
(1995) 02 MAD CK 0095

In the Madras High Court

Case No : Appeal No's. 9, 11 to 13 and 16 to 18 of 1986

Special Tahsildar, No. XV (Land Acquisition)

APPELLANT

Vs

P.R. Ramalingam and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4(1)

Citation : (1996) 1 CTC 483

Hon'ble Judges : Srinivasan, J; S.S. Subramani, J

Bench : Division Bench

Advocate : A. Jinasenan, for the Appellant; N.A. Sarma, for the Respondent

Judgement

Srinivasan, J.—In these appeals, A.S. Nos. 9, 16 and 17 of 1986 arise out of Award No. 6 of 1979, while A.S. Nos. 11, 13 and 18 arise out of Award No. 7 of 1979. A.S. No. 12 of 1986 arises out of Award No. 12 of 1979. In all these cases, the date of notification u/s 4(1) of the Land Acquisition Act is 11.11.1978. The date of taking possession of lands in A.S. Nos. 9, 11, 13 and 18 of 1986 it is 14.11.1979, while in A.S. No. 12 of 1986 it is 15.3.1980. The lands involved are classified in two groups by the Subordinate Judge as Government Wet and Government Dry. A.S. Nos. 9, 16 and 17 are appeals against the judgment of the Subordinate Judge in L.A.O.P. Nos. 108, 110 and 106 of 1983 dated 14.5.1985. A.S. No. 11, 13 and 18 of 1986 are against the Common Judgment of the Subordinate Judge dated 30.3.1985 in L.A.O.P. Nos. 119, 120 and 123 of 1983. A.S. No. 12 of 1986 is against the Judgment in L.A.O.P. No. 104 of 1983 dated 14.5.1985. While the Land Acquisition Officer awarded Rs. 7000/- per acre for the lands involved in A.S. Nos. 9 of 1986, 12 of 1986, 17 of 1986 and 18 of 1986, the Subordinate Judge awarded Rs. 65,000 per acre with respect to those lands. With respect to the lands in the other appeals, the Land Acquisition Officer awarded Rs. 5,000 per acre whereas the Subordinate Judge awarded Rs. 60,000 per acre for the lands in A.S. Nos. 11 of 1986 and 16 of 1986, but Rs. 65,000 per acre for the lands in A.S. No. 13 of 1986.

2. The evidence recorded is of the same pattern in these preceedings. It should be pointed out at the outset that when a reference is sought u/s 18 of the Land Acquisition Act by the claimants, each of them had expressly stated that the compensation must be paid at the following rates-

(1) Rs. 30,000 per acre for wet lands with irrigation facilities from the lake and own sub-artisan well with motor;

(2) Rs. 25,000 per acre of wet land with irrigation facilities from the lake alone;

(3) Rs. 25,000 per acre of dry land with irrigation facility of own sub-artisan well with motor;

(4) Rs. 20,000 per acre for ordinary dry land.

In the course of trial, the claimants adduced evidence to the effect that they had raised sugarcane crops in all the lands and they used to get a net income of Rs. 7,000 per annum per acre. In support of that claim, besides the evidence of the claimants themselves, they have examined a clerk of Aruna Sugar Mills. He has produced a copy of a ledger to show that an extent of two acres has been registered in the name of Ramasamy Naidu, the claimant in L.A.O.P. No. 110 of 1983. According to his evidence, per acre 50 to 60 tons of sugar-cane will be available. He has stated that the Mills had paid at the rate of Rs. 160 and above per ton. According to him, a sum of Rs. 3000 will be the expenditure per acre for raising sugar-cane and the income will be at least Rs. 10,000. His evidence does not inspire any confidence. There is no explanation for the non-production of the original ledger. Further, the claimants have not themselves spoken anything about the registration with Aruna Sugar Mills as such. Nor have they stated as to how much sugar-cane they supplied to the mills in the relevant years. In their evidence, there is no reference whatever to the documents produced by the clerk of Aruna Sugar Mills. It is also admitted by the claimants that at the time when the Government took possession of the lands pursuant to the acquisition, there was no sugarcane in the land and there were only other crops. P.W.1., is the claimant in L.A.O.P. No. 110 of 1983. He has stated in the chief-examination itself that he has asked for Rs. 30,000 per acre. In the cross-examination he has stated that he has asked for Rs. 20,000 per acre of punja land. In his evidence he has stated that the total income will be Rs. 12,000 per acre and after deducting an expenditure of Rs. 5,000 the net profit will be Rs. 7,000. He has produced adangals to show that sugar-cane had been raised in the lands in question. The adangals have been raised in the lands in question. The adangals have been marked as Exs.A-1 to A-13, A-14, A-15, A-18, A-19 and A-20 in L.A.O.Ps. 110, 108 and 106 of 1983. Some of them have been marked as Exs.A-1 to A-3 in L.A.O.P.104 of 1983 and in the other batch of L.A.O. Ps. they have been marked as Exs.A-5 to A-13.

3. Taking into account the entire evidence adduced by the claimants, the only conclusion possible is that the claimants have not been raising sugarcane in all the lands though in some portions of the lands, they have been raising

sugarcane. Further, they have themselves admitted that sugarcane has to be raised in rotation with other crops. According to their evidence, for three years, they will raise sugarcane and thereafter they will raise some other crop and once again raise sugar cane some years later. But, exact evidence has not been adduced by the claimants as to the method by which sugarcane is cultivated by them. The Court can certainly take note of the fact that sugarcane cannot be raised continuously for all years and it has to be done only in rotation. In pages 170 and 171 in the Gazetteer of India, Madras, South Arcot, 1961 Edition, the following particulars are found with regard to sugarcane crop in the district-

" Sugarcane, as has already been stated, is an important cash crop of the district. It is grown on wet lands in rotation with paddy in alternate years, or once in three or four years. In parts of the Cuddalore (Gudalur) Taluk, it is grown on wet lands in three course rotation with paddy and indigo grown pure or mixed with paddy. In the Kallakurichi taluk it is grown in rotation with paddy once in four years. It is cultivated principally round about Nellikuppam in the Cuddalore (Gudalur) Taluk, under the Ponnaiyar anicut channels in the Tirukkivilur taluk and under the small anicuts of the Gomukhi in the Kallakurichi taluk. Some of it is also cultivated round about Chidambaram and under the bajandurai anicut near Srimushnam in the Chidambaram taluk. A little of it is likewise cultivated under the Ginge (senji) and the Manimuktanadi and the Vellar channels near Tittagudi in the Vriddhachalam Taluk.

Formerly two main varieties of cane were raised: the while reed cane, called "nanal Karumbu" which was an inferior variety, and the striped cane, known as "rastali" or "namadhari Karumbu", which was a better variety. Here and there was also grown a little of the Maories cane which had been introduced into the district as long ago as 1839 but which had not proved a success owing to the various causes. All these varieties of cane came to be gradually replaced by purer strains like J247 (a drought resisting variety) and Fiji 8, both of which had a higher jaggery content. Both these varieties have, however, been replaced, in turn by the still purer and higher yielding varieties like "CO 419, CO 449 and CO 527. Messrs. East India Distilleries and Sugar Factories of Nellikuppam have given not a little encouragement to sugar cultivation in the district. They crush almost all the cane raised in the Cuddalore (Gudalur), Villupuram and Tirukkivilur taluks. Canes grown in the Ginge (Senji), Kallakurichi and Vriddhachalam taluks in the interior are, however, locally crushed for jaggery.

As is well-known, a sugarcane is an exhausting crop. It thrives best on fertile soils with good drainage facilities; but it can also be grown on a variety of soils, clayey soils, red loams and sandy loams, provided it is properly manured and looked after. The crop demands a preparatory village. Soon after the harvest of the previous crop, the land is ploughed a number of times fairly deep until the required tilth is obtained. Both wooden and iron ploughs are used for ploughing. The main planting season is March-April but, in some parts, it commences even earlier. The crop is heavily manured, by bulky as well as concentrated manures.

Cattle manure is the common basal dressing given before planting. After two or three ploughings, the manure is applied to the land. Where cattle manure is not available, sheep penning is adopted or compost manure is used. Green-leaf manure is also applied wherever possible. This is sometimes done by growing a sunn-hemp crop before the sugarcane crop. These manures are nowadays supplemented by oil cakes and nitrogenous fertilizers either alone or in suitable combinations. The oil cakes used are commonly those of groundnut, coconut, castor or gingelly and the fertilizer used is commonly the sulphate of ammonia".

At page 175 and 176 the following passage is found:-

"In the case of sugarcane it has demonstrated that 12,000 sets of top portions of cane per acre are sufficient for planting; that no advantage is gained by planting more sets; that a spacing of 3 feet is enough between the lands of the crop; that the best time for planting is February to April; that the removal of dried leaves from the growing crop (trashing) reduces the incidence of cane-fly (leaf hopper); that the growing of cane in alternate years, in rotation, with other crops like groundnut, ragi, cumbu and paddy, though profitably for a few years in the beginning, eventually exhausts the soil and thereby reduces the profits; that such growing once in three years in rotation with the other crops yields the best results; that ratooning for a number of years instead of planting which is practised in several places to reduce the cost of cultivation, produces crops of stunted growth subject to diseases and pests and therefore, in the long run, holds out no advantage over planting;"

4. It is also in evidence, as pointed out already, that at the time when possession was taken by the Government, sugarcane was not on the lands. The adangals also show that sugarcane was raised only in 1976-77 and in the previous year it was not raised. Thus, even on the evidence on record, it is clear that sugarcane is raised only by rotation method and it is not continuously raised by the claimants in all the years. Hence, the Subordinate Judge is wrong in fixing the value on the basis of the yield from the sugarcane crops per year and capitalising the same by multiplying it by 20. If the capitalisation method is to be adopted, the multiplier can only be 10 or 12 it cannot be 20 as sugarcane is not continuously raised.

5. The Land Acquisition Officer compared several sale deeds for about a period of three years preceding the notification and rejected most of them as dealing with different types of lands. He chose only two or three sale deeds for comparison as relevant and fixed the value on that basis. But when he gave evidence as R.W.1, in each of these cases, he admitted that he did not decide the quality of the lands involved in those sale deeds and the quality of the acquired lands. His evidence shows that he did not carry out the necessary exercise for deciding whether the data sale deeds are relevant and comparable for fixing the value of the acquired lands. The Subordinate Judge did not make any reference to those sale deed as in his opinion they were not relevant. The reasoning of the Subordinate Judge is that even as early as 1948, the Government had notified

that these lands would be acquired for the purpose of lignite production. Even though there was no specific prohibition against any sale of the lands, certainly the people in the area would not be willing to purchase for a proper price as acquisition was imminent at any time. In theory, it can be said that there was no prohibition against a sale and any party could have sold the property. But, in actual practice no man would be prepared to invest money on a land when he is aware that the land would be acquired by the Government at any time from him.

6. It is seen that the claimants have expressly referred to this aspect of the matter in their claim statements. There is no denial in the replies filed by the Land Acquisition Officer. The claimants have also expressly spoken about it in their depositions. They have stated that as the Government had announced even in 1947 that the lands would be acquired, sales did not take place in the locality. It is also stated that in order to meet emergent situations, sales could have taken place and the consideration did not reflect the market value. It is further deposed that compensation should be fixed on the basis of 20 years income and net on the basis of comparable sales.

7. Neyveli Lignite Corporation, (hereinafter referred to as "the Corporation"), which was impleaded as party in these appeals in 1986, have chosen to produce a tabular statement at the time of hearing showing the particulars of sale deeds relating to lands in the village. With respect to this Vadakkuvellore Village, the statement mentions about 21 sale deeds ranging from 1976 to 1979. Items 1 to 4 in the statement are sale deeds of 1979, after the date of notification u/s 4(1) of the Act. Similarly, items 9 and 10 in the second list relating to the same village are sale deeds which came into existence after the notification u/s 4(1). One of the documents mentioned in the tabular statement is already marked as Ex.B-8 in L.A.O.P.108 of 1983 batch. With reference to all the sale deeds mentioned in the tabular statement, we have looked into the village map which has been marked in these proceedings as Ex.B-9 in one case, Ex.B-5 in another case and Ex.B.8 in the third case. We find that the survey numbers to which the sale deeds relate, are situate far away from the lands acquired and they cannot be taken up for comparison. The particulars given by the Corporation in the Tabular statement are not sufficient to know exactly the quality and nature of the lands dealt with in those documents.

8. It is argued by learned counsel for the Corporation that an opportunity must be given to the Corporation to adduce evidence with regard to the value of the lands by witnesses. In the first instance, the counsel sought for a remand of the matter. When we expressed our disinclination to remand the matter, as the proceedings have been pending for more than a decade, learned counsel suggested that the Subordinate Judge should be directed to record evidence and place it before this Court. We are unable to accede to this request for the following reasons:-

(1) As pointed out already, the Corporation was impleaded as party in 1986 itself. No doubt, the impleading of the Corporation was challenged in L.P.As. and

orders were set aside by a Full Bench of this Court. But, the matter was taken before the Supreme Court and ultimately, the Supreme Court reversed the judgment of this Court. The order of the Supreme Court is dated 19.10.1994. The matter came up before us on 19.12.1994 and at the request of counsel we fixed the date of hearing as 13.2.1995. In spite of the fact that nearly two months had been given for preparation of the case, the Corporation did not choose to make any preparation. The Corporation has not chosen to file any document before us. Not even an affidavit has been filed before us about the documents now referred to in the tabular statement. Only in the course of the hearing, the Corporation filed the tabular statement and submitted that they would be producing the documents later. As seen by us already, the documents mentioned in the tabular statement are no use for fixing the value of these lands. (2) The sale deeds are dealing with small extents of lands and they cannot be taken as guidance for fixing the value of large tracts of lands acquired.

(3) Any amount of oral evidence at this distance of time will open the flood gates of perjury.

(4) The Corporation had ample opportunity to adduce evidence in the O.Ps. before the Sub Court u/s 50(2) of the Act. The Corporation was all along aware of the proceedings and its officials were assisting the Government Pleader. Some of the officials had given evidence in these proceedings. Some of them had given evidence on the side of the claimants also with regard to the value of the lignite and the value of the sand in the acquired lands. One of them has given evidence on the side of the Government with regard to the value of the bore-well and the pipe-line in the acquired lands. Hence, it cannot be contended that the Corporation had no opportunity earlier to let in evidence as regards the value of the lands. If the Corporation had so decided, it could have handed over the relevant documents to the Government Pleader. In any event, there is no explanation for the inaction on the part of the Corporation after 19.10.1994, when the Supreme Court restored the orders impleading the Corporation as party to these appeals.

9. Learned counsel for the claimants places reliance on the judgment of the Privy Council in AIR 1939 98 (Privy Council) . The Privy Council held that compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. It was observed that the compensation must not be increased by reason of any sentimental consideration but the vendor is to be treated as a vendor willing to sell at the market price. With regard to the potential value, the Court said;-

"There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is

what must be meant in general by the market value" in Section 23. But sometimes it happens that the land to be valued possesses some unusual, and it may be, unique features as regards its position, or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification u/s 4(1)), but also by reference to the uses to which it is reasonably capable of being put in the future."

Again the Court said that the possibility that a particular purchaser of land will give a higher price for it by reason of its possessing a special adaptability should not be disregarded merely because the land would be more valuable in his hands when he exploited that adaptability than it would be if left in the hands of the Vendor who was unable to exploit it. It is submitted by learned counsel that the Corporation is exploiting the land and making huge profits by digging out lignite and exploiting the same. It is therefore, contended that the said potentiality must also be taken note of while fixing the value of the lands.

10. Learned counsel invite our attention to the judgment of the Supreme Court in *Hitkarini Sabha, Jabalpur v. The Corporation of the City of Jabalpur and Ors.*, 1972 1 SCWR 969. The Court made a reference to the Judgment of the Privy Council in AIR 1939 98 (Privy Council) but did not lay down any proposition as such. The Court referred to the judgment of the High Court and observed that all the relevant factors had been taken into consideration by the High Court. That ruling is not of much use in the present case.

11. Our attention is drawn to the judgment of the Andhra Pradesh High Court in *The Rajah of Vizianagaram v. The Revenue Divisional Officer, Visakapatnam*, AIR 1954 And 12. The Division Bench said that if there is a reasonable prospect of the acquired land being used as a salt-pan, the income from a working salt-pan may be taken and after taking into consideration the enormous expenditure incurred for converting waste-land into a salt-pan, some reasonable rate may be fixed. The Court also observed that there is always an element of guess and it is for the Court to come to a reasonable conclusion on the facts adduced in each case.

12. Learned Counsel for the Corporation submits that this is not a case in which the Court should adopt the capitalisation method. According to him, number of comparable sale deeds in the locality are available and only in the absence of sale deeds Court should adopt the capitalisation method. Reliance is placed on the observation of Supreme Court in *Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others*, . Though in that case the Court adopted the capitalisation method and a multiplier of 12 for computing the market value, the

proposition of law was laid down that only in the absence of any definite material in the shape of sales of similar lands in the neighbourhood at or about the date of notification u/s 4(1) or otherwise, the Court has no other alternative but to fall back on the method of valuation by capitalisation.

13. The principles relating to valuation were considered elaborately and laid down by the Supreme Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, . The Court set out the various factors which have to be borne in mind while determining the market value of the land. The Court took care to say that the evaluation of these factors depends on the facts of each case and there cannot be hard and fast or rigid rules. The Court said that common sense is the best and most reliable guide and that every case must be dealt with on its own fact pattern bearing in mind all the factors referred by it as a prudent purchaser of land in which position the Judge must place himself. Ultimately, the Court said that those are the general guidelines to be applied with understanding informed with common sense.

14. The question was once again considered in *Koyappathodi M. Ayisha Umma Vs. State of Kerala*, . The Court said that there are three methods of valuation, (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of the purchase or sale of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. The Court then proceeded to say that those methods do not preclude the Court from taking any other special circumstances obtained in an appropriate case into consideration and as the object is always to arrive as near as possible an estimate of the market value in arriving at a reasonable correct market value, it may be necessary to take even two or all those matters into account in as much as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality; nor it is possible in all cases to have reliable material from which that valuation can be accurately determined. (*Italics ours*). Thus, the Supreme Court has categorically laid down that each case has to depend on the facts thereof.

15. In the present case, we have already pointed out that the method of comparison with the sale deeds of lands situated in the village will not be of any use as there is no acceptable evidence before the Court to show that there were comparable sales in the locality of similar lands during the relevant period. Hence, we take into account the method of capitalisation as well as the potential value of the lands. Taking into consideration all the facts and circumstances of the case and the fact that the claimants themselves prayed for only Rs. 30,000 for wet lands with both types of irrigation being available and Rs. 25,000 for irrigated dry lands and Rs. 20,000 for ordinary dry lands, we are of the view that in the present case, the value has to be fixed at Rs. 30,000 per acre for wet lands and Rs. 25,000 per acre for dry lands.

16. The Subordinate Judge has awarded compensation separately for the bore-

well and the pump-sets. The learned Government Pleader places reliance on the judgment of the Supreme Court in O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others, , wherein it has been held that there shall be no award of compensation separately for irrigation wells in agricultural lands as the compensation fixed for the lands is on an enhanced basis because of the irrigation wells. The relevant passage in the judgment reads thus:-

"Again when the agricultural land, the irrigation of which was possible from the water of the irrigation well, is acquired, the value of the land so acquired will have to be determined taking into consideration the irrigation facility it had from the well. In this situation, the irrigation well in an acquired agricultural land, cannot have a value apart from the value of the agricultural land itself."

Hence, the grant of separate compensation for the bore-well constructed by the claimants is not sustainable.

17. Consequently, there will be an award of compensation at the rate of Rs. 30,000 per acre for nanja lands and Rs. 25,000 per acre of dry lands. The claimants will be entitled to the consequential solatium at 30% and also interest as provided in Section 28 of the Land Acquisition Act.

18. The appeals are allowed partly to the extent indicated above. There will be no order as to costs.