
(2013) 11 AP CK 0108
In the Andhra Pradesh High Court
Case No : L.A.A.S. No. 1058 of 2007

Maddiseti Bharathi and Another

APPELLANT

Vs

Special Deputy Collector and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2013) 6 ALT 718 : (2014) ALT(Rev) 1

Hon'ble Judges : Dama Seshadri Naidu, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Ganga Rami Reddy, for the Appellant;

Judgement

Dama Seshadri Naidu, J.—The appellants in this land acquisition appeal are the claimants in L.A.O.P. No. 85 of 1999 on the file of the Senior Civil Judge, Gudur. Impugning the Order, dt. 16.04.2007 passed by the reference court on the ground of inadequacy of compensation, the present appeal is preferred. Facts in brief are that an extent of Ac. 10-25 cents of land belonging to the claimants, comprised in survey Nos. 354/1A & 354/1B of Penubarthi Village of Rapur Mandal, with pomegranate trees standing thereon, was acquired for the purpose of foreshore submersion of Kandaleru reservoir under Telugu Ganga Project. Notification u/s 4(1) of the Land Acquisition Act ("the Act") was issued on 25.07.1994; it was followed by declaration u/s 6 of the Act; and thereafter the Land Acquisition Officer passed an award on 31.07.1996, fixing the market value of the trees and lands therein and eventually the same was enhanced by the reference Court as follows:

- (a) The market value for the lands under category numbers I and II is fixed at Rs. 25,000/- per acre;
- (b) the market value for the lands under category III is fixed at Rs. 20,000/-;
- (c) The market value of each pomegranate tree is fixed at Rs. 75/- per tree per year, with a multiplier of 3, the total number of trees being 1053;

- (d) The market value of the motor shed is fixed at Rs. 22,311/-; and
- (e) the market value of 7 fig trees is fixed at Rs. 7,000/- [consolidated].

2. Aggrieved by the order passed by the reference court, especially with regard to the value fixed for the pomegranate trees, the landowners have filed the present appeal.

3. The learned counsel appearing for the appellants has contended that Government issued G.O.Ms. No. 338/63/1988 to fix the market value of different fruit bearing trees, but the guidelines given in the said GO have been ignored by the reference Court without any basis. It is contended that despite numerous precedents laid down by the Supreme Court as well as this Court, the primary authority and the reference Court have not taken into account the multiplier method to fix the value of the fruit bearing trees. The LAO and the reference Court have given a very summary treatment to all the claims made by the appellants.

4. Summarizing his submissions, the learned counsel for the appellant-land owners has stated that the oral evidence of CW-1 to CW-3 and Exs. A-1 to A-20 clearly show that the appellants have raised Ganesh variety, which yields more fruits than other pomegranate varieties, that the value of each pomegranate tree ought to have been taken as Rs. 3,600, and that by the time of notification the age of trees was 5 years. It has further been contended that as per the decision of the Hon"ble Supreme Court in Vemareddy Kumaraswamy Reddy and Another Vs. State of A.P., , the principle of capitalization method is that the annual income should be multiplied with the life time of the trees. The reference court, however, has not followed the capitalization method. Even as per the NABARD guidelines, each pomegranate tree yields 100 to 150 fruits, that if the price of each fruit is taken at Rs. 3/-, and that if average yield of each tree is taken at 150 fruits, the yield of each tree must come to Rs. 450/-. By deducting the agricultural expenses, the net income per tree in its life time must be more than Rs. 3,600/- per tree.

5. It is further contended that the evidence of CW-1 to CW-3 and Exs. A1 to A14 clearly establish the number of trees, yield per tree, etc. Finally, the learned counsel has relied on the decision of this court in The Special Deputy Collector (Land Acquisition), Somasila Project v. Peddireddy Madhava Reddy and 114 others (AS. No. 1749 of 2004, decided on 01-03-2013) and Palempalli Sunil Manohar Reddy and another v. The Special Deputy Collector (Land Acquisition) and another (A.S. No. 3798 of 2000, decided in September, 2013).

6. The learned Government Pleader, on the other hand, has strenuously defended the award, as modified by the reference Court. He has contended that the reference Court has already been liberal in granting compensation to the fruit bearing trees, at the rate specified above, which, in the opinion of the Government, is on the higher side. Despite the same, the Government has not chosen to disturb the said findings, so that a quietus could be given to the issue.

It is contended that the claim on the part of the appellants is highly exaggerated. Though the burden lay on the claimants to establish the actual number of trees, their age and the annual yield, the claimants could not place before the reference Court any cogent material to come to any other conclusion than what has been arrived at by the reference Court. In sum and substance, the learned Government pleader has submitted that the order of the reference Court is just and proper and does not call for any interference.

7. Heard the learned counsel for the appellants and the learned Government Pleader for the respondents, apart from perusing the record.

8. A perusal of the record shows that during the course of trial, the claimants have examined CWs. 1 to 3 and marked Exs. A. 1 to A. 20. On the part of respondent Land Acquisition Officer, apart from examining himself as R.W. 1, he has not marked any exhibits.

9. It is evident that the claimants have not laid much stress on the value of the land, as they have not chosen to file any registration extracts of contemporaneous sales to prove the existing market value of the lands; nor have they led much oral evidence in that regard. It is, as observed from the record, felt by the reference Court that since a comprehensive value is fixed for the fruit bearing trees, a nominal value could be fixed for the land in question.

10. Dealing with the aspect of the value of fruit bearing trees, it has come on record that by the date of draft notification, the age of the Pomegranate trees is about five years, which is also the gestation period. Basing on the report of the Director of the Horticulture, the reference Court has fixed the value of each pomegranate tree at Rs. 225/-.

11. From a perusal of the record and the submissions made by the learned counsel for the appellants, it is evident that, leaving aside the market Value of the land, the appellants have laid a lot of stress on what is stated to be the omission of the L.A.O. to consider the value of the trees, despite the abundant oral evidence and documentary proof produced by the appellants.

12. Insofar as the documentary evidence produced by the appellants is concerned, Exs. A. 1 to Ex. A13 relate to the sale proceeds of the produce marketed by the appellants; Ex. A14 is the letter, dated 23.11.1989 issued by the Horticulture Department; Ex. A15 is the copy of the award No. 6/2004-05, dated 25.10.2004; Ex. A16 is the copy of the judgment in LAOP No. 58 of 1990; Ex. A17 is a copy of judgment in LAOP 72/2000; Ex. A18 is a copy of common judgment in LAOPs 113/91 & others; Ex. A19 is a copy of the judgment in LAOP 16/1994; and Ex. A20 is a copy of Government order, dated 20.09.1986.

13. It may be relevant to recall to the mind that the Hon''ble Supreme Court has recently reviewed the law on awarding compensation to the fruit bearing trees in *Sk. Imambi v. Spl. Deputy Collector*, wherein it was held:

6. The Land Acquisition Officer had adopted a multiplier of 14 in regard to the

annual income of Rs. 80 per lime tree. That has not been disturbed by the High Court. The High Court, however, was of the view that in regard to the increase in income adopted by it, the multiplier should be only 10, relying upon the decision in Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. Sri S.T. Pompanna Setty,

7. The learned counsel for the appellant contended that the multiplier should not be less than 14 adopted by the Land Acquisition Officer. We cannot accept the contention of the appellant. Having regard to the consistent view taken by this Court, we are of the view that the High Court was right in holding that the multiplier should be 10.

This Court has repeatedly held that the standard multiplier should be 10; and that in special circumstances based upon specific evidence regarding the nature, standard, condition of the orchard, the Court may apply a higher multiplier of 12 or 13 or a lower multiplier of 8. (See Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, Special Land Acquisition Officer, Malaprabha Dam Project, Saundatti and Others Vs. Madivalappa Basalingappa Melavanki and Others, Special Land Acquisition Officer Vs. Virupax Shankar Nadagouda, Revenue Divl. Officer v. M. Ramakrishna Reddy (2011) 11 SCC 648.) But no such special circumstances are made out.

7. On the facts and circumstances, we are of the view that the finding of the High Court that the multiplier should be 10 does not call for interference.

14. Recently, following the above ratio, a Division Bench of this Court has held in the Special Deputy Collector (Land Acquisition) v. Peddireddy Madhava Reddy and others (A.S. No. 1749 of 2004), a Division Bench of this Court through its Order, dt. 1-3-2013, has answered the issue as follows:

Having regard to such a detailed evidence available with regard to the yield from the fruit bearing trees, it appears to us that the compensation should have been determined on yield basis by applying the appropriate multiplier.

In identical circumstances, Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. Sri S.T. Pompanna Setty, , it was held that where compensation is awarded on yield basis multiplier "10" is considered to be proper and appropriate. While relying upon the principles laid down in the said decision, the learned counsel for the respondents/Cross-objectors submitted that the compensation for trees may be awarded by applying multiplier "10". However, the learned Government Pleader vehemently contended that the said issue requires consideration by the Reference Court and therefore the matter may be remanded for fixing the compensation on yield basis by adopting the multiplier system.

...

Accordingly, instead of remanding the matter, we deem it appropriate to give a quietus to the controversy by fixing the compensation for the fruit bearing trees

as under:

For Mango, Acid Lime, Coconut, Guava, jack-fruit and Sapota (Sapodilla), the claimants-respondents/cross-objectors shall be entitled to compensation at the rate of Rs. 3,000/- per each tree....

15. A perusal of the award, dated 31-07-1996 would show that no proper exercise has been undertaken in fixing the value of the trees. Such an approach as this, needless to say, is arbitrary.

16. Without further discussion, in the light of the ratio laid down in A.S. No. 1749 of 2004, disposed on 01.03.2013 and A.S. No. 3798 of 2000, disposed of in the month of September, 2013, as well as the decision rendered by this very bench in L.A.A.S. No. 427 of 2009, the value of the fruit bearing trees is hereby fixed.

17. In the light of the principles laid down by this Court in the above cases, we propose to rely on the market value fixed per tree by the earlier Division Bench of this Court in Special Deputy Collector (Land Acquisition) v. Peddireddy Madhava Reddy and others. Thus, having regard to the evidence of PW-1 to PW-3, as well as the market value assessed under Ex. A14, and after appreciating the same in the light of the above precedents of the Apex Court and this Court, we feel that it will sub-serve the ends of justice if the market value of the pomegranate trees is fixed at Rs. 2,000/- per tree, without disturbing any other findings of the reference Court. Accordingly, the appeal is allowed by enhancing the value of fruit bearing tree, namely Pomegranate to Rs. 2,000/- per tree. The appellants-claimants are also entitled to statutory benefits like 30% solatium and 12% additional market value on the enhanced amount. They are further entitled to the interest on the enhanced market value at 9% from the date of taking possession up to one year and thereafter 15% till the enhanced amount is paid or deposited in the court.

As a sequel thereto, Miscellaneous Petition, if any, pending shall stand closed.