

Karnataka High Court The Special Land Acquisition ... vs Kallangouda And Others on 7 November, 1992 Equivalent citations: AIR 1993 Kant 197 Author: Shyamsundar Bench: K Swami, S Hakeem, P Shyamasundar ORDER Shyamsundar, J. 1. On a reference made by our brethren Shivashankar Bhat and R. Ramakrishna, JJ. under S. 7 of the High Courts Act we are now in seizen of the two questions formulated by the aforesaid Division Bench for consideration by a Full Bench. The Two questions are : 1) Whether a claimant who has made a particular claim for the compensation before the Land Acquisition Officer is bound by the same when he seeks enhanced compensation under S. 18 of the Act and if not under what circumstances he is permitted to depart from the earlier claim? 2) Whether the observations quoted above made in R. H. Kalburgi's case, ) lays down the law correctly? 2. The referral order gives an adequate insight to the controversy the resolution of which is sought for under the reference. While it is not necessary to advert in extenso to the origin and genesis of the controversy suffice it to note that the question arose as to whether a claimant under the Land Acquisition Act (hereinafter referred to as 'the Act') who had made some claim for compensation before the Land Acquisition Authority ('LAO' for short) has the freedom or the liberty to cut adrift from that claim made before the L.A.O. and in its place feel free to claim something more and beyond the demand made before the L.A.O. and in the context arose the question for consideration to be dealt with herein as follows : 3. Questions Nos. 1 and 2 :- Both these questions are inierconnected, hence considered together. In L.A.O. v. R. H. Kalburgi, , a Bench of this Court comprising of Justice Rama Jois, the Ag. Chief Justice (as he then was) and M. Ramakrishna, J., had taken the view that for a claimant to be eligible to seek a compensation higher than what was sought for by the claimant before the L.A.O. he had necessarily to satisfy the Court as to why a lower claim was made and further to establish the reason for departing from the earlier claim so as to enable the Court to award a suitable compensation to the claimant. Their Lordships were of the view that while a claimant may c|aim more than what was claimed before the L.A.O. he would become eligible and entitled to the higher claim only if he sets out the reasons that persuaded him to restrict his claim to a lesser sum by producing convincing evidence in that behalf apart from providing good and sufficient evidence for being awarded a higher compensation. Their Lordships felt the position was as aforesaid despite the amendment to S, 25 of the Act by Central Act 68/84. It seems to us to put that matter in the right perspective it would be desirable to excerpt the relevant portion of the dicta in Kalburgi's case referred to supra. It reads :- "It is true that the embargo placed on the power of the Court to award compensation more than what was claimed in the claim statement by S. 25 as it stood prior to 1984 Amendment has been removed by 1984 Amendment. The question is, under what circumstances, the Court can award compensation higher than what was claimed... As can be seen from Sec. (9)(2) a claimant is required to specify in the statement before the Deputy Commissioner the amount of compensation for his land acquired under the Act and also specify the basis for it. When the Land Acquisition Officer in his award awards an amount of compensation which is lower than what was claimed by the claimant and the claimant makes

an application for reference, the only two questions which have to be decided by the Courts are : (1) Whether the compensation awarded by the Land Acquisition Officer is proper and correct ? (2) Whether the compensation claimed by the claimant before the Land Acquisition Officer was correct ? Even though by amending Section 25 of the Act, by Act 68 of 1984, the bar against granting compensation at a rate higher than the rate at which the claimant had claimed before the Land Acquisition Officer had been removed, compensation at a rate higher than the one at which compensation was claimed in the statement filed before the Deputy Commissioner/Land Acquisition Officer under S. 9(2) of the Act, can be awarded by the Court only under the following circumstances : (1) There must be a plea in the reference application that on account of ignorance or for any other specific valid reason the claimant has claimed compensation at a rate lower than the rate at which he would have claimed compensation, but for such ignorance or cause. (2) There should be convincing evidence in support of such plea and the Court should record a finding to the effect that the plea is well founded. (3) That there must be an unimpeachable evidence justifying the awarding of compensation at a rate higher than the rate at which compensation was claimed by the claimant before the Land Acquisition Officer.” Not unnaturally, the Bench which made the referral order herein felt that albeit the somewhat free and open outlay of S. 25 of the Act as it now stands there would be no need to ask the claimant to show cause as to why he claimed a lower compensation before the LAO vis-a-vis the one claimed by him before the Court as it would then tantamount to making the claim in question as if made under the unamended Act albeit the claim itself having arisen long after the amendment. The referral order makes apposite reference to the decision of the Supreme Court in *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona*, wherein their Lordships had taken occasion to emphasise the need for the Court to treat the reference under the Act as an original proceeding for the purpose of determining the market value afresh on the basis of the material produced before it subrogating the claimant to the position of a plaintiff who had necessarily to establish that the compensation offered to him by the L.A.O. was inadequate and had therefore to prove its adequacy or otherwise by placing appropriate material in that behalf. The Bench also referred to the decision of the Gujarat High Court in *Sharadchandra Chimanlal v. State of Gujarat*, wherein their Lordships have also taken the view that having regard to the format of S. 25 following its amendment under Act 68/84 a claimant who had refused to make a claim before the L.A.O. would be entitled to put forward a claim before Court and seek for its adjudication unhindered by the omission to make a claim before the L.A.O. 4. Before we advert to these decisions, in order to indicate our views we will make a brief reference to the relevant provisions of the Act that have a bearing on the question relating to determination of apposite compensation payable to a claimant whose lands have been compulsorily acquired. To start with S. 9 of the Act refers to the duties of the Collector or the Deputy Commissioner to follow the modalities prescribed in that Section for collecting information from all persons interested in the land touching their interest therein and in particular the amount and the particulars of the claim for

compensation, the physical configuration of the property such as measurement etc. S. 11 contemplates an enquiry by the Collector before making an award. With the passing of the award the L.A.O. ceases to play any further role in the matter. In case the claimant feels aggrieved by the award passed by the L.A.O. he can seek a reference to be made under S. 18 of the Act by the Deputy Commissioner to the Court so that the Court could determine the correctness of the award made. The last and probably the material provision to be referred to is Section 25 of the Act which enjoins a duty on the Court to decide and determine the compensation to be awarded to the claimant. It reads :- “25. Amount of compensation by a Court not to be lower than the amount awarded by the Collector :- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.” The above provision does not either by implication or explicitly limit the compensation amount that could be claimed by claimant. The Section, on the other hand, makes it plain that under no circumstance the award made by the Court should be less than the amount awarded by the Collector. The only limitation on the power of the Court in awarding compensation appears to be that the Court cannot award a compensation less than the one awarded by the L.A.O. By implication it means that the Court can award higher compensation than what was awarded by the L.A.O. Significantly the section remains untrammelled by any conditions enjoining the making of a claim higher than what was sought for before the L.A.O. In other words the section does not forge a connecting link between the claim made before the L.A.O. and a claim made before the Court. The result is the claimant will be free to claim any amount before the Court as compensation and this liberty to claim any amount in Court remains totally uninhibited by any claim made before the L.A.O. even if there was a great disparity between the two claims i.e. the one made before the L.A.O. and the one made before the Court. We must emphasize here that the Section itself being silent about any barriers that either prohibit making of a higher claim before Court vis-avis the claim made before the L.A.O., there is no need at all for the claimant to offer any explanation whatsoever as to why he made a lower claim before the L.A.O. while hiking it up before the Court. The law does not enjoin offering of any such explanation. 5. We must at this juncture go back to the point of time i.e. before the Act was amended by Act 68/84. Prior to its amendment Section 25 stood hemmed in and was severely constricted by conditions when it came to making a higher claim before Court than the one made before the L.A.O. or when it came to making a claim before Court without making any claim before the L.A.O. Section 25, prior to its amendment, stood thus :- “Rules as to amount of compensation :- (1) When a person interested has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Deputy Commissioner under Section 11. (2) When a person interested has refused to make such claim or has omitted without sufficient reason to be allowed by the Judge to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Deputy Commissioner. (3) When a person interested has omit-

ted for a sufficient reason to be allowed by the judgment to make such claim the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Deputy Commissioner.” Thut it may be seen Section 25 prior to its amendment contemplated a preliminary exercise by which a claimant had to support his stand of having not made a claim or having made a lower claim citing good reasons for not making a claim or for making a lower claim before the L.A.O. Only if he was able to persuade the Court to unshackle him from his own self induced fetters he would be permitted to make good the claim for compensation put forward for consideration by the Court but not otherwise. But after the amendment the law deemed it fit to liberate S. 25 from such inhibiting factors giving full liberty to the claimant to claim whatever amount he wanted to claim before Court. This significant departure in our view has brought forth a sea change in the panorama of the Act. 6. We need hardly add that the Act undoubtedly has an element of confiscatory complexion which, nevertheless, is justified in public interest. Had it not been for the award of compensation involuntary acquisition by the State would not have stood judicial scrutiny at all. In *Bhag Singh v. Union Territory of Chandigarh*, it was held that the State was bound to pay to the claimants compensation on the basis of the market value of the land acquired. It was also pointed out that the State Government must do, “what is fair and just to the Citizen” and should not, as far as possible, take up a technical plea to defeat the legitimate and just claim of the citizen. Thus bearing in mind the circumstance of lands being taken away without the consent and much against the wish of the land owner, the humanising factor in the law has thought it fit to remove all hurdles and humps in the way of the claimant getting a compensation which is deemed just and adequate. While the law of course expects him to make good the claim made before Court by producing ample evidence, it has nonetheless thought fit to remove all barriers that may prevent or preclude him from claiming the market value of the land. Thus we find S. 25 as it now stands totally liberates the claimant from all restraints that held him in check earlier from making a claim before Court for the first time even where he had not made any claim before the Collector and even if he had made some claim the Section in its new orientation gives him full liberty to hike his claim before Court without furnishing any reasons on affording an explanation for making a lower claim before the Collector. 7. Having thus so far considered the question on an a priori basis we now move on to consider the authorities on this point. We may start by referring to the decision of Supreme Court in *Chimanlal v. Land Acquisition Officer, Poona*, to which there was some reference earlier. We shall now set out the view points of the Supreme Court on the nature of a proceedings under Section 18 of the Act and the duty owed by a Court in disposing of a claim made under Section 18 of the Act vis-avis the position of the claimant. Their Lordships observed at page 1656: 4. The following factors must be etched on the mental screen: (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court. (2) So also the Award

of the Land Acquisition Officer is not to be treated as a Judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court. (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. (4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose. (only relevant portion excerpted) Suffice for our purpose to emphasise the Court's dicta holding the reference made to a Court under Section 18 of the Act to be an original proceeding requiring the court to determine the market value of the property on the basis of the material produced before it treating the claimant as the dominus litis occupying the position of the plaintiff. These are also aspects referred to and highlighted in the referral order made by the Bench. It is enough to point out that in the light of the foregoing dicta of the Supreme Court, without more, the claimant can now make bold to claim a compensation which is different and much more than what he had claimed before the L. A.O., besides he can also make a claim even if he had claimed nothing towards compensation before the L.A.O. As S. 25 of the Act now stands a claimant can boldly approach the Court and ask for whatever compensation he desires to seek provided he is able to substantiate it by adducing adequate evidence. 8. We notice that the Gujarat High Court has taken a view similar to that of the Supreme Court in Chimanlal's. case referred to supra. The decision of Gujarat High Court is earlier in point of time having been disposed of on the 14th of March, 1986 (reported in) . Therein their Lordships having noticed the history of the amendment and the difference between the amended S. 25 vis-a-vis the section as it stood originally and concluded that in view of the sea-change brought about by the amendment, omission to make a claim before the L.A.O. or claiming a lesser compensation before the L.A.O. will not hinder the claimant from claiming any compensation for the first time before the Court or from claiming an higher compensation before Court. Their Lordships observed at page 59 : "Section 25 as it stands now obviates the necessity of any claim being led in response to the notice under S. 9 of the Act, because the only limitation on the power of the Court which has now been prescribed under the amended S. 25 is that the amount of compensation awarded by the Court shall not be less than the amount offered. In other words, the Court cannot in a reference application reduce the amount of compensation as offered by the Land Acquisition Officer. The resultant position emerging from the amended section is that even without any such claim the Court can award compensation in excess of what has been awarded by the Collector, which position was not available prior to 1984 since there was a limitation also on the power of the Court in the preamended section that the Court would not award

compensation beyond that claimed by a person interested. In other words, the position prior to 1984 was that failure to make a claim despite receiving notice under S. 9 without sufficient cause precluded the Court from awarding a sum in excess of Collector's award." In Spl. Tahsildar, Land Acquisition, Yerraguntla v. K. Reddy, , the decision of Supreme Court in Chimanlal's case was followed by His Lordship K. Ramaswamy who adverted to it and observed at page 126 : "The first question, therefore, is whether it is incumbent upon the Claimants to plead and prove that they are the owners of the sub-soil mineral rights. In Chimanlal v. Spl. Acquisition Officer, Poona, , Thakkar, J. speaking for the Court held that the Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. The claimant is in the position of a plaintiff who has to show that the prior offered for his land in the award is inadequate on the basis of the material produced before the Court. Thereby, it is settled law that the claimant is a plaintiff and the reference is an original proceeding to determine the market value afresh. It is for the claimant to produce the material evidence for enhancement. Regard being had to the catena of decisions referred to supra, more so in the light of the decision in Chimanlal's case rendered by the Supreme Court by which we are bound that the claimant can seek compensation without any pre-condition or restraint being no longer res-integra, we must hold : (1) the claimant being free to ask and obtain compensation after making an appropriate demand before Court subject to making good the claim by substantiating it by adequate evidence it would not be necessary for the claimant to explain away the circumstance under which he made no claim or made a smaller claim before the L.A.O. In view of the amended provision of Section 25 of the Act he is no longer under any obligation to support his conduct before the L.A.O. in not making a claim or in making a lesser claim, and (2) in the light of the discussion on the ambit of Sec. 25 after its amendment, the contrary dicta in Kalburgi's case cannot be supported more so in the light of the decision of the Supreme Court in Chimanlal's case, and has necessarily to be treated as per incuriam and therefore dissented and overruled. 9. These being our answers to the questions formulated by the Bench we direct the matter to go back to the Bench for further consideration. 10. K. A. SWAMI Actg. C. J.:— I agree. 11. S. A. HAKEEM, J.:— I agree. 12. Order accordingly.