

(1985) 12 KAR CK 0011
In the Karnataka High Court
Case No : M.F.A. No. 551/83, etc

Special Land Acquisition Officer

APPELLANT

Vs

Ayyappa Yamanappa Kirasur

RESPONDENT

Date of Decision : 30-12-1985

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1987) 3 KarLJ 132

Hon'ble Judges : A. K. Laxmeshwar, J; P. A. Kulkarni, J

Judgement

Kulkarni, J.-Appeals allowed in part.

All these appeals by the claimants are directed against the common judgment and awards dated 31-8-1982 passed by the Civil Judge Jamakhandi, in L.A.C. Nos. 39/82, 44/82, 43/82, 48/82, 46/82, 41/82, & 40/82, awarding a compensation of Rs. 16,750/- per acre in respect of irrigated land and awarding Rs.9975/- per acre in respect of dry land.

2. Sy. No. 24 measuring 18 acres and 13 guntas and 17 guntas of phot karab, and Sy. No. 35/2A measuring 4 acres, and Survey No. 35/2B measuring 4 acres and 35 guntas are involved in Misc. First Appeal 551/83. Sy. No. 39/1 + 2AB measuring 7 acres and 27 guntas is involved in M.F.A. 545/83. Sy. No. 36/2 measuring 8 acres and 25 guntas is involved in M.F.A.547/83, Sy. No. 23/2B measuring 3 acres and 37 guntas + P.K.O-3 guntas is involved in M.F.A. 548/83. Sy. No. 27/1A measuring 1 acre and 14 guntas and 6 guntas of phot karab is involved in M.F.A. 549/83. Sy.No. 43/2 measuring 5 acres and 33 guntas is involved in M.F.A. 550/83. Sy.No. 32/1 + 2 measuring 7 acres 27 guntas and 1 acre and 20 guntas of phot karab is involved in M.F.A. 552/83, and Sy. No. 29/1A + B/2 + 3 measuring 15 acres, 15 guntas and 1 acre and 20 guntas phot karab is involved in M.F.A. 553/83. The said lands was acquired by the Government for the purpose of Upper Krishna Project and also on account of submersion of these lands in respect of a reservoir, in pursuance of the preliminary notification issued under Section 4(1) of the Land Acquisition Act, published in the Government

Gazette dated 11-2-1980. Thereafter, the final notification was also issued under Section 6 of the Land Acquisition Act.

3. The L.A.O. after enquiry awarded compensation at Rs.3,000/- per acre for medium lands and Rs.3,200/- per acre for good dry lands. He awarded compensation at the rate of Rs.4,400/- per acre of good irrigated land and at Rs.4,200/- per acre of the medium type of irrigated land and at Rs.4,000/- per acre for inferior irrigated land.

4. The claimants received the compensation amount under protest and sought a reference to the Court of Civil Judge.

5. On reference to the Civil Court, the Civil Judge awarded compensation at the rate of Rs. 16,950/- per acre of irrigated land and awarded Rs.9,975/- per acre of dry land.

6. The L.A.O. Upper Krishna Project Bagalkot being aggrieved by the enhancement ordered by the Civil Judge, has come up with these appeals.

7. The points urged before us are: (i) what is the multiplier that should be adopted in the case, (ii) the number and nature of crops grown and as to what is their price, (iii) whether the fertility of the lands should be determined only with reference to the assessment and (iv) what is the effect of the amendment of the Land Acquisition Act which has come into force in 1984.

8. Learned Government Advocate submitted that the L.A.O. had divided the lands into good type, medium type and inferior type on the basis of the assessment. The L.A.O., in the course of the award at one stage, has treated the lands assessed at 1.82 to 2.55 per acre as good land, and treated the lands assessed at 1.07 to 1.81 per acre as medium type lands and has treated the lands assessed at 0.0 to 1.6 as inferior lands. But, however, in the course of the award passed by him, he has given a go-by to the said alleged classification made by him. In the award as well as in his evidence, the L.A.O. has stated thus:

"There is a slight difference between the fertility of good type of dry land and medium type of dry land. All these Petition lands are well bounded, levelled, properly maintained and are of high fertility."

When this is the view of the L.A.O. himself, not only in the course of passing of the award but also in the course of the evidence given by him before the Court, we think that it is not proper and safe to classify the lands only on the basis of the assessment.

9. Learned Counsel Hiremath referred us to Special Land Acquisition Officer v Laxman Radavo Gawada (ILR 1985 KAR 2734) Therein it appears that the LAO himself had made a classification as double crop wet lands assessed at more than Rs.4/- per acre and double crop wet lands assessed at less than Rs.4/- per acre It is on that basis that this Court proceeded to consider the yield got by the claimants in those cases. There is nothing in the said judgment to indicate that

this Court classified the lands only on the basis of the assessment. This Court proceeded to determine the compensation with reference to the classification of the lands made by the L.A.O. himself. Therefore, the said ruling relied on by the Learned Government Advocate Hiremath will not help him at all in this case.

10. Sriyuth Datar, Learned Senior Counsel, placed before us. The State of West Bengal v Shyamapada (AIR 1975 SC 1723) Supreme Court in paragraph 4 has stated thus:

"Mr. B. Sen appearing on behalf of the State of West Bengal contended that it looked rather absurd that while sali land, which is considered to be the best quality of land on which paddy is grown, was awarded a compensation at the rate of Rs.425/- per acre and the land owners had no objection to the compensation, they wanted Rs.800/- per acre for land growing sabai grass. It must be noted that even the land owners claimed only Rs.600/- per acre for sali land, Rs.800/- per acre for daga land on which sabai grass was grown and for the rest they claimed Rs. 200/- per acre While the land classification for revenue purposes might have its own rationale, it is not uncommon to find that land which has a lower classification for revenue purposes fetches a higher price in the market. The question of the value of the land on which sabai grass is grown should therefore be decided on other considerations"

The Supreme Court further held that the classification of the lands on the basis of the assessment under the said circumstances was rather unwarranted and not proper. The said judgment of Supreme Court clearly repels the contention raised by Sri Hiremath.

11. The provisions of the Karnataka Land Revenue Code are practically similar to the provisions of the Bombay Land Revenue Code. Section 45 of Bombay Code speaks that all lands are liable to pay revenue unless specially exempted. Section 48 of the Bombay Land Revenue Code reads as:

"(1) The Land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land- (a) for the purpose of agriculture, (b) for the purpose of building, and (c) for a purpose other than agriculture or building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the State Government may prescribe in this behalf, etc.,"

Section 95 of the Land Revenue Code speaks that revenue survey may be introduced by the State Government in any part of the Presidency. Section 96 speaks that it shall be lawful for the Survey Officer deputed to conduct or take part in any such survey, to require by general notice or by summons, the

attendance of holders of lands and of all persons interested therein, in person, or by legally constituted agent duly instructed and able to answer all material questions, and the Village Officers, who in their several stations and capacities are legally, or by usage, bound to perform service in virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith as may not be inconsistent with the position of the individual so called on. Section 106 speaks that it shall be lawful for the State Government to direct at any time, a fresh survey or any operation subsidiary thereto. Section 117A of the Bombay Revenue Code reads as:

"Subject to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947:

(1) Survey numbers may from time to time and at any time be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason; (2) the division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and from time to time revised in accordance with rules made by the Provincial Government in this behalf:

Provided that the total amount of the assessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under the provisions of this Act, unless such assessment is liable to alteration under Section 48(3) the area land assessment of such sub-divisions shall be entered in such land records as the Provincial Government may prescribe in this behalf."

12. Section 117(G) reads:

"117G. (1) The land revenue assessment on all lands in respect of which a settlement has been directed under sub-section (1) or sub-section (2) of Section 117D and which are not wholly exempt from the payment of land revenue shall, subject to the limitations contained in the proviso to Section 52, be determined by dividing the lands to be settled into groups and fixing the standard rates for each group:

Provided that the standard rates so fixed shall be such that the aggregate assessment on the occupied lands in any group shall not exceed thirty-five per cent, of the average of the rental values of such lands for a period of 5 years immediately preceding the year in which the settlement is directed.

(2) The groups shall be formed on a consideration of the following factors:

(i) physical configuration, (ii) climate and rainfall, (iii) markets, (iv) communications, (v) standard of husbandry, (vi) population and supply of labour, (vii) agricultural resources, (viii) the variations in the area of occupied and cultivated lands during the last 30 years, (ix) wages, (x) prices, (xi) yield of the principal crops, (xii) ordinary expenses of cultivating such crops, including the wages of the cultivator for his labour in cultivating the land, (xiii) rental value of

lands used for the purposes of agriculture,

(xiv) sales of lands used for the purposes of agriculture.

(3) The land revenue assessment of individual survey numbers and sub-divisions shall be based on their classification value in the manner prescribed.

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Physical Configuration-The Settlement Officer should describe the position of the Taluk, its boundaries, the total area, rivers, lakes, streams, canals, bandharas, forests, hills, valleys, drainage, main roads, railways, steamer facilities and such other particulars. Important temples, mosques and other attractions such as hot springs, annual fairs, etc., should be mentioned. The Settlement Officer should base the information on observation made by him personally".

An useful reference in this connection can be made to the Commentary by the learned Author K.S. Gupte on The Bombay Land Revenue Code, 1879, 4th edition 1958 on pages 650 to 661.

13. Thus, it becomes crystal clear that while the land revenue is to be assessed, the authorities concerned will have to take into consideration not only the fertility of the soil but also the rainfall, vicinity of the market, means of communication and standard of wages, prices of the commodities, the yield of the principal crops and the nature of the principal crops etc.,etc. Therefore fertility is only one of the circumstances that will have to be taken into consideration by the authorities concerned while fixing the assessment. Therefore, the assessment levied on the land by itself may not be a conclusive or proper or safe criterion for determining the fertility of the soil. Similar provisions are to be found in Sections 80, 84, 86, 106 and 117 of the Karnataka Land Revenue Code.

14. Survey was first introduced in the last Century. We are informed at the bar that though the Government intended to resurvey, there was only reclassification of the lands and fresh amounts of assessment were levied. But, there does not appear to be any re-survey conducted as per the provisions of the Land Revenue Code. Therefore, to classify the land at this distance of time on the basis of assessment levied on the land nearly a Century ago, may result, in a mockery of justice. The world has been changing so fast and the technique of agriculture has been changing so fast that it is not proper to determine the fertility of the land with reference to the assessment levied in the last Century and which might have been raised recently on account of the reclassification. Therefore, the argument of Learned Counsel Sri Hiremath that the lands acquired should be classified as good, medium and inferior only on the basis of the assessment levied on them, does not appeal to us in the least. We think it rather unsafe and not proper to classify the lands in different categories only on the basis of assessment.

15. It cannot be forgotten and it is admitted by the L.A.O. himself that the lands acquired are on the bank of river Krishna. The lands situate on the bank of the river get submerged every year and they get alluvial soil and the fertility of the

solid would go on increasing as time passes and years roll by. Therefore, the fertility of these lands would have gone on increasing during the last one Century. Therefore, the fertility of the soil involved in these cases, cannot, in our opinion, be determined with reference to the quantum of the assessment levied on these lands.

16. Then the next question is one of multiplier to be adopted in such cases. Learned Government Advocate Sri Hiremath with his usual vigour and in his usual fairness placed before us Special Land Acquisition Officer, Davangere v P. Veerabhadrapappa etc., (ILR 1984(2) KAR 411: AIR 1984 SC 774) It is laid down in the said case as:

"In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in money investments. The return which an investor will expect from an investment will depend upon the characteristic of income as compared to that of idle security. The main features are: (1) Security of the income; (2) fluctuation; (3) chances of increase; (4) cost of collection etc. The most difficult and yet the most important and most crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property. The principle is that the basic factor in applying the method of capitalization of income for ascertaining the market value of property is the rate of return that an ordinary investor would reasonably get on his investment, having due regard to all the relevant circumstances. It would be unrealistic to adhere to the traditional view of capitalized value being linked with gilt-edged securities when investment in fixed deposits with Nationalised Banks, National Savings Certificates, Unit Trusts and other forms of Government securities and even in the share market in the shape of blue chips command a much greater return. More secure the capital and regular the return, lesser the rate of interest. Most secured kind of investment is Government Securities or deposits with Scheduled Banks or Unit Trusts or National Savings Certificates.

In regard to investment in agricultural lands, there are many imponderables in as much as the investor runs a much greater risk than the risk that he runs in investment in housing which consist in vagaries of weather and other uncertainties. There is no security of principal, no liquidity of investment nor any certainty of income. The appreciation of the principal or income is also uncertain. The reasons for these is that agricultural lands are not readily transferable under the various Land Reforms legislations e.g. laws relating to ceiling on agricultural holdings under the existing state laws and tenancy laws which place restrictions on transfer of such lands with concomitant danger of effacement of the rights of the absentee-landlords and the creation of rights in the tillers of the soil. In evaluating the rate of return which would ordinarily satisfy an investor in such a

property, the risk factor has further to be evaluated. There may be total or partial failure of crops either through failure of rains or drought or inadequate or excessive rain-fall. There may be a failure of crops on account of locust invasion or insects or pests. The cost inputs such as sales, water, fertilisers, labour charges etc., would vary from year to year. If the overall cost goes up, the income from the agricultural produce would be comparatively less. The fluctuation in price of agricultural produce introduces a great deal of uncertainty in regard to the income that can be expected from the sale of the produce. If the yield of the crop in other producing countries is large or the market prices prevailing in such countries are low, the prices of such agricultural produce in India would go down. In view of these considerations, an investor would expect a much higher rate of return so that the risk factor is properly discounted. In the premises, when the rate of return on investment was 8.25% in the years 1971-72 i.e., on the date of notification under Section 4(1) a person investing his capital in agricultural lands would ordinarily expect 2% to 3% more than what he could obtain from gilt-edged securities or other forms of safe investment and, therefore, the proper multiplier to be applied for the purpose of capitalisation would not, in any event, exceed "ten". However, when the State Government contended that the proper multiple to be applied should be 12-1/2 in computation of the capitalised value of the lands in the cases in question having regard to the rate of return of 3% at the relevant time i.e. on the date of notification under Section 4(1), it must be held that the multiple of 12-1/2 should be applied in computation of the capitalised value of the lands."

In the said case, the multiple 12-1/2 was adopted only on account of the concession made by the Government Advocate appearing for Karnataka State in the Supreme Court, though it held that the proper multiplier should not exceed ten. It can be seen that in view of the modern trends and facilities and especially in view of the conferment of occupancy rights, the position of the cultivator of the land has become rather safe. Now there is not much of uncertainty. It may be that there might be drought or floods. But they are not usual features. Therefore, the agriculturist would rather like to invest his money in land itself rather than keeping it idle in banks. Agriculturists now-a-days have more faith in the lands and that too on account of the inflation in the prices of commodities. Therefore, the agriculturist, in our opinion, would be satisfied if he gets 10% return on the amount invested by him. The income which an agriculturist has been getting now-a-days and ever since the last 5 to 6 years, is rather fantastic when compared to the income that he was getting 8 to 10 years back by adopting orthodox methods of agriculture. Therefore, in our opinion, the agriculturist would be supremely happy and satisfied if he gets a return of 10% over the investment made by him in the lands.

17. Learned Counsel Hiremath urged that the rate of interest has now been increased to 11% on long period deposits and that thus the multiplier should thus be reduced to 8. But, the rate of interest would be changed by R.B.I. very often. Therefore, it alone cannot be taken as the sole basis to determine the

return which an agriculturist expects from his investment in the agriculture. In 1980 or 1981 when the preliminary notification was issued on the present cases, the rate of interest hovered round about 8. Therefore, taking into consideration the trend in the changing pattern of rate of interest and taking into consideration the prevailing rate of interest at the time when the preliminary notification was issued in these cases, and taking into consideration the reasonable expectation of an agriculturist, we are of the opinion that an agriculturist was and is and would be extremely happy and satisfied if he got and gets a return of 10% on the investment made by him.

18. Learned Counsel Manjappa for some of the appellants and Learned Senior Counsel Datar for some of the appellants drew my attention to Union or India v Smt. Shanti Devi (AIR 1983 SC 1190). It was a case where the land was acquired in 62-63. On account of the increase in the rate of interest on several investments, the Supreme Court held that the proper multiplier would be 15 and not 20 years purchase. But, in view of the recent decision of the Supreme Court itself rendered in 1984, and in view of the fact that the preliminary notification in the said case was 1962-63 the adoption of 15 as multiplier in the said case cannot be taken as the deciding factor in these cases. It was with reference to the acquisition made in 62-63 when the agriculturist was very poor and when there were no irrigation facilities and when people did not even think of digging wells. Therefore, the multiplier of 15 with reference to the year of acquisition might have been adopted by the Supreme Court in the said decision. On account of the subsequent changes, the Supreme Court has laid down that the proper multiplier should not exceed 10. This Court also in a recent Judgment in Special L.A.O. v Laxman Radavo Gawada, has laid down that the proper multiplier should not exceed 10. This Court has held in the said case as:

"After the pronouncement of the Supreme Court in Veerabhadrappe v LAO, Davangere, it is now settled that the multiplier should not exceed 10. It cannot be 15"

Therefore, under these circumstances, we are of the view that in these cases also the multiplier that should be adopted should be only 10 and not 15 as urged by the other side.

19. Learned Government Advocate Sri Hiremath submitted that as the lands were situate on the bank of river Krishna they would get submerged under water for a pretty long time and thus at the most only one crop could be raised. In the rainy season if the river overflows the banks then alone the lands would get submerged. It appears from the report of the expert and evidence of the claimant that the river bed is 10 to 15 feet below the level of the lands. Therefore, we do not think that during all the months of rainy season the lands would get submerged. The river water might over flow the bank for a few days. But, thereafter, the water would recede. Therefore, it is idle to imagine that the land on the bank of the river would remain submerged for a long period.

On account of the deposit of alluvial soil, the moisture contained in the soil would remain throughout the year. Therefore, the first crop like jawar, maize or ground nut could be sown in the month of April or May itself. They are three months crops. They can be harvested by the middle or at the latest by end of July itself. The L.A.O. has admitted in his evidence before the Court that the two crops were and are being raised even in the dry lands. In view of the admission of the L.A.O. himself, on whose behalf the present appeals are filed, the argument of learned Government Advocate cannot be accepted.

20. Taking into consideration the deposit of the alluvial soil during the last so many years, the fertility of the soil must have increased a good deal and even without much rainfall two crops could be raised with the aid of the moisture retained in the alluvial soil deposited in the land itself. Therefore, the Trial Court, in our opinion, was justified in holding that even the dry lands are capable of yielding and are yielding every year two crops. It was also justified in holding that the irrigated lands are yielding two crops per year.

21. As already stated above, the quantum of assessment levied on the land cannot be pressed into service in these cases to classify the land and to determine the quantum of the yield. The L.A.O. himself has admitted in his evidence that there is very slight difference between good, medium and other varieties of land. The evidence given by the L.A.O. cannot be said to suffer from any infirmity because the lands are situate on the banks of the river and every year they are getting deposits of alluvial soil. Therefore, on account of the deposit of alluvial soil during the last so many years, there will not be any telling difference between the lands situate on the bank of the river.

22. Learned Government Advocate Hiremath contended that there is no yield notification issued by the authority under the Land Reforms Act during the relevant period. It is unfortunate that the authorities concerned have stopped issuing the yield notifications after the coming into force of the Land Reforms Act. In the absence of the yield notification, the Court will have to go by the evidence adduced by the parties.

23. Learned Government Advocate Hiremath commented very seriously on the certificate issued by the Assistant Director of Agriculture. I am really unable to understand as to why and how the said Assistant Director addressed a letter to the lawyer informing him about the yield. This circumstance, according to the Learned Government Advocate, attaches serious suspicion to the said letter. Whatever it be, it is a certificate issued by a so-called expert. The said document has been marked in evidence without any objection from the other side. It has been marked as an exhibit. As to what value should be attached to the document is altogether a different matter. Therefore, it will have to be treated as a piece of evidence in this case, though its evidentiary value might be of a very weak character.

The Director who has issued the said certificate, has not been examined. On

what basis he has given the information and what is the source of information available to him for giving the yield, are not made clear by the certificate. He does not mention in that certificate as to what documents or materials were available to him for basing his opinion. Therefore, under these circumstances, it is a very weak type of evidence in the case. It would not rather be proper and safe to base the conclusions on such an uncorroborated document, though it might be taken into consideration while finding out the proper yield in the lands.

24. Learned Government Advocate Hiremath Commented very seriously on the evidence of P.W. 2-Sindagi who is a retired Deputy Director of Agriculture and who has been recognised as a expert valuer in the year 1975 by the Central Government. P.W. 2 does not state that be himself was cultivating any one of the lands acquired under the said notification. His evidence can only be treated as an expert opinion. Learned Author Sarkar in his Evidence Act, 12th edition, in relation to "expert opinion has stated at page 511:

"They are a type of remunerated witnesses and like others of that class have an unconscious bias in favour of the party engaging them. Moreover, their opinions are previously ascertained and they are brought only when they are favourable to the party calling. The fact that they know before hand why they have been called and what the party calling wishes to be proved, detracts to a great extent from the weight to be given to their opinion."

Learned author has referred to the decision rendered by Miller J. in *Middlings PCO v Christian* (4 Dillon 448, 459) Learned Judge Miller said: 5.4 Dillon 448, 459.

"My own experience both in the local Courts and in the Supreme Court of the United States is, that whenever the matter in contest involves an immense sum in value, and when the question turns mainly upon opinions of experts, there is no difficulty in introducing any amount of them on either side."

Therefore, under the said circumstances, the evidence of P.W. 2, in our opinion, is one of opinion and cannot be given full weight. Further, he himself has stated that still he has not charged the parties and he would charge them later on. Perhaps, he wants to charge fat fees on the basis of the quantum of the compensation which the parties might get. May be, he desires to charge them a heavy fee after the parties are awarded compensation. Therefore, we have no hesitation in our mind to hold that he is a highly biased expert witness who has come to the Court without personally knowing anything about the yield got from the lands.

25. We are now left with the oral evidence adduced by the parties regarding the yield. It is most unfortunate that in these cases where heavy stakes are involved the parties have not come forth with proper and better evidence at all. The claimants have tried to rely on their own evidence which is naturally bound to be tainted and interested and would be erring on the higher side. One of the claimants Ayyappa P.W.1 has stated that he and other claimants have claimed

compensation at the rate of Rs.20,000/- per acre of dry land and at the rate of Rs.40,000/- per acre of irrigated land. If this be the market value of the land in a proverbially drought area like Bijapur District, there would not be any poverty at all, in that District. This circumstance itself shows how exaggerated the version given by P.W.1 is. According to him, the yield of hybrid jawar and hybrid maize would be 20 to 25 bags per acre; the yield of jarilla cotton would be 8 to 10 quintals; the yield of sonar wheat and groundnut and Varalaxmi cotton would be 12 to 15 quintals, and the yield of onions would be 75 to 100 quintals per acre. This version naturally suffers from exaggeration. Therefore, the version given by P.W. 1 regarding the yield cannot be made a safe basis for reaching a conclusion at all. But for tainted and exaggerated testimony of P.W.1, the claimants have not placed before the Court any satisfactory evidence. As already stated above, the evidence of P.W.2 will have to be taken with a pinch of salt and that cannot be made the basis of any conclusion and in our opinion it cannot be safely used to corroborate the evidence of P.W.1. The yield given by the P.W.2 does not fit in with the yield given by the claimant himself. If the claimants feel or felt that, the yield given by the L.A.O. in the award is rather very low it is for them to show by satisfactory evidence as to how the amount awarded by the L.A.O. is low. They cannot show it only by placing before the Court an exaggerated and tainted testimony of the claimants themselves. They ought to have placed before the Court independent evidence like that of Village Panchayat Chairman or the Village Accountant or the Revenue Officer of the taluk. Nothing of that sort has been done in these cases. We are constrained to observe that the parties have not placed before the Court the necessary material in order to enable this Court to arrive at an approximately correct conclusion regarding the yield. But, in our opinion, no useful purpose would be served in sending back the matters because the lands have been acquired in 1980-81 and they are already submerged or are going to be submerged. Therefore, greater injustice would be caused to the parties if the matters are sent back to the Court below. Therefore, this Court is constrained under these peculiar circumstances, to decide the cases on the basis of the evidence that has been placed on record.

26. As already stated above, the evidence of P.W. 1 is not satisfactory at all. The L.A.O. has stated and the award also shows that the yield of white jawar per acre would be round about 6 to 8 quintals per acre in dry lands, if one acre of dry land yields about 6 to 8 quintals of white jawar, it can be taken that hybrid jawar that could be raised in one acre of irrigated land would be 9 quintals which would come to roughly about 12 bags. Each bag of hybrid jawar would weigh about 80 to 90 kgs. Therefore, the Trial Court, in our opinion, was justified in holding that one acre of irrigated land would yield about 9 quintals of hybrid jawar. Taking into consideration the price notification Ex. P-40 and other evidence on record we take the price of one quintal of hybrid jawar as Rs. 118/-. The value of 9 quintals at the rate of Rs.118/- per quintal would come to Rs. 1,062/-. The yield of groundnut, even according to L.A.O. would be about 3 quintals. We think that even in the case of irrigated land having alluvial soil the yield would not be more

than that. Therefore, the value of 3 quintals of groundnut at the rate of Rs.3067/- per quintal would come to Rs.918/-. The second crop can be taken to be cotton. As can be seen from the evidence of L.A.O. the yield of cotton would be 11/2 quintals. In the case of irrigated land it can be taken as 2 quintals. The price of cotton per quintal as per the price list is Rs.383/-. Therefore, the value of 2 quintals would come to Rs.766/-. Normally the first crop that would be raised is groundnut and the second crop that would be raised normally is jawar or cotton. Therefore, in one year it can be taken that the groundnut would be raised as first crop and the second crop would be jawar. The value of 9 quintals of hybrid jawar and of 3 quintals of groundnut as stated above would be Rs. 1980/-. In the second year the value of 3 quintals of groundnut at the rate of Rs. 306/- per quintal would come to Rs. 918/- and the value of 2 quintals of cotton at the rate of Rs. 383/- would come to Rs. 766/-. Both put together would come to Rs. 1684/-. Therefore, the value of crops raised in two years would work out to Rs. 3664/-. Therefore, gross value of the crop per year would come to Rs. 1832/-. It is well settled that 50% of the income would have to be deducted as cultivation charges. If 50% is deducted as cultivation charges, the net income would work out to Rs. 916/-. The Trial Court has taken the yield of irrigated land as Rs. 1130/- which, in our opinion, appears to lean on the higher side. If the multiplier 10 is adopted as indicated above, the market value of irrigated land per acre would come to Rs. 9160/-. Therefore, the Trial Court, in our opinion, erred in awarding compensation at Rs. 16,950/- per acre of irrigated land. For the said reasons, we award as compensation Rs. 9160/- per acre of irrigated land.

27. So far as the dry lands are concerned, it becomes clear from the evidence on record and from the evidence of the LAO that the yield of white jawar per acre would be 6 to 8 quintals. The value of 6 quintals of jawar at the rate of Rs. 177/- would come to Rs. 1062/- and the value of 3 quintals of groundnut would come to Rs. 918/- at the rate of Rs. 306/- per quintal. Both put together would come to Rs. 1980/-. In view of the evidence of the LAO and in view of the exaggerated claim of the claimant, we are of the opinion that 11/2 quintals of cotton could be grown per acre of dry land. The value of 11/2 quintals at the rate of Rs. 383/- would come to Rs. 574/-. Therefore, the value of 3 quintals of groundnut and 11/2 quintals of cotton would come to Rs. 1492/-. Therefore, the value of the crops for both the years in respect of dry lands would come to Rs. 3472/-. Therefore, the gross value of the crop for one year would come to Rs. 1,736/-. 50% will have to be deducted as cultivation charges. Therefore, the net income per year would be Rs. 868/-. The Trial Court has determined the net yield per acre at Rs. 665/-. However, taking into consideration the fertility on account of deposit of alluvial soil and the capacity of the alluvial soil to retain moisture, the finding by the Court below that the net yield per acre in respect of dry land would be Rs. 665/- appears to err on the lower side. Therefore, we conclude that the net yield in respect of the dry land per acre should be taken as Rs. 868/-. We have already concluded that the multiplier of 10 should be adopted. Therefore, the value of the dry land per acre would come to Rs. 8,680/-.

28. The Trial Court has awarded compensation at the rate of Rs. 9,975/- per acre of dry land on the basis of net income of Rs. 665/- per acre. The lower Court has adopted the multiplier 15 whereas we have adopted the multiplier 10. It is no doubt true that the claimants have not filed any cross-objections or preferred any appeal against the conclusion that the net income per acre of dry land is Rs. 665/-. But, when the matter is decided in favour of the claimants and when the claimants have been awarded compensation at the rate of Rs. 9975/- per acre in respect of dry land, they are entitled under Order 41, Rule 22 C.P.C. to support the finding regarding the award of Rs. 9975/- per acre in respect of the dry land. The claimants (respondents in these appeals) without filing any cross-objections and without filing any appeal, are still entitled in law as per Order 41, Rule 22 C.P.C. to support the final conclusion regarding the quantum of the compensation. However, the amount of compensation awarded by us in respect of dry land is only Rs. 8680/- as against Rs. 9975/- awarded by the Trial Court. The amount awarded by us which is less than the amount awarded by the Trial Court, is covered by the principle laid down by Order 41, Rule 22 C.P.C.

29. Learned Senior Advocate Sri. Datar submitted that the yield in the irrigated land would be nearly 1 1/2 times the yield in the dry lands. But, in the case of alluvial soil, there would not be such a large difference at all. Therefore, the compensation awarded by us in respect of the dry land and the irrigated land, appears to be rather quite just, fair and reasonable.

30. Learned Advocates for the claimants submitted that subsidiary crops like green grass, sunflower, two and other things should be also taken into consideration. It is a matter of common knowledge that such subsidiary crops are raised only when jawar is raised and such subsidiary crops will not be raised when groundnut and cotton are grown. If the subsidiary crop is grown along with jawar, the yield of jawar itself would diminish to some extent because the subsidiary crop also would exhaust or eat-away some strength from the soil. Subsidiary crop also would require some space to grow and survive. Therefore, taking into consideration all these aspects, we are not inclined to take into consideration the subsidiary crops, the yield of which also would be extremely low.

31. P.W.1 has stated that 4 acres in Sy.No.47/2B is an irrigated land. Simple statement that it is an irrigated land, will not make it an irrigated land. Merely because a river flows by the side of this land, it will not become an irrigated land. If any land is to be irrigated, it will have to be irrigated with the aid of water. Water will have to be pumped either by fixing pumps or by resorting to country water lifts like mutti or running wheels. P.W.1 does not state in his evidence that any such contrivance had been in existence in order to irrigate Sy. No. 47/23. It is no doubt true that the record of rights shows that it is bagayat land. But, the very record of rights, which has got a column regarding source of water, does not show anything regarding the source of water and the column is kept blank. Therefore, the entry in the record of rights showing that it is bagayat, is not

sufficient, in our opinion, to show that it is irrigated. Therefore, the Trial Court, in our opinion, committed an error in holding that 4 acres in Sy. No. 47/23 are irrigated area.

32. Learned Advocates for the claimants submitted that in view of the amended provisions of the Land Acquisition Act, the claimants are entitled to higher solatium at 30% and future interest at 9% or 15% whichever would be applicable to the facts of the case. Learned Government Advocate Hiremath submitted that the recent decision reported in *Bhag Singh v Union Territory of Chandigarh*, (AIR 1985 SC 1576) should not be applied at present, as the matter had been referred by Supreme Court to a larger Bench. He produced before us a private copy of the letter addressed by the Advocate for Karnataka State, stating that the matter is pending before a larger Bench. But on what grounds the matter has been referred to a larger Bench does not become clear from that letter. It does not even state that the operation of the Judgment in the said case has been stayed by the Supreme Court. Under Article 141 of the Constitution, the law laid down by the Supreme Court is binding on all Courts unless it is set aside by a decision of the larger Bench or unless the operation of the Judgment is stayed by an order of the Supreme Court. Therefore, the said argument advanced by learned Government Advocate Hiremath does not appeal to us in the least.

33. Further in the said case, the important point involved was whether the benefit of the amended provisions of the Land Acquisition Act could be extended to matters pending in appeal even if the awards were passed prior to the introduction of the Bill. Section 30(2) reads as:

"(2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People), and before the commencement of this Act".

Therefore, a reading of this sub-section (2) leaves no doubt in our mind that it applies to the proceeding pending on the file of the Civil Judge when the Amending Bill of 1982 was introduced in the Parliament on 30-4-1982. The matters were disposed of by the Civil Judge on 31-8-1982. The Amending Bill was introduced in the Parliament on 30th April, 1982. Therefore, we have no hesitation or doubt in holding that the said beneficial provisions would clearly apply to the present case.

34. For the aforesaid reason, the judgment and awards passed by the Lower Court are modified and the appeals are allowed in part. For the purpose of clarification it is ordered that the claimants in all these cases where only dry

lands are involved, do recover Rs. 8,680/- per acre with solatium at 30% and with future interest at 9% as per the amended provisions of the Land Acquisition Act. If the amount of compensation is not deposited within one year, from the date of dispossession, then the claimants are entitled to get future interest at the rate of 15% instead of 9%. Under the circumstances, we think it proper to order that the parties should bear their own costs in these appeals.