
(2001) 01 MAD CK 0082
In the Madras High Court

The Special Tahsildar (Land Acquisition), Special Minor
Irrigation Programme

APPELLANT

Vs

V. Sankaralinga Thevar and Another

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Citation : (2001) 1 MLJ 581

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—Aggrieved by the common award passed by the learned Subordinate Judge, Ramanathapuram at Madurai dated 13.4.1989 made in L.A.O.P.Nos. 137 of 1988 and 142 of 1988, the Special Tahsildar (Land Acquisition), Special Minor Irrigation Programme, Virudhunagar has filed A.S.Nos. 45 and 46 of 1990. With regard to the disallowed claim, the claimants have preferred Cross Objection Nos. 37 and 38 of 1995.

2. Since the appeals and the cross-objections arise out of a common award passed by the learned Subordinate Judge, the above appeals and cross-objections are being disposed of by the following common judgment.

3. The facts which are necessary for the disposal of the appeals and cross-objections alone are stated hereunder:

For the purpose of Special Minor Irrigation Programme, the Special Tahsildar (Land Acquisition), Virudhunagar acquired 93 cents in Survey No. 413/1A, 1 acre 21 cents in Survey No. 413/2 in Injaarnaduvapatti Village and determined the compensation of Rs. 6,000.00 per acre. With regard to 53 guava trees in 50 cents of land in Survey No. 413/2, the Special Tahsildar fixed Rs. 51, 562.50 as compensation. In respect of 5.44 acres in Survey No. 416 of the same village, the Land Acquisition Officer has determined Rs. 803.00 per acre and Rs. 4,360.00 in respect of the well therein. Not satisfied with the amount determined, at the instance of the claimants, the issue was referred to Sub-Court

which resulted in L.A.O.P.Nos. 137 and 142 of 1988. Before the Sub-Court on the side of the claimants, one Ramarajpandian - relative of the claimants, Venkatasamy - retired Officer from the Agricultural Department as well as one Sadagopan - retired. Assistant Executive Engineer were examined as C.Ws.1 to 3 respectively and Exs.A.1 to A.4 were marked. On the side of the Land Acquisition Officer, Surveyor was examined as R.W.1 and the Assistant Director of Horticulture was examined as R.W.2. Exs.B.1 to B.4 were marked on their side in support of their defence. The learned Subordinate Judge after considering the oral and documentary evidence, fixed the value of the land at Rs. 1,000.00 per cent and Rs. 2,73,319.00 for guava thope. The learned Judge has also fixed Rs. 40,000.00 in respect of well in Survey No. 416. Against the said common award, both the Land Acquisition Officer as well as the claimants preferred appeals and cross-objections as stated above.

4. Heard the learned Additional Government Pleader as well as learned Counsel for respondents/Cross-objectors.

5. The point for consideration is, whether the value fixed by the learned Subordinate Judge in respect of lands, guava thope and well are acceptable and what is the proper compensation payable to the claimants?

6. We have to consider the value and proper compensation under the following heads:

(a) Land in Survey Nos. 413/1A and 413/2:

(b) Guava thope; and

(c) Well in Survey No. 416.

7. Land in Survey Nos. 413/1A and 413/2: The total extent of land covered in L.A.O.P. No. 137 of 1988 (A.S.No. 45 of 1990) is 2.14 acres and in L.A.O.P.No. 142 of 1988 (A.S.No. 46 of 1990) is 5.44 acres. Section 4(1) notification under the Land Acquisition Act was published in the gazette on 12.1.1983. One Ramarajapandiyan, son of the claimant in L.A.O.P.No. 137 of 1988 and uncle of the claimant in L.A.O.P.No. 142 of 1988 has been examined as C.W.1. He deposed that, the acquired lands are situate at Injaarnaduvapatti Village, Virudhunagar Taluk. He further deposed that the lands are surrounded by fire work, match factories and within a distance of 1 1/2 furlong, two High Schools are functioning in Krishnaberi Village and within a distance of 3 kilometre there is a college by name Iyya Nadar Janakiammal. He also deposed that there is a well in the acquired lands and agricultural operations are being done. He further stated - that the acquired lands are nearer to lands acquired by the Housing Board for the construction of houses. He also produced and marked Ex.A.1 - Sale deed dated 20.3.1982, wherein it is stated that, Muniandi Thevar and others sold 2 1/2 cents for Rs. 5,000.00 in favour of Krishnasamy Thevar and others. The said document has been pressed into service and prayed that compensation may be fixed in terms of Ex.A.1. Ex.A.1 is a certified copy of the sale deed dated

20.3.1982. Adangal extract for Faslis 1388, 1389 and 1390 in respect of Survey No. 416 has been marked as Ex.A.2.

8. On the other hand, Surveyor who was examined as R. W. 1 has deposed that the distance between the acquired lands and Injaarnaduvapatti Village is 6 furlong and during the period 1980 - 1983 one acre of land in the said village was sold for Rs. 5,000.00 to Rs. 6,000.00. Considering the oral evidence of P.W.1 as well as Ex.A.1 - sale deed dated 20.3.1982 and after noting that smaller extent alone was sold under Ex.A.1, the learned Subordinate Judge has fixed Rs. 1,000.00 per cent for the acquired lands. Before considering the reasonableness or otherwise, it is fairly admitted that though the learned Subordinate Judge has very much relied on Ex.A.1 and arrived at the value of land, neither the vendor nor the vendee of Ex.A.1 was examined to prove the contents of the said document. In this regard, learned Additional Government Pleader has very much relied on the decision of the Supreme Court in the case of A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others, . The following conclusion in the said case is relevant.

3...It is now not in dispute that Exs.A.2, A.9 and A.11 were relied on to enhance the compensation. Admittedly, none of the persons connected with the documents, namely, neither the vendee nor the vendor has been examined. This Court in Kummari Veeraiah and Others Vs. State of A.P., , held that in the absence of adduction of any evidence through the vendor or the vendee the document per se cannot be relied upon. This was reiterated in State of Bihar Vs. Madheshwar Prasad, . Acceptance of certified copy of the sale deed u/s 51 - A relates only to the production of the original sale deeds but it does not dispense with proof of the contents of the documents, relative features vis-a-vis 193, the land under acquisition. All is needed to be proved by examining the persons connected with the same and parties to the document. Following the above ratio, we hold that the view taken by the High Court and that of the reference Court is entirely illegal.

9. In the case of Meharban and others etc. etc. Vs. State of U.P. and others, Their Lordships have observed,

13...Since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence though certified copies marked u/s 51-A are available. So, all the sale deeds stand excluded.

In the case of Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , the Hon"ble Supreme Court has again observed that,

8. The best evidence of the value of property are the sale transactions in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the

vicinity of the acquired land. In that case, the features required to be present are: it must be within a reasonable time of the date of the notification; it must be a bona fide transaction; it should be a sale of land similar to the land acquired or land adjacent to the land acquired; and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired land as on the date of the notification published u/s 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51-A of the Act only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-a-vis this land. The marking of the certified copy per se is not admissible in evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. This principle has been repeated in a catena of subsequent decisions of this Court.

It is clear from the decisions of the Supreme Court that without examining either the vendor or vendee the sale deed cannot be considered, since it is inadmissible in evidence. This is the consistent view of the Hon'ble Supreme Court. In our case, admittedly C.W.1 has nothing to do with Ex.A.1. The learned Subordinate Judge basing reliance only on Ex.A.1, determined Rs. 1,000.00 per cent for the acquired lands, which cannot be sustained. On this ground we set aside the value fixed at the rate of Rs. 1,000.00 per cent based on Ex.A.1. However in the absence of any other acceptable evidence on the side of the claimants, in order to ascertain the proper value of the acquired lands and to give opportunity to the claimants, we are of the opinion that the matter has to be remitted to the Sub-Court, Srivilliputhur for passing fresh orders.

10. Guava Thope: There is no dispute that 53 guava trees are planted in an extent of 50 cents in Survey No. 413/2. With regard to the existence, growth, its yield and probable income, one Venkatasamy, a retired Officer from the Directorate of Agriculture was examined as P.W.2. After making personal inspection on two occasions and after noticing the guava thope he submitted a report, which has been marked as Ex.A.3. According to him, he retired as a Deputy Director in the Office of the Directorate of Agriculture at Virudhunagar and he studied B.Sc., Agriculture. It is stated that the guava cultivation is a commercial crop and he inspected the thope in December, 1982 and noticed 53 guava trees and the same were planted with a gap of 6 meters. He again visited in April, 1985. Before submitting a report under Ex.A.3, he considered the soil, water facility and growth of the guava trees. There is also a well in Survey No. 254. According to him the guava tree will yield at least for a period of 25 years and after trimming the old stems it will yield for further period of five years. He further deposed that the guava trees planted in the acquired lands are special

variety known as Lucknow - 49. After analysing all those aspects he estimated the value of guava thope at Rs. 3,38,979.00.

11. On the other hand, R.W.2 the Assistant Director of Horticulture was examined on the side of the Land Acquisition Officer and he has estimated the value of guava thope at Rs. 51,562.50. In the light of the oral evidence of P.W.2 and R.W.2, we have perused their respective reports viz., Exs.A.3 and B,4. The learned Subordinate Judge after considering both their evidence and reports, in view of detailed study made by P.W.2, preferred to accept the evidence of P.W.2 and his report Ex.A.3. Based on the said report, he calculated the yield of guava trees upto 20th year, which comes to Rs. 2,68,019.00. In Ex.A.3, P.W.2 has further opined that, even after completion of the yield, the trees particularly the stems can be used as fire wood and for that he valued the same at Rs. 5,300.00. In this way the learned Judge has fixed a sum of Rs. 2,73,319.00 for the guava thope. We have already stated that the evidence of P.W.2 and his report Ex.A.3. are more probable and acceptable. Since the learned Subordinate Judge has extracted his evidence and report in detail in the order impugned (para 10), it is unnecessary for us to refer the same once again. Learned Additional Government Pleader would contend that the learned Subordinate Judge failed to consider the fact that there is no guarantee that the guava trees would yield every year. He further contended that there is likelihood of fail in the price of guavas in one or two years. He also contended that the application of multiplier and calculation of the yield upto 20 years is on the higher side.

12. Mr. A. Sivaji, learned Counsel appearing for the claimants has brought to our notice the Division Bench decision of this Court in the case of The Special Tahsildar (LA) Vembakottai Reserved Projeet Scheme Unit No. 1 Vs. Chinna Veerasami Naicker and Others, . The Division Bench had an occasion to consider similar question. In that case, by a common order the learned Subordinate Judge adopted the capitalisation method, since the lands are thope lands i.e., orchard lands or lands where fruit bearing trees were there. The Sub-Court computed the annual income from those trees and by adopting the multiplier of 20 has arrived at the market value. The said method was challenged by the Special Tahsildar in the appeal before the Division Bench. After considering similar report and evidence from the persons concerned, the Division Bench rejected the objection raised by the learned Additional Government Pleader and held that, it is settled law that, in the case of orchards, computation of annual income from those trees and adopting the multiplier of 20 to the said income as arrived at the market value is the best method. Further, after referring the earlier decision of the Supreme Court with regard to determination of value of agricultural crops, orchards etc., their Lordships have held,

10...the Supreme Court held in the case of coconut and orange thope that capitalisation of the net income of 20 years purchase was a fair method for arriving at the market value....

It is clear that, as far as fruit bearing trees, orchards etc., the capitalisation of

the net income of 20 years purchase is a fair and best method to arrive at the market value. Since the Court below has adopted the same method, we are in agreement with the conclusion arrived at by it. As a matter of fact the evidence of P.W.2 and his report Ex.A.3 show that the fruit bearing trees will yield for more than 20 years and we do not find any valid reason to apply lesser multiplier than that of 20. The following observation of the Supreme Court in the case of The State of Madras Vs. Rev. Brother Joseph, is relevant.

12. In this case, the Land Acquisition Officer found in his award that all the fruit bearing trees will yield for more than 20 years. That was the reason which weighed with him to capitalize the net income of these topes at 20 years purchase to find out their market value. We do not think that the learned Subordinate Judge and the High Court went wrong in accepting this estimate of the average yielding life of coconut and orange trees. Therefore, we do not think that the capitalization of the net yield from these topes at 20 years purchase was not a fair method to arrive at the market value of these topes. We are not satisfied that the method of valuation adopted for finding out the market value of the topes was, in the circumstances, in any way unreasonable.

It is settled law that, once we apply the multiplier method to capitalise the net income and if it is reasonable and acceptable, there is no question of deduction of any amount towards certain imponderable things like fall in price, lesser yield due to insects and other natural calamities etc. As a matter of fact, in the case before the Supreme Court viz. The State of Madras Vs. Rev. Brother Joseph, and the Division Bench, their Lordships have not allowed any deduction after applying proper multiplier viz., 20 for the fruit bearing trees. In such a circumstance, we are unable to accept the argument of the learned Additional Government Pleader either for lesser multiplier or for reduction of a portion of the amount for unforeseen events and we confirm the amount fixed by the learned Subordinate Judge.

13. Well in Survey No. 416: P.W.1 in his evidence has explained the nature of well and the water therein. P.W.3 - retired Assistant Engineer, Public Works Department, after inspection of the well in Survey No. 416 submitted a report, which has been marked as Ex.A.4. P.W.3 in his evidence has explained that the length of the well is 9 meters, width 8 meters and depth 8.3 meters. He also deposed that there is a pucca parapet wall to the height of 3 feet from the ground level on all sides. Though on the side of the Land Acquisition Officer a report which has been marked as Ex.B.3, admittedly, the person who prepared the said report has not been examined. In such a circumstance, as rightly observed by the Court below no credence need be given to Ex.B.3. Considering the oral evidence of P.W.1, P.W.3 and his report Ex.A.3, length, width, depth as well as existence of water and percolation, we are of the view that the amount of Rs. 40,000.00 arrived at by the learned Subordinate Judge is quite reasonable and acceptable. Though the claimant has preferred a cross-objection viz., Cross Objection No. 38 of 1995, claiming further sum of Rs. 9,000.00, in the light of

what is stated above, we do not find any justification in his claim. Accordingly, we confirm the amount fixed by the learned Subordinate Judge and Cross-objection No. 38 of 1995 is liable to be dismissed.

14. Regarding interest on solatium, it is brought to our notice that, in view of conflict of decisions by the Hon"ble Supreme Court in granting interest on solatium, we were told that the issue has been referred to the Larger Bench. It is also clear from the case of Kapur Chand Jain (Dead) and Others Vs. State Govt. of H.P. and Others, . In such a circumstance, till such time the Hon"ble Supreme Court decides the said issue, claimants will not be entitled to interest on solatium. However, we make it clear that, ultimately if the issue is decided in favour of the claimants, they are at liberty to approach the competent Sub-Court for necessary direction.

15. In the light of what is stated above, we pass the following order:

(i) the value fixed by the learned Subordinate Judge in so far as the acquired lands is set aside and the matter is remitted to the Sub-Court, Srivilliputhur for fresh disposal. Both the parties are permitted to adduce additional oral and documentary evidence to substantiate their respective claim. The learned Subordinate Judge is directed to dispose of the same expeditiously i.e., within a period of three months from the date of receipt of copy of this order and records.

(ii) The value arrived at i.e., Rs. 2,73,319.00 for! the guava thope is hereby confirmed;

(iii) The amount of Rs. 40,000.00 arrived at for the well in Survey No. 416 is also hereby confirmed.

16. Net result, the appeals filed by the Land Acquisition Officer are allowed in part to the extent mentioned above. Cross Objection No. 37 of 1995 is closed with liberty to agitate the same before the Sub Court and Cross Objection No. 38 of 1995 is dismissed. No costs.