
(1992) 03 AP CK 0054
In the Andhra Pradesh High Court
Case No : Appeal No. 2011 of 1986

Special Deputy Collector, Land Acquisition	APPELLANT
Vs	
Tekumallavaraha Narasimham (died) and Others	RESPONDENT

Date of Decision : 04-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 23, 54

Citation : (1992) 2 ALT 721

Hon'ble Judges : Iyyapu Panduranga Rao, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : V. Rajagopal Reddy, for the Appellant; N.V. Ranganadham, for the Respondent

Judgement

G. Radhakrishna Rao, J.—An extent of Acs.19-78 cents belonging to the claimants was acquired for the purpose of construction of the steel plant. Out of this land Acs. 15-00 is a tope and the remaining is vacant land i.e., Acs.4-78 cents, without any trees. The Land Acquisition Officer awarded a sum of Rs. 1,037-93 p. per hectare so far as the vacant land is concerned and with regard to the remaining land capitalisation method has been applied and awarded a sum of Rs. 1,85,037-00. Being dissatisfied with that the claimants filed an application u/s 18 of the Land Acquisition Act for reference to the Civil Court. The matter has been referred and the same was numbered as O.P.No. 167/83. After reference the son of the claimant is examined as P.W.1. P.Ws.2,3 and 4 were examined to prove the income that is being derived from the land. P.W-5 is an expert on the agricultural side. Exs.A-1 to A-8 were marked. On behalf of the referring Officer none were examined. The learned Subordinate Judge by taking into consideration the oral and documentary evidence came to the conclusion that the vacant land can be valued at Rs. 30,000/- per hectare. So far as the trees are concerned after considering the evidence of P.W-5 came to the conclusion that 8 times of the basic value can be granted.

2. The steel plant authorities, for whose benefit the land has been acquired, has filed the appeal only to the extent of the compensation awarded to the vacant site only. The claimants have filed the cross-objections questioning the valuation fixed for the trees and limiting the appeal to Rs. 3 lakhs only, even though according to the claimants the claim is more than Rs. 8 lakhs.

3. It is contended by Sri N.V. Ranganadham, the learned counsel for the claimants that when once the land that is covered by Ex.A-5 was valued at Rs. 14,000/- per acre, the lower court was not justified in awarding a lesser amount.

The evidence of P.W-1 shows that the lands are more superior and more income fetching either in terms of yield or site value than the house sites in Appikonda village. Appikonda village is at a distance of about 8 K.Ms. from Visakhapatnam city limits. As such the claimants are entitled for the same value offered for the lands in the other O.P. Ex.A-5 has become final. So in view of that we felt that Rs. 14,000/- per acre would be the reasonable compensation so far as the vacant land is concerned i.e., Acs.4-78 cents.

4. The next question is compensation with regard to the garden land. It is contended by the learned counsel for the claimants that in *Koyappathodi M. Ayisha Umma v. State of Kerala*, AIR 1991 S.C P. 20-27 it is held that 15 years multiplier would be the proper and fair method and in this case also the 15 years multiplier can be applied and the lower court is not justified in adopting the method of capitalization at 8 years annual income. It is held by the Supreme Court in *Koyappathodi M. Ayisha Umma v. State of Kerala*, *Koyappathodi M. Ayisha Umma v. State of Kerala*, AIR 1991 S.C P. 20-27 as follows:

"It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the Court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land. In this case the award of compensation was based on both the value of the land and trees. Accordingly the determination of the compensation of the land as well as the trees is illegal.

5. The Supreme Court thus held that the Court may assess lands with all its advantages as potential value and fix market value thereof or may multiply annual net income of trees by appropriate capitalisation of 15 years and both values cannot be granted. After announcing that principle the Supreme Court pointed that 15 years multiplier can be applied depending upon the situation, extent, the marketing facilities, the labour expenses that is being spent and the

effective management are some of the factors that had to be taken into consideration. So the location of the land, nature of the land, income being derived, supply of water and the environmental conditions also have to be taken into consideration in fixing the compensation to the land. Further if the land is a black cotton soil it will fetch more income. So we have to see what is the evidence that has been let in. Mere saying that the trees are fetching so much amount is not sufficient. There must be some recorded evidence i.e., maintenance of accounts, receipts etc. The State of Madras Vs. Rev. Brother Joseph, is a case wherein it is held that where fruit bearing trees are likely to yield for more than 20 years capitalization of the net income at 20 years" purchase is not improper. They relied upon Kompalli Nageswara Rao and Others Vs. Special Deputy Collector, Land Acquisition, Bapatla, . In that case it is said that the approved method for valuing orchards is to capitalize their net income at a number of years" purchase which has to be fixed with reference to the nature of the trees and other circumstances and capitalized the net income at 15 years" purchase for finding out the market value of the coconut garden and the orange orchard in question in that case. In Elias M. Cohen v. Secy. of State AIR 1918 Pat 625 the net income from an orchard was capitalized at 15 years purchase to find out its market value. In Rajammal v. Head Quarters Deputy Collector, Vellore AIR 1915 Mad 356 the value of a tope of trees was estimated on the longevity and yield that can be produced has to be taken into consideration.

6. The decisions are to the effect that longevity of the fruit bearing trees has to be taken and thereafter how much yield has been giving by those trees and they are the main factors that have to be taken into consideration. The other factors are market facilities and the rate prevailing. So unless the income aspect has been duly established it is not desirable nor practicable to the court to give a finding. In this case the evidence of P.W-5 is available on that aspect. He deposed that he was working as Assistant Director, Horticulture (cashew) at Visakhapatnam. He was appointed as Commissioner to evaluate the cashewnut tope in the land in question. The ages of the trees fixed by him were on the date he visited the tope. The report of P.W-5 shows that out of 495 cashewnut trees 120 are of 25 years old, 175 trees are of 12 to 15 years old and 200 trees are 5 to 10 years old. These 200 trees as it is seen from the evidence of P.W-5 might have been planted knowing fully well about the acquisition of the land by the authorities. The other evidence available is that of P.W-1 who is the person interested in getting more compensation. The cashew variety is a local variety but not a hybrid variety. More than 50% of the plantation was severely infected as stated by P.W-5 in his report. When infection is there, yield will be far below than the claimant expected. It cannot be said that the estimation that has been given by P.W-5 is a valid guide for us. P.W-5's evidence has to be closely scrutinised. We came to the conclusion that except literature there are no instructions or guidelines by anybody with regard to the yield of the cashew trees. P.W-5 deposed that the value arrived at in column No. 15 is the future yield for each tree. The future fruit bearing value came to Rs. 7,10,260/-. He

admitted that he has no idea about arriving the value of the tope on capitalisation method. According to him he deducted roughly 1/4th of the gross yield towards cultivation expenses and for maintenance. For medium size trees he deducted 1/12th of the gross yield towards the expenses of the maintenance. For big trees he deducted about less than 1/5th. Now-a-days when scientific methods are available the learned Subordinate Judge is correct in refusing the evidence of P.W-5. P.W-2 has gone to the extent of saying that there are 550 cashew trees and he has gone to the extent of saying that the net income is Rs. 80,000/- to Rs. 90,000/- per year. The interestedness has been exhibited on the face of the evidence that has been given by him. Such an evidence cannot be relied upon and the lower court has rightly rejected his evidence. P.W-3 stated that in 1980 each bag of cashewnut was sold at Rs. 800/- to Rs. 900/- and each coconut tree gives a net yield of about Rs. 250/- per year and his evidence was rightly rejected by the lower court. P.W-4 did not depose about the yield. The value of the coconut was estimated at Re. 1/- in the year 1980 and the value that has been fixed is a reasonable one.

7. The valuation of palmyrah trees is not correct. One or two years old trees will not be of any value at all. It is only after 7 or 3 years old the trees will fetch some value. The trunk will be of some use after 20 years. So the capitalization method that has been applied for eight times is correct one.

8. Basing on the rullings it is argued by Sri Rajgopal Reddy that 6 or 7 times multiplier can be granted. In fact this court is of the view basing on the decisions that the multiplier that has been fixed by the learned Subordinate Judge is correct and this Court is in agreement with his finding. Accordingly the appeal filed by the Government is dismissed and the cross-objections are allowed to the extent mentioned above in part. No costs.

9. The claimants are entitled for solatium at the rate of 30 per cent and interest at the rate of 9% p.a. for one year from the date of taking possession of the land and at 15% p.a. thereafter till the date of deposit.