. *These seven rights are foundational components of a law that is tune with Article 300-A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in K.T. Plantation declares that the law envisaged under Article 300-A must be in line with the overarching principles of rule of law, and must be just, fair, and reasonable. It is, of course, precedentially sound to describe some of these sub-rights as "procedural", a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300-A, non-*

compliance of these will amount to violation of the right, being without the authority of law.

x x x x x

33.7.1. *Upon conclusion of process of acquisition and payment of compensation, the State takes possession of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300-A."*

In ***Competent Authority v. Barangore Jute Factory*** reported in **(2005) 13 SCC 477**, the Apex Court while determining the quantum of compensation in a compulsory acquisition observed as follows:-

14. *Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in*

accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance i.e. the construction of a national highway. The construction of a national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the landowners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the landowners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the landowners, that is, the writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.

15. *Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of*

land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the notification so that the landowners are adequately compensated. Reference may be made to:

(a) Ujjain Vikas Pradhikaran v. Raj Kumar Johri [(1992) 1 SCC 328]

(b) Gauri Shankar Gaur v. State of U.P. [(1994) 1 SCC 92]

(c) Haji Saeed Khan v. State of U.P. [(2001) 9 SCC 513]

In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19-2-2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19-2-2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19-2-003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the appropriate

authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act, should be given to the writ petitioners along with what has been directed by us in this judgment."

17. We have considered the contentions advanced in detail. The scheme of the 1894 Act provides for taking possession of property which is required for a public purpose after giving due notice to the land owners, after considering their objections and publishing a declaration under Section 6 of the 1894 Act and after computing the value of the land so acquired and tendering the same to the land owners with the statutory benefits and interest as provided in the 1894 Act. Section 17 of the 1894 Act provides for taking of possession of the property even without the award being passed in cases of extreme emergency. However, even in such cases 80% of the compensation for the land as estimated by the Collector has to be tendered to the land loser or deposited before taking possession. In the instant

case, no such tender of compensation or deposit thereof was made. It is an admitted case that even as on the date of filing of this appeal seeking enhancement of the compensation, the amount awarded by the SLAO had neither been tendered nor deposited in full.

18. In the peculiar facts and circumstances of the instant case, we are of the opinion that this is a fit case where the value of the land acquired has to be calculated reckoning the date of deposit of the first tranche of compensation or at least the date of reference as sought for in the appeal, as the relevant date for calculating the value of the land. We are fully aware that the jurisdiction being exercised by us in this appeal is appellate in nature and not the extraordinary original jurisdiction exercisable under Article 226 of the Constitution of India.

19. The Apex Court in ***Bernard Francis'*** case (supra), has clearly held that the power to postpone the date of the effect of the acquisition can be exercised by the Apex Court under Article 32/142 of the Constitution of India

as also by this Court under Article 226 thereof. It was held as under:-

"16. *We are in agreement with the findings of the learned Single Judge of the High Court, inasmuch as the SLAO cannot shift/postpone the date of preliminary notification. In case, upon appreciation of the material placed on record if this Court or the High Court, in exceptional circumstances, came to the conclusion that the acquisition proceedings themselves were liable to be quashed only then by exercising inherent powers this Court under Article 32/142 or the High Courts under Article 226 of the Constitution of India, respectively, can shift/postpone the date of preliminary notification to a later date. In our considered opinion, therefore, the learned Single Judge of the High Court rightly came to the conclusion that the award dated 22-4-2019 be quashed and set aside and ordered accordingly."*

However, in the extraordinary circumstances available in this case, where it is an admitted fact that no compensation whatsoever was tendered or deposited till 14.12.2015, we are of the opinion that this is a case where extraordinary measures are called for even in the exercise of the appellate jurisdiction. This Court being privy to a gross injustice done to a citizen cannot refuse to exercise jurisdiction on a

technicality that what is being exercised is appellate jurisdiction under the provisions of the 1894 Act.

20. Having held that the date of valuation must be reckoned as 11.03.2014, the determination of per cent value to be ascribed to the acquired land as on that date, arises for consideration. On the question of determination of market value of acquired lands, this Court in ***State of Karnataka, by Principal Secretary to Government, Revenue Department and Others v. Arthur Pereira and Others*** reported in ***2019 SCC OnLine Kar 984***, held as follows:-

"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, 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."

21. The appellant has placed on record Ex.P4 dated 07.01.2010 which evidences the sale of 22 cents of land in the neighbourhood for a total consideration of Rs.35,00,000/-, yielding a per-cent rate of Rs.1,59,091/- and Ex.P5 dated 28.01.2011 evidences the sale of 3.5 cents of land in the adjacent village within 500 metres of the acquired land for Rs.12,00,000/-, yielding a per-cent rate of Rs.3,42,857/-. The extent acquired from the appellant being one acre, it would be appropriate to adopt Ex.P4 as the base exemplar wherein the sale transaction was in respect of 22 cents of land.

22. Further, the principles governing the application of cumulative escalation over an established sale exemplar are well-settled by the Apex Court in ***General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel*** reported in ***(2008) 14 SCC 745***, held as follows:-

"14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a

significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

15. *Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the*

market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

16. *Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-1995 or 1995-1996 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices.*

x x x x x"

In view of the principles laid down by the Apex Court in the above-mentioned case, we are of the view that cumulative escalation at the rate of 15% per annum is the appropriate measure for arriving at the market value as on 11.03.2014. The Apex Court in ***General Manager, Oil and Natural Gas Corporation Ltd.'s*** case (supra) has held that cumulative escalation ought to be applied for a period not exceeding four to five years preceding the date of acquisition, beyond which it may be unsafe to uniformly apply the same rate with cumulative effect. Therefore, cumulative escalation at 15% per annum over four years applied to Rs.1,59,091/- per cent established by Ex.P4, results in per cent rate of Rs.2,78,252/-, accordingly rounded off to Rs.2,78,000/- per cent, as the market value of the acquired land as on 11.03.2014. In addition to the enhanced market value, the appellant is entitled to all statutory benefits and interest in accordance with law, with interest from 11.03.2014.

23. Having considered the contentions advanced and in view of the admitted factual position in the instant case, we are of the opinion that this is a fit case where the

compensation due is to be re-fixed, taking note of the date of the reference as sought for in this appeal. From the affidavit placed on record by the SLAO, it is clear that though the acquisition was initiated in the year 1990 and award was passed in the year 1992, the reference was made only on 11.03.2014. No fault can be attributed to the appellant for the said delay since the affidavit on record by the respondents only states that the delay in deposit of compensation happened due to administrative and procedural reasons. The first tranche of compensation, that is, part of the un-enhanced amount was deposited only on 14.12.2015. We make it clear that this judgment is being rendered in the peculiar facts and circumstances of the instant case, where no compensation whatsoever was paid or deposited before the said date and shall not be treated as a precedent for the purpose of Section 28-A of the 1894 Act.

24. In the above view of the matter, we direct as follows:-

- (i) The Miscellaneous First Appeal is ***allowed in part.***

- (ii) The Compensation shall be re-determined by taking the market value as Rs.2,78,000/- per cent, together with solatium and statutory interest from 11.03.2014, the date taken into account for deciding compensation.
- (iii) The amount already paid or deposited shall be deducted and the balance amount shall be deposited within a period of four months from date of receipt of copy of the judgment.
- (iv) The appellants are permitted to withdraw the enhanced amount deposited in accordance with law.

All pending Interlocutory Applications and memos shall stand *disposed of* and are consigned to the records.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

cp*