(1976) 09 KAR CK 0007

In the Karnataka High Court

The Special Land Acquisition Officer, Devangere and Others — APPELLANT

Vs

KotraiahFr. and Others — RESPONDENT

Date of Decision : 22-09-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4 (1)

Citation : AIR 1977 Kar 33 : (1976) 2 KarLJ 318

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.N. Venkatachaliah, J

Bench : Division Bench

Advocate : N. Venkatachala, II A.G.A and R.M. Patil, in M.F. As. Nos. 278, 292 to 298 and 809 to 318 of 1976, for the Appellant; N. Venkatachala, II A.G.A. and R.M. Patil, (in M.F. As. Nos. 150 to 264 of M15), for the Respondent

Judgement

Venkatachallaa, J.—M. F. As. Nos. 250 to 264 of 1975 are by the Special Land Acquisition Officer, B. R. ProLlect, Davangere, Chitradurga District, and are directed against the common Award and separate Decrees in L. A. C. Nos. 194 '' 171, 72, 173, 174, 177, lal, 182, 189, 19L 193, 196, 197, 198 of I rt 3 and 127 of 1974 respectively on the file of the Court of the Civil judge at Chitradurga, enhancing the compensation respecting several extents of agricultural 1inds classified as dry, wet and bagayat situate in Devarabelakere village, Harihar Taluk, Chitraduraga District, acquired for a public purpose, namely, the "Devarabelakere Pick-up project pursuant tu the preliminary Notification u/s 4(1) of the Land Acquisition Act published in the Gazet. te dated 15-7-1971.

The connected appeals are by the several claimants ''seeking further enhancement.

2. ''Me claim for compensation before the Land Acquisition Officer was Rupees MOM/- Per acre for the dry lands: and Rs. 80,000k per acre for the wet and bagayat lands. The Land Acquisition Officer awarded compensation valuing the acquired lands at Rs. 961/- per acro uniformly on the basis of sales statistics from the Office of the Sub-Registrar, Haribar Taluk The claimants did not accept the Awards made by the Land Acquisition Officer; ''6ut sought references to the

Civil Court u/s 18 of the Land Acquisition Act in proceedings pursuant to which the Civil judge enhanced the compensation fixing the market value of the acquired lands at Es. 4.800/- per acre for dry lauib, Rs 6'',SW17 por acm for wet lands and Ra 12,800/.- per Pcxe for bagayat lands. While the Land Acq]Wticm Officer has, in the appeals preferred by him. challenged the said enhancement made by the Court below, the claimants in the second set of appeal, have sought further enhancement to Bs. 7,500i-, Rs. 10,000/- and Rs. 23,000/.-, per acre for the dry, wet and bagayat lands respectively.

3. The determination of the market value in these cases is of considerable gene. ral importance both in the interests of the State and of the land-owners. We are told by the counsel on both iddex that an extent of about 1300 acres hre acquired for the project and the claim for compensation organised from Rs. 15,000/. tn Rs- 30,000/per acre. In such circumstances, the degree of care with which ail Award under S. 11 of the Land Acquisition Act has to be made, cannot be over-emphasises If an arbitrary award is made fixing a small amount as compensation wholly urxelated to the propermarket value of the lands and in di,regard of ettled principles of valuation. serious injustice will be done to the owners of land who are expropriated, Even if they are able to repair their fortunes in further proceedings in the reference they would, during the T&nod of the pendency of such reference. the delay in the final disposal of which is not inconsiderable, lie deprived of the Y-t-ripensation which would be their just entitlement. The -rate of interest Permissible is only 5% per annum. which is wholly unrelated to the extent of economic conditions. On the conbary, if the award suffers frorn. extassiveness or if the award contains erwA"_43S recitals and findings which may serve to cow.titute the basis of or render inevitable an award of compensation far in excess of the real value of the lands '' the interests of the State Will, AcQrrespondingly, suffer.

4. Indeed the various aspects of valuation of agricultural lands and principles of valuation bearing on them are now well settled by the pronouncements of the Supreme Court and decisions of this Court. It, is the duty of the Land Acquisition Officer to hold a careful enquiry and determine the market value on the basis of to well recognised principles of valuation. He has to enquire about transactions of sale of similar lands and if such evidence is not available, then follow the alternative methods of valuation, which include the methods of capitalization of the net income What is the average gross yield from agricultural lands; what is the cost of cultivation and what is the average price of the agricultural commodity grown on the lands are all matters which require investigation and should enter into the determination of the market value made in the statutory award u/s 11 of the Act. However, no specific observation relative to the amount of the award can be made other than the obvious statement that each award must be made and judged by its peculiar facts and circumstances. The facts peculiar to each case, in the light of general principles of valuation applicable thereto, are determinative of the question of the adequacy and validity of an award.

5. Thus tested, the awards made in the present cases by the Land Acquisition Officer (Sri A. K. Agarwal, I. A. S.), we are constrained to say, are wholly unsatisfactory. He has determined the market value of the acquired lands at Rupees 961/- per acre on the basis of, the average price indicated by the sales statistics of the Sub-Registrar''s Office for the period between 20-11-1970 and 18-9-1972. The process of taking such average is opposed to the law laid down by the Supreme Court. Further, the Land Acquisition Officer adopting his awn method of capitalisation of income the basis of. which is not intelligible and the learned Government Advocate found himself unable ta interpret its rationale, assuming it has any, determined the market value at Rs. 2,885/,- per acre. However, he preferred the lesser value of Rs. 961/- per acre as the basis for the award of compensation. The relevant portions of- his Award read:

"S. R. Statistics:- The statement of S. R. Statistics for dry lands reveals that the average ot S. R. valuation comes to Rs. 961/- per acre for the period from Mll-1970 to 18-9-1972.

The Mahazardars on the other hand have demanded as much as Rs. 10,000/- to 12,000/- and for wet lands 20,000/- to 25,000/, This is clearly too high a value for dry lands in view of the fact that the malki on it is to be evaluated separately from the valuation for the laud itself.

Capitalisation Method:

The principal crops which can be grown in area are jowar, Ragi, Cotton and G. Nut. The average yield of. this, land is three quintals per acre for medium dry lands. Now the price.- of Ragi in the year, 1971 was Rs. 70/- (Approximately). There fore, using the capitalisation method, Value of land. 18 (70x1/4) (9x35x3x3/4)=81x35Rs. 2835-00 per acre,

However, the S. R. statistics, which represent the rate at which the people are buying and selling land in the area, gives a much lower figure (Rs. 961/-) per acre. .. ." It does not require any argument to demonstrate the arbitrariness and the untenability of an award of this kind. It is settled law that when the award is arbitrary, the burden of establishing the market value of the acquired lands is not shifted to the claimants in the reference.

6. in the Court below, the claimants did not adduce any acceptable evidence of transactions of sale of similar lands. They, instead, relied upon E.-hibit P-82, which is the report of a valuer who was appointed as a Commissioner in the case. It is claimed that the said Commissioner is an expert in agricultural and Farm valuation and that be has been appointed as Approved Valuer under the Estate Duty and WealthTax Acts. Exhibit P-82, no doubt, furnishes the requisite basic and preliminary information and contains references to criteria which are amongst those relevant in the matter of valuation of agricultural lands, The process of valuation is said to be the prediction of an economic event the price out-come of a hypothetical sale expressed in terms of all probabilities. It is thus a fact finding exercise as to a logical desideratum and it is essentialto explain its

logical derivations. The value of expert evidence is directly proportional to the accuracy of facts which it is supported by and is dependent upon the cogency of its reasons. The criteria adopted by the expert must be susceptible to and admit of objective verification. A mere ipse dixit of the expert will not suffice, One of the infirmities of Ext. P-82 is that it has proceeded to determine the value of dry lands without a classification of their soil. The necessity for such classification assumes materiality in the context of the admission of P. W. 2 in the course of his cross-examination, - that some of the acquired lands are of red soil and some are of- black soil and "that the prices of land of red soil is half of that of the land of black soil" and of the further admission that the yield from black soil would be 2 to 21/2 times more than the yield from red soil. This circumstance alone is sufficient to dislodge the tenability of the valuation. It is further seen from Exhibit P-82 that he has deducted 40% of the gross yield towards the cost of cultivation and marketing and has capitalised the net income so arrived at on the basis of 20 years'' purchase value. The assumption as to the percentage of the gross yield as the cost of cultivation and as to the choice of multiple are not supported by any acceptable data. The capitalisation is made on the assumption that an investor in agricultural lands expects and is satisfied with a return of only 5 per cent. per annum on his outlay. There are several considerations that compel the conclusion that investment in the real property market is becoming increasingly less attractive. A person making an investment on agricultural property would consider the alternative investments open to him not only in the real property market, but also in the investment market in general. When he is making an investment for monetary income, he would consider whether, other things being equal, he would receive a higher return on his money by investment elsewhere than -.,n land. The real property market is an integral part of the investment market and the same factors which influence the investment market will also influence the real property market. It is, therefore, reasonable to accept tbat,an investor in agricultural lands expects a return considerably higher than the return from the gilt-edged securities. For determining the appropriate rate of capitalisation, the source from which funds are available for investment also requires analysis and the present lending rates being what they are, it will be wholly unrealistic to employ a multiple which is unrelated to expectations of proper returns. We are, therefore, of the view that Exhibit P-82 cannot be of any assistance in constituting the basis for the determination of the market value of the lands concerned in the present case.

7. The learned Civil judge has valued the dry lands on the method of capitalisation of net income. He has assumed the gross yield at 6 quintals, valued at Rupees 80/- per quintal, After deducting 50% of the gross yield towards cost of cultivation the net income, so arrived at, was capitalised at 20 years'' purchase value. The assumption that 50% of the gross yield is the cost of cultivation is also not of general validity. The multiple of 20 adopted by the Civil judge was clearly inapplicable to the present case. So far as the market value of wet and bagayat lands are concerned, the conclusion of the learned Civil judge is

wholly arbitrary. The reasoning given by him had better be stated in his own words:

"8. The next question is what was the market value of the wet lands. The wet lands acquired have the source of water from the well and from the mahazars Exhibit P-16 to 18, it is clear that the valuation of the dry lands was according to tbem Rs. 10,000/- per acre and that it was Rupees 12,000/- per acre with regard to the wet lands. The Mahazardars have thus taken an additional valuation of Rs. 2,000/- per acre in the case of wet lands over and above that of dry lands. The dry lands having now been valued at Rs. 4,800/- per acre, I think that the valuation of the wet lands should be taken at Es. 6,800/- per acre in the abs,ence of any satisfactory materials placed before this Court by the claimants with regard to the extent yield, the exact cost of cultivation and the exact rate of produce corroborated by the documentary evidence . ...

"9. Come to the question of'' the determination of the market value of bagayat land, the mabazardars have valued the bagayat land in Ex. P-16 to P-18 at Rupees 20,000/- to Rs. 25,000/- per acre. Thereby they have taken the addition of Rs. 8 to 13 thousands of rupees per acre for bagayat lands in comparison with the wet lands. Taking an average of the said estimate I think that the proper valuation would be Rs. 12,800/- per acre in the case of garden lands in the absence of any satisfactory evidence on the part of the claimants with regard to the exact income and to exact rate of'' produce from the bagayath lands .... Fallacy and the untenability of the above reasoning is all too obvious and self-evident.

8.. It is, therefore seen that both the awards of the Land Acquisition Officer and that of the Court below are arbitrary. Faced with this position, counsel on both sides filed a memo praying that the award and decrees of the Court below be set aside and the cases remitted with appropriate directions as regards their disposal afresh, with liberty to both sides to adduce additional evidence.

9. Taking into consideration all the circumstances of the case, we are of the view that ends of justice will be served by granting the prayer made in the said joint memo. A proper determination of the market value of the acquired lands cannot be made on the basis of the material on record. The Land Acquisition Officer has not been examined and no other evidence on his side is also adduced. The determination of the market value of the lands concerned in the present cases will have larger repercusions, inasmuch as, about 1300 acres of land are stated to have been acquired for the same Project. In a matter of such importance and magnitude where heavy stakes are involved both for the State and for the land-owners, it is only appropriate that awards are made after a sound and careful analysis of all relevant criteria. The value that the law recognises in respect of the lands acquired under the provisions of the ILand Acquisition Act is their fair market value, taking into consideration any and all uses to which the land is reasonably adapted and might, with reasonable probability, be applied. The evidence as to the value of the property in the context of the best and the most

profitable use to which it may be devoted in the reasonable near future is also admissible. All factors which would be considered by a reasonable purchaser and a seller in fixing the value should go into the process of ascertainment of market value.

10. In the case of agricultural lands, best evidence of valuation would be the price obtained by sale of similar lands with similar advantages in the area. Where there are no sales of comparable lands in that area, the value must be found in some other way. One method is to take the annual net income which the owner is expected to obtain from the land and to capitalise it by a number of years'' purchase. The number of years'' purchase varies with the nature of the crop and its duration. Even where there are transactions of sale of similar lands in the area, the value on the basis of capitalisqtion of net income method may be ascertained in order to counter-check whether the value as reflected by the sale transactions represents the true market value; in other words, whether the price disclosed in the deed is the real value that has passed between the parties. In the absence of evidence of transactions of sale of similar lands, the Court is left with the alternative method of valutaion, namely, capitalisation of net income method. The ascertainment of the net income for. the purpose of capitalisation and the selection of the multiple for capitalisation involve an interplay of diverse factors which require a careful analysis and assessment. What percentage of the gross yield is the net income to be taken into account for the purpose of capitalisation is again a matter for ascertainment on investigation. It cannot be said as a matter of rule that 50% of the gross yeild should be regarded as net income for the purpose of capitalisation. It all depends upon the prevaiiing practice with buyers of similar land, In some area, the rental income which the lands would have fetched, if there are no rent restrictions, is taken as a basis for capitalisation of income. This court in several cases has taken 50% of the gross yield as the net income for the purpose of capitalisation. 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% 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.

11. In Two Acts-Gift and Wealth Tax, the author C. A. Gulanikar, indicates the following method for ascertainment of the net income:

"The usual method is to estimate the value of the produce; deduct costs of cultivation, to ascertain the surplus. 1/3 of surplus is taken as rent for capitalization. Cost of cultivation is generally taken between 40% to 50% of the sale proceeds," (vide part II Principles of Valuation, page 168).

The various elements that go to make the entirety of the concept of value is a matter which calls for the application of the mind of an expert who can collect, collate and analyse these criteria and assign to each of them its due weight and importance in the process. It appears eminently advisable that in cases where such large acquisitions are embarked upon for projects, the Government employs or secures the services of persons whose training and experience have equipped them to assess the value of the concerned properties and make their opinion as to value available to the Land Acquisition Officers for their consideration. In considerable cases such opinion-evidence may be the only available means of proving the value, and in almost every case, the testimony of competent expert constitutes a practicable medium for presenting the case in definite form. Indeed, the matter of valuation of land is a task of reconciliation of many variables. The value of a particular Piece of real estate cannot definitely be determined by the application of any exact principle of science and even after all the possible information bearing upon the question has been weighed the market value is still a matter of opinion, there being no such thing as a property market where one can ascertain price of land as one would do, say, in a share-market or commoditymarket.

12. In the present cases, matters are already before the Court upon references made u/s 18 of the Land Acquisition Act. In adducing additional evidence before the Court below, the parties will do well to follow, as far as practicable, the above guidelines.

13. In the result, the award and decrees under appeal are set aside and the cases remitted for fresh disposal in accordance with law after affording to the parties an opportunity to adduce additional evidence and in the light of the observations contained in this order.

14. Appellants in M. F. As. 278, 292 to 298 and 309 to 318 of 1976 will be entitled to a certificate for refund of the Court-fee paid on the memoranda of appeals. In the circumstances, parties are directed to bear their own costs.

15. Cases remanded for fresh disposal.