

(1981) 10 MAD CK 0052
In the Madras High Court

The Special Tahsildar (L.A.), Modernisation of Vaigai Channel Scheme APPELLANT

Vs

The Managing Director, Alavai Industries (P.) Limited RESPONDENT

Date of Decision : 15-10-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 25(2)

Citation : (1984) 97 LW 598 : (1982) 2 MLJ 390

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—An extent of 3.50 acres of land in S. Nos. 26, 27 and 30 in Virahanur Village, Madurai South Taluk was acquired under the provisions of the Land Acquisition Act, hereinafter referred to as the Act for modernisation of Vaigai Channel Scheme. The relevant Section 4(1) notification was issued on 21st January, 1976. Before the Land Acquisition Officer, the respondent herein, the owner of the lands. acquired, claimed compensation at the rate of Rs. 500 per cent, of land, at Rs. 100 per cent, as severance, at Rs. 100 per cent, for the injurious affection and Rs. 60,000 as value for the 40 cocoanut trees which were on the acquired land. The Land Acquisition Officer, however, awarded compensation at the rate of Rs. 72.72 per cent, for the thope lands of the extent of 3.22 acres and at Rs. 50 per cent, for the dry lands of the extent of 28 cents. He has adopted the above market value for the thope lands based on a sale deed Exhibit B-3, dated 3rd September, 1972, under which a portion of survey No. 54/3 was sold as a thope at the rate of Rs. 72.72 per cent. For the dry lands the Land Acquisition Officer adopted the said market value at Rs. 30 per cent, based on Exhibit B-4, dated 6th February, 1975, under which 8 cents of land in survey No. 62/4 and one cent in survey No. 62/5 were sold at me rate of Rs. 30 per cent. The Land Acquisition Officer did not award any compensation, either under the head "severance" or under the head "injurious affection" or for the value of the cocoanut trees.

2. Not satisfied with the award of the Land Acquisition Officer, the respondent-claimant sought reference u/s 18 of the Act to the Court below. The Court below has adopted the market value of Rs. 150 per cent, uniformly both for thope and dry lands based on a sale deed, Exhibit A-12, dated 7th December, 1975, under which 20 cents of thope land in R.S. No. 6012 has been sold at Rs. 150 per cent. The Court below has also awarded Rs. 10 per cent, towards severance and another Rs. 10 per cent, towards loss of earnings and a sum of Rs. 30,000 being the value of 40 cocoanut trees. Aggrieved by the award of the Court below the State has filed this appeal.

3. According to the learned Government Pleader appearing for the State the market value at Rs. 150 per cent, fixed by the Court below uniformly is excessive and that in any event, the Court below should not have awarded separate compensation for the value of the trees, as the market value of Rs. 150 per cent, has been fixed only on the basis of Exhibit A-12 which is a sale of thope land. The submission of the learned Government Pleader is that once the land acquired has been valued as a thope, there, is no question of any separate award for the value of the trees. As regards the severance compensation as well as loss of earnings, the appellant's contention is that no claim was made under these two heads by the claimant in answer to the notice u/s 9 of the Act and, therefore, he is barred from claiming any sum under those two heads in view of Section 25(2) of the Act. The appellant further submits that even assuming that the claimant can claim compensation under the heads "severance and loss of earnings" still, the Court below has erred in awarding compensation under the head loss of earnings while in fact there is no evidence indicating any loss of earnings suffered by the claimant as a result of the acquisition. It is the further submission on behalf of the appellant that the sum of Rs. 30,000 awarded as compensation for the 40 cocoanut trees is highly excessive.

4. We will first take up the valuation of the land. Out of 3.50 acres acquired, 3.22 acres are thope land and 28 cents were dry lands. Admittedly there were about 40 cocoanut trees in the acquired land. The claimant's case is that the soil is suitable for manufacture of bricks and the claimant is actually carrying on business in manufacture of bricks by taking clay from the lands acquired and from other lands and, therefore, the land cannot be valued merely as thope land or dry land as the case may be and that the potential value of the soil which could be used for manufacture of bricks also should be taken into account. It is seen that R.S. No. 60/2, which is the subject-matter of Exhibit A-12 is in the same locality. From Exhibit A-12, it is seen that the land sold was punja thope. Though the sale under Exhibit B-3, date 3rd September, 1972, which has been relied on by the Land Acquisition Officer for valuing the thope lands at Rs. 72.72 per cent, was of the year 1972, nearly 3? years before the date of acquisition, it cannot represent the market value of the lands on the date of Section 4(1) notification in this case. We are, therefore, of the view that the Court below is right in adopting Exhibit A-12 as the basis for fixing the market value of the land acquired in this case at Rs. 150 per cent. The question is whether after fixing the

market value of the acquired lands at Rs. 150 per cent. treating them as thope lands, the claimant could be awarded a separate compensation for the trees as has been done by the Court below. It is in evidence that 40 cocoanut trees had been planted only in a small portion of the acquired land. The Court below has not¹, Show ever, given the extent of land over which the 40 cocoanut trees stand, but it proceeds on the basis that since the cocoanut trees are only in a small portion of the land the claimant will be entitled to compensation separately for cocoanut trees apart from the value of the land acquired. We are of the view that the Court below is not right in not determining the extent of land over which the 40 cocoanut trees stand and excluding the same while determining the value of the land. In this case, the Court below has fixed the capitalised value of the income from the cocoanut thope and once that is done, the land over which the trees stand cannot be separately valued. Though the Court below has not separately determined the area over which the cocoanut trees stand, having regard to the normal practice adopted by cocoanut growers in this State of leaving an inter space of 25 feet between one tree and another for a proper growth of the trees as well as the maximum yield from the trees the area over which the 40 trees are standing can be determined as 50 cents. Therefore, since the cocoanut garden has to be separately valued on the basis of the capitalisation of the income, the land value has to be fixed only for 3 acres out of 3.50 acres acquired. The Court below has adopted the yield from the cocoanut trees at a minimum of 10 cocoanuts per cutting at the rate of 8 cuttings a year and 1/3rd of the yield is to be deducted for expenses towards maintenance and other charges. Thus the Court below has determined the net yield from one tree per annum at 50 cocoanuts, and for the entire 40 trees the annual yield will be 2,000 cocoanuts. Taking the price at 75 paise per cocoanut the annual yield has been taken as Rs. 1,500 and for 20 years the total income has been determined as Rs. 30,000. But we are of the view that having regard to the climatic conditions and the soil fertility in the area 15 can be adopted as the multiplier instead of 20 as has been adopted by the Court below. Further, there is no evidence as to the age and yield of the trees at the time of the acquisition. In *Kompalli Nageswara Rao and Others Vs. Special Deputy Collector, Land Acquisition, Bapatla*, , for a cocoanut thope 15 years yield was taken for determination of the capitalised value of the thope. Therefore, adopting 15 years purchase the income from the cocoanut thope comes to Rs. 22,500 instead of Rs. 30,000 fixed by the Court below.

5. Coming to the compensation for severance and loss of earnings awarded by the Court below, a legal objection has been taken by the appellant. It is stated that no claim was made by the claimant in his statement filed in answer to the notice issued u/s 9 of the Act and, therefore, Section 25(2) will be a bar. It is not in dispute that the claimant did not make any claim for severance or for loss of earnings in the statement given in reply to Section 9 notice. However, it is seen that long before Section 4(1) notification the lands acquired in this case have been taken possession of in the year 1973 and at that time the claimant had sent

a letter Exhibit A-14, dated 9th May, 1973, to the Land Acquisition Officer wherein he has referred to the compensation payable under the head of severance as well as loss of earnings. The Court below, taking note of the letter Exhibit A-14 has held that as the claimant had claimed compensation for severance as well as for loss of earnings even before Section 4(1) notification, it cannot come within the mischief of Section 25(2) of the Act. The submission of the learned Government Pleader is that Exhibit A-14 was not a statement given by the claimant in answer to Section 9 notice and therefore, Exhibit A-14 cannot be called in aid by the claimant. In this case, as already stated, at the time when the lands were taken possession of which happened long before the Section 4(1) notification, the claimant has referred to the severance compensation as also loss of earnings, arising out of the proposed acquisition. It is true, the claimant, technically, has not claimed compensation for severance as well as for loss of earnings in the statement given in answer to the Section 9 notice. The question is whether Exhibit A-14, which is a statement admittedly given at an earlier stage could be relied on by the claimant. As pointed out in *V.S. Subramania Chettiar and Another Vs. State of Madras*, , so long as the claimant¹ has not given up the claim for compensation under various heads, the penal provisions of Section 25(2) cannot strictly be applied. In this case the claimant has made a claim for severance and for loss of earnings in an earlier statement and it has been under the bona fide belief that the earlier statement will serve the purposes of Section 25(2). In the circumstances we are inclined to agree with the Court below that the claimant is not barred by Section 25(2) of the Act from claiming compensation for severance and for loss of earnings in respect of which it has made a claim in Exhibit A-14.

6. However, we are not inclined to uphold the award of compensation under the head "loss of earnings". There is absolutely no proof that the claimant has sustained any loss because of the acquisition of the lands. The claimant's brick kiln and the factory have not been acquired and only a portion of the land owned by it has been acquired from which the clay is said to have been taken for the manufacture of bricks. That the claimant is still carrying on the business even after the acquisition by taking clay from other lands left unacquired is not in dispute. No account books had been produced by the claimant to show that in consequence of the acquisition of the lands the company is not able to manufacture bricks as usual and it has sustained loss. In the absence of any evidence the Court below was not justified in granting compensation at the rate of Rs. 10 for loss of earning. However, the severance compensation awarded by the Court below at the rate of Rs. 10 per cent, does not appear to be excessive. Thus the total compensation payable to the claimant is fixed as follows:

(1) Market value of 3 acres of land valued as thope at Rs. 150 per cent...	
45,000-00	(2) Value of cocoanut garden of 50 cents including trees ...
22,500-00	(3) Severance compensation ... 3,500-00
	_____ Total Rs.
71,000-00	_____

After deducting the sum of Rs. 31,325-80 awarded by the Land Acquisition Officer, the claimant will be entitled to a sum of Rs. 39,674-20 as against the sum of Rs, 58,174-20 awarded by the Court below. The said additional compensation will be paid with solatium at 15% and interest at 4 per cent, per annum from the date of taking possession till the date of payment. The appeal is allowed in part. There will, however, be no order as to costs.