
(1973) 08 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 58 of 1970

Channaveerappa Gouda

APPELLANT

Vs

Land Acquisition Officer

RESPONDENT

Date of Decision : 21-08-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4 (1), 54

Citation : (1973) 08 KAR CK 0001

Hon'ble Judges : Govinda Bhat, C.J.;Srinivasa Iyengar, J

Bench : Division Bench

Advocate : S.L. Benadikar, for the Appellant; N. Venkatachala, II Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Bhat, C.J.—This appeal arises u/s 54 of the Land Acquisition Act, 1894, (hereinafter called the "Act") and it is directed against the award and decree of the Additional Civil Judge. Shimoga. made in L.A. Mis. Case No. 304/67. Briefly stated the relevant facts are:

2. Pursuant to a preliminary notification u/s 4(1) of the Act published in the Mysore Gazette dated 30-7-1964. 11 acres and 31 guntas of cultivable wet land, 1 acre 14 guntas of fallow wet land and 2 acres 15 guntas of areca garden situated at Halusale Malavalli village of Hosanagar Taluk were acquired for the Linganamukki reservoir. The Appellant who was the claimant preferred a claim for compensation at Rs. 2,500 per acre in respect of cultivable and fallow wetlands and at Rs. 35,000 (thirty-five thousand) an acre for the areca garden land. The Land Acquisition Officer awarded compensation at Rs. 1,250 per acre for cultivable wetland. Rs. 350 per acre of fallow wetland and at Rs. 9,000/- per acre of areca garden:

3. On a reference made to the Civil Court u/s 18 of the Act, the learned Civil Judge. Shimoga. enhanced the compensation to Rs. 2,000/- per acre of

cultivable wet-land; Rs. 1,000/- per acre of fallow wet-land and to Rs. 49,000/- for the 2 acres and 15 guntas of areca garden which, works out at Rs. 18.426 an acre.

4. Aggrieved by the said award, the claimant has preferred the above appeal.

5. Before the Court below, the parties did not adduce any evidence of sale transactions of similar lands. Witnesses were examined on both sides and the award made by the Court below is based on oral evidence adduced by the parties. In the absence of evidence of sale transactions of similar lands, the Court below determined the market value of the lands by adopting- the "Income Method of Valuation". The net income from the wet-lands was fixed by the Court below at Rs. 105 an acre. Then it determined its market value by multiplying the net income by 20. The figure thus arrived at was Rs. 2,100 an acre for wet-land; but it fixed the compensation at Rs. 2,000 an acre. For the fallow wet-land it determined its market value, at Rs. 1,000 an acre. For the areca garden, on the basis of the oral evidence, it held that the net annual income after giving deduction towards cultivation expenses is Rs. 1,800 an acre. Then it fixed the market value of the entire 2 acres 15 guntas of areca garden at Rs. 49,000 which, works at Rs. 18,426 an acre approximately.

6. The submission of Sri Benadikar. learned Counsel for the claimant-Appellant was that in respect of the cultivable wet land the compensation should have been determined at Rs. 2,100 an acre and that there was no justification for reducing that amount to Rs. 2,000. His second submission was that the net income of the areca garden at Rs. 1800 an acre per annum ought to have been multiplied¹ by 20 and so done, the compensation for the areca .garden should have been fixed at Rs. 36.000 an acre.

7. While fixing the net income from the wet-lands, the Court below has not made any deduction for payment of land tax. It is seen from the records that the assessment of cultivable wetland was about Rs. 5 an acre. If land assessment had been deducted, as it ought to be. the net income is really Rs. 100 an acre. If this figure is multiplied by 20 the market value of an acre of wet land would come to Rs. 2.000/-. The Court below was therefore, justified in awarding, compensation at Rs. 2,000 for an acre of wet-land. No contention was urged in regard to the compensation awarded " for the fallow wet-land.

8. The main grievance of the claimant-Appellant was with regard to the award of compensation for the areca garden. His learned Counsel strenuously urged that the net annual income from the garden land ought to have been multiplied by 20 in order to arrive at its market value. In our opinion, there is no substance in this contention and therefore, has to be rejected.

9. What is the proper multiple to be applied for arriving at the market value of any land if the Income Method Valuation is adopted depends upon the nature of the agricultural land and the kind of crop/crops raised on it. There is no invariable rule that in the absence of evidence of sales of similar lands and the

only evidence let in is regarding the net income, that net income should be multiplied by 20 in order to arrive at the market value. What multiple should be applied depends on the evidence as to the rate of return a purchaser of an areca garden generally expects on his investment. The multiple of 20 is applied where the rate of return expected is 5 per cent on the capital invested.

10. In *William Heysham v. Bholanath Mullick* (1882) 17 SWR 221, Sir Richard Couch. C.J., has stated thus:

We think, on the evidence, that 16 years' purchase would be a fair allowance. But in saying that 16 years' purchase is a fair allowance in this case, we must not be understood as laying down that as a rule in cases of this kind. Every case must depend on its own circumstances, on the evidence given, and the nature of the property.

The number of years' purchase which it would be right to allow with regard to one sort of property might not be a fair allowance for other kinds of property, and we wish to guard ourselves against being understood as laying down any rule as to the number of years' purchase which ought to be allowed. On the evidence we think that 16 years' purchase is sufficient to allow in the present case.

We respectfully adopt the statement of law as made by the learned Chief Justice.

11. Arecanut is a plantation crop. It is a matter of common knowledge that the yield varies from year to year and it is a risky crop being subject to vagaries of nature. If areca palms are destroyed by heavy gale, drought or such other causes the land has to be replanted and thereafter it would take about eight years for the palms to yield crop.

12. In a large number of Land Acquisition appeals that have come before us it has come to our notice that the Civil Judges determining the compensation have multiplied the net annual income by 20 irrespective of the nature of the crop raised on the land. Whether the land is a wet land on which paddy or sugar cane is grown or it is a plantation where areca palms are grown the same multiple of 20 has been employed in all cases. In our judgment, computation of market value in that manner is not right.

13. Sections 23 and 24 of the Act lay down the principles for determining the amount of compensation. Section 23 deals with matters to be considered in determining compensation and Section 24 relates to matters to be neglected in determining compensation. The most important provision is the first clause in Section 23 which enjoins that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into consideration the market value of the land at the date of the publication of the notification u/s 4 of the Act. The points to be noticed in this sub-clause are, first, that the basis for determining the compensation is the market value of the land and secondly, that the crucial date for the determination of the market value is

the date of publication of notification u/s 4 of the Act. The expression, "market-value" has not been defined in the Act. It is not possible to lay down any uniform set of rules for determining the market value of the land, applicable to all cases. In the nature of things therefore, it must be left to the Courts to evolve the principles for the determination of the compensation in different classes of cases having regard to the nature of the property, its situation, the nature of the crop raised on the land and other relevant considerations. The principles for determining the market-value have been fully expounded by the Judicial Committee of the Privy Council in AIR 1939 98 (Privy Council) . It was stated by their Lordships of the Privy Council that "the land is not to be valued merely by reference to the use to which it is being "put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future". The second principle laid down in the said decision is that when the land has unusual or unique features or potentialities, the valuing officer must ascertain, as best as he can. from the materials before him the price a willing purchaser would, pay for the land. The Judicial Committee defined the expression, "market value" as the price which a willing vendor might reasonably expect to obtain from a willing purchaser.

14. In *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*, the Supreme Court has held:

...The market value is the amount which the land if sold in open market by a willing seller might be expected to realise. In the case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantage. Where there are no sales of comparable lands the value must be found in some other way. One method is to take the annual income which the owner is expected to obtain from the land and to capitalise it by a number of years" purchase. The capitalised value is then taken as the market value which a willing vendor might reasonably expect to obtain from a willing buyer...

15. In *State of Kerala Vs. P.P. Hassan Koya*, the Supreme Court has observed thus:

It cannot be laid down as a general rule applicable to all situations and circumstances that a multiple approximately equal to the return from Gilt-Edged Securities prevailing at the relevant. time forms an adequate basis for finding out the market, value of the land.

16. The proper method for determining the value of a land where the Income Method of Valuation is followed has been described by Shri C.A. Gulanikar in his book *Two Acts-Gift and Wealth Tax* (2nd Edn.). It is stated thus:

Earning Power Method: This is commonly known as Income Method of Valuation. It commences by studying the utility of property, its maintainable income, which is then capitalised. The essence of this method lies in the measurement of property value by discounting income expectancies. The two components are (i)

net income and (ii) rate of capitalisation. Net income means, gross incomings, less all legitimate outgoings in the form of taxes; a reasonable amount for repairs and replacements. insurance and bad debts. The sole point is what should be the rate of capitalisation Any realistic rate of return must be correlated to the Government borrowing rates or the effective yield on Government securities. To this base stratum, additions may be made to find out the suitable or reasonable return of income.

(Vide page 22 of Part II of the book).

17. In the Book entitled "Modern Methods of Valuation of Land. Houses and Buildings" by David M. Lawrence and others, (5th Edn. P. 19) it is stated thus:

In order to value a property by the investment method, two things must be known. Firstly, the net income which the property will produce and secondly, the rate of interest appropriate to the property from which the years" purchase can be found.

At page 154 of the book., the same learned authors have stated:

Valuation for sale or purchase. As with other forms of real property, the capital value of a farm is ascertained by estimating the rental value, deducting various outgoings and multiplying the result by so many years" purchase.

At page 147 of the same book the main points to be considered by viewing a farm have been stated and they are:

- (a) The general Situation;
- (b) The lie of the land;
- (c) Climate and rainfall;
- (d) The size of the farm;
- (e) The land itself, i.e. the quality, the composition and the texture of the soil;
- (f) Water supply to Fields;
- (g) Roads and approaches;
- (h) Fences and Gates;
- (i) Main water and Electricity; and
- (j) The Cottages and Buildings.

18. John A. Parks in his book "Principles and Practice of Valuation (Land and Houses), states thus

The return which an investor will expect from a property will depend on the characteristics of the income, as compared to that of the ideal security. He will consider if the income is secure; if there is the possibility of it being maintained

for a considerable period; if the income is liable to fluctuate owing to the vagaries of trade; if the income is liable to increase or be augmented by any means; if the costs of collection are in a reasonable proportion to the amount collected; if the income can be collected easily and this will depend on the class of tenants likely to occupy the premises; if he wishes to realise his capital at any time, is there a reasonable chance of selling the property without making a loss. Having considered all these factors he will then consider what return would be reasonable and that figure will represent the security of the income from which the years" purchase can be easily calculated.

(Vide pages 16-17 of the Book).

19. Dr. Gunnar K. Myrdal in his book. "Asian Drama" (Vol. I at p. 507) has referred to, a study of Plantation Industry in India, which places the rate of gross profits on total capital employed for the years 1955-58 at 10-1 per cent for 167 tea plantations, and over 15 per cent for 43 rubber and coffee plantations.

20. The return which an investor on areca gardens expects on his capital has to be determined on the evidence of experts and other relevant materials. On the basis of the return expected by investors in areca plantations, the proper multiple or years" purchase value has to be fixed. If the return expected is 10% on the capital, the multiple to be applied is 10. If the return expected is 12 1/2 per cent, the multiple is 8.

21. That arecanut is a plantation crop and that there is no appreciable difference between the economics of tea, coffee and rubber plantations and areca plantations is beyond dispute in View of the pronouncement of the Supreme Court in Karimbil Kunhikoman Vs. State of Kerala, After referring to Rr. Myrdal's Book, we have "stated earlier that the return expected "on capital employed for the years .1955-58 for coffee and rubber plantations is over 15 per cent. The burden was on the claimant to establish that the return expected is less. Unless "he establishes that the return is merely 5 % he cannot contend successfully that the net income should be multiplied by 20 in order to "arrive at the market value. In the instant case, the net income from the areca plantations determined is Rs. 1,800 an acre per annum. The learned Counsel for the Appellant did not contend that the net income is more than Rs. 1,800 an acre. What the Court-below has granted is approximately 10 years" purchase value on the basis of the said income. The said value fixed by the lower Court, in our opinion, cannot be considered as either low or arbitrary , and it does not call for interference in appeal.

22. Accordingly, we affirm the award made by the Court below and dismiss the appeal with costs.