

(1972) 05 KL CK 0006
In the High Court Of Kerala
Case No : A.S. No. 652 of 1971

State of Kerala

APPELLANT

Vs

A.R. Sulaiman Sait and Others

RESPONDENT

Date of Decision : 31-05-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1972 Ker 274

Hon'ble Judges : T.C. Raghavan, C.J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; K. Shahul Hameed and K.K. Mathew, for the Respondent

Judgement

Viswanatha Iyer, J.—This ap-peal is by the State against the decision of the Alleppey Sub Court in L. A. R. No. 54 of 1970. An area of 6 acres of land comprised in two survey numbers, 511/1-11 and 512/C3-2, situated in the Alleppey Village was acquired by the Government for the purpose of construction of South Police Quarters. Alleppey. Section 3 Notification was issued on 8-4-1969 and the State took possession on 15-7-1970. Pattadars, namely plaintiffs 1 to 10, who wore in actual possession of the land, claimed compensation at the rate of Rs. 1,200/- per cent. The Land Acquisition Officer awarded compensation at the rate of Rs. 940/- per cent for 38 cents adjoining the road and at the rate of Rs. 750/- per cent for the remaining area of 5 acres 62 cents. From the amount so fixed, a sum of Rs. 6,894.74 was deducted towards reclamation charges. The value of the land in actual occupation of the kudikidappukars, (23 in number) amounting to Rs. 20.460.58 was further deducted. The balance comes to Rs. 4,29,864.67. A sum of Rs. 7.108.95 towards timber value of trees in the property acquired was added to this figure. Thus, a total compensation of Rupees 4,36,973.62 was awarded to the plaintiffs towards land value and value of trees. The buildings were separately valued. Adding the value of the buildings and a solatium of 15%. a grand total of Rupees 5.02,519.60 was awarded to the plaintiffs. Dissatisfied with this award, the plaintiffs moved for a reference u/s 20

of the Land Acquisition Act. to the Sub Court, Alleppy. The Sub Court took the view that the valuation by the belt system was bad and had been deprecated by the High Court and hence fixed a uniform rate of Rs. 1,000/- per cent for the entire area claimed by the plaintiffs. The Court below also took the view that the value fixed for the trees was very inadequate and, accepting the Commissioner's report and evidence regarding the value of the trees, held that a further sum of Rs. 63,317/- was due to the plaintiffs. In conformity with these conclusions, a decree was passed. It is against this decree that the State has filed the appeal.

2. Three points were raised in the appeal by the learned Government Pleader. One was that when the land with trees was valued at a particular amount per cent, trees could not be separately valued on a capitalised basis and the value thereof included in the compensation. According to him, if the capitalised value of the trees was to be taken as the compensation, proportionate area for the space occupied by the trees should not be valued separately; or, in other words, when compensation for trees was awarded on a capitalised basis, the value for the space occupied by the trees should be deducted from the total compensation. His second contention was that the Court below was wrong in taking the view that the valuation by belts could not be adopted in fixing the market value of a large area in an urban locality. His further contention was that the award of compensation at the rate of Rs. 1,000/- per cent for the entire area acquired was very excessive.

3. Coming to the first point, the contention of the State, namely, that when the entire area was valued on a centage basis as vacant land, valuation of trees separately on a capitalised basis without deducting the value of the space occupied by such trees should not be made, seems to be correct. This question, came up for decision before this Court in the case reported in *State of Kerala Vs. Mariamma Abraham and Another*, . At page 271 it has been held that:

"In such cases, when the land has been fully planted to the best advantage from the point of view of income, capitalisation of the net annual income derived from the trees might be a safe mode of arriving at the market-value. But this method must fail where, as in the present case, the plantations are scattered here and there and the bulk of the land is bare land. In such cases, where the improvements yield an income, a fair way of assessing the value of the improved land would be to deduct from the total area the area necessary for or occupied by the improvements since that area would not be available for any other purpose, and value the balance as bare land, and add to that the capitalised value of the income derived from the improvements. However, even non-yielding improvements (unless they are worthless and cannot really be regarded as improvements) would add to the market-value of bare land, and, in the case of such improvements, their present cost less depreciation might be a proper addition. And, where the improvements consist of non-yielding trees, their fuel or timber value must, it is apparent, be added to the value of the land as bare land without any deduction made for standing space. For, if the trees are felled

and sold, the entire area without any deduction in area would be available for sale as bare land. Of course, the minimum would be the value of the entire land as bare land, plus the fuel or timber value of the trees whether yielding or non-yielding standing on it, and the deductions made on account of standing space for yielding trees should not have the result of reducing the land value below this minimum. (If no deduction is to be made on account of standing space, even yielding trees can be valued only on the basis of what they would fetch if cut and removed thus releasing the land occupied by them, and we are unable to appreciate the logic behind the claim of the plain-tiffs before the Collector and in the Court below that they should be allowed a fourth of the capitalised value of the income of the yielding trees in addition to the value of the entire land as bare land with no deduction made on account of the land occupied by the trees although that seems to have been allowed in one or two Travancore cases in the special circumstances of the case. Before us the claim has been that that should be allowed if it is more advantageous to the plaintiffs, but. on the land values we are awarding that would not be more advantageous)."

4. In the light of this principle, the procedure adopted by the Court below in awarding compensation for the trees on a capitalised basis without deducting the value of the area occupied by the trees cannot be sustained. The respondents are not for giving up the value of the land occupied by the trees the value of which have been capitalised. Naturally, they cannot be compelled to do so because, in this case, the value of the land on the basis of centage will be higher than the value which the land will fetch if the value is fixed on the principle of capitalised value of income from the trees. Therefore, the only correct method to award the compensation will be to determine the true market value on the basis of centage and the timber value of the trees, whether yielding or non-yielding, standing on it. added to the value so fixed. This principle was adopted by the Land Acquisition Officer and we hold that that principle alone can be adopted in fixing the value in this case. The decree directing payment of compensation at the capitalised value of the trees requires variation in this regard.

5. The second Question that has been urged by the learned Government Pleader is that the view taken by the Court below that valuation by belt system should not be adopted in fixing the value for the land acquired is incorrect. It is true that in some cases this Court had taken the view that valuation by belts is not a correct method. In *Ananthan Pilial v. State of Kerala*. 1961 KLT 723 it was held following an earlier decision of the T. C. High Court in *Kunju- krishna v. State* AIR 1953 Trav Co 177 thus:

"The arbitrary manner in which property is divided into parts for the purpose of valuation causes prejudice to the owner of the property. Such a method of valuation in land acquisition cases, which is technically known as valuation by belts by artificially dividing the property into belts or plots, is generally discouraged for the obvious reason that it involves a considerable extent of arbitrariness. Even while attempting to fix the value of the property for the

purpose of awarding compensation on the basis of the evidence disclosing the price at which other properties in the neighbourhood possessing similar advantages were sold at about the time, of the acquisition, a certain degree of arbitrariness is inevitable. But care has to be taken to keep the scope of such arbitrariness in the matter of fixing the value of the property to the lowest level possible. That is the reason why the method of valuation by belts, which is bound to be arbitrary and artificial is generally condemned and discouraged".

But this view can no longer be said to be correct in the light of the recent decision of the Supreme Court reported in Mathura Prasad Rajgharia and Others Vs. State of West Bengal, . Their Lordships have held in that case that:

"Where, a large area of land in an urban locality is sought to be acquired in determining the market value, the "method of belting" is appropriate. It is common knowledge that lands having frontage on the main roads in urban areas are always more attractive than the lands which have no such frontage".

6. The lie and nature of the land in this case are mentioned in the plan and mahazar prepared by the Land Acquisition Officer. Ex. DI group sketch also shows its situation. The property is comprised in two survey numbers. S. No, 512/C3-2 touches the main road and has an area of 68 cents. South of that, there is a puramboke thodu comprised in S. No 511/3. It is to the south of this thodu that the other survey number. 511/1-11, having an area of 5 acres 32 cents is situate. So it is not correct to say that the acquired land lies as a single block. In between the two survey numbers acquired, there is a puramboke thodu belonging to the State. Further, S. No. 512/C3-2 is a small plot with a small road frontage. The other survey number lying south of the thodu is a big and more or less a rectangular plot. The major buildings are situate on the northern survey number. In the southern survey number, 25 kudikidappu-kars reside and there are thirteen tanks to be reclaimed. So the northern survey number acquired can be said to be a better, plot separately situated from the southern survey number and the value to be given for the northern plot cannot be given to the southern plot. Thus, the lie and the nature of the land acquired in this case amply justify the valuation by the belt system.

7. The further question is: what is the value to which the plaintiffs are entitled for the land acquired? The Land Acquisition Officer relied on Ex. PI, a sale deed for a plot of land measuring 71/2 cents and lying just at Zacharia Bazaar junction. Alleppey. for fixing the value of the portion of the required plot adjoining the road. The sale deed was dated 27-11-1967 and it was for a sum of Rs. 7,707/- which works out at Rupees 1,036/- per cent. The acquired property lies about two furlongs away from this junction towards the west and the area is fairly large. It is well known that small plots fetch higher value per cent than large plots, so that the value fixed for Ex, PI property cannot be taken to fix the value of the entire property acquired in this case. So, considering the distance between these properties and their location, the Land Acquisition Officer fixed Rs. 940/- per cent for the northern 38 cents of the acquired property. The lower

Court thought that on the basis of Ex. PI and considering all the other factors into account Rs. 1,000/-per cent can be fixed as the rate for the acquired property. Since the property acquired lies in two plots, northern and southern, separated by a puramboke thode, the value of the northern plot lying adjacent to the road alone can be fixed at the rate of Rs. 1,000/- per cent, taking into consideration the value fixed for Ex. PI. The lower Court has made a differentiation between the northernmost 38 cents and the next 30 cents in the northern plot. There is no justification for this differential treatment. This rate of Rs. 1,000/- per cent can be given to the entire property comprised in S. No. 512/C3-2 lying north of the puramboke thodu and south of the main road.

8. But this cannot form the basis of the value for the southern plot. The Court below and the Land Acquisition Officer have taken into account a sale deed, Ex. P5. _dated 9-11-1967 for a plot of 171/2 cents with buildings situate nearly two furlongs south of the acquired land for fixing the value of the southern plot. That sale deed was for Rs. 20,000/-. According to the Land Acquisition Officer, deducting the value of the building standing thereon at the time of the sale deed, the land value for the Property comprised in Ex. P5 would be Rs, 747/- per cent. But the lower Court was of the view that "the building that existed on Ex. P5 date could have a value of only Rs. 2.500 and therefore the land value of Ex. P5 property would work out at Rs, 1,000/-per cent on that date and therefore fixed that rate for the acquired property as well. According to us. Ex. P5 cannot form the basis of valuation of the southern property, Ex. P5 property is only 71/2 cents, whereas the .southern plot, namely S. No, 511/1-11. is a large area of 5 acres 32 cents. Ex. P5 properly has a road or lane on thr east, whereas the acquired property has no such facility. Small plots may easily he sold out, but that is not the ease of large areas. Purchasers are not easily available for the latter. Go, the value of large areas will always be less. Even if the value of the property comprised in Ex. P5 would have been Rs. 1,000/- per cent on the date of sale, that cannot form the basis for fixing the value of S. No. 511/1-11 comprised in the acquired area.

9. But the acquired property i.s near the main road. Very important offices, hospital and schools are verv here the property. The properly fetches a good income. It can be used for building houses and the acquisition is for the construction of police quarters. We have in an earlier paragraph fixed 1he value of the northern plot at Rs. 1,000/- per cent Considering all the factors mentioned above, we hold that Rs. 800/- per cent will be a reasonable compensation for the plot comprised in S. No. 51 1/1-11 Iying south of the thodu.

10. Therefore, the trial Court decree requires substantial modification. The area acquired is 6 acres. The olain-tiffs are entitled to get compensation for 5 acres 72.72 cents of land only. The compensation for the remaining 27.28 cents should go to the kudikidappukars; and they have not claimed anv enhancement. Out of this 5 acres 72.72 cents. 68 cents comprised in S, No. 512/C3-2 should be valued at Rs. 1,000/- per cent and the remaining 5 acres and 4,72 cents should

be valued at Rs. 800/- per cent; and to the amount so arrived at a sum of Rs. 7.108.05 should be added being the timber value fixed by the Land Acquisition Officer for the trees. As the entire plot in its existing condition is acquired. no deduction need be made for reclamation charges. The aggregate amount with 15% solatium thereon will carry interest at 4% per annum from the date of dispossession namely 15-7-1970. The valuation of trees on a capitalised basis made by the Court below is disallowed. The award passed by the lower Court is modified as above, in other respects. the lower Court decision is confirmed. The parties shall bear their costs in this Court.