
(1958) 05 KL CK 0003
In the High Court Of Kerala
Case No : A.S. No. 554 of 1954 (M)

Land Acquisition Officer, Tellicherry

APPELLANT

Vs

Amsa and Others

RESPONDENT

Date of Decision : 29-05-1958

Acts Referred:

Land Acquisition Act, 1894 — Section 24, 4(1)

Citation : AIR 1959 Ker 158 : (1958) 2 KLJ 677

Hon'ble Judges : N. Varadaraja Iyengar, J;K. Sankaran, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; A. Achuthan Nambiar and T.P. Kelu Nambiar, for the Respondent

Final Decision : Allowed

Judgement

Varadaraja Iyengar, J.—This appeal is by the Land Acquisition Officer representing the State and arises out of the judgment in a reference u/s 18 of the Act, whereby the compensation under the award was enhanced though not to the full extent claimed.

2. Land acquired was situated in Panniyur amsam and desam in Chirakfial Taluk in Malabar and stood registered as unoccupied dry and measured 24 acres 95 cents. The acquisition was for the purpose of Pepper Research Station, The Notification u/s 4 (1) of the Act was dated 80-10-1951 and the declaration u/s 6 was published in the Gazette on 6-11-1951. The land was taken possession of under the urgency provision on 7-4-1952. The award which was dated 10-10-1952, valued the land at the rate of Rs. 250 per acre and the few maruthu and other miscellaneous trees standing thereon at Rs. 125.

Adding 15 per cent solatium the total value came to Rs. 7,316-14-0. In their petition for reference filed on 23-11-1952 the claimants averred that the land was ideally situated on the road side and best suited for pepper cultivation, and further that they had made every arrangement for planting pepper on the

property when the acquisition proceedings were started. They went on to add that the prevailing price of similar land in the locality ranged between Rs. 1,000 to 1,500/- per acre but owing to the special adaptability of the land for pepper cultivation the potential value of the land acquired was considerably greater.

Still they would be satisfied with the modest estimate of at least Rs. 500 per acre. Learned Principal Subordinate Judge of Tellicherry before whom the reference came on for trial and disposal, found that the evidence let in by the claimants in respect to the value of other lands in the locality was totally unhelpful. He had nothing to say about the averments made in the petition for reference because the claimants had themselves not testified thereto.

Nevertheless he held, rather cryptically, that the compensation awarded was too low having regard to the fact that the land was acquired for working a Pepper Research Station and the claimant "was deprived of the potential value for his own purposes." In the result he fixed the compensation at Rs. 450/- per acre, that is, a little less than the rate of Rs. 500 claimed. Hence the appeal and learned Government Pleader urges before us that the case did not admit of the application of the doctrine of "potential value" and the enhancement of the compensation as granted by the Court below or to any extent is, in the circumstances, not called for. We may say at once that we agree.

3. Mr. Achuthan Nambiar appearing for the respondents was unable to controvert before us the conclusion of the Court below that the evidence adduced by the claimant as to comparable property nearby, was of little value. Indeed Ext. A-8, assignment deed dated 16-8-1952 in favour of P.W. 3 which alone is at all pertinent, concerns a property in extent just about half an acre though two miles away and certainly that cannot afford a criterion for settling the market value of the large extent of land as here.

Besides, P.W. 3 admitted that he purchased it from the point of view of house-site and paid the high value of Rs. 600 in view to its nearness to the agricultural farm on the Talaparamba-Erikkur Road. The short question then is, whether the Court below was right in attaching potential value to the land because of the very purpose for which it was being acquired and so interfering with the compensation under the award.

4. The doctrine of "potential value" under English Law is stated in Halsbury, 3rd Edn. Vol. 10V page 94, paragraph 157.

"Under the Land Clauses Act, tribunals assessing compensation may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land. The principle is applicable whether the owner has acquired the land in order to use it for some particular purpose, or whether he has no such present intention.

Where the prospective use of land depends on the making of an Order in Council, the possibility of obtaining such an Order may be taken into consideration in assessing the compensation.

The purpose for which the undertakers intend to use the land is not such a use as can be considered in estimating the potential value, when that value is created or enhanced simply by the act or scheme of the undertakers. The loss is tested by the value to the person from whom the land is taken, and not by the value to the persons acquiring it. It follows that if the person claiming compensation can make no use of the land, nor obtain any value for it in the market by reason of the restrictions on his ownership, he practically suffers no loss, and is therefore entitled to merely nominal compensation."

5. In India also, the same principle as in England regarding "potential value" of the land, has been accepted in determining its "market value" for purpose of assessment of compensation under the Land Acquisition Act. It is unnecessary for this purpose to go earlier than *Narayana Gajapathiraju v. Revenue Divisional Officer, Vizagapatam* AIR 1933 PC 98. In that case, their Lordships referred to Ss. 23 and 24 of the Act and observed that the general principles for determining compensation that were specified in those sections differed in no material respect from those upon which compensation was awarded in England under the Land Clauses Act of 1845 before the coming into operation of the Acquisition of Land (Assessment of Compensation) Act of 1919. In the course of their judgment they said :

"In the case of land, its value in general can be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by "the market value" in Section 23. But sometimes, it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentialities. In such a case the arbitrator in determining its" value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for land in that particular position and with those particular potentialities. For the land is not valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act) being the date of the notification u/s 4(1), but also by reference to the uses to which it is reasonably capable of being put in the future. It is possibilities of the land and not its realised possibilities that must be taken into consideration."

6. How to measure the increase accruing to value owing to potentialities was then dealt with by their Lordships as regards land possessing potentialities of such an unusual nature that the arbitrator has no similar cases to guide him e.g. (i) where the owner of the land is the only person who can do so, (ii) where the owner is not the only person but merely one of the persons able to turn the potentiality to account and (iii) where the owner is himself unable to turn the

potentiality to account and there are several other persons or at least one who would be able to do so and on this last aspect their Lordships disagreed with the views of Fletcher-Moulton, L. J. in *In re, Lucas and Chesterfield Gas and Water Board* (1908) 1 KB 571 and went on to hold that the principle applied even when the special value existed only for the particular purchaser who had obtained powers to compulsorily purchase. But their Lordships were clear and that is the matter of importance to us in this case that

"the existence of the scheme (proposed by "the acquiring authority) must not be allowed to enhance the price."

7. Indeed Section 24, Clause (5) of the Act made this position clear when it said that the Court shall not take into consideration any increase to the value of the land acquired, likely to accrue from, the use to which it will be put when acquired. Referring specifically to this clause, their Lordships in the Privy Council in the case just cited, observed that it meant that in valuing the land acquired on the date of the notification u/s 4(1) of the Act it must be valued as it then stood and not as it would stand when the land had been acquired and used for the purpose for which it was acquired. And they added:

"It did not mean that the possibility that a particular purchaser of land will give a higher price for it by reason of its possessing a special adaptability must be disregarded merely because the land will be more valuable in his hands when he exploits that adaptability than it would be if left in the hands of the vendor who was unable to exploit it."

So when the land acquired was as in that case, a natural reservoir of spring water with this potentiality that it was the only source of water supply to a harbour and the surrounding industrial concerns, though the Harbour authority were alone in a position to exploit it, the question was what that body would have paid as a willing purchaser not under compulsory acquisition, But where the land value was claimed for a road as a potential building site the Privy Council in *Ujagar Lal V. Secretary of State* ILR All 733 held that claim could not be allowed inasmuch as the owner (or any private purchaser from him) could never have used the road land for such purpose although the acquiring body after acquisition could do so.

8. The Land Acquisition Officer in fixing the compensation value of Rs. 250 per acre had reported that there were no bona fide sales of similar unoccupied dry lands within a radius of 4 or 5 miles, from the land acquired, during the last 8 years and took as his basis a sale of September 1949 regarding a survey number situated in the adjacent Poomangalam deson of Panniyur amsam and registered "occupied dry" and which measured 87 cents. The sale was for Rs. 200 working out an average rate of Rs. 229-15-10 or 230 in round figures. The report then said :

"The land sold and the land acquired are in one and the same amsam, and the distance between the two is only three miles. Though the land sold is registered

as occupied dry, and bears a slightly higher rate of assessment, than the land acquired, both are similar on grounds. The latter has the advantage of being nearer to the road and this, more than counter-balances the slight superiority of the land sold in the matter of soil classification and higher rate of assessment. There has been no appreciable variation in land value in the locality during the period between the date of publication of the notification u/s 4(1) and the date of sale."

As against this, there was no data supplied by the claimants, as we have noticed, either as to the present capabilities or future possibilities of the land. The fact that the acquiring authority intended to utilise that land for putting up pepper research station, it is clear, could not be taken into consideration. In the circumstances we are satisfied that the value adopted in the award was quite proper and did not call, for any interference at the hands of the Court below.

9. We therefore allow the appeal and restore the valuation contained in the award. The respondents will pay the costs of the appellant both in this and in the Court below.