

(1985) 06 KAR CK 0001
In the Karnataka High Court
Case No : MFA No. 110 of 1984

Special L.A.O.

APPELLANT

Vs

Laxman Radavo Gawada

RESPONDENT

Date of Decision : 27-06-1985

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23 (2), 28

Citation : (1985) ILR (Kar) 2734

Hon'ble Judges : Vithal Rao, J;Venkatachaliah, J

Bench : Division Bench

Advocate : R.P. Hiremath, for the Appellant; M.R. Naik, for Hegde Associates, for the Respondent

Judgement

Venkatachaliah, J.

1.This appeal, by the Special Land Acquisition Officer, Dandeli, is directed against the Award and decree dated 8-9-1983, made in L.A.C. No. 59 of 1981, on the file of the Court of the Civil Judge, Sirsi, enhancing, in proceedings of reference u/s 18 of the Land Acquisition Act, compensation in respect of two bits of land of the extent of 2 acres 1 guntas in Survey No. 29 and 20 guntas in Survey No. 34/4 of Keverle Village, Supa Taluk, acquired for the purpose of Kalinadi Hydro Electric Project, pursuant to the preliminary notification published in the Gazette dated 12-6-1975.

1. The enhancement is from Rs 3,000/- per acre awarded by the Land Acquisition Officer, to Rs. 12,000/- per acre in respect of 2 acres 1 gunta in Survey No. 29, and from Rs. 3000/- per acre to Rs. 15,600/- per acre in respect of the 20 guntas in Survey No. 34/4. The acquired lands were wet-lands capable of raising paddy-crop.

2. In enhancing the compensation the Court-below adopt-ed the method of capitalization of net income. In respect of Survey No. 29 the Court-below estimated the gross-yield at 7 1/2 quintals relying upon the yield notification at

Exhibit-D.9 which indicated that in respect of the wet-lands assessed at less than Rs. 4/- per acre the average yield is 7 1/2 quintals of paddy and that in respect of the lands assessed at more than Rs. 4/- per acre the average yield is 9 quintals. The value of the gross-yield was estimated at Rs. 160/- per quintal, indicated in Exhibit-D.10, the notification of average yield issued by the A.P.M.C., Haliyal.

Accordingly, in respect of the 2 acres 1 gunta in Survey No. 29 the Court-below estimated the gross-yield, at 7 1/2 quintals per-acre, at Rs. 1200/-, Rs. 400/- per acre was deducted towards cost of cultivation. The net income of Rs.800/- was capitalised on 15 years" purchase value to yield Rs. 12,000/- which was determined as the market-value.

As regards 20 guntas in Survey No. 34/4, the Court-below estimated the gross yield at 9 quintals of paddy and valuing the same at Rs. 160/- per quintal arrived at the gross-yield of Rs. 1440/-. Out of this also Rs. 400/- was deducted towards cost of cultivation and net yield of Rs. 1040/- arrived at was capitalised on 15 years" purchase value yielding Rs. 15,600/- which was awarded in respect of Survey No. 34/4.

These enhancements are challenged in this appeal.

3. We have heard Sri R.P.Hiremath, learned Government Advocate in support of the appeal and Sri M.R.Naik, Learned Counsel for the claimants. Sri Naik sought to raise certain additional contentions concerning the allow ability to the claimants of the benefit of higher solatium and higher interest u/s 23(2) and 28 of the Land Acquisition Act respectively read with Sections 15(b) and 18 and 30 of the Central Amending Act 68 of 1984.

In this appeal, appellant has not questioned the correct-ness of the estimate of the gross yield at 7 1/2 and 9 quintals, respectively, for the two lands. Nor is the price taken to assess value of that gross-yield questioned. What is questioned is the appropriateness of the multiplier of 15 employed and of the deductions of only Rs. 400/- per acre as cost of cultivation.

On the contentions urged at the hearing, the following points fall for determination in this appeal :

(a) Whether the Court-below was justified in adopting the multiplier of 15 for purposes of capitalising the net-income in determining the market value, and whether the appropriate multiplier has to be 10?

(b) Whether the deduction of Rs. 400/- towards cost of cultivation was not justified and unsupportable on the evidence on record ? and whether 50% of the gross-yield should have been deducted towards cost of cultivation to arrive at the net-yield as con-tended for the appellant ?

(c) What is the market-value to be determined in respect of the two lands in Survey No. 29 and 34/4 of Keverle village?

(d) Whether the claimants are entitled to higher solarium and higher rates of interest under Sections 23(2) and 28 of the Karnataka Land Acquisition (Extension & Amendment) Act 1961, in view of the provisions in Section 15(b) ; Sections 18 and 30 of the Central Amending Act 68 of 1984.

4. Re: Point (a) - After the pronouncement of the Supreme Court in International Tourist Corporation and Others Vs. State of Haryana and Others, it is now settled that the multiplier should not exceed 10. It cannot be 15. This proposition was not seriously debated. We, accordingly, hold that the Court-below was in error in employing the multiplier of 15. The multiplier should not exceed 10.

Point (a) is answered accordingly.

5. Re: Point (b) - Learned Government Advocate strenuously contended that the Court-below committed a serious error in deducting only Rs. 400/- towards cost of cultivation and urged that atleast 50% of the gross-yield, particularly where wet-cultivation was involved, should be deducted to arrive at the net-income for purpose of capitalization.

Sri Naik, learned Counsel for the claimants, however, sought to maintain that the deduction towards cost of cultivation as made by the Court-below was proper and justified on the evidence on record. He urged that the general practice of deducting towards cost of cultivation anywhere between 40 to 50 per cent of the gross-yield could have no application to a case where there was evidence on record as to the extent and quantum of cultivation expenses and that the Court-below, in this case, had found the evidence acceptable. Learned Counsel urged that even in the award, Ext. DI, the L.A.O. himself had estimated the cost of cultivation at Rs. 400/-and had in fact furnished details of the basis on which he had come to that conclusion. Sri Naik pointed out that the actual case of the L.A.O. in that behalf put to the claimants in the course of the cross-examination by the learned Government Pleader, was that the cost of cultivation was Rs. 400/-. When, under such circumstances the Court-below had accepted a particular quantum as the cost of cultivation, the finding was one based on evidence, and the practice or the rule of deducting anywhere between 40 to 50 percent of the gross-yield as cost of cultivation would have no application.

6. Elaborating his submission, learned Government Advocate said that, first, the Award of the L.A.O. and its contents are not admissible in evidence in the reference before the Court at all; that, secondly, even if the contents of an Award are admissible, the statements as to cost of cultivate on of Rs. 400/- per acre obtaining in the Award were not absolute and unconditional statements but were merely relative statements made in a particular context and closely inter-twined with the estimate of the gross-yield of 6 quintals and should not be taken out and read out of that context and that, if the estimate of the gross-yield made by the Court was different from or exceeded the one made by the L.A.O., the question of the appropriate cost of cultivation would also be at large, and that, thirdly, if any higher estimate of gross-yield is taken, at all events, atleast a

proportionate increase in the cost of cultivation should be made and deducted out of the value of such gross-yield.

7. As to the first of the above contentions, viz., that the award and its contents are wholly inadmissible in evidence in the proceedings in reference are concerned, it is no doubt true that proceedings of reference u/s 18 of the Land Acquisition Act are not in the nature of appeals from the award of the Land Acquisition Officer. The proceedings of L.A.O. are administrative in nature. The award is a mere offer which the claimant may accept; or may refuse to accept and seek a reference to the Civil Court. The evidence recorded by the Land Acquisition Officer will not, ipso facto become substantive evidence in, and part of the record of, the Court of reference. The proceedings of reference are in the nature of proceedings before a Court of first instance. A person interested in the land who has not accepted award may require the matter to be referred to the Court for determination of the amount of compensation. The scope of the reference will also take-in any objections as to the measurements of the land or apportionment of compensation amongst the persons interested.

In such a proceeding, claimant-land owner is in position of the plaintiff. The burden is upon him to show that the compensation offered is inadequate and that he is entitled to higher compensation. In such a proceeding, the application u/s 18 for reference is analogous to a plaint in a suit and the reference and the statement that accompanies it in terms of Section 19 are in the position of and analogous to the written-statement. The Court of reference can also permit further pleadings.

It appears to us that the statements of fact contained in the award bearing on the question of the market-value of the acquired lands made by the Land Acquisition Officer, who, for this purpose acts as the agent of the Government can be relied upon by the claimants. A copy of the award is not required to be sent to the Court along with the reference u/s 19 and is therefore not a part of the record. The claimants can produce a copy of the award or require its production. The Court of reference may also call for it.

As to the nature of the function which the Land Acquisition Officer performs in making an award the Judicial Committee said:

" It is clear therefore that the Land Acquisition Officer, in awarding the amount of compensation u/s 11, is performing a statutory duty, a duty the exercise of which, in cases where land is to be acquired for a public purpose, concerns the public, since it affects the expenditure of public money, in assessing compensation he is bound to exercise his own judgment as to the correct basis of valuation, and his judgment can-" not be controlled by an agreement between the parties interested. On a reference u/s 18 the District Judge must also exercise his own judgment and consider, among other things, whether the award of the Land Acquisition Officer was based on a correct principle...."

The statements of fact contained in the award which bear on, and constitute

evidence of, the market-value can be relied upon by the claimants as admission made by the Land Acquisition Officer, on behalf of the Government. Awards cannot be dismissed as inadmissible for the purpose of determination of compensation. But these admissions, be it noted, are evidentiary admissions and not judicial-admissions. An evidentiary admission, is not conclusive against the party making it. It is only a piece of evidence. Government may show that the statements were made by mistake and that they are not true. It can satisfactorily explain the admission or successfully withdraw it.

We may notice here-one-other submission of the Government Counsel. He submitted that if all the statements made AIR 1946 75 (Privy Council) by the Land Acquisition Officer in the course of the award, which may bear or influence a conclusion as to the market-value are binding on Government, the Government would be faced with a struggle with infinity. He posited a conceivable case where though the Land Acquisition Officer while making an award in modest terms may yet pay such extravagant encomia to the nature and value of the acquired-property that make an unjust enhancement inevitable in the reference. He said that serious detriment to public interest would flow from such situations. The Learned Government Advocate submitted that only those statements in the Award which are consistent and reconcilable with the amount actually determined must alone be held relevant. This is, perhaps, a question of the weight to be attached to the admission, which is merely a piece of evidence. Even where a fact is admitted, the Court has, in appropriate cases, always the discretion to call upon a party relying upon the admission to prove the fact independently of the admission. Learned Government Advocate relied upon the decision of the Gujarat High Court in *The Officer on Special Duty, Land Acquisition, Ahmedabad Vs. Gordhanbhai Bhalabhai Patel*, in support of his contention that the statements in the Award are wholly inadmissible in the reference. That decision does support this submission. With respect, we think the proposition is too broadly stated and we find it difficult to accept the sweep of the dictum. The view taken in the earlier decisions of this Court is somewhat different.

In *M.S. Ramiah and others v. Special Land Acquisition Officer* 1974(1) KarLJ 231 referring to the permissibility of looking into the Award of the Land Acquisition Officer in determining the market-value of a land concerned in a land acquisition reference this Court said:

"....For making such an award, the Court has necessarily to rely on the materials contained in the award of the Land Acquisition Officer u/s 11 and the evidence of the Land Acquisition Officer, if any, tendered before the Court.... If on the basis of the data furnished in the award of the Land Acquisition Officer, the Court finds that the market-value of the land has not been determined in accordance with settled principles of valuation, the Court has to determine the compensation in accordance with such principles on the basis of the data available on record. Therefore, the Court has to apply its mind and make an award and cannot blindly

confirm the award of the Land Acquisition Officer."

Again in *State of Madras v. A.M. Manjan & another* AIR 1976 S.C. 551 the Supreme Court observed :

"As a matter of fact these awards given by the Collector are at least relevant material and may be in the nature of admission with regard to the value of the land on behalf of the State and if the land involved in the awards is comparable land, in the reasonable proximity of the acquired land, the rates found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. The awards, therefore, cannot be dismissed as in admission for the purpose of determination of the compensation."

Indeed in *M.F.A. 108/84* decided on 26 6 1985, *Spl. L.A.O, v. L.T. Ganesh* this Court said this on the point:

"If an earlier award is admissible as evidence of market-value in a different proceeding, it does not stand to reason that the statements of fact contained in the award bearing on, and constituting evidence of, market-value cannot be relied upon in the reference arising out of that very award."

We are, therefore, of the view that the propositions that statements in the award of the Land Acquisition Officer bearing on, and constituting evidence of, market-value of the acquired land are inadmissible in the reference incurs the criticism of being too broadly stated. We find ourselves unable to subscribe to such a broad generalisation.

8. The second contention of the Learned Government Advocate on the point is that if the statements of the Land Acquisition Officer in the award and the suggestions in the cross-examination as to Rs. 400/-per acre being the cost of cultivation, amount to admissions, they must be taken as a whole and could not be dissected and only those portions advantageous to the claimants taken. Cost of cultivation, says Learned Government Counsel, is not something which is constant or hypothetical and must needs be related to the yield that is intended or desired from the land and that concept of cost of cultivation is incomplete without the essential component of the cost of labour. If the members of the family of the land-owner themselves contribute the labour, none-the-less the value of that labour is as much a part of the cost of cultivation as any other component. The reasoning of the Land Acquisition Officer to the contrary in his exercise to reduce the cost of cultivation from Rs. 802-50 per acre furnished by the Assistant Director of Agriculture to Rs. 400/-, says Counsel, lacks as much in logic as in acceptability. Learned Government Advocate urged that if the estimate of 6 quintals of gross yield is jettisoned then the estimate of Rs. 400/- as cost of cultivation must also be left out for consideration. He says that this is how the suggestion in the cross-examination must also be understood. Learned Government Advocate says that if the gross-yield is taken at more than 6 quintals, then cost of cultivation must be taken at 50 percent of the value of the

gross yield.

9. The scope of the rule, which is not one of law but one of practice, as to the deduction of 40% to 50% of the gross-yield as cost of cultivation was explained in *The Special Land Acquisition Officer, Devangere and Others Vs. KotraiahFr. and Others*, thus :

"10.....What percentage of the gross yield is the net income to be taken into account for the purpose of capitalization is again a matter for ascertainment on investigation. It cannot be said as a matter of rule that 50 per cent of the gross yield should be regarded as net income for the purpose of capitalization....This Court in several cases has taken 50 per cent of the gross yield as the net income for the purpose of capitalization. But, that should not be regarded as a rule of law. In the said cases, in the absence of material on record as to the actual cost of cultivation, this Court as a rough and ready measure with a view to avoiding remand of the cases treated 50 per cent of the gross yield as net income from the principal crops ignoring the yield from subsidiary crops. This is not to be understood as laying down a principle of general application."

In the present case the Land Acquisition Officer in the award said this in justification of limiting the expenses of cultivation to Rs. 400/-.

"....The cost of Cultivation of paddy ascertained from Agricultural Department is Rs. 802.50 per acre....

The above figure apply only when lands are being cultivated with hired labour. The lands under acquisition are being cultivated by Khatedars. They engage hired labour only on limited occasions and contributes their own and their family labour for cultivation. The Assistant Director of Agriculture, Sirsi Sub-Division, Sirsi has stated that the Agricultural expenditure per acre is Rs. 802.50. This expenditure includes the labour contributed by the cultivator and his family also. If an agriculturist engage hired labour from the beginning (ploughing of the land) to the end of agricultural operation (Harvesting and thrashing) the total cultivation expenditure to be incurred would be Rs. 802.50. In case hired labour is engaged only on limited occasion on the expenditure to be incurred obviously would be less than Rs. 802.50. The cultivation method adopted in the village is also of old tradition.

Further Agricultural expenditure furnished by the Agricultural Department is based on "Package of practice" programme of Agricultural Department. Such practice is not in vogue in this village. The prescribed doses of fertiliser are not being applied. Had all the prescribed method adopted by the Agriculturist the yield would have been more than 7 quintals of paddy (Gross yield) per acre. Such being the case the agricultural expenditure reported by the Agricultural Department does not reflect the practical aspect of cultivation. To arrive at a realistic picture....Therefore, I consider Rs. 400.00 per acre is the Agricultural expenditure (cost of cultivation) incurred by Agriculturist for cultivation of an acre of wet land in this village....

In the course of cross-examination some suggestions were put to the claimant as to the extent of the cultivation expenses. Implied in these suggestions is the case of the party on whose behalf the witness is cross-examined. These suggestions are :

It is to be noticed that the specific case is that to raise an yield of 6 quintals per acre the cultivation expenses are Rs. 400/- per acre.

This suggestion of the Learned Government Advocate that the moment the gross-yield is increased even slightly the cost of cultivation is at large, pushed to its logical or illogical conclusions is beset with some anomalies. Six quintals of yield would be Rs. 960/- in value at Rs. 160/- per quintal and Rs. 400/- is the cost of cultivation. If the gross-yield is taken at 6 1/2 quintals valued Rs. 1040/- then, according to the argument, the deduction must be half of it i.e., Rs. 520/-. The result is that while an addition of Rs. 80/- is made to the gross-yield, Rs. 120/- more has to be deducted towards cultivation-costs.

10. However, the third contention of the Learned Government Advocate that wherever the gross-yield is estimated at more than 6 quintals, atleast a proportionate increase in the cost of cultivation should be made, appears to us to be reasonable. We are sensible of the circumstance that in several other cases where similar matters came-up before this Court, and where gross-yield of 7 1/2 quintals had been estimated, and only a sum of Rs. 400/- had been deducted towards cost of cultivation, the net yield so arrived at was maintained and only the multiplier had been reduced. But, we find considerable difficulty in rejecting the third contention of the learned Government Advocate that both in the award of the Land Acquisition Officer and in the suggestion in the course of the cross-examination, the figure of Rs. 400/- towards cost of cultivation is not an independent estimate but is related to the gross yield which was estimated at 6 quintals per acre. We agree with the Learned Government Advocate that those statements have to be read as a whole and do not admit of being dissected.

The result is that if increase in the cost of cultivation proportionate to the increase of the gross-yield is made, the cost of cultivation in cases where lands are assessed to less than Rs. 4/- per acre, and yield estimated at 7 1/2 quintals, would be Rs. 400+100=500 per acre ; and in cases where the estimate of gross-yield of 9 quintals is made, the proportionate increase in the cost of cultivation would be Rs. 200/- more per acre, taking the deduction to Rs. 600/-per acre. These are cases of wet-cultivation and in the absence of evidence, 50% of the gross-yield would be required to be deducted towards cultivation-costs. We would have done so. The thinking of the L.A.O. that labour contributed by the members of the family should be excluded in estimating cultivation costs is a fallacy. But deduction of only Rs. 500/- and Rs. 600/- respectively, are made because, this is the specific admission and logical inferences from the specific case of the L.A.O. himself as made manifest both in the Award passed u/s 11 and in the course of the cross-examination of the claimants.

We hold and answer Point (b) accordingly.

11. Re: Point (c) - This is now a matter of mere arithmetical calculation. The value of the gross-yield has to be estimated and then the increase in the cost of cultivation must be given effect to by way of deduction. The Court-below has estimated the market-value of the yield at Rs.160/ per quintal. The range of the price at the relevant period, according to the price-list of the A.P.M.C. was Rs. 158/- to 164/-. There is no reason why Rs. 164/- should not be taken. If this is so, the gross yield in the case of lands assessed at less than Rs. 4/- will be Rs. 1230/-. With the deduction of Rs. 500/- towards cost of cultivation the net yield would be Rs. 730/- which if capitalised on 10 years' purchase, would yield Rs. 7300/-. This will be the appropriate market-value to be determined for lands assessed at less than Rs. 4/- per acre and where the yield is estimated at 7 1/2 quintals.

In the case of single crop wet-land assessed at more than Rs. 4/- per acre, yielding 9 quintals per acre, the value of the gross-yield at Rs.164/- per quintal would be Rs.1476/-. Deducting Rs. 600/- per acre for cultivation costs the net-yield be Rs. 876/-. If this is capitalised on 10 years' purchase it will yield Rs. 8760/- per acre, which may be rounded off to Rs. 8800/- per acre. This is determined as the market-value of lands with assessments of more than Rs 4/- per acre and where the gross yield is taken at 9 quintals of paddy.

Point (c) is answered accordingly.

12. Re: Point (d) - This concerns the allowability of the benefit of the higher rate of solatium u/s 23(2) and higher rates of interest u/s 28 in the light of Section 15 (b) and Section 18 of the Central Amending Act 68 of 1984. The date of the award of the Civil Judge in this case is 8-9-1983. In view of the provisions of Section 30 of the said Amending Act, the benefit of the enhanced solatium and higher rates of interest will be available to the claimants.

Point (d) is answered accordingly.

13. In the result, for the foregoing reasons, this appeal is allowed in part, and, in modification of the award and decree under appeal, compensation in respect of Sy. No. 29 of Kevarle village, Supa Taluk, is reduced from Rs. 12000/-to Rs. 7300/- per acre and compensation in respect of Sy. No. 34/4 of the said village is reduced from Rs. 15600/- to Rs. 8800/- per acre. The claimants shall be entitled to the enhanced solatium of 30% u/s 23(2) of the Karnataka Land Acquisition (Extension & Amendment) Act, 1261 read in the light of Sections 15 (b) and 30 of the Central Amending Act 68 of 1984, and also to higher rates of interest of 9 percent and 15 percent, as the case may be, on the enhanced amount of compensation u/s 28 of the said Karnataka Act read in the light of Sections 18 and 30 of the Central Amending Act 68 of 1984.

14. In the circumstances of the case, the parties are left to pay and bear their own costs in this appeal. Order accordingly.