



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST 2023

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION No.33180 OF 2016 (LA-RES)

BETWEEN:

M/S. DECO EQUIPMENTS PVT. LTD.,
C-38, HEBBAL INDUSTRIAL AREA
METAGALLI,
MYSORE -16
REPRESENTED BY ITS
MANAGING DIRECTOR
DERIC FERNANDES.

... PETITIONER

(BY SRI D.L.N. RAO, SENIOR ADVOCATE FOR
SRI RAGHAVENDRA KATTIMANI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS SECRETARY
DEPARTMENT OF REVENUE
M.S. BUILDING
BANGALORE - 560 001.
2. THE DEPUTY COMMISSIONER
MYSORE DISTRICT
MYSORE - 570 001.

3. M/S. BHABHA ATOMIC RESEARCH CENTRE
RARE MATERIAL PROJECT
MINISTRY OF ATOMIC ENERGY
GOVERNMENT OF INDIA,
MYSORE - 570 001
REP. BY ITS MANAGING DIRECTOR.
4. THE LAND ACQUISITION OFFICER/
ASSISTANT COMMISSIONER
HUNSUR TALUK
MYSORE DISTRICT - 570 001.
5. THE UNION OF INDIA
MINISTRY OF ATOMIC ENERGY
GOVERNMENT OF INDIA
NEW DELHI - 01
REP. BY ITS SECRETARY.

... RESPONDENTS

(BY SRI R. SRINIVAS GOWDA, AGA FOR R1, R2 & R4;
SRI OMKARESHA, ADVOCATE FOR R3;
SRI H. SHANTHI BHUSHAN, DSGI FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED AWARD BEARING NO.LAQ/CR/01/2006-07 DATED 20-01-2016 AS PER ANNEXURE-X PASSED BY THE 4TH RESPONDENT I.E., THE LAND ACQUISITION OFFICER AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 14.07.2023 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has filed the present petition seeking quashing of the Award at Annexure-'X' dated 20.01.2016 passed by respondent No.4 - Land Acquisition Officer, Mysore District. The petitioner has also sought for issuance of a writ of mandamus to draw up an Award in terms of Section 26 of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' ('hereinafter referred to as '2013 Act').

2. The Preliminary Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') was issued on 15.03.2008 notifying the land of the petitioner. The Final Notification under Section 6 and 17(1) of 1894 Act came to be passed on 05.06.2009. The validity of the notification came to be challenged in W.P.No.405/2010, which was

disposed off remitting the matter for fresh disposal after affording an opportunity of hearing under Section 5-A of 1894 Act.

3. After rejecting the objections, the Notification was published under Section 6(1) of 1894 Act. The petitioner challenged the validity of the Notification in W.P.No.10322/2013 and during the pendency of the said Writ Petition, 2013 Act came into force and the petition was disposed off as follows:-

"6. ... However, if an award has not been passed as on date, it would be necessary for determination of compensation under 2013 Act as is made plain under Section 24(1) of the 2013 Act..."

4. The Special Land Acquisition Officer (SLAO) has passed an Award, the copy of which is enclosed as Annexure-'X' and the market value is fixed on the basis of the sale consideration of Sale Deed dated 21.04.2007

for Rs.78,00,000/- and following the norms fixed in the Gazette Notification dated 04.07.2013.

5. The said Award has been assailed by the petitioner contending that the Guidelines mandated under Section 26 of 2013 Act have not been followed, that the reliance on the Notification dated 04.07.2013, which was passed prior to commencement of 2013 Act is bad in law, that the value as the base price for calculation of compensation under Section 26 of 2013 Act would be the value as on 01.01.2014, that the Apex Court in the case of **Hori Lal v. State of Uttar Pradesh and Others**¹ [*Hori Lal*] has taken the market value as on 01.01.2014.

6. The respondents on the other hand have contended that the value for the purpose of Section 26 of 2013 Act ought to be the value as on the date of the

¹ 2019 SCC OnLine SC 129

Section 4(1) notification under 1894 Act, that the Land Acquisition Officer has rightly followed the Guideline under the Gazette Notification dated 04.07.2013.

7. Heard both sides.

8. The points for consideration are as follows:-

(a) Where Notification under Section 4(1) and Section 6 of the Land Acquisition Act, 1894 is passed but Award is passed only after coming into force of 2013 Act, the market value of the land is to be determined as on the date of Section 4(1) Notification of 1894 Act or on 01.01.2014 when 2013 Act has come into force?

(b) Whether the Special Land Acquisition Officer could have relied on the Gazette Notification dated 04.07.2013 while fixing the market value?

9. At the outset, this Writ Petition is entertained as the contention advanced is that the Land Acquisition Officer has not adhered to the direction passed in

W.P.No.10322/2013, which mandates passing of Award under 2013 Act. Even otherwise, there is no serious opposition to the entertaining of the Writ Petition, directly.

CONSIDERATION:-

(a) Where Notification under Section 4(1) and Section 6 of the Land Acquisition Act, 1894 is passed but Award is passed only after coming into force of 2013 Act, the market value of the land is to be determined as on the date of Section 4(1) Notification of 1894 Act or on 01.01.2014 when 2013 Act has come into force?

10. The Preliminary Notification under Section 4(1) of 1894 Act was passed on 15.03.2008, and the Base Value adopted was the consideration recorded in a Sale Deed of 21.04.2007.

11. It must be noted that in terms of Section 24 of 2013 Act, *"(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings*

initiated under the Land Acquisition Act, 1894 (1 of 1894) - (a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to determination of compensation shall apply." If that were to be so, the proceedings of acquisition initiated under the 1894 Act are saved and compensation is to be determined under the provisions of the 2013 Act.

12. Section 26 of 2013 Act provides for determination of the market value and proviso to the aforesaid section is in the nature of an Explanation and stipulates, *"Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11."*

13. The base point for calculation of compensation is the date of Notification under Section 11 of 2013 Act, while this would take care of the circumstance of

determination of market value as regards those matters where notification is passed under Section 11 of 2013 Act, but the determination of market value as regards Notification under Section 4 of 1894 Act and where award is sought to be passed subsequently under 2013 Act is not dealt with specifically.

14. The only manner of addressing such a circumstance would be on the basis of the following legal propositions:

(i) As regards notification under Section 4(1) of the 1894 Act and where Award is sought to be made after 2013 Act has come into force 'all provisions' of 2013 Act shall be applicable².

(ii) In terms of the Proviso to Section 26 of 2013 Act, the relevant date would be the date of Notification under Section 11 of 2013 Act.

² Section 24(1)(A) of 2013 Act

(iii) The earliest of the dates as regards Notification under Section 11 of 2013 Act would be 01.01.2014 when the 2013 Act has come into force.

(iv) Accordingly, the market value even as regards circumstance of 4(1) Notification under 1894 Act and where Award is sought to be passed after coming into force of the 2013 Act would be as on 01.01.2014.

15. It must be noted that in circumstances, where the delay in passing of the Award, if could be attributed to the land owner leading to the non-passing of Award under the provisions of the 1894 Act and Award is passed under 2013 Act, the Apex Court in **Faizabad-Ayodhya Development Authority, Faizabad v. Dr.Rajesh Kumar Pandey**³ has held that such land

³ (2022) SCC OnLine 879.

owner is not entitled for having the Award passed under the provisions of 2013 Act.

However, in the present case, though initially the petitioner had challenged the validity of the proceedings in W.P.No.10322/2013, during the course of the proceedings, the petitioner had settled for the relief of entitlement of compensation in terms of 2013 Act and accordingly, the petition was disposed off as follows:-

"6. ...However, if an award has not been passed as on date, it would be necessary for determination of compensation under the 2013 Act as is made plain under Section 24(1) of the 2013 Act..."

This order having attained finality, the controversy stands narrowed.

16. As regards the contention of the petitioner that the Central Government is bound by the order of 26th October 2015 bearing D.O. Letter No.13013/01/2014-LRD (pt), which stipulates taking of 01.01.2014 as

the relevant date, thereafter the Central Government has clarified by its communication dated 26.09.2018 vide letter No.13013/2017-LRD that the D.O. Letter No. 13013/01/2014-LRD (pt) dated 26.10.2015 is not an order under Section 113 of 2013 Act, but is only a D.O. letter.

17. No doubt, in ***Hori Lal (supra)***, the Apex Court has taken the relevant date as 01.01.2014, however, the State Government which was the acquiring body itself had conceded for taking 01.01.2014 as the relevant date. There was no adjudication on such issue after contest.

18. Suffice it to say that there are conflicting judgments of the High Courts without clarity. Accordingly, adjudication is made herein without reference to the order/D.O. letter.

(b) Whether the Special Land Acquisition Officer could have relied on the Gazette Notification dated 04.07.2013 while fixing the market value ?

19. Sri D.L.N. Rao, learned Senior Counsel appearing on behalf of Sri Raghavendra Kattimani for the petitioner has rightly contended that reliance on the Gazette Notification dated 04.07.2013 may not be proper as the same is prior to coming into force of 2013 Act and the determination of market value under Section 26 of 2013 Act is to be made taking note of the guidelines contained in Section 26 of 2013 Act. The said contention is accepted.

20. Accordingly, the Award at Annexure-'X' dated 20.01.2016 is quashed. The Land Acquisition Officer is directed to pass a fresh Award while re-working the compensation in light of the discussion at Point-(a) supra and is to strictly adhere to the Guidelines under Section 26 and other applicable Rules made under the 2013 Act.

Accordingly, the Writ Petition is ***disposed off.***

**Sd/-
JUDGE**

NP/VGR