

Special Land Acquisition Officer Davangere

Vs

P. Veerabhadarappa and Others

Civil Appeals Nos. 290-348, 729-746 and 802-805 (N) of 1980 and 2328-31 and 2350-2388 of 1981

(A. P. Sen, E. S. Venkataramiah JJ)

09.01.1984

JUDGMENT

A. P. SEN, J. -

1. The short question involved in this appeal by special leave and the further appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) directed against the judgment and decrees of the Karnataka High Court dated January 24, 1979 and in the connected appeals is whether there has been any error in principle or in law in the method of valuation arrived at by the courts below in adopting 'fifteen' to be the multiple for computation of capitalized value of certain agricultural lands acquired in the years 1971 and 1972. In the connected appeals although the point was not specifically taken before the High Court, but the parties were given notice that that was the real question to be determined. These appeals have accordingly been heard together as they involve common question. The issue involved is as to the proper multiplier to be applied in determining the capitalized value of the lands acquired and that depends on the rate of return on investments in 1971 and 1972.

2. In these appeals the judgments were rendered by the High Court on appeals being preferred by the Special Land Acquisition Officer, Davangere against the appellate judgments and decrees of the District Judge, Chitradurga and of the Civil Judge, Davangere on Various references made under Section 18 of the Act.

3. The facts giving rise to these appeals are more or less similar, and the essential facts may be shortly stated. Due to the construction of D. B. Kere Pick-up Project, several thousand acres of agricultural land in two villages in the State of Karnataka videlicet Budihar village in Harihar taluq and Siraganahally village in Davangere taluq got submerged and were accordingly acquired by the State Government pursuant to different notifications issued under Section 4(1) of the Act published on diverse dates in the years 1971 and 1972 followed by the usual notifications under Section 6. In response to notices issued under Section 9(2) of the Act, the respondents appeared before the Special Land Acquisition Officer, Davangere and claimed compensation varying between Rs. 15,000 per acre to Rs. 25,000 per acre for dry and wet lands depending upon the quality of the soil, the nature of the yield and the income derived therefrom. In some cases they also claimed compensation at more than rupees one lakh per acre for areca nut garden lands. The Special Land Acquisition Officer however by his various awards adopted a multiple of fifteen and awarded compensation at a flat rate of Rs. 3300 per acre for dry agricultural lands and Rs. 5000 per acre for wet agricultural lands. On reference under Section 18 of the Act in each of these cases, the Civil Judge, Davangere enhanced the amount of compensation to Rs. 19,500 per acre for wet agricultural lands and Rs. 1,10,000 for areca nut garden lands. There was common evidence adduced by the

parties in all these cases and the evidence disclosed that the acquired lands were more or less similar in nature and contiguously situated. On a consideration of the evidence the learned Judge came to the conclusion that the lands affected were capable of yielding two crops in a year with assured irrigation facility, the first being of paddy and the second of jowar, groundnut, chillies etc. As there was no other method of determining the market value of the land, the learned Civil Judge applied a multiple of 15 times the net annual profits. On appeal by the Special Land Acquisition Officer, the High Court also adopted the capitalized value at 15 years' purchase of the net annual profits but reduced the amount of compensation to Rs. 15,000 per acre for wet agricultural lands and Rs. 25,000 per acre for areca nut garden lands i.e. depending upon the nature of the lands acquired. It would therefore appear that the High Court and the courts below have both adopted fifteen to be the proper multiplier for computation of the capitalized value of the lands acquired for the purpose of determining the amount of compensation payable for acquisition thereof.

4. Shri Kacker, learned counsel appearing on behalf of the appellant contends that the High Court was wrong in adopting the multiple of 15 of the actual or immediately prospective net annual profits of the lands acquired to be the capitalized value thereof when the rate of return in the years 1971 and 1972 was 8 per cent per annum. According to the learned counsel, there is an error in principle or in law in the method employed and he draws our attention to the unreported decision of the High Court in *The Special Land Acquisition Officer, Davangere v. B. Basavarajappa* (Misc. First Appeals Nos. 881-4/76, decided on November 21, 1977) laying down that the proper multiple for computation of the capitalized value should be 12 1/2 having regard to the rate of return at the relevant time i.e. on the date of the notification under Section 4(1) of the Act. The contention must, in our opinion, prevail.

5. In *Basavarajappa case* (Misc. First Appeals Nos. 881-4/76, decided on November 21, 1977), a Division Bench of the High Court while dealing with the determination of compensation payable for similar agricultural lands in the neighbourhood of the same two villages acquired at or about the same time adopted the multiple of 12 1/2 times the net annual profits for purposes of determining the capitalized value thereof. In coming to that conclusion, the High Court observed :

The rate of return from Government security, which is gilt-edged security, was around 6 per cent in the year 1971-72. A person investing his capital in irrigated land would expect a return of about 2 per cent more than what he obtains from Government securities. That means, a return of 8 per cent would be the normal return expected by an agriculturist investing in purchase of wet lands. If 8 per cent was the return expected, the number of years' purchase value comes to 12 1/2.

We regret to find that in these cases the High Court instead of having adopted the multiple of 12 1/2 times observed that the decision in *Basavarajappa case* (Misc. First Appeals Nos. 881-4/76, decided on November 21, 1977), was not applicable because the lands acquired in these cases were far superior for which there is no rational basis. If the lands acquired were of a superior quality, the actual or immediately prospective net annual profits would be more and when multiplied by the proper multiplier arrived at on the rate of return at the relevant time i.e. on the date of the notification under Section 4(1) of the Act, the amount of compensation for acquisition of such lands would necessarily be more. The quality of the soil has no relevance to the proper multiplier to be adopted in determining the capitalized value.

6. In *Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatnam* (LR (1939) 66 IA 104 : AIR 1939 PC 98 : 43 CWN 557 : 41 Bom LR 725) the Privy Council adopted the

traditional legal definition of value as the price at which the property would sell "as between a willing buyer and a willing seller". In its narrowest sense it is designed to preclude a valuation based on an assumed forced sale; the property must be appraised at what it would probably bring if the owner allowed a reasonable opportunity for negotiations. But the court have invoked a mythical willing buyer to justify valuation higher than any attainable sal price. According to the Privy Council, "marker value" of the land within the meaning of Section 23 of the Act is the price the property may fetch in the open market if sold by a willing vendor unaffected by the special needs of a particular purpose. The owner is entitled to the value of the property in its actual condition at the time of expropriation, with all its advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is acquired. It is not only realized possibilities but also the future possibilities that must be taken into consideration. The Privy Council further observed that there is not in general any market for land in the sense that one speaks of market for shares or commercial goods. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value can also be measured by a consideration of the prices that have been obtained in the past for lands of similar quality and in similar positions, and that is what must be meant in general by the "market value" in Section 23.

7. The function of the court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) of the Act and the methods of valuation may be : (1) Opinion of experts. (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages. And (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available.

8. It is axiomatic that the best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighborhood at or about the date of notification under Section 4(1) or otherwise, the court has no other alternative but to fall back on the method of valuation by capitalization. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in money investments. The return which an investor will expect from an investment will depend upon the characteristic of income as compared to that of idle security. The main features are : (1) security of the income; (2) fluctuations : (3) chances of increase; (4) cost of collection etc. The most difficult and yet the most important and crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property.

9. The traditional concept of capitalization was indicated by this Court in *Rustom Cavasjee Cooper v. Union of India* ((1970) 3 SCR 530 : (1970) 1 SCC 248 : AIR 1970 SC 564). It was stated to be :

Capitalization of the net annual profit out of the property at a rate equal in normal cases to the return from gilt-edged securities. Ordinarily value of the property may be determined by capitalizing the net annual value obtainable in the market at the date of the notice of equation.

It is thus clear from the above enunciation that the method of determining the value of the property by application of a multiplier to the net annual income or profit should only be adopted when there is no evidence of comparable sales of similar lands in or about the neighborhood at the relevant time i.e. on the date of the notification under Section 4(1) of the Act. In certain circumstances however the court has not other alternative but to fall back on the capitalized value.

10. Alfred D. Jahr in Law of Eminent Domain (1953 edn.) after a general discussion regarding the valuation of property, sums up at pp. 100-101 :

It is evident, therefore, from the foregoing definitions as well as from numerous other definition which may be cited, that the fair market value of property taken by eminent domain is the price that the property will bring when offered for sale by one desiring, but not obliged, to sell; and purchased by one desiring to purchase but under no necessity of buying. It is the price which a piece of property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use, potential or prospective, and all other elements which combine to give a piece or property a market value.

The learned author then deals with the fixation of market value on the basis of rental income at pp. 226-229 and states :

It is far sounder practice to avoid the use of rental value capitalization, if better evidence of market value is available. In any event, the courts are inclined to give a greater weight to sales of similar properties in the market than to evidence of leasehold rentals.

Jahr then deals with the method of capitalization of income and says at p. 230 :

It is quite evident from the formula that the lower the rate or return applied, the higher the capitalized sum will be. However, the rate of return on money invested is dependent upon many varied factors : (1) safety of principal; (2) liquidity of investment; (3) certainty of income; (4) possible market fluctuations; (5) appreciation of principal or income; and undoubtedly other elements too numerous to mention. The interest rate current in the security market must be considered, as well as the investment rate to be obtained from high grade bonds or common stocks and commodities traded on the several exchanges.

The principles deducible from the above passage is that the basic factor in applying the method of capitalization of income for ascertaining the market value of property is the rate of return that an ordinary investor would reasonably get on his investment, having due regard to all the relevant circumstances.

11. In the classical economic sense, as adopted by the Privy Council in Vyricherla case (LR (1939) 66 IA 104 : AIR 1939 PC 98 : 43 CWN 557 : 41 Bom LR 725), the meaning to be placed upon the phrase "market value" of the land under Section 23 of the Act is the price at which the land acquired

could actually be sold at the relevant time i.e. on the date of the notification under Section 4(1) of the Act by a fictitious willing buyer in a hypothetical market, with the qualification that a forced sale is not to be assumed. The price at which the property would sell "as between a willing buyer and a willing seller" raises the problem of valuation. The value of any object of wealth is simply a capitalization of the services of income which actual or potential owners of the property expects to derive from it i.e. earning power as a basis of valuation. The rule of number of years' purchase is not a theoretical or legal rule, but depends upon the economic factors such as the prevailing rate of return which a prudent investor in the class of properties in question would expect. The most important of such economic factors is the prevailing rate of interest at the relevant time i.e. on the date of the notification under Section 4(1) of the Act. It is first necessary to ascertain the gross income from the acquired property. The next step should be to ascertain the net income. Having ascertained the net annual income, it must be capitalized by computing the number of years' purchase.

12. During the Imperial days, investment in gilt-edged securities was looked upon as the only safe form of investment. But after the attainment of independence, the country has taken long strides in the growth of commerce and trade. Due to growth of industries both in the public as well as in the private sector, investment of capital in such industries, if not any more secure, have come into the law merchant and such other alternative available securities have attracted persons who are inclined to invest, rather than gilt-edged securities alone, apart from making fixed deposits in the scheduled banks. This accounts for the variation of the proper multiple to be adopted. The line of inquiry in such cases must therefore be : What was the prevailing rate of interest on long term deposits with scheduled banks or in the public or private sector ?

13. At the turn of the century, it was not uncommon for the courts to adopt a rule of 20 years' purchase for arriving at the capitalized value of agricultural lands. It had long been the practice in the courts of the then Madras Presidency to calculate the profits from any form of landed property as equal to the profits made by investing of money in the gilt-edged securities. Till the early '50s, the courts of the then Madras Presidency held that the capitalized value of agricultural lands should be arrived at 20 years' purchases having regard to the rate of interest on gilt-edged securities at five per cent per annum. It was however, observed that with respect to melwaram interest in a zamindari land or a vacant site, it was difficult to accept the current rate of interest on gilt-edged securities as a safe guide to the multiple to be applied to the annual profits on ryotwari land. The landlord in such cases would not only expect to get a return on the capital invested on the land but also something in addition to that as compensation for his trouble in attending to the land and for the risks involved in the cultivation of land. It was observed that although the tenants might have agreed to pay him a fixed rent in money, yet if a full crop was not raised on the land either through failure of rain or because of pests or for any other reason, it was extremely difficult for the landlord to realize the rent. For these reasons, the landlord naturally expected an appreciably larger return than he would expect from gilt-edged securities which he left in the bank and for the realization of the interest of which he is put to no trouble whatsoever.

14. It would be unrealistic to adhere to the traditional view of capitalized value being linked with gilt-edged securities when investments in fixed deposits with the nationalized banks, National Savings Certificates, Unit Trusts and other forms of Government securities and even in the share market in the shape of blue chips command a much greater return. More secure the capital and regular the return, lesser the rate of interest. Most secured kind of investment is Government securities or deposits with scheduled banks or Unit Trusts of National Savings Certificates. The rate of interest on Government of India bonds for a period of 30 years in 1972 yielded 5.75 per cent per

annum. As per the Government of Karnataka publication called "Finance Accounts of 1972-73" the rate of interest on the Mysore State Development Loans issued in the years 1967, 1968, 1969, 1970, 1971 and 1972 was uniformly 5 3/4 per cent return. The rate of interest on fixed deposits with State Bank of India for a period ranging from 3 years up to 5 years yielded 7 per cent while the rate on fixed deposits above 5 years was 7.25 per cent. The rate of dividend payable on Unit Trusts in 1972 was 8.25 per cent per annum. National Savings certificates, 7 years, second issue yielded tax-free interest at 6 per cent on maturity, 7 years, third issue 6 per cent tax-free payable annually and 7 years, fourth issue 7.5 per cent payable annually but subject to income-tax.

15. In *Oriental Gas Co. Ltd. v. State of W. B.* ((1979) 1 SCR 617 : (1979) 1 SCC 171), this Court held for the acquisition of an industrial undertaking in the State of West Bengal that if 12 1/2 per cent of the capital invested was the annual return, the adoption of multiplier of "eight" could not be unreasonable in the year 1962. The contention based on the traditional view expressed by Shah, J. in *Cooper case* ((1970) 3 SCR 530 : (1970) 1 SCC 248 : AIR 1970 SC 564), that the multiplier must be related to the rate of interest on gilt-edged securities was repelled by Chinnappa Reddy, J. It was stated that the observations of Shah, J. in *Cooper case* ((1970) 3 SCR 530 : (1970) 1 SCC 248 : AIR 1970 SC 564) that "capitalization of the net annual value of the property, at a rate equal in normal cases to the return from gilt-edged securities" was an important method of determination of compensation, did not lay down a rule of law of universal application. It was observed :

The very use of the word "normal" by Shah, J. indicates that it was not intended to lay down any invariable rule that whenever a method of capitalization of net profit was adopted, the return from gilt-edged securities was to be the basis. That should depend on a variety of circumstances such as the nature of the property, the normal return which may be expected on like investment, the state of the capital market and several such factors.

16. In *Union of India v. Smt. Shanti Devi* (AIR 1983 SC 1190 : (1983) 4 SCC 542) this Court recently had occasion to lay down the principle as to the true multiplier of "thirteen" applicable in determining the capitalized value of about 70,000 acres of agricultural land located in the Kangra valley in the State of Himachal Pradesh where the notification under Section 4(1) of the Act had been issued in the years 1962 and 1963, and where there was no evidence of comparable sales of similar lands in the Kangra valley. After referring to the judgment of this Court in *Oriental Gas Co. Ltd. case* ((1979) 1 SCR 617 (1979) 1 SCC 171), and several other decisions, one of us (Venkataramiah, J.) observed :

The number of years' purchase has gradually decreased as the prevailing rate of interest realisable from safe investments has gradually increased - the higher the rate of interest, the lower the number of years' purchase. This method of valuation involves capitalizing the net income that the property can fairly be expected to produce and the rate of capitalization is the per-centage of return on his investment that a willing buyer would expect from the property during the relevant period.

17. The Court explained that although at one time it was felt that interest on gilt-edged securities or Government bonds should alone be taken into consideration, having regard to the safety and liquidity of investment, by the circumstance have now changed during the recent years and deposits with the State bank of India and other nationalized banks are equally safe and even in the share market there are many 'blue chips' which command stability and other attendant benefits such as issue of bonus shares et cetera, and added :

A return of 10 per cent per annum on such safe investments is almost assured. Today nobody thinks of investing on land which would yield a net income of just 5 per cent to 6 per cent per annum. A higher return of the order of 10 per cent is usually anticipated. Even in the years 1962 and 1963 an investor in agricultural land excepted annual net return of at least 8 per cent. It means that if the land yielded a net annual income of Rs. 8 a willing buyer of land would have paid for it Rs. 100 i.e. a little more than 12 times the annual net income.

18. There are certain general considerations which investors of all types take more or less into account : yield and appreciation possibilities, the ability readily to dispose of the investment (market-ability) and safety. Investments differ with respect to assurance of income and safety of principal. In the investment market, the quality of investment is evidenced by the yield or return that is produced in relation to market price - higher the quality, the lower the yield. Investors must take into account various types of risks associated with different investment mediums and therefore adopt a type of investment that is appropriate to their resources and particular investment objectives.

19. As already stated, some 20 to 30 years back i.e. till the early 50s, it was taken as a settled rule of practice, that the capitalized value 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 housing 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, collection of rent, payment of taxes et cetera. The rate of return expected therefore was 1 1/2 per cent to 2 1/2 per cent more than what was expected from gilt-edged securities. A person investing his capital in agricultural lands would ordinarily expect a return of 2 per cent to 3 per cent 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 the chips i.e. on stocks and shares in the public or private sector which yield a much greater return.

20. In regard to investment in agricultural lands, there are many imponderables inasmuch 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 are 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 law and tenancy laws with 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 an investor in such a property, the risk factor has further to be evaluated. There may be total or partial failure of crops either through failure of rain or drought, or inadequate or excessive rainfall. There may be a failure of crops on account of locust invasion or insects or pests. The cost inputs such as seeds, water, fertilizer, 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 the 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.

21. In the premises, when the rate of return on investment was 8.25 per cent in the years 1971 and 1972, person investing his capital in agricultural lands would ordinarily expect 2 per cent to 3 per cent more than what he could obtain from gilt-edged securities or other forms of safe investment and therefore the proper multiplier to be applied for the purpose of capitalization could not, in any event, exceed 'ten". In the present case, the State Government however contends that the proper multiple to be applied should be 12 1/2 in computation of the capitalizes value of the lands in these cases having regard to the rate of return of 8 per cent at the relevant time i.e. on the date of the notification under Section 4(1) of the Act. In view of this, it must be held that the multiple of 12 1/2 should be applied in computation of the capitalizes value of the lands.

22. In the result, the appeal must succeed and are allowed. The judgments and decrees of the High Court are modified by directing that the compensation awarded for acquisition of land should be reduced by one-sixth in these cases wherever the amount of compensation has been determined by the method of capitalization. The respondents shall get solatium at the rate of 15 per cent on the compensation computed on the above basis and shall be paid interest at the rate decreed by the courts below.

23. The costs shall be borne by the parties throughout as incurred.

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