(1973) 08 KAR CK 0009

In the Karnataka High Court

Case No : Misc. First Appeal No. 293 of 1969

Special Land, Acquisition Officer, Sagar — APPELLANT

Vs

K.S. Ramachandra Rao and others — RESPONDENT

Date of Decision : 13-08-1973

Acts Referred:

Citation : AIR 1974 Kar 23

Hon'ble Judges : Govinda Bhat, C.J;Srinivasa Iyengar, J

Bench : Division Bench

Advocate : N. Venkatachala, 2nd Addl. Govt, for the Appellant; T.S. Ramanchandra, for the Respondent

Final Decision : Allowed

Judgement

Govinda Bhat, C.J.—This is an appeal by the Special Land Acquisition Officer, Sagar. u/s 54 of the Land Acquisition Act, 1894, and it is directed against the award and decree of the Court of the Additional Civil Judge at Shimoga in L A. Misc. Case 399 of 1967, by which the Court enhanced the amount of compensation awarded by the Land Acquisition Officer in respect of three lands acquired pursuant to a notification u/s 4 (1) of the Act published in the Mysore Gazette dated 16th April. 1964, for the purpose of Linganamakki Reservoir of Sharavathi Valley Hydro Electric Project

2. Respondents 1 to 5 are members of a joint Hindu family and they are all brothers. The sixth respondent Devappa was a cultivating tenant of two lands comprised in S. Nos. 102 and 111 of Aramangekoppa village, Nagar Hobli, Hosanagar Taluk. The family of respondents 1 to 5 was the landlord. The land comprised in S. No. 241/2 also was acquired pursuant to the same notification and for the same purpose. It was owned by respondents 1 to 5 and 7.

3. In S. No. 102 aforesaid, there was an extent of 1 acre and 24 guntas of cultivated areca garden and there was a further extent of 1 acre and 32 guntas of abandoned arecanut fallow garden. In S. No. 111, there was an extent of 20

guntas of cultivated area garden. In S. No. 241/2 the extent of cultivated areca garden was 1 acre and 21 guntas; 1 acre and 25 guntas was fallow or abandoned areca garden with only 48 areca trees. In the same S. No. 16 guntas were fallow garden; 19 guntas were garden land converted into wet land. There was a further extent of 24 guntas of dry land in the same survey number. The Land Acquisition Officer awarded compensation at the rate of Rs. 125 in respect of the dry land in S. No. 241/2 and that award was confirmed by the Court below and the matter is not in dispute in this appeal.

4. The dispute in the appeal is mainly concerned with the quantum of compensation awarded in respect of the cultivated areca gardens situated in S. Nos. 102 and 111. It is common ground that areca gardens in S. Nos. 102 and 111 were leased to the sixth respondent Devappa and that the said Devappa was paying an annual rental of Rs. 150. The areca garden in S. No. 241/2 was not leased to any tenant but was under the direct cultivation of the owners.

5. Before the Land Acquisition Officer the claimants laid a claim for compensation at the rate of Rs. 30,000 an acre in respect of areca gardens. Only in respect of dry lands they made a claim at Rs. 500 per acre. Before the Land Acquisition Officer the sixth respondent tenant who was entitled to claim apportionment of the compensation, entered into a settlement with the landlords. According to the said settlement the amount awarded by the Land Acquisition Officer was apportioned in the manner set out in the terms of settlement and it was further agreed between the parties that whatever amount was enhanced by the Court on reference u/s 18 of the Act, the same was to be given to the landlords, i.e., respondents 1 to 5.

6. In respect of S. No. 241/2 as to which there was inter se dispute between respondents 1 to 5 on the one hand and respondent-7 on the other, they entered into a settlement before the Court agreeing to the apportionment of compensation in the following manner, viz., respondents 1 to 5 ten annas share in the rupee and respondent 7 six annas share in the rupee.

7. Before the Court, the parties did not adduce any documentary evidence concerning transactions of sale of areca gardens similar to the lands acquired in the instant case. The court below rested its decision on the basis of the oral evidence adduced by the parties-is to the gross areca yield and the expenditure necessary to realise the same. The net annual income so arrived at was capitalised by multiplying the same by 20. The lower Court did not make any distinction between cultivated areca garden and abandoned areca garden. It treated the entire holding as one piece of land and computed its income and on the basis of the said income determined the market value by capitalising the same in the manner aforesaid. On the basis of the income so arrived at the court below determined the compensation in respect of the areca garden in S. Nos. 102 and 111 at Rs. 36.771, and in respect of the garden land in S. No. 241/2, it awarded Rs. 23,600 an acre. In respect of fallow or abandoned areca garden as also areca garden converted into wet land, the lower Court fixed the

compensation at Rs. 3,933 per acre. The basis for such award was that the value of such land could be fixed at one sixth the value of the cultivated areca garden.

8. The learned High Court Government advocate Shri Venkatachala submitted that when there is undisputed evidence that the landlords in the instant case were getting a fixed rent of Rs. 150 per annum, the market value of the land should have been capitalised by multiplying the same by a proper multiple and it was not right on the part of the Court below to have determined the market value of the entire land without regard to the rentals to which the landlords were entitled. He further argued that since the 6th respondent tenant did not prefer any claim for enhancement of compensation or apportionment of the same, it was not open to the Court below to have determined the market Value of the land as a whole and award the same to the landlords consequent on the settlement between the parties. The next argument of the learned Government Advocate was that the award of compensation for fallow garden and garden converted into a wet land at Rupees 8,933 is wholly arbitrary and without any basis.

9. We shall deal with the last ground first since the same can be disposed of without further discussion. Shri T. S. Ramachandra, the learned counsel for the contesting respondents, rightly conceded that there was no basis for the Court below to have fixed the market value of the fallow or abandoned garden and garden converted into wet land at one-sixth of the rate of a good cultivated garden. We are unable to appreciate as to how a garden converted into wet land, and abandoned garden, may be treated alike. In this respect the award made by the Court below appears to us to be wholly arbitrary and cannot be sustained,

10. In para 12 of its order, the Court below has come to the conclusion that the net income from an acre of wet land is Rs. 125 per annum and multiplying the same by 20, the market value of the same comes to Rs. 2,500. Having come to that conclusion the Court below arbitrarily enhanced the amount to Rs. 3,933 without any basis. The market value of Rs. 2,500 for an acre of wet land is fair and just. The same value can be applied to the fallow or abandoned garden which could also be converted into wet land and therefore the same value should be fixed in respect of the same.

11. Coming to the main ground urged by the learned Government Advocate, we are unable to accept his contention as sound. What has to be remembered in a land acquisition case is that what is acquired is the land and not the several or different interests in the land. Section 23 of the Land Acquisition Act provides for determination of the market value of the land acquired. It has been laid down by Lawrence Jenkins, C J., in Collector of Belgaum Vs. Bhimrao V. Patel, as follows:--

Where the market value of the land has to be ascertained for purposes of Section 23 of the Land Acquisition Act, 1894, the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it.

The same view was followed by the Madia High Court in Raja of Pittapuram R. D. O., Cocanada, ILR 42 Had 644 = (AIR 1919 Mad 222 (2)) where Sir John Wallis, C.J. stated:

Where, wet lands in a zamindari are acquired by the Government under the Land Acquisition Act for extension of the village site, the lands have to be valued in the first instance including nil interests in it, and the amount so ascertained has then to be apportioned among the parties interested, according to their interests.

In Ramachandraiah etc. Vs. Land Acquisition Officer, Sagar, the same view has been accepted by the Supreme Court as laying down the correct law. In the said case the lands acquired were, under the cultivation of tenants. The tenants were not before the Court. Nevertheless the Supreme Court said that:

.... in fairness to the tenants (if they are still on the land) their interests ought to have been ascertained and if they are entitled in law to any share, compensation according to the market value of the land should be ascertained afresh and their share," if allowable to them, should be allocated to them.

The Supreme Court further proceeded to state that:

.... the annual income of the lands in question will have to be ascertained afresh from the evidence on record or otherwise and the net total income after deducting the costs of cultivation and other outgoings ascertained in order to arrive at the correct market value.--

If the position as contended by the learned Government Advocate was correct, there was no need for the Supreme Court to direct the determination of the market value of the land afresh taking into consideration the net income of the lands. In that view the Court below was right in determining the market value of the areca gardens irrespective of the fact that they were under the cultivation of cultivating tenants.

12. The next question is whether the quantum of compensation awarded by the Court below calls for interference by this Court The Court below, on appreciation of the evidence on record, determined the gross annual income at Rs. 3,502 per annum. After making allowance] of 50 per cent for cultivation expenses, the net income was determined at Rs. 1,750. Even If the said figure is multiplied by ten, the market value works out to nearly Rs. 18,000 an acre. This is what has been awarded by 1 Court below which we cannot consider at all as unreasonable or excessive.

13. In the result, for the reasons stated above, we affirm the award and decree of the Court below except with regard to two acres of fallow garden land and garden land converted into wet land. With respect to the said land we fix the compensation at Rs. 2,500 an acre in modification of the award made by the Court below in that regard.

14. Parties will pay and receive costs in proportion to their success in this appeal.

