

(1987) 01 KL CK 0043
In the High Court Of Kerala
Case No : L. A. A. No. 247 of 1980

State of Kerala

APPELLANT

Vs

Mrs. Lucy Koehuvareed and Another

RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 11, 20, 23, 24, 3(1)

Citation : (1987) KLJ 224

Hon'ble Judges : U. L. Bhat, J;Chetur Sankaran Nair, J

Bench : Division Bench

Advocate : George Mathew Kalappurackal A.A.G. For State, for the Appellant;
T.M. Chandran and P. Divakaran Achean, for the Respondent

Judgement

Bhat, J:

1. The State of Kerala being aggrieved by the enhancement in compensation awarded by the Land Acquisition Court Trichur in L A R. No. 136/74, has filed this appeal. The claimants have preferred cross-objection.. 937.91 37/40 acres (379.5615 hectares) of land in various survey numbers in Vellayanikkara and Madakkatbara villages were acquired by the State for the purpose of Kerala Agricultural University, the dates of publication of notification u/s 3 (1) of the Kerala Land Acquisition Act (for short "the Act") being 14-7-1970 and 2U7-1970 Possession was taken on 1- 5-1973. The land belonged to A party. It was in the possession of B party as lessee, The Land Acquisition Officer in his Award fixed compensation payable to A party at Rs. 19,16,385 08 and payable to B party at Rs 9,58,192.54. At the instance of the claimants reference was made to the Land Acquisition Court u/s 20 of the Act. The claimants contended that valuation made by the Land Acquisition Officer was too low.

2. Out of the land acquired, 794.09 41/80 acres consisted of yielding rubber plantation with 83551 rubber trees. The remaining extent of 143.82 33/80 acres contained 21152 immature plants, said to have been planted in the year 1965-66. The claimants put forward a claim that the land should be valued at Rs.

9.500/- per acre. According to them, yielding rubber trees would be worth Rs 30/-per tree and the immature plants would be worth Rs 15/- per plant. The Land Acquisition Officer assessed the value of the yielding plantation on capitalisation basis. To assessing the market value of the yielding plantation be estimated the yield to be 190kgs-per acre [as against the claim of 250 kg per acre] the expenses as Rs. 620/-per acre [as against the claim of Rs. 550/- per acre], the price of lubber as Rs 4 75 per kg. [as against the claim of Rs. 5 25 per kg.] and the multiplier as 8 times [as against the claim of 30 times]. He valued the immature rubber plants at Rs 3/- per tree as against the claim of Rs. 15/- per tree.

3. The Land Acquisition Court fixed the yield as 190 kgs. per acre [that was agreed to by both the parties], the price as 5.20 per kg., expenses as Rs 550/- per acre and multiplier as 12 times. The value of the immature plants was fixed at Rs 10/- per plant. The court fixed net income at Rs 438/- per acre for the yielding plantation. Consequently, compensation for the yielding plantation was fixed at Rs. 41,73,737 04 and the value of the immaiure plants was fixed at Rs 3 55,344.12. The valuation of other improvements was fixed at Rs. 4,34,850,41. The total value fixed was Rs. 4963.953 57. Deducting the amount due to the Government, the balance payable was determined as Rs. 49,52,289.18. The court also awarded 15% as solatium. It was found that the sum of Rs. 331/- was additionally due from the claimants and deducting the same, the balance compensation amount including solatium was fixed Rs 56,94,801.50. A sum of Rs. 28,74 577.62 had already been paid. The balance due as enhanced compensation was fixed at Rs. 28,20,223 88, out of which A party was entitled to get Rs. 18.80J49 25 and the B party Rs. 9,40,074.63. Interest was awarded at 4% per annum from the date of taking possession. Both the parties Mere directed to bear their costs.

4. The learned Additional Advocate General who argued for the appellant confined his arguments to the following heads:

- a) Price of the rubber adopted
- b) Expenses assessed
- c) Multiplier to be adopted for capitalisation
- d) Value of immature rubber plants.

According to the claimants the court below under-estimated the price of rubber and the multiplier. These aspects are covered by the points already mentioned.

5. It is said that the statutory Rubber Board issues periodical notifications regarding price of rubber. But there is no dispute that the price thus published is only the floor price at which the various official agencies would be prepared to buy rubber, in case the growers would need such outlet. This is evidently to protect the growers in case of fall in price in the open market. According to the State, for the relevant period in 1970 the notified price was Rs. 4.75. Therefore

according to the learned Additional Advocate General, the court below should have adopted this as the price and not Rs. 5 20 Unfortunately the notification was not placed before the court below and no officer of the Board who could speak about it was also examined. As we have indicated, even the notified price would only be the floor price and need not indicate the market price.

6. The claimants produced their account books and the bills for sale of rubber during the year 1969-70. The account books are Exts A8 to A15 and the bills are Ext A6 series and A7 series. The floor price obtained by the claimants during the period would work out at Rs 5-24 The court below fixed the price at Rs 5 20. leaving out balance for marginal differences. The finding is seriously challenged by both sides. The lower court noticed that the price control of rubber was lifted with effect from 16-12-1963. Both sides agreed that from about 1967 the prices have been showing upward trend. The price fixed by the court below was on the basis of price obtained by claimants for the year 1969-70 The court below did not take into consideration the fact that during the previous years price would have been less It is not the price on the data of notification or even the year of notification alone which is relevant in fixing the average price-The price of rubber, as is well known, is dependent on several factors The fluctuations in market are inevitable in regard to a commodity, which is said to be scarce to some extent. Import of rubber leads to fall in price Ban on import leads to upward trend in price. The court below did not advert to or bear in mind any of the important circumstances in fixing the price Considering the fact that during the year 1969-70 the average price obtained by the claimants was Rs 5. 24, the fact that for some years previously the price showed upward trend, the tendency for fluctuation in price dependent on various facts, we are of the opinion that average price should have been only Rs 5/-per kg and not Rs 520 per kg. The amount of compensation would be reduced on this basis

7. We are supported in this conclusion by very significant circumstances emerging from the evidence. For the yielding plantation, the price adopted and compensation awarded by the Land Acquisition Officer would work out at Rs 2355/-- per acre. The compensation awarded by the court below works out at Rs 5257/- per acre. In 1967 A party sold 161 acres of yielding plantation to a third party for Rs 6,68,955/-That works out at Rs 4100/-per acre. Even at that time B party was in possession as lessee. The rent payable under the lease deed was Rs 75,000/- per annum, i.e., for 951.41/80 acres of plantation. The area sold was roughly 1/6th of the total area. Therefore on sale the rent payable by the lessee also should have been reduced by about 1/6th. The rent was actually reduced to Rs 43000/-per year. The reduction was Rs 32,000/- which is nearly 40% of the earlier rent. This would show that the portion sold in 1967 was more valuable than the portion retained. This would also indicate even considering the fact that three years had passed after the sale by the time the land acquisition notification was issued that the price fixed by the court below was excessive. One of the factors, which resulted in excessive valuation was the excessive price adopted by the court below. The compensation can be awarded only on the basis that the

market value of the rubber was Rs 5/-per kg.

8 As against the finding of the Land Acquisition Officer that the expense for cultivation per acre was Rs. 620/- the court below accepted the figure Rs. 550/- per acre provided by the claimant. According to the Land Acquisition Officer tapping charges would be Rs- 300/- cultivation and up keep expenses Rs, 80/- processing charge Rs. 40/- spraying charge Rs, 100/- and supervision charge Rs. 100/- the total being Rs. 620/- The accounts of the claimants would show that tapping charges for three years was Rs. 178/- Rs. 210/- and Rs. 252/- and the spraying charge was Rs. 65.12. The genuineness and correctness of the accounts were not challenged. It was considering these accounts that the court below fixed the expense at Rs. 550/-- per acre, We are of the opinion that the figure fixed by the court below is more or less correct.

9. The next serious issue between the parties relates to the multiplier to be adopted for capitalisation. No party has a contention before us that the capitalisation method should not have been followed. Therefore we do not propose to go behind the method adopted by the court below. The Land Acquisition Officer adopted $8\frac{1}{3}$ as multiplier while the claimants put forward claim of 30 as multiplier. The court accepted 12 as the multiplier. It is brought to our notice that this court during the last several years adopted various multipliers in regard to acquisition of land during various years. In the decision in *Punantchand v. Special Thasildar* [1971 KLT 683] in regard to 1968 acquisition 13 was accepted as the multiplier. In *State of Kerala v. Madhu alias Madhavt Amma* H974 KLT 143) relating to 1963 acquisition 16 was accepted as multiplier, for paddy land and 12 for dry land with building. In 1974 KLT sh. N 26 (*State of Kerala v. Joseph*) 16 was accepted as the multiplier. In *State of Kerala v. Chacko* (1977 KLT 850) the court did not interfere with the multiplier adopted as 16 by the court below. In *State of Kerala v. Geevarghese Kathannr* [1980 K.LT 880] in regard to 1965 acquisition the court adopted 16 as the multiplier In *Spl, Dy. Collector v. Orit Tinman & others* (I.L.R. 1976 (I) Kerala 242) for dry land with tapioca crops the court adopted 16 as the multiplier. In several unreported decisions 12 has been adopted as the multiplier.

10. Our attention has been invited to the decision in *Union of India v. Shanti Devi etc.* (AIR 1981 S. C 1190) where 15 was adopted as the multiplier for 1962-63 acquisition In *Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others*, for agricultural land acquired in 1971-72 the court held that multiplier should not exceed 10 but since the government conceded 12 $\frac{1}{2}$ times as the multiplier that was not interfered with.

11. Section 11 of the Act requires the Collector to determine the compensation which in his opinion should be allowed for the land. Section 23 prescribes matters to be considered in determining compensation and Section 24 prescribes matters to be neglected in determining compensation. According to section 23 what is to be taken (sic) consideration is the market value of the land at "the date of publication of the notification u/s 3(1) of the Act, The expression "market

value" has not been defined anywhere in the Act, Therefore the expression "market value" could only be understood in its general Sense, that is, what a willing purchaser would have been prepared to pay for the land in question at the relevant date. The methods of valuation may be;

a) Opinion of experts

b) Prices paid within a reasonable time in bona fide transaction of purchase or Sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages

c) A number of years' purchase of the actual or immediately prospective profits of the lands acquired.

Normally if there is evidence of comparable sales or other evidence for computation of market value capitalisation method should not be adopted. In the present case there is no possibility of adopting methods (a) or (b) and parties are agreed that method (c) alone could have been adopted. In adopting the capitalisation method, there is no rule as to the number of years' purchase, it depends upon economic factors such as prevailing rate of interest in money investments, security of the income, fluctuation, chances of increase, cost of collection, rate of return which could be reasonably expected and other relevant factors. The rate of capitalisation (sic)

percentage of return on investment that an investor would expect during the relevant period. At one time it was thought that the relevant rate of interest that should be taken into consideration was the interest which gilt-edged securities or government bonds would normally fetch. Safety and liquidity of such investment were accepted as twin factors to take the view that interest on gilt-edged securities alone should be taken into consideration. But that view prevailed at a time when there were few other avenues of safe investments and investment in commercial institutions was not regarded as quite reliable or safe. This position has changed over years, particularly after the State Banks became popular and nationalisation of leading banks. It is now accepted that deposits in such institutions are quite safe the present trend is to invest money in the share market with the possibility of the benefit of higher return exemption from income tax. issue of bonus shares. appreciation of the value of shares etc. Currently return of 10% per annum on such safe investments is almost a certainty. At the present time no person would think of investing on land which would yield a net income of just 5% or 6% or 7%.

12. The relevant period in this case is 1970. We will have to take into consideration the circumstances prevailing at that period. What is the relevant is to find out the prevailing rate of interest on deposits in banks or public or private sectors, as the Supreme Court pointed out in Veerahadarappa's case. In the above decision it has been further observed that there are general considerations which investors take into account such as yield, appreciation, possibility, marketability and safety. The investment would differ with respect to assurance

of income and safety of principal. The quality of investment is evidenced by the yield or return that is produced in relation to market price, higher the quality lower the yield . Various types of risks associated with investment also should be taken into account.

13. In Veerabhadarappa's case the court further observed as follows:

As already slated, some 20 to 30 years back i.e. till the early '50 it was taken as a settled rule of practice, that the capitalized value of agricultural land should be arrived at 20 years "purchase having regard to the rate of interest on gilt-edged securities at five per cent. That rule no longer can be adhered to in view of the changed economic situation. In the early '70s people believed that investment in (sic) was more secure than other forms of Government securities in respect of safety of investment. Investment in housing involves certainty of labour and effort such as maintenance, collocation of rent, payment of taxes at cetera. That rate of return expected therefore was 11/2% to 21/2% more than what was expected from gilt-edged securities. A person investing his capital in agricultural lands would ordinarily expect a return of 2% to 3% more than what he could obtain from gilt-edged securities or other forms of safe investment such as fixed deposits in scheduled banks. National Savings Certificates, Unit Trusts et cetera or on blue chips i.e. on stocks and shares in the public or private sector which yield a much greater return.

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 consists 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 principal or income is also uncertain. The reasons for these is that agricultural lands are not readily transferable under the various land reform 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 in investor in such a property, the risk factor has further to be evaluated. There may be total or partial failure of 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 of inputs such as seeds, water, fertiliser, labour charges etc. would vary from year to year. If the overall cost goes up, the income from agricultural produce would be comparatively less. The fluctuations in price of agricultural produce introduce 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 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.

14. Learned counsel for the claimants contended that these observations would not apply to rubber plantation. According to him, rubber plantation is not agricultural property. He referred in this connection to the fact that income of rubber plantation is roped in to an extent from the income tax Act and rubber plantations are exempted under the ceiling] provisions of the Kerala Land Reforms Act. Basically there is no difference between cultivation of rubber and agricultural operation. Cultivation of rubber also involves preparation of land for planting, process of planting, nurturing and the like. It is true that the ceiling provisions of the Kerala Land Reforms Act would not apply to the rubber plantation. But that may be because of the particular situation, political and otherwise, obtaining in this State. There is no guarantee that ceiling provisions will not be rendered applicable to rubber plantation in future. We have already referred to the fact that the price of rubber depends on so many imponderables. The risk element in investment in rubber is also very much present. In computing the expenses, the Land Acquisition Court reckoned expenses of spraying pesticides obviously because rubber trees are susceptible to damage by pests. Seasonal factors do not leave rubber plantations unaffected. Therefore we are of the opinion that a person investing in rubber plantation, conscious of the various imponderables in the matter of return would expect a higher return than in the case of investment in nationalised banks. National Saving Certificates or the like.

15. According to the learned counsel for the claimants, rate of interest on deposits in banks in 1970 was 7%, A prudent investor in rubber plantation would not be satisfied with such a return. The reasonable return that such a person would expect would be 8 to 9%. We are therefore of the opinion that multiplier to be adopted in the present case would be 12 times. That was what was adopted by the Land Acquisition Court. We are not persuaded to interfere with the same.

16. The next dispute relates to valuation of the immature rubber plants. The Land Acquisition Officer allowed at the rate of Rs 3/-per tree which the court below enhanced to Rs 10/- per tree. The learned counsel for the appellant would submit that rate adopted by the officer was excessive. Learned counsel for the claimants would contend that claim of Rs 15/-per tree should have been allowed. It is pointed out that the first claimant has sold 4. 25 acres containing of immature rubber plants at Rs 1405/- per acre. Since the extent sold was comparatively small, this cannot provide any basis for estimating the value. Even in Ext R2 note non-yielding trees were valued at Rs 10/- per tree on a rough and ready basis We are of the opinion that the estimate made by the court below at Rs 10/- is reasonable and does not call for interference.

17. The claimants have now put forward a claim on the provisions of the Land Acquisition Amendment Act. 1984. This court has consistently taken the view that the provisions are applicable, see two cases Mohammed Sheriff v. State of Kerala [1986 KLT 57] and Hindustan O C. Lid v. Damodaran; Namboodiripad [1986 KLT 1013]. The claimants are entitled to get solatium at 30% instead of

15%. They are also entitled to interest on the market values awarded at 12% per annum from the date of publication of the notification u/s 3 (1) of the Act till the date of taking possession of the land, that is, 1-5-1973. In addition, they are also entitled to interest at 9% per annum on the excess amount as determined by the Land Acquisition court and modified by this court from the date of taking possession of the land for a period of one year and thereafter at 15% per annum till payment of the excess amount. In the result, we modify the award of the Land Acquisition Court as follows;

(i) Market value of 794.09 41/80 acres of yielding rubber plantation will be calculated on the basis laid down by the Land Acquisition Court subject to one difference, namely, price of rubber to be adopted will be only Rs 5/- per kg. instead of Rs 5.20 per kg.

(ii) Claimants are entitled to solatium at 30% instead of 15% awarded by Land Acquisition Court.

(iii) Claimants are entitled to interest on the total market value awarded at 12% per annum from 21. 7. 1970 till 1. 5. 1973.

(iv) Claimants are also entitled to interest on the enhanced amount from 1.5.1973 at 9% per annum for a period of one year and thereafter at 15% per annum till the excess amount determined is paid.

(v) In other respects, award of the Land Acquisition Court is not interfered with.

The appeal and the cross-objection are thus disposed of. Parties are directed to bear their costs in the appeal.