

(1990) 08 MAD CK 0088

In the Madras High Court

Case No : O.P. No. 287 of 1986, Application No. 4623 of 1986 and O.P. No. 128 of 1987

S. Byravan

APPELLANT

Vs

R. Thirumalaisamy Reddiar and others
R.
Thirumalaisamy Reddiar and others Vs S. Byravan and
Others
State of Tamilnadu Vs R. Thirumalaisamy
Reddiar and others Thiru S. Byravan B.A., B.L., Arbitrator,
Retired District Sessions Judge, (Now, Advocate at High
Court, Madras)

RESPONDENT

Date of Decision : 20-08-1990

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 15, 15(b), 20, 29
Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 226
Interest Act, 1978 — Section 3
Land Acquisition Act, 1894 — Section 17, 30, 4(1), 4(1), 6(1)

Citation : (1990) 08 MAD CK 0088

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : K. Alagirisamy, A.G. for the Additional Government Pleader C.S. in O.P. No. 128 of 1987 and Mr. M.S. Umapathy in application No. 4623 of 1986, for the Appellant; K. Alagirisamy, Advocate General for the Additional Government Pleader (C.S.) for Respondents 2 to 5 and Mr. M.S. Umapathy in O.P. No. 128 of 1987, for the Respondent

Final Decision : Allowed

Judgement

A.R. Lakshmanan, J.—O.P. No. 287 of 1986 was filed by the Sole Arbitrator Mr. S. Byravan, Retired District and Sessions Judge and now practising as an advocate, praying that the Award made by him be filed u/s 14(2) of the Arbitration Act, 1940 and further action taken thereon in accordance with the said Act. Application No. 4623 of 1986 was filed by the claimants/owner of the lands praying to pronounce the judgment according to the Award and pass a decree in terms of such award.

2. O.P. No. 128 of 1987 was filed by the State of Tamil Nadu represented by the Collector of Anna District u/s 30 of the Arbitration Act to set aside the Award passed by the Sole Arbitrator.

3. The facts in brief relating to the above matters are as follows:- In G.O. Ms. No. 1250, Public Works Department dated 10.8.1973 the Government approved the estimate for formation of tank across the river "Mangarai" under the Small Minor Irrigation Programme. Land acquisition proceedings were initiated for acquisition of 29.65 acres in Goodalvavi Village and 2.07 acres in Thathapatti village for the said purpose. Pending acquisition the Executive Engineer entered upon the lands in Survey Nos. 284/1, 284/2, 284/3, 287, 289/1, 300/28 Goodalvavi Village belonging to other parties and started construction of tank bund. The draft notification was submitted to the Collector of Madurai on 30-6-1977. The Collector of Madurai recommended the Land Acquisition proposal to the Government on 24.11.1977. The estimate cost of acquisition was also worked out by him by following the rates applicable as per D.S.O. and P.W.D. rates. The Collector worked out the compensation payable in respect of coconut thope in S. No. 276/4 and 280/1 at Rs. 13,865 per acre. For the wet lands in S. No. 274/part, 275/1 and 275/2 the compensation was worked out at Rs. 9729 per acre. For the water spread dry lands in S. No. 264/1 and 275/4, the compensation payable was worked at Rs. 1785/- per acre.

4. The claimants filed objections to the Special Tahsildar, Land Acquisition at that stage for the award of higher compensation. Section 4(1) notification under the Land Acquisition Act was published in the Gazette on 4.1.1978, which only indicates approximately the required extent. Objections were filed by the claimants stating that the entire lands should be acquired in respect of part or parts of certain survey numbers. The said objection petition was forwarded to the Executive Engineer for his remarks and the Executive Engineer in his remarks had indicated the actual lands needed by him. On 15.10.1978, the Authorised Officer (Land Reforms) reopened the case of the claimants Thirumalaisamy Reddy regarding the taking over of the excess lands over and above the ceiling limit which was dropped on 11.1.1974 and declared that the extent of 54.06 acres of lands acquired by Thirumalaisamy Reddy subsequent to 6.4.1960 is vested with the Government u/s 20 of the Act 54/61. Thirumalaisamy Reddy filed an appeal against the decision of the Tribunal in C.M.A. (LT) 146/80 and the Tribunal set aside the award of the Authorised Officer. The State has preferred Revision Petition in C.R.P. No. 2894 of 1985 before this Court. On 24.6.1981, the Government decided to drop the land acquisition proceedings in respect of the claimant's lands and cancellation notification was published in the Gazette on 29.7.1981. Once again the Executive Engineer, P.W.D., Dindigul submitted a fresh requisition to the Revenue Divisional Officer for acquisition of the claimant's lands. A draft notification was transmitted by the Collector to the Government. A report was called for by the Government as to whether the acquisition would be proper. Since by the construction of the dam, the claimant's lands would come within the water spread area, the Government decided to acquire the lands under

a fresh notification u/s 4(1) of the Land Acquisition Act and the same was published in the Gazette on 5.9.1984. In the meanwhile, the claimants filed W.P. No. 4133 of 1984 for the issue of Writ of Mandamus directing the Collector of Madurai to determine and pay the compensation for the lands which was dismissed on 14.6.1984 by Honourable Mr. Justice Ratnavel Pandian, J. (as he then was). While dismissing the writ petition learned Judge has observed as follows:-

As per the first proviso to Section 6(1) of the Act, no declaration in respect of any particular land covered by a notification u/s 4(1) published after the commencement of the Amendment and Validation Act shall be made after the expiry of three years from the date of the publication. Admittedly, the notification under Sec. 4(1) in this case was made on 4.1.1978. Therefore, the three years" period had expired on 3.1.1981. According to the learned Government Pleader, no declaration has been made before 3.1.1981, that is to say, within the period of three years from the date of the notification u/s 4(1). It is to be noted that it is not the case of the writ-petitioner that any declaration has been made. Therefore, even by virtue of the fact that the three years" period has expired, no declaration could be made. Apart from that, it is stated on behalf of the respondents that the entire notification has been cancelled and the entire notification has been cancelled and that the said cancellation has been published in the Tamil Nadu Gazette on 29.7.1981. Under these circumstances, as rightly pointed out by the Government Pleader, there is no question of any acquisition under the Land Acquisition Act in respect of the lands in question of any payment of compensation to the petitioners. Accordingly, no writ will issue and the petition is dismissed. No costs.

5. At this stage, it is submitted on behalf of the petitioners that the tank has already been constructed and thereby the petitioners have been deprived of the use of that part of the land which is covered by the tank. If it is so, it is for the petitioners to seek any other remedy that is available to them under law, if they are so advised.

5. The claimants again filed W.P. Nos. 7248, 7249 and 7250 of 1984 praying for the issue of writ of Mandamus directing the respondents (Collector and others) not to make the use of the claimant's lands bearing Survey Nos. 276/4 (1.05 acres) and 274/1 (part 32 cents) in Goodalvavi village, Dindigul, in W.P. No. 7248 of 1984, 275/1 (3.71 acres), 275 (23 cents) and 280/1 (1.89 acres) in Goodalvavi village, Dindigul in W.P. No. 7249 of 1984 and Survey Nos. 264/1 (52 cents) and 275/4 (2.43 acres) in Goodalvavi village, Dindigul Taluk, which is subject matter of W.P. No. 7250 of 1984, for the formation of the tank across the Periakombayar or for any other purpose. At that time the dam was constructed and part of the claimant's lands came under the water-spread area of the tank and were inundated. Pending the Writ Petitions, the claimants prayed for an injunction restraining the respondents from interfering with the lands by allowing the tank water to stagnate or submerge their lands. When the writ petitions were

admitted and rule nisi was issued, interim orders were passed in W.M.P. Nos. 11399 to 11401 of 1984 granting temporary injunction restraining the respondents from interfering with the lands of the petitioners. The interim injunction granted on 6.8.1984 and was made absolute on 21.8.1984. As however the entire area had already become submerged and the Government could not restore to the petitioners the benefit of the lands, the petitioners have taken out applications for action being taken against the respondents for contempt in Contempt Application No. 215 of 1984 (by R. Thirumalaisamy Reddiar), Contempt Application No. 216 of 1984 by Minor R.T. Kalyani, Minor R.T. Manimegalai, and Minor R.T. Sudha, represented by mother and guardian Kanagarathinammal, and in Contempt Application No. 10 of 1985 by Minor Parthasarathy and Minor Kesava Rangaswamy represented by mother and guardian Indirani Ammal through Power of Attorney R. Thirumalaisamy Reddiar. Notice was issued in the Contempt Applications and the respondents have filed counter affidavits. Therein, the respondents have admitted that the lands of the petitioners were originally notified for land acquisition under the Land Acquisition Act for formation of a tank across Peria Kombayar river, that the notification u/s 4 (1) of the Land Acquisition Act was issued in G.O. Rt. No. 2756, Public Works Department, dated 16.12.1977 and published in the Government Gazette on 4.1.1978, that even three years before the notification, the work in connection with the formation of the tank had been commenced and the work was completed during the year 1978 and the storing of water in the tank had begun from the year 1979 onwards. It is further stated that the lands of the petitioners fall within the water-spread area and as such, there is no scope whatever for the lands being restored to the petitioners for their enjoyment. The tank has been formed to provide irrigation facilities for about 1400 acres belonging to 600 ryots besides feeding 7 anaicuts below the tank. The counter affidavit filed by the respondents in the Contempt Application, then, proceeds to say that the land acquisition proceedings were cancelled on 24.6.1981 even though the Government had been in possession of the lands all along and that the Government was examining the question whether the take over of the lands should be under the Land Acquisition Act or under the Land Reforms Act. In respect of some of the lands, the Government have issued fresh notification u/s 4(1) of the Land Acquisition Act in the Government Gazette dated 5.9.1984. The notification is with regard to 6.11 acres belonging to Minor Parathasarathy and Minor Kesavarangasamy, represented by their mother and guardian Indiraniammal (W.P. No. 7249 of 1984). In so far as the lands of the other claimants are concerned, the Government is taking proceedings under the Land Reforms Act for regularisation of the taking over of the lands of those claimants. But, whatever may be, there is no possibility of the lands being given back to the petitioners for their enjoyment, because the lands constitute water-spread area and form an integral part of the irrigation project. As stated above the claimants' lands were flooded with waters of the tank, the State had no other alternative except to agree to refer the question of compensation payable to the Arbitrator. Here again it is useful to refer the order passed in W.P. Nos. 7248 to 7250 of

1984 and in Contempt Application Nos. 215, 216 of 1984 and 10 of 1985, on 4.10.1985, by Honourable Mr. Justice Natarajan, J., as he then was, under what circumstances the Arbitrator was appointed in a Writ Proceedings filed under Article 226 of the Constitution of India. Learned Judge after referring to the joint representation made by the learned counsel for the petitioner Mr. M.S. Umapathy and the learned former Advocate General Mr. R. Krishnamurthi, has observed in paragraphs 5, 6, 7 and 8 of the order as follows:-

5.....The learned Advocate General conceded that the lands of the petitioners have been taken over by the Government for construction of a dam across Peria Kombayar river and that the petitioners' lands are in the water-spread area of the reservoir and that from the year 1979, onwards the lands have been submerged by water stored in the tank. Such being the case, it follows that the petitioners are entitled to compensation for their lands taken over by the Government. In fact, the Advocate-General stated that the Collector has already worked out the compensation including solatium and interest payable to the petitioners and gave out the figures of the compensation amounts so arrived at. The Advocate General stated that the compensation amount has been fixed in accordance with the norms and that the authorities are willing to deposit the compensation amount in Court or disburse the same in accordance with the directions of the Court.

6. Mr. Umapathy, learned counsel, for the petitioners however stated that the compensation amount arrived at by the Collector is neither fair nor adequate and that the petitioners are entitled to payment of compensation at far higher rates. He submitted that in respect of other lands situate nearby, which had also been taken over by the Government for formation of the irrigation project in question, the civil court had determined the compensation amount at a much higher rate and in such circumstances, the least the Collector could have done was to adopt the rates prescribed by the civil court. Mr. Umapathy further submitted that the petitioners are entitled to a higher rate of compensation than what has been fixed by the civil court in respect of the other lands in the area acquired for the project, because the petitioners have been deprived the enjoyment and use of the lands and also the usufructs of the coconut trees from the years 1974 onwards.

7. The learned Advocate General could not refute the statement of Mr. Umapathy that the civil court has fixed the compensation amounts for adjoining lands at much higher rates and that the Collector has not adopted those rates in arriving at the compensation amounts payable for the lands of the petitioners. He was therefore fair enough to concede that if the petitioners are aggrieved with the compensation amount fixed by the Collector and feel that they are entitled in law to get a higher rate of compensation, then this Court may give directions as to how the compensation amount may be determined and that if necessary an Arbitrator, preferably a retired Judicial Officer may be appointed to go into the question and pass an award in respect of the compensation amount payable to

the petitioners. He however submitted that if this Court were to appoint an Arbitrator, then the parties may be given an opportunity to question the award given by the Arbitrator in appropriate proceedings. Mr. Umapathy was agreeable to the suggestion and stated that it would be the best course to be adopted in the circumstances.

8. Since both the parties would say that an Arbitrator, preferably a retired Judicial Officer practising as an Advocate may be appointed as Arbitrator to determine the or the lands and the loss of income from the usufructus, etc. and pass an award regarding the compensation amount payable to the petitioners in each case, I think the best course would be to appoint a suitable Arbitrator to determine the compensation amount payable for the lands of the petitioners under all heads and pass an award in that behalf. The Arbitrator will be at liberty to make local inspection of the lands and also to record evidence, oral and documentary , and make whatever further enquiries that are needed for ascertaining the value of the lands, the value of the loss of usufructs, etc. and then pass an award. In the circumstances, Thiru S. Byravan, retired District and Sessions Judge, and now a practising Advocate in the High Court, is appointed as Arbitrator to conduct the enquiry and pass an award on or before 31.12.1985.

Thus, it is seen from the above findings that the Arbitrator who was appointed by this Court by consent of parties will be at liberty to make local inspection of the land and also to record evidence and make whatever further enquiries that are needed for ascertaining the value of the lands, the value of the loss of usufructs, etc. and then pass an award. The learned Judge accepting the willingness of the respondents/State to disburse the compensation amount tentatively determined by the Collector in order to avoid payment of interest on the said sum, issued a further direction regarding the disbursement of the compensation amount arrived at by the Collector. The learned Judge has made it very clear that the payment will be, made by the Government to the claimants without prejudice to the rights of both parties. In paragraph 13 of the order, the learned Judge has directed the arbitrator and both parties to seek further direction from this court for fixation of the arbitrator's fees and for further directions being given regarding the payment of the same. In view of the disposal of the writ petitions in the manner indicated above, the learned Judge has observed that there is no need to proceed with the contempt applications and accordingly dismissed the same.

6. The Arbitrator has examined five witnesses on behalf of the claimants and eight witnesses on behalf of the State. A number of documents were also marked before the Arbitrator. The Arbitrator also made a local inspection and prepared a notes of inspection. The arbitrator proceeded to assess the compensation payable for the lands as on 4.1.1978 i.e., on the date of publication of Section 4(1) notification which had subsequently been dropped. The arbitrator framed issues and addressed himself each one of the issues, referred to his findings and gave reasons for each of his findings. The arbitrator has also relied on several decisions of this Court before ascertaining the compensation. It is the award of

the arbitrator that is being challenged by the Government in O.P. No .128 of 1987. The arbitrator passed the award on 13.6.1986. The award was served on the State of Tamil Nadu represented by the Collector of Anna District on 11.8.1986. The compensation amount awarded by the arbitrator has represented the net annual income from the trees, their capitalised valuation of 20 times as determined which according to the State is against law.

7. According to the award the compensation payable to the claimants worked out as follows:-

Trees Capitalisation valuation (decreed)

Land value together with trees to Three petitions value

7,82,200.00

9,38,980.00

15,64,170.00

Total value usufructs

32,85,350.00

Solatum 30%

9,85,605.00

Addl. Compensation 12% from 16.6.75 to 15.6.86, 11 years market value (i.e.)
@ Rs. 32,85,350/-

43,36,662.00

Total value

86,07,617.00

Interest 9% from 16.6.75 to 15.6.76 - One year

77,46,85.55

Interest 15% from 16.6.76 to 15.6.86 - 10 years

1291,142.50

Total Compensation award as per

1,06,73,445.05

The following grounds have been urged in the O.P. filed by the State:-

a) The arbitrator has directed payment of compensation by adopting capitalisation method i.e. annual income derived from the trees on multiplication of the net income of such usufructs derived from the trees. Such capitalisation theory is illegal and has not been followed in any other case much less advocated

by any judicial pronouncement. The same clearly therefore amounts to misconduct on the part of the arbitrator.

b) The award is not based on any legal evidence. The extent adopted in 4(1) notification is only approximate extent and not on actual extent. The sketch presented by the claimants as Ex. A. 30 in consultation with technical persons as stated in the award cannot be relied upon in the absence of the actual measurement made on ground by the Government technical staff. It is relied on with reference to area square Paper Check measurement. The technical authorities in Revenue and P.W.D. along with claimants should have gone to the field and made field measurement in order to know the actual water spread area determination.

c) An extent of 0.52 cents in Survey No. 264/1 lies outside the water spread area of the tank and on the direction of the court and considered as one of the items involved in the acquisition the compensation was paid. Since the above mistake was found out only during the survey as per direction of the Arbitrator and so the claimants should ask to refund the compensation since the land is not at all required for water spread area.

d) The actual extent required and utilised by the Government for the purpose of Peria Kombayar dam are as detailed below:-

Survey No

Total Extent. A.C.

Land Taken for Dam Actual Extend A.C.

Sub Division Now proposed

280/1

1.89

1.89

280/1

276V4

1.05

1.05

276/4

275/1 (Part)

4.92

3.99

275/1B

275/2

0.23

0.23

275/2

273/4 (Part)

2.43

2.21

275/4B

274/1 Part

4.76

0.28

274/1B

9.65

(e) It is apparent that the Dam was started in the year 1978 and completed in the year 1979 and the water stagnation started from the year 1975 onward is believed by the arbitrator. Even though the construction of the pond work was started in January, 1975, nobody entered into the lands, the claimants at any point of time prior to 1979 because the pond site is about two furlongs away from the suit land as admitted by one of the claimant. The claimants had free hand throughout the years for cultivating, their lands from the year 1975 onwards and therefore no question of taking possession of the lands in the earlier period as early as 1975

(f) In respect of Land Acquisition cases the Government follow the Registration sales statistical dates for fixation of valuation as per Land Acquisition Act and the rules in force. Therefore the capitalisation method for the fixation of valuation is not applicable.

(g) The value of the trees which are affected by the Acquisition Act are fixed by the Land Acquisition Officers on the basis of instruction contained in District Standing Orders and B.S.O. Rules. Therefore the capitalisation valuation adopted by the arbitrator is not justifiable in respect of land acquisition cases.

(h) The capitalisation value is a multiplication into 20 times adopted by the arbitrator in respect of land acquisition cases is not correct where comparable sales are available

(i) The compensation awarded in the order of the arbitrator is found too high and not based on any legal or acceptable evidence. The award shows a bias towards the petitioners in the method of submissions made by them and against the

respondents inasmuch as a new theory is invented and pressed into service to the detriment of the Government and its exchequer.

(j) The award is liable to be set aside on the ground of bias and misconduct.

8. The claimants contested the O.P. proceedings and have raised the following defence:-

(a) It is not the case of the Government that the Arbitrator has misconducted himself or has misconducted the proceedings. All that is stated in the petition is that instead of adopting one method of valuation, the Arbitrator has adopted a second method of valuation. It cannot be disputed that any one method can be adopted by the arbitrator.

(b) It is not the case of the Government that the Award has been improperly procured by the claimants or otherwise invalid.

(c) The compensation represents the net annual income from the trees and their capitalised value and that what has been determined by the Arbitrator is compensation for the property of the respondents which has been taken over compulsorily by the State Government.

(d) Regarding the extent of the land, it is not enough to say that as on date certain portions of the land are not sub-merged. The Arbitrator has rightly taken the extent of land that were forcibly occupied by the State Government at the time of the commencing of the construction of the Tank.

(e) It is well accepted that in assessing compensation for thope, the correct method is the method of capitalisation. Adequate evidence has been let in to show that the lands in question are peculiarly suited for a thope with natural surroundings and the required amount of seasonal rains, and that the capitalisation is the only method of valuing the land of the claimants. The Arbitrator has relied on the reports and evidence" of the officers of the State Government itself to come to the conclusion that the land should be construed as a thope and also for the purpose of fixing the number of trees. The number of trees and the yield from the trees are determined only for the purpose of finding out the annual income from the thope as a whole. When the Award can be sustained on legal principles, the petitioner cannot attribute the motive to the Arbitrator merely because the Award is against the State Government.

9. A perusal of the claim statement made by the claimants before the Arbitrator would show that detailed particulars have been given as to the number of trees, the yield from the trees and the annual income from such trees after deducting the expenses for the maintenance etc. These figures only lead to the determination of the annual income from the thope and most of the particulars have been derived from the reports of the Government Officers and such factual basis cannot be disputed in an Application u/s 30 of the Arbitration Act. It is also not necessary to adopt the tree value with reference to the D.S.O. and in fact the petitioner has not brought to the notice of the Arbitrator at the time of the

enquiry about the value to be adopted with reference to the D.S.O. while valuing the trees. It is open to the arbitrator to adopt the capitalisation value while granting compensation for the lands with valuable trees acquired under the Land Acquisition Act.

10. I have heard the elaborate arguments advanced by Mr. K. Alagirisamy, learned Advocate-General, on behalf of the State and Mr. M.S. Umapathy, learned counsel on behalf of the claimants. Learned Advocate-General at the time of the argument has raised and argued following four points for my determination. They are:

(a) The method of calculating the market value by capitalisation method should be adopted only as a last resort when details of actual income from the lands and sale of similar lands in the same locality are not available. According to the learned Advocate-General capitalisation method could be resorted only as a last resort.

(b) The arbitrator assumed the role of Land Acquisition Officer and fixed the compensation under the provisions of the Land Acquisition Act. The order referring the matter for arbitration did not authorise him to fix the compensation after following the Principles or the provisions contained in the and Acquisition Act. The arbitrator has therefore erred in awarding 30% solatium and interest as per the provisions of the Land Acquisition Act.

(c) The awarded amount is disproportionately excessive.

(d) No interest pendente lite could be awarded by the arbitrator in the absence of express terms to that effect in the order referring the matter to the arbitrator.

11. A feeble attempt was made by the learned Advocate-General to say that the reference to the arbitration itself is incorrect. Certainly it is too late in the day to advance such an argument. In this context the order of reference made by Nataraiyan, J. (as he then was) in W.P. Nos. 7248 to 7250 of 1984 and Contempt Application Nos. 215 and 216 of 1984 and 10 of 1985, dated 4.10.1985 may be usefully referred to. It is seen from the order that the learned counsel for the petitioners Mr. M.S. Umapathy and the then learned Advocate-General appearing for the State jointly represented that an arbitrator, preferably a retired Judicial Officer, Practising as an Advocate be appointed to determine the value of the land and loss of the income from the usufructus, etc. and pass an award regarding the compensation amount payable to the petitioners in each case. Accepting the suggestion made by the counsel for both sides learned Judge has made the following order of reference:-

I think the best course would be to appoint a suitable Arbitrator to determine the compensation amount payable for the lands of the petitioners under all heads and pass an award in that behalf. The Arbitrator will be at liberty to make local inspection of the lands and also to record evidence, oral and documentary, and make whatever further enquiries that are needed for ascertaining the value of

the lands, the value of the loss of usufructs etc. and then pass an award. In the circumstances, Thiru S. Byravan, retired District and Sessions Judge, and now a practising Advocate in the High Court, is appointed as Arbitrator to conduct the enquiry and pass an award on or before 31.12.1985.

12. The order of reference will show that it was made by consent and Government had conceded that it had taken possession of the land for the construction of the Dam across Periakombayar river and that the petitioners' lands are in the water-spread area of the reservoir and that from the year 1979 onwards the lands were submerged by water stored in the tank. Under these circumstances, I am of the view that it is not open to the learned Advocate-General now, to challenge the order of reference. This is also clear from the decision of the Supreme Court reported in *Prasun Roy Vs. Calcutta Metropolitan Development Authority and Another*, . Let me now consider the four points raised by the learned Advocate-General in its *seriatim*.

13. Point (a):- By referring to the letters which have been marked as Exhibits B.2, B.3 and B.5 learned Advocate-General has stated that the claimants themselves in their letter to the Collector claimed compensation on the basis that the entire land would fetch an income of Rs. 25,000/- and when such admitted income of the claimant is available, the arbitrator went wrong in arriving at the compensation on the basis of hypothetical yield from each tree and multiplying it by the number of trees and arriving at the yearly income and capitalising it by multiplying it 20 times. This argument is answered by the claimants as seen from paragraph 41 of the Award, stating that Ex. B.2 has been written in respect of the land belonging to C.W.1 in his individual capacity and Ex. B.3 has been written by C.W.1 in capacity as Power of Attorney Agent of C.W.1's minor grand children through his son and his daughter-in-law Indrani Ammal and his wife Kanagarathinamal, (petitioners in W.P. No. 7249 of 1984 and applicants in Contempt Application No. 10 of 1985) and that the approximate income in respect of C.W.1's land would be Rs. 25,000/- and similarly each of the four claimants under Ex. B.3 would get an yearly income of Rs. 25,000/-. This practically tallies with the present claims as seen from Exhibits A.3 to A.5. Further, in these petitions the holdings of the daughters of C.W.1 are not included, (petitioners in W.P. No. 7250 of 1984 and Contempt Application No. 216 of 1985). The holdings of these three sets of petitioners are not equal extent or in the number of trees. His estimate is only approximate. In the claim statement it is pointed out by the claimants that in exhibit B.3 the claim must be read as the individual income for each of the claimants in W.P. No. 7249 of 1984. And in the claim petitions in these Arbitration proceedings the same income of Rs. 25,000/- has been adopted in the claim statement. Further, there are statements found in the letters impressing on the authorities the necessity to expedite clearance in land reforms proceedings. These are not claim statements. Therefore these statement cannot be torn out of the context and treated as admission in these proceedings. Ex. B.5 is also a letter written in similar circumstances and what applies to Ex.B2 and Ex.B3 will apply to this letter also.

Thus, the sole arbitrator has not accepted the arguments of the State that the claimants are bound by Ex. B.2, Ex. B.3 and Ex. B.5 and in any event the approximate annual income is not far different from the present claim.

14. It is also seen from the evidence let in on the side of the claimants on this aspect. We find that the claimants along with their claim statement had furnished three Annexures separately for each set of the claimants, wherein the particulars regarding the trees available in each Survey fields are separately furnished. These Annexures have been marked as Exhibits A.3 to A.5. In his oral evidence C.W.1 Thirumalaiswamy Reddiar had deposed reiterating the particulars given in the said Annexures Exs.A.3 to A.5. According to him coconut trees in those fields were of three age groups viz., 10 years, 20 years, and 40 years old. He had also deposed that he used to consult Agricultural Officers and other experts and had been maintaining and manuring the survey fields and got good yield from them. He also spoke about the fertility of the soil and the seasonal conditions prevailing in the area. C.W.2. had also corroborated the evidence of C.W.1. C.W.5 whose lands are adjacent to the lands in question were also subject matter of the acquisition for the same project has also deposed. Certified copy of the court proceedings has also been marked as Ex.A./23. He had further deposed that the coconut trees standing in the name of C.W.1 and other claimants are capable of better yields, than his own trees, and good yield given by the other fruit bearing trees in their lands. This witness had also given an affidavit before the Collector of Madurai, marked as Ex.A.29. That apart, the particulars of the trees furnished by the Collector of Madurai, in his tree valuation statement under Ex.A.9 and also in the statement of compensation prepared by him and marked as Ex.A.8 lend support to the case of the claimants. The Arbitrator has also prepared a comparative table regarding the number of trees according to the claimants in the notified area and the total number of trees. As admitted by the Collector of Madurai in Exs.A.8 and A.9. The total number of coconut trees in the notified area according to the claimants is 739 and according to the Tree valuation statement and the statement of compensation the total number of trees for which compensation is worked out by the Collector is also 739. Likewise the total number of trees of each category as claimed by the claimants in the notified area tallies with the total found in Exs.A.8 and A.9 prepared by the Collector. In this context, tabulation statement in Appendix III and the abstract prepared by the Arbitrator can also be usefully referred to. The abstract is given below;-

Variety of Trees

Total Number according to the claimants

Total Number according to the the Collector of Madurai Exs.A.8 and A.9.

Coconuts

739

739

Pomagranate

22

21

Lime

189

189

Guava

101

101

Northai

81

81

Athi

4

5

Margoasa

3

3

Arasu

1

1

Tamarind

1

Nil

.

From the above extract it is seen the discrepancy occurs in the total number of trees only in respect of three trees. In view of the fact that the total number of trees tallies practically in respect of each and every item, it can be inferred that the Revenue Authorities had correctly totalled the number of trees available under each category. It can be pointed out that only on the basis of the total number of trees mentioned in Exs.A.8 and A.9, the Collector had calculated the compensation payable to the claimants. The compensation worked out, basing on

the total number of trees has been paid to the claimants by the Government without prejudice to their rights as seen from the order of this Court in W.P. Nos. 7248 to 7250 of 1984 in referring to the matter to the arbitration. Therefore the arbitrator has adopted the figures as given by the Collector of Madurai in his own statement as representing the correct number of trees in notified areas. In any event the state cannot now go back on their own admissions as contained in Exs.A.8 and A.9 regarding the number of trees. In view of the fact that the discrepancy occurs only in three minor items and according to the claimants only in respect of two items and that too by one number taken over and utilised by the Government for the purpose of the project.

15. However the learned Advocate-General has stated that the arbitrator has wrongly overlooked the admitted claim of the claimants that the lands will fetch only Rs. 25,000/- in a year and also failed to look into Exhibits B.2, B3 and B.5. He further submitted that even assuming that each one of the said claimants would get an income of Rs. 25,000/- per year from their share of lands, the total income from the entire lands would be Rs. 75,000/-. By adopting the capitalising method, for twenty years the income from the land would only be Rs. 15 lakhs, which would be somewhere nearer to the value assessed by the Collector i.e. Rs. 13 lakhs and odd while sending proposals for acquisition of the land. According to the learned Advocate General capitalisation method should be adopted only as a last resort when other modes of valuation could not be adopted, and hence the arbitrator has misconducted himself by not referring to the admitted income which is available on record but followed the capitalisation method. The value was assessed by the arbitrator under the provisions of the Land Acquisition Act, the compensation fixed by the arbitrator is more than one crore and the excessive compensation awarded by the arbitrator would itself go to prove the misconduct of the arbitrator. In this context the learned Advocate-General has invited my attention to the case law reported in *Dandasi Sahu v. State of Orissa* 1990 1 SCC. 214. The said decision would lend support only to the case of the claimants and not to the State. In the above said decision the Supreme Court has held as follows:

Though the arbitrator is not bound to disclose as to what interpretation he has made and what inference he has derived from the documentary evidence, he is bound to refer in the award that he had considered all the documents placed before him no matter whether he relies on them or discards them from consideration. The arbitrator in his award in this case *ex facie* did not mention that he had referred to or considered the documents placed before him in respect of the original claim.

The award in the instant case also disclosed the nature of the documentary evidence considered by the arbitrator and the inference drawn from the same.

16. While considering issue No. 5 in regard to correct mode of valuing the lands whether it is by capitalisation of the annual income or by adopting comparable sales of similar lands in the immediate locality, the arbitrator has elaborately

discussed the matter as could be seen from paragraph 24 of his award. Mr. M.S. Umapathy, learned counsel for the respondents while replying to the points raised with regard to the method of calculation submitted that the principle of fixing the compensation are found in the Land Acquisition Manual published by the Government itself and referred to in this connection page 83 and 84 of the said manual. He has also invited my attention to many decisions that once it is found that there is no similar land with of similar additions as the acquired lands, then it is open to the authority to adopt capitalisation method. He has further submitted that the arbitrator has given valid reasons and has also referred to several decisions to show why he adopted the capitalisation method.

17. The arbitrator in paragraph 24 of his award considered the point for adopting the method of comparable sales and the other by adopting the capitalisation of annual income. According to the arbitrator for adopting the method of comparable sale, the copies of the sale deeds of similar lands in the same locality and of the same period of execution must be available While referring to the deposition of R.W.2, the Revenue Inspector who filed a number of sale deeds marked as Exs.B.28 to B.33 relating to the sale of lands in Goodalvavi village in question the arbitrator has found that they relate to Nanjai lands and dry lands and no one connected with this transaction neither the vendor or vendee had been examined. R.W.5 also did not give the details about the locality or the nearness of the lands in question. The arbitrator has further found the land in Exs.B.28 to B.33 will not afford any guidance to arrive at the value of the lands taken over by the Government. According to the arbitrator the Revenue Authorities have failed to examine the concerned persons for determining the value of the land. In fact while paying the admitted amount as per Ex.A8 this method was not adopted and only capitalisation method had been adopted. In this context the learned Advocate-General summoned all the documents and examined all the witnesses, even if the department failed to produce those documents relating to the adjacent coconut thopes which were acquired for the same purpose. I am unable to appreciate the said contention. It is the duty of the department to get hold of such document and examine all such witnesses to ascertain the compensation and those documents reflect the correct market value at that time. The arbitrator as a matter of fact, has clearly found that the department has failed to produce the documents and examine the witnesses. Under these circumstances it is not for me to go beyond the finding given by the arbitrator on this point. Learned Advocate-General again referred to a decision reported in K.P. Poullose Vs. State of Kerala and Another, and submitted that the arbitrator was guilty of legal misconduct in conducting the proceedings by not considering the material documents resulting in miscarriage of justice It is seen from the records that though the State filed Exs.B.28 to B.33 relating to the sale of the lands, no one connected with this transaction, neither the vendor nor the vendee has been examined. Not even the attestor to the document or neighbours of lands which are the subject matter of the documents had been examined. R.W.5 also did not give the details about the locality or the nearness of them to

the lands in question in the absence of any assistance from the State, the arbitrator is not expected to consider the said question. Even as a matter of fact the arbitrator has held that there is nothing to presume that the lands under Exs.B.28 to B.33 will afford any guidance to arrive at the value of the lands taken over by the Government and that the Revenue Authorities have failed to examine the concerned persons for determining the value. Under these circumstances, the arbitrator had no other option except to adopt only the capitalisation method. Hence the decision cited supra by the Advocate-General will be of no help to the State. Learned Advocate General has also referred another decision reported in Spl. L.A. Officer, Railways v. Narayana AIR 1973 Mys 25. The Mysore High Court held that capitalisation method can be adopted only in the absence of evidence of prices of similar lands at or about the time of acquisition. As stated above and as held by the arbitrator the documents produced by the State under Exs.B.28 to B.33 in relation to the sale of lands in Goodalvavi village relate to nanjai lands and dry lands and no one connected with this transaction neither the vendor nor the vendee had been examined. The Revenue Authorities have also not pursued in and examined the concerned persons for determining the value of the lands. The persons concerned have not been put into the box and made available for cross-examination by the claimants. Under these circumstances, I am of the view, that there is no misconduct on the part of the arbitrator as alleged by the State.

18. It is not the case of the petitioner/State that the arbitrator has misconducted himself or misconducted the proceedings. All that is stated in the petition is that instead of adopting one method of valuation, the arbitrator has adopted a second method of valuation. It cannot be disputed that any one method can be adopted according to the facts and circumstances of the case. In any event, in my view the said action of the arbitrator cannot be equated to misconducting himself or misconducting the proceedings. It is also not the case of the State that the award was improperly procured. It is seen from the award that what has been determined by the arbitrator is compensation for the property of the respondents which has been taken over compulsorily by the State Government. It cannot also be disputed that one of the methods commonly used in respect of Thope is the method of capitalisation. It has been adopted by the arbitrator and in my view it is in order and valid in law. The State Government cannot acquire the land and at the same time be reluctant to give compensation to the claimants. The extent of the land used and occupied by the State of Tamil Nadu has been set out in the claim statement filed before the arbitrator. It is also not open to the department now to say that as on date certain portions of the land are not submerged. In my view the arbitrator has rightly taken the extent of land that were forcibly occupied by the State Government at the time of commencing of the construction of the tank. I hold that the procedure adopted by the arbitrator in adopting capitalisation method is valid, proper and that the arbitrator has not misconducted himself in this regard. The arbitrator has adopted the method of capitalisation for reasons stated in the award itself. On the other hand it is well

accepted that in assessing compensation for thope, the correct method is the method of capitalisation. Adequate evidence has been let in to show that the lands in question are peculiarly suited for a thope with natural surroundings. It will never be possible to get a comparable sale deed of thope as, that of the claimants because of the situation in the mountain. Reports of the officers of the State Government itself were relied on by the arbitrator to come to the conclusion that the land should be construed as thope and also for the purpose of fixing the number of trees. The number of trees and the yield from the trees are determined only for the purpose of finding out the annual income from the thope as a whole, and this annual income is arrived at and the market value is ascertained by the method of capitalisation. It cannot be disputed that the Land Acquisition Manual itself refers to the method of capitalisation and the procedure to be followed. In the instant case the arbitrator has only adopted the said procedure. It is also seen from Ex.A.8 the statement showing the compensation payable to the claimants for their lands involved in acquisition in Goodalvavi village for the formation of Dam across Periakombayar river under Special Minor Irrigation Programme. The Collector of Madurai has worked out the compensation including solatium and interest payable to the petitioners and gave out the figures of the compensation amount so arrived at. The compensation amount payable to the claimants has also been fixed in accordance with the norms. In Ex.A.8 the Collector has assessed the compensation after considering the relevant details viz., the classification of lands, total extent, extent to be acquired, basis for the rate per acre, land value, tree value, market value, 30% solatium on land value, interest at 9% for one year from 16.6.1975 to 15.6.1976, interest at 15% from 16.6.1976 to 30.4.1983 and total compensation. By considering the above aspects, the Collector of Madurai has tentatively arrived at the compensation payable as Rs. 13,00,000/- and odd. Thus it will be seen that the arbitrator has adopted and followed only the procedure followed and adopted by the Collector under Ex.A.8. This Court also by order dated 4.10.1985 made in W.P. Nos. 7248 to 7250 of 1984 and contempt application Nos. 215 and 216 of 1984 and 10 of 1985, has directed the arbitrator to make local inspection of the lands, to record evidence, oral and documentary, and make whatever further enquiries that are needed for ascertaining the value of the lands and the value of the loss of usufructs etc., and then pass award. In my view the award of the arbitrator can be sustained on these principles. Thus, the State has not made out any ground for setting aside the award of the arbitrator on this point.

19. Point (b) The learned Advocate-General for the State argued that the order of this Court made in W.P. Nos. 7248 to 7250 of 1984 dated 4.10.1985 referring the matter to the arbitrator does not enable him to invoke the provisions of the Land Acquisition Act nor does it direct the arbitrator to pay solatium or interest as per the provisions of the Land Acquisition Act. According to the learned Advocate General solatium or interest is payable only under the Land Acquisition Act. The arbitrator was only directed to fix the value of the land so that the

compensation by way of damages could be paid and no solatium or interest are payable. He further stated that the principles for payment of compensation laid down in the Land Acquisition Act cannot be applied to cases like this and the award of solatium at 30% and interest is totally without any authority and would constitute a clear misconduct on the part of the arbitrator. It is further contended that no interest could be awarded by the arbitrator in the absence of any express provisions in the order referring the matter for arbitration.

20. It is seen from the Land Acquisition proceedings, in the instant case that draft notification was submitted to the Collector of Madurai on 30.6.1987 and the Collector of Madurai recommended the land acquisition proposal to the Government on 24.11.1977. The estimate cost of acquisition was also worked out by him by following the rates applicable as per D.S.O. and P.W.D. rates. The Collector worked out the compensation payable in respect of coconut thope in Survey Nos. 276/4 and 280/1 at Rs. 13,865/- per acre. For the wet lands in S. Nos. 274/part, 275/1 and 275/2 the compensation was worked out at Rs. 9729/- per acre. For the water spread dry lands in S. No. 264/1 and 275/4, the compensation payable was worked at Rs. 1785/- per acre. The claimants filed objection to the Special Tahsildar, Land Acquisition and prayed for award of higher compensation, Section 4(1) notification under the Land Acquisition Act was published in the Gazette on 4-11-1978. Under the said provision, extent of land required and the S. Nos. which are more or less needed for the purpose would be published in the Gazette. Again objections were filed by the claimants stating that the entire lands should be acquired in respect of part or parts of certain survey numbers. The said objection petition was forwarded to the Executive Engineer for his remarks and the Executive Engineer in his remarks had indicated the actual lands needed by him.

21. On 15.10.1978 the Authorised Officer (Land Reforms) reopened the case of the claimants regarding the taking over of the excess lands over and above the ceiling limit which was dropped on 11.11.1974 and declared that the extent of 54.06 acres of lands acquired by Thirumalaisamy Reddy subsequent to 6.4.1960 is vested with the Government u/s 20 of Act 58 of 1961. One of the claimants filed an appeal against the decision of the Tribunal in C.M.A. (LT) 146 of 1980 and the Tribunal set aside the award of the arbitrator. The Revision preferred by the State in C.R.P. No. 2894 of 1985 is said to be pending in this Court. On 24.6.1981, the Government decided to drop the Land Acquisition proceedings in respect of the claimants' lands and cancellation notification was published in the Gazette on 29.7.1981. Once again the Executive engineer, P.W.D., Dindigul submitted a fresh requisition to the Revenue Divisional Officer for acquisition of the claimant's land. A draft notification was submitted by the Collector to the Government. A report was called for by the Government as to whether the acquisition would be proper. Since by the construction of the dam, the claimant's lands would come within water spread area, the Government decided to acquire the lands under a fresh notification u/s 4(1) of the Land Acquisition Act and the same was published in the Gazette on 5.9.1984. In the meanwhile, the claimants

filed W.P. No. 4133 of 1984 for the issue of a Writ of Mandamus directing the Collector of Madurai for determining the compensation payable for the lands which was dismissed on 14.6.1984, by Ratnavel Pandian, J. (as he then was). While dismissing the writ Petition learned Judge has observed in paragraph 5 of the order as follows :-

At this stage, it is submitted on behalf of the petitioners that the tank has already been constructed and thereby the petitioners have been deprived of the use of that part of the land which is covered by the tank. If it is so, it is for the petitioners to seek any other remedy that is available to them under law, if they are so advised.

Once again the claimants filed W.P. Nos. 7248 to 7250 of 1984 praying for the issue of Writ of Mandamus directing the respondents not to make use of the claimant's lands for the formation of the tank. At that time the dam was constructed and part of the claimant's lands came under the water spread area of the tank and were inundated. Pending the Writ Petitions, the claimants prayed for an injunction restraining the respondents from interfering with the lands by allowing the tank water to stagnate or submerge their lands. Interim injunction granted by this Court was made absolute on 21.8.1984. The claimant filed Contempt Application Nos. 215 and 216 of 1984 and 10 of 1985 to punish the respondents for contempt of the orders of this Court dated 6.8.1984 and 21.8.1984 made in the respective W.M.Ps. As already stated since the claimants' lands were flooded with waters of the tank, the State had no other alternative except to agree to refer the question of compensation payable to the arbitrator. In this context it is useful to refer to the order of Natarajan, J., (as he then was) made in W.P. Nos. 7248 to 7250 of 1984 and in Contempt Applications 215, 216 of 1984 and 10 of 1985, on 4.10.1985. The learned Judge has observed the reasons for the petitioners filing the writ petitions in this Court, in paragraph 5 of the said order, A Joint representation was made by the learned counsel for the claimants and the then learned Advocate-General that the writ petitions themselves may be disposed of, acceding to their request, they were called upon to argue the writ petitions themselves. The then learned Advocate-General conceded that the lands of the petitioners have been taken over by the Government for construction of a dam across Periakombayar river and that the petitioners lands are in the water spread area of the reservoir and that from the year 1979, onwards, the lands have been submerged by water stored in the tank. Such being the case, it follows that the claimants are entitled to compensation for their lands taken over by the Government. In fact, the then Advocate-General stated before the Court that the Collector has already worked out the compensation including solatium and interest payable to the claimants and gave out the figures of the compensation amounts so arrived at. The then Advocate-General further submitted that the compensation amount has been fixed in accordance with the norms and that the authorities are willing to deposit the compensation amount into Court or disburse the same in accordance with the directions of the Court. At the time of hearing of the writ petitions, Mr. M.S.

Umapathy the learned counsel for the claimants further stated that the compensation amount arrived at by the Collector is neither fair nor adequate and that the claimants are entitled to payment of compensation at far higher rates. The learned Advocate-General could not refute the statement of Mr. Umapathy, counsel for the claimants, that the civil Court has fixed the compensation amounts for adjoining lands at much higher rates and that the Collector has not adopted those rates in arriving at the compensation amounts payable for the lands of the petitioners. In this context it is useful to refer the observation in the order of the learned Judge made in W.P. Nos. 7248 to 7250 of 1984.

The learned Advocate General could not refute the statement of Mr. Umapathy that the civil Court has fixed the compensation amounts for adjoining lands at much higher rates and that the Collector has not adopted those rates in arriving at the compensation amounts payable for the lands of the petitioners. He was therefore fair enough to concede that if the petitioners are aggrieved with the compensation amount fixed by the collector and feel that they are entitled in law to get a higher rate of compensation, then this Court may give directions as to how the compensation amount may be determined and that if necessary an Arbitrator, preferably a retired Judicial Officer, may be appointed to go into the question and pass an award in respect of the compensation amount payable to the petitioners. He however submitted that if this Court were to appoint an Arbitrator, then the parties may be given an opportunity to question the award given by the Arbitration in appropriate proceedings. Mr. Umapathy was agreeable to the suggestion and stated that it would be the best course to be adopted in the circumstances.

22. Accordingly, by consent of parties Mr. Byravan, retired District and Sessions Judge was appointed as sole arbitrator to determine the compensation amount payable for the lands of the petitioners under all heads and pass an award in that behalf. Liberty was also given to the arbitrator to make local inspection of the lands and also to record evidence, oral and documentary, and make whatever further enquiries that are needed for ascertaining the value of the lands, the value of the loss of usufructs etc., and then pass an award.

23. From the above, it is seen that the lands of the claimants were acquired only by invoking the provisions of Land Acquisition Act and that the arbitrator was appointed to determine the compensation amount payable for the lands of the petitioner under all heads and pass an award in that behalf. Accordingly, in my view the arbitrator has rightly invoked the provisions of the Land Acquisition and fixed the compensation payable for the lands of the claimants under all heads. The facts of the case will also disclose that the land acquisition was only under the Land Acquisition Act. It is a matter of record that all the other neighbouring land have also been acquired only under the Land Acquisition Act and compensation paid only under the said Act. The Collector himself offered compensation only as per the Land Acquisition Act giving solatium and interest under Ex.A.8. Under these circumstances. I am unable to appreciate the

contentions of the learned Advocate-General and hold that the procedure adopted by the arbitrator in fixing the compensation under the Land Acquisition Act, is not legal and proper. Since the lands of the claimants have been acquired under the Land Acquisition Act, the claimants will be entitled to compensation and solatium as per the provisions of the Land Acquisition Act. It is also pertinent to note the fact that the claimants are entitled to additional compensation and solution as admitted by the Collector under his statement Ex.A.8 and making the calculations these amounts have been shown in the said column 10 and 11 Ex.A.8

24. Point (c): The learned Advocate-General next contended that the amount awarded is disproportionately excessive. I am unable to accept the said contention. In the instant case the arbitrator has passed a reasoned award after considering the evidence available on record, both oral and documentary. In the instant case the parties have chosen Mr. Byravan as their arbitrator by consent in regard to the dispute between them. In my view, the arbitrator has not committed a mistake either in law or in fact in determining the matters referred to him. The fact that merely the award amount is quite high or that a large amount has been awarded does not vitiate the award as such. One has to judge whether the amount of the award was so disproportionately high to make it per se bad in facts and circumstances of each case. It is seen from the facts of this case and also from the records that the arbitrator gave all due opportunities to the parties to adduce all evidence. Under such circumstances it cannot be said that the award was so disproportionate as to shock the conscience of the Court. As such it cannot be held that the award was bad per se as argued by the learned Advocate-General.

25. In this context the judgment of Supreme Court reported in *State of Orissa v. Dandasi Sahu* (1984) 4 SCC, 12 can be referred to. The Supreme Court while dismissing the appeal filed by the State of Orissa held that merely the award amount is quite high or that a large amount has been "awarded does not vitiate the award as such. In my opinion the said contention of the learned Advocate General is not well founded and has to be rejected in view of the verdict of the Supreme Court of India.

26. Point D: Learned Advocate General further submitted that the order of the Court referring the matter to the arbitrator does not enable the arbitrator to invoke the provisions, of the Land Acquisition Act or to pay solatium or interest as per the provision of the Land Acquisition Act. According to learned Advocate General solatium and interest are payable when the award is passed only under the Land Acquisition Act. Apart from the provisions of and Acquisition Act, there is no scope for payment interest and that the principles of payment of compensation laid down in the and Acquisition Act cannot be applied and that the award of interest is totally without any authority and would constitute a clear misconduct on the part of the arbitrator. It is further contented no interest could be awarded by the arbitrator in the absence of any express provision in the order referring the matter in the arbitration in W.P. Nos. 7248 to 7250 of 1984 dated

4-10-1985. In the absence of any such direction being given to the arbitrator to pay interest, subsequent interest could only be directed to be paid after the decree is passed in terms of the award.

27. Mr. M.S. Umapathy, in his reply to the said argument submitted that the Collector himself offered compensation only as per the provisions of the Land Acquisition Act giving solatium and interest under Ex.A.8 and that solatium and interest is automatic when the proceedings are initiated to acquire land under the Land Acquisition Act, and that the denial of the same will amount to violation of the rights guaranteed under the Constitution of India. He has further submitted that the compensation awarded as much is only reasonable as on date of taking possession viz., 15-6-1975. Because of their own action and the long passage of time interest has to be paid from the year 1975. Therefore Mr. Umapathy submitted that it is incorrect on the part of the Government to complain now that the award of interest has boosted the compensation.

28. I see much force in the contention of the Advocate General, Section 15 of the Arbitration Act deals with the powers of the Court to modify the award. u/s 15(b) of the Arbitration Act whether the award is imperfect in form or contains any obvious error, it can be amended without affecting the said decision, the Court can modify the award. The learned Advocate General has cited, decisions reported in State of Rajasthan Vs. R.S. Sharma and Co., in support of his contention on the question of award of interest. The Supreme Court in the case of State of Orissa (supra) held that the arbitrator has no jurisdiction to award interest pendente lite.

In this context it is relevant to refer a decision reported in Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, . The Supreme Court while considering the situation held interest during the pendency of the arbitration proceedings are disallowed. In the State of Orissa Vs. Dandasi Sahu, the Supreme Court held interest pendente lite cannot be granted by the arbitrator. The Supreme Court held that interest pendente lite is not matter within the jurisdiction of the arbitrator, and deleted the payment of such interest from the date of the award.

In Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, the Supreme Court modified the award passed by the arbitrator and awarded interest till the date of actual payment.

29. In my view, one infirmity in the award which is apparent on the face of the award which in the interest of justice as the law now stands and declared by the Supreme Court, this Court should correct viz., the question of interest pendente lite. In accordance with the principles stated in Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, having regard to the position in law emerging from the decision of the Supreme Court in Executive Engineer, Irrigation, Galimela (supra) and Section 29 of the Arbitration Act, 1940 and Section 34 of the Code of Civil Procedure, I would modify the grant of interest in

this case. In the instant case the arbitrator has awarded interest from 16-6-1975 to 15-6-1976 at 9% and 15% from 16-6-1976 to 15-6-1986 on the total compensation for the property arrived at by him as per the Appendix IV, V and VI. There cannot be any doubt that my power to grant interest in cases governed by Interest Act 1978 as Section 3(1)(a) to enable me to do in this proceedings. In this case the arbitrator was appointed by this Court in W.P. Nos. 7248 to 7250 of 1984 on 4-10-1985 and the arbitrator passed an award on 13-6-1986. Hence the date of the award should be taken as the date of it making or publication and therefore 13-6-1986 would be taken as the date of the award. Following the principles laid down in Gujarat W.S. & S.B. (supra) I would however, delete the interest awarded by the arbitrator for the earlier periods and confine the interest on the principal sum awarded by way of compensation for the land value together with trees, usufructs, etc., and to award interest at 15% per annum from 13-6-1986 till date of realisation in exercise of my powers u/s 3 of the Interest Act, 1978 and Section 29 of the Arbitration Act, 1940. I further direct the principal sum or or the unpaid part thereof should carry interest at the same rate from the date of the award till the date of actual payment. The point argued by the learned Advocate General on the question of interest is not seriously disputed by Mr. M.S. Umapathy, learned counsel appearing for the claimants.

30. Before coming to a close, a few lines about the conduct of the then Government in acquiring the lands. As stated supra, the previous Government originally initiated proceedings under the Land Acquisition Act and issued 4(1) notification on 4-1-1978, Long before the initiation of the proceedings under the Land Acquisition Act, Government had taken possession of the land of the claimant for proceeding with the project work. By reason of the possession of the lands being taken over claimants were not only deprived of the land but also the benefit of the usufructs of the coconut trees the claimants had planted in those lands. Construction of the dam and formation of the reservoir resulted in the lands becoming submerged and the loss of usufructs of the coconut trees. In spite of taking possession of the land and subsequently initiated proceedings under the Land Acquisition Act, the Government failed to award and pay compensation to the petitioners which compelled the claimant to file writ petition No. 4133 of 1984 seeking to issue a writ of mandamus to determine the compensation amounts for the lands and pay the same. At that time the Government took the stand that they have cancelled the notice issued u/s 4(1) of the Land Acquisition Act and that they are going to take alternate proceedings under the Land Ceiling Act to take over the surplus lands from the petitioners and make use of those lands for the project work, which had already been completed. The claimants would contend their lands which had been utilised for the project work, are not surplus lands, and as such, the Government is not entitled to treat them as surplus and justify the utilisation of those lands for the project without paying compensation for them under the Land Acquisition Act. It is on that basis, the claimants have filed writ petition Nos. 7248 to 7250 of 1984 and Contempt Application Nos. 215, 216 of 1984 and 10 1985. After the writ petitions were

admitted by this Court and rule nisi was issued, interim orders were passed granting temporary injunction restraining the respondents/State from interfering with the lands of the claimants. As however the entire area had become submerged and the Government could not restore to the claimants the benefit of the lands, the claimants have taken out applications for action being taken against the respondents for Contempt of Court. After issue of notice in the Contempt Applications the State have admitted that the lands of the claimants were originally notified for acquisition under the Land Acquisition Act for the formation of a tank across Periakombayar river, that the notification u/s 4(1) of the Land Acquisition Act was issued in G.O. Rt. No. 2756, Public Works Department Gazette on 4-1-1978, that even three years before notification the work in connection with the formation of the tank had been completed during the year 1978 and the storing water in the tank has begun from the year 1979 onwards. Under the circumstances the then Learned Advocate General conceded for the appointment of an arbitrator to make local inspection of the lands and also to record evidence for ascertaining the value of the lands, the value of the loss of usufructs etc., and then pass an award. The facts above mentioned will clearly go to show that the Government was interested only in taking the lands of the claimants but was not at all willing to pay just compensation payable for the lands and usufructs etc., and has been contending that the compensation of the award is in the high side. It is also to be seen that the Government have disobeyed the orders of injunction passed by this Court in W.M.P. Nos. 11399 to 11401 of 1984 which resulted in the claimants filing the Contempt Application in this Court, and to avoid facing contempt proceedings and to avoid officers being punished, the then Advocate General conceded for the appointment of an arbitrator only to save the officers who have violated the orders of this Court. Had the proper procedure been adopted by the officers in time, the Government would have saved several lakhs of rupees. Because of the indecisive conduct of the officers of the Government, the Government was made to suffer and pay a heavy sum by way of compensation which could have been avoided had there been a proper and timely approach in this case. This is only by the way.

31. Before concluding, a few lines about the award passed by the arbitrator. The arbitrator has considered all the materials placed before him both oral and documentary and the other records made available to him has come to the correct conclusion and awarded the compensation. He has passed a reasoned award. The objections which have been raised against the award are such that they cannot now be taken into consideration within the limited ambit of challenge admissible under the scheme of the Arbitration Act. The award is not open to challenge on the ground that the arbitrator has reached a wrong conclusion or has adopted a different method in calculating the compensation payable to the lands in question. In my view on the facts of this case challenge to the award is not permissible by taking the stand that the arbitrator acted contrary to the provisions of the Land Acquisition Act in following the capitalisation method. In these premises the petition filed to set aside the award has to be rejected,

however subject to my decision on the question of award of interest. It is well settled by the catena decisions of the Supreme Court and also of this Court that the Court has no jurisdiction to deal judicially with the merits of the case determined by the arbitrator. It is not the function of the Court to scrutinise the award on merits as if it is sitting in appeal on the verdict of the arbitrator. There is no scope for the Court to invoke the aid of Section 30 of the Act for setting aside the award. Unless the Court sees the cause to remit the award or any of the matters of the award referred to arbitration for reconsideration or to set aside the award, a definite and a positive result must follow as set out Section 17. In my view, I have no other option except to pronounce the judgment according to the award which shall be followed by a decree, subject to my finding on the question on interest.

32. In the result, no orders are necessary in O.P. No. 287 of 1986 since the arbitrator has already filed the award. The said O.P. is disposed of accordingly. O.P. No. 128 of 1987 and Application No. 4623 of 1986 are allowed in part to the extent indicated above. The amount of compensation arrived at by the arbitrator is confirmed and the State shall pay interest at 15% on the amount arrived at by the arbitrator by way of compensation in regard to the value of the lands and the usufructs from the date of the award viz., 13-6-1986 till payment. Both parties are directed to file a memo of calculations on the terms indicated above within two weeks from this date to enable the Court to pass a final judgment and decree. Since both parties to the action have succeeded in part, there will be no order as to costs.