

(2015) 04 KAR CK 0025

In the Karnataka High Court

Case No : MFA No. 2050/2006 (LAC) and MFA Crob. No. 206/2007

The Chief Engineer (Civil Kali) Karnataka Power Corporation
and Others

APPELLANT

Vs

Gopalkrishna Shivaram Gaonkar and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17(1), 4(1), 6(1)

Citation : (2015) 04 KAR CK 0025

Hon'ble Judges : N. Kumar and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : Veena Hegde, Adv. for Rao Associates, for the Appellant; Anant Hegde, Advocate for Hegde, Neeralgi and Patil, for the Respondent

Judgement

N. Kumar, J.—This appeal is preferred by the beneficiary challenging the award of Reference Court insofar as the number of arecanut trees and coconut trees that are taken into consideration by Reference Court as well as the award of compensation in respect of two crops of paddy. Cross-objection is preferred by the claimant challenging the rate awarded in respect of both arecanut and coconut.

2. The subject matter of this appeal is land bearing Sy. No. 38/2 measuring 4 acres 27 guntas, situated at Beerhol village in Joida Taluk of Uttara Kannada District. Government of Karnataka required an area of 22 acres 16 guntas and 8 annas of malki land of Beerhol T-2 village for the establishment of Kalinadi Hydro Electric Project. A preliminary notification under Section 4(1) read with Section 17(1) of the Land Acquisition Act (for short hereinafter referred to as "Act") that came to be issued on 13.05.1993. A declaration under Section 6(1) of the Act was also made on 27.06.1994. After holding an inquiry an award came to be passed under Section 11 of the Act on *16.1.1996/19.10.1995. In the said award Land Acquisition Officer had awarded a sum of Rs. 71,090/- towards value of the land Rs. 4,64,248/- in respect of the value of structure, Rs. 526/- towards

value of Jungle trees and Rs. 13,85,196/- towards value of fruit yielding trees and in all Rs. 19,21,060/- with other statutory benefits.

3. Aggrieved by the said award, claimant sought for reference to Civil Court, on such reference being made, Reference Court has awarded a sum of Rs. 16,77,560/- towards the value of arecanut. Calculating the same at the rate of Rs. 34/- per kg. by taking the yield at 4 kg. per tree and taking the total number of arecanut trees as 2467 and confirmed the value of structure and had also awarded a sum of Rs. 4,54,000/- being the value of coconut trees by taking into consideration the number of coconut trees at 227 and price at the rate of Rs. 4/- per coconut and yield at 100 coconut per tree per year. In so far as Jungle trees, it was enhanced to Rs. 31,000/- and affirmed the finding of the Land Acquisition Officer in so far as award towards structure is concerned.

4. Aggrieved by the award passed by Reference Court both the claimant and the beneficiary are in appeal before this Court.

5. Learned counsel for the appellant assailing the impugned award of the reference Court contends that Reference Court committed a serious illegality in taking into consideration 2467 arecanut trees. Further, it ought to have taken multiplier 8 as against 10, when both arecanut trees and coconut trees are grown in one land, there would be no scope for cultivation of paddy or sugarcane in the said land and award of compensation under the aforesaid heads are patently illegal.

6. Per contra, learned counsel appearing for the cross-objector/claimant submits that Reference Court relied on the judgment in MFA No. 1084/2001 in fixing the rate of arecanut as Rs. 34/- per Kg. and said judgment pertains to a notification of the year 1991 whereas the present notification is dated 13.05.1993. According to him as per Ex. P.2 which is the price list issued by APMC for various years proceeding 1993 the price of arecanut in the year 1993-94 ought to be taken as Rs. 52/- as the Hon'ble Supreme Court in SLP No. 9712/2010 has affirmed the judgment of this Court in Miscellaneous First Appeal No. 11437/2006 and other connected matters where Rs. 51/- is taken as the price per kg. of arecanut in respect of notification of the year 1991 and therefore he contends that present claim being relating to the notification of the year 1993 Rs. 53/- per kg. is the market price for the arecanut as per Ex. P-2 and Rs. 4.50 paise is the value per coconut during the relevant period and therefore contends that claimant is entitled to enhancement at Rs. 00.50 paise per coconut. He fairly concede if the claim of claimant is upheld on these two issues i.e., rate of arecanut and coconut he would give up his claim in respect of compensation awarded towards paddy and sugarcane. In the light of the aforesaid fact and rival contentions, point that would arise for our consideration in this appeal and Cross-objection is as under:

a) Whether the reference Court was justified in taking the number of arecanut trees as 2467 in respect of Sy. No. 38/2?

b) Whether the claimants are entitled to payment of Rs. 52/- per kg. of arecanut?

c) Whether the claimant is entitled for payment of Rs. 4.50 per coconut?

d) What is the correct multiplier to be adopted? Is it 8 or 10?

7. The claimant in support of his contention that there are 2467 trees in Sy. No. 38/2, relies on Ex. P-11 which is the Statement of evaluation of Horticultural trees at village. In respect of Sy. No. 38/2, it shows that there are 1371 tree are 20 years old, 495 trees are 15 years old, 601 trees are of 4 years old in all 2467 trees. Total number of coconut trees shown are 227.

8. However this Court while hearing this matter earlier doubted the correctness of this joint survey report, as it is unthinkable that in one acre of land, 2467 trees were planted. Hence, Deputy Director of Karnataka, Horticultural Department, Karwar was directed to submit a report with regard to maximum number of arecanut trees that can be planted in one acre and maximum number of coconut trees that can be planted in one acre of land. Accordingly, report came to be submitted to this Court on 04.10.2010, which is available in the record. According to the said report, the maximum number of arecanut trees that can be planted per acre as per recommended packing of practice of UAS, Dharwad as 514 arecanut trees. It is also opined in the said report that there is a possibility of maximum number of areca plants in traditional system of planting in old areca garden in the Malnad region would be 600-1400 trees.

9. From the aforesaid report it is clear, in Malnad region in traditional system of planting it is possible to plant upto 1400 trees in an acre. But according to recommended packing of practice of UAS, Dharwad it is 540 trees per acre. But the fact remains if more than the minimum number of trees are planted in an acre, the yield from such arecanut trees would be lesser than the normal yield. In which event the compensation cannot be awarded on the basis of the calculation found at Exhibit P-4 which deals with normal yield. In these circumstances, we are of the view, in the light of these undisputed facts if we have to take the yield per tree as 4 kgs. we cannot adopt the number of trees mentioned in Exs. P-11 nor in the report submitted in pursuance of the direction issued by this Court. May be 540 trees as per the recommendation of UAS also would be on the lower side and 1,200 trees per acre is also on higher side. In our view, justice in the case would be met by taking 600 trees per acre and yield at 4 kg. per tree.

10. In that view of the matter, finding of the reference Court that there are 2467 trees in Sy. No. 38/2 cannot be sustained. We hold that number of trees that can be taken into consideration for the purpose of award of compensation is 600 per acre.

11. In so far as the value per kg. of arecanut is concerned, Reference court has relied on the judgment of this Court in MFA No. 1084/2001 where it was taken as Rs. 34 per kg. i.e., acquisition in respect of notification issued in the year 1991. Infact, in respect of the very same notification in an appeal preferred against the order of yet another appeal in MFA No. 11437/2006, whereunder this Court has

awarded Rs. 51/- per kg., was challenged by the very same beneficiary before the Hon'ble Apex Court in SLP No. 9712/2010 which came to be dismissed on 19.04.2010. In addition to that, we have Ex. P-2, the undisputed document i.e., price list issued by the Agricultural Produce Marketing Committee of Yellapur which gives the value per kg. from 1984-85 to 1995-96 of various types of arecanut. A perusal of the said price list shows that average value of arecanut was between Rs. 3000-8000 during the period from 1993-94. The present proceedings, is the result of acquisition made on 13.05.1994 i.e., two years after the judgment in the aforesaid case. Thus taking into consideration the aforesaid judgment of this Court and Hon'ble Apex Court and Ex. P-2, we are of the view, that market value per kg. of arecanut would be Rs. 52/- and that would meet the ends of justice.

12. Insofar as, coconut is concerned Reference Court has taken number of coconut trees at 227 in Sy. No. 38/2. Appellant does not dispute the existence of 166 trees in Sy. No. 38/2. The dispute is only regarding 61 coconut trees. Infact, learned counsel for the cross-objector submitted, if Rs. 4.50 is given as price per coconut, he would not press his claim in respect of the said 61 coconut trees which is the subject matter of the appeal. In support of his contention that Rs. 4.50 is correct valuation of coconut, he relies on Ex. P-2. The said undisputed document is not taken into consideration by the Reference Court while fixing the rate at Rs. 4/- per coconut. In that view of the matter, we hold that the claimant is entitled to 166 coconut trees in Sy. No. 38/2. However, claimant would be entitled to Rs. 4.50 per coconut, to that extent we modify the award of the reference Court.

13. Insofar as multiplier is concerned the learned counsel for the appellant submits that correct multiplier is 8 and not 10 as done by the reference Court. In support of her contention she relies on the judgment of the Apex Court in the case of State of Haryana Vs. Gurcharan Singh and another etc., , where the Hon'ble Supreme Court has held that under no circumstances, multiplier should be more than 8 years. Multiplier as it is settled by this Court in catena of decisions, when market value is determined on the basis of yield from the trees or plantation, 8 years multiplier shall be appropriate multiplier. However, the learned counsel for the respondent relies on the judgment of the Apex Court in the case of Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. Sri S.T. Pompanna Setty, wherein after relying on three judgments of Hon'ble Apex Court in the cases of:

- (i) State of Gujarat Vs. Rama Rana reported in (1987) 2 SCC 693.
- (ii) Special Land Acquisition Officer Vs. Virupax Shankar Nadagouda, .
- (iii) Krishi Utpadan Mandi Samiti Vs. Malik Sartaj Wali Khan and another reported in (2001) 10 SCC 660.

it has been held that multiplier to be applied would be 10. At paragraph 15 of Pompanna Setty's case it has been held as under:

"From the above cases, it is clear that normally in the cases where compensation is awarded on yield basis, multiplier of 10 is considered proper and appropriate. In the case on hand, multiplier of 15 has been applied which on a higher side. To that extent, therefore, the submission of the learned counsel for the appellant is well founded and deserves to be accepted."

14. Thus, it is clear that normally in case where compensation is awarded on yield basis, multiplier of 10 is considered to be proper and appropriate multiplier. In the case on hand, multiplier of 10 has been applied which is well founded and deserves to be accepted. Therefore, multiplier of 10 is considered to be appropriate and proper multiplier in respect of compensation award on yield basis. In that view of the matter the reference Court committed no illegality in adopting 10 multiplier in awarding compensation.

15. In the light of what is stated above, award of the reference Court stands modified as under:

(i) In respect of Sy. No. 38/2 the number of trees for which the compensation is to be paid is taken at 600 per acre in respect of Sy. No. 38/2.

(ii) The price of the arecanut is to be calculated at Rs. 52/- per kg.

(iii) The number of coconut trees in Sy. No. 38/2 is taken as 166 trees and the price per coconut is to be taken as Rs. 4.50 paise.

(iv) The award of reference Court insofar as the award of compensation and insofar as sugarcane and paddy crop is concerned is hereby set aside.

16. In all other aspects, award of Reference court is affirmed. Thus, in substitution and in modification to the award of reference Court, we hold the claimants are entitled to the following:

17. Accordingly, we pass the following order:

ORDER

i) The appeal as well as the cross-objection is allowed in part, in the light of what is stated above. M.F.A. Crob No. 206/2007 is allowed with costs.

ii) Misc. Cvl. No. 105231/2011 is dismissed as not pressed.

iii) The amount in deposit shall be paid to the respondent/cross-objector on proper identification.

*Corrected vide Court order dated 23-4-2015.