

SUPREME COURT OF INDIA

Hirabai

Vs.

L.A.O. Cum Asst. Commnr.

C.A.Nos.2042-44 of 2004

(Dr. Mukundakam Sharma and Anil R. Dave JJ.)

23.09.2010

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. The applications seeking for substitution of the legal representatives of the deceased appellants pending consideration are allowed while condoning delay, directing substitution of the names of the legal representatives in place of deceased appellants. The said applications are accordingly disposed of by this common order.

2. Having passed an order for substitution of the legal representatives in place of the deceased appellants, we now proceed to dispose of all these appeals by this common judgment and order as all these appeals are interconnected and issues raised and urged are almost identical in nature.

3. The Government of Karnataka issued a preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 [for short "the Act"] proposing to acquire lands for the Bhima River Lift Irrigation Project which was published in the Government Gazette on 08.06.1995 by which the Government proposed to acquire lands belonging to the appellants herein. The lands proposed to be acquired consist of both irrigated and dry lands pertaining to Devangaon Village, Bijapur District. Subsequently, the State Government also issued declaration under Section 6 of the Act on 25.01.1996. Subsequent to the aforesaid issuance of notification under Section 4(1) followed by the notification under Section 6 of the Act, the Land Acquisition Officer passed an award on 14.12.1996 whereby he fixed the compensation and the market value of the acquired irrigated land at the rate of Rs. 15,000/- per acre and for the dry lands at Rs. 13,000/- per acre.

4. Aggrieved by the aforesaid award, reference applications were filed by the claimant - appellants on the basis of which a reference was made to the reference court. Before the reference court parties adduced evidences both oral and documentary. At the conclusion of the trial, the reference court enhanced the compensation of dry lands from Rs. 13,000/- per

acre to Rs. 31,500/- per acre by way of judgment and order dated 31.01.2000 and so far as the irrigated lands are concerned, the reference court by way of its judgments and orders dated 08.04.1999 and 13.12.1999 enhanced the compensation of irrigated lands from Rs. 15,000/- per acre to Rs. 45,900/- per acre.

5. The claimants preferred appeals before the High Court of Karnataka and the High Court by the impugned judgments and orders enhanced the market value for the irrigated lands and determined the same at the rate of Rs. 75,600/- per acre and in respect of dry lands the High Court determined the market value at Rs. 38,000/- per acre. Being aggrieved by the aforesaid judgments and orders passed by the High Court, the present appeals were filed in this Court, in which we have heard the learned counsel appearing for the parties.

6. The learned counsel appearing for the appellants contended before us that the High Court was wrong in applying the capitalisation method of valuation for calculating the market value of both the categories of lands. In order to strengthen her argument, she had extensively taken us through the judgments and orders of the High Court, reference court and also the other evidences on record.

7. The first submission which was advanced before us by the counsel appearing for the appellants was that the High Court was wrong to hold that appellants have restricted their claims at Rs. 80,000/- per acre whereas it is shown from the claim petition filed before the reference court that the claim was made at Rs. 1,00,000/- per acre, although, appellants paid the court fee only at Rs. 80,000/- per acre for the lands in question. Therefore, on this basis, we find that there was nothing wrong on the part of the Division Bench of the High Court mentioning that the prayer of the appellants was to fix the market value of the acquired land at Rs. 80,000/- per acre.

8. The next contention of the counsel appearing for the appellants is that the High Court was unjustified to reject the certificate dated 24.02.1996 [Exhibit P-71] issued by the Assistant Director of Agriculture, Sindgi in respect of agricultural land in Devangaon Area indicating a standard yield of sugarcane as 60 tonnes per year per acre. She also submitted that the market value of the irrigated lands in the present case should be decided on the basis of a similar case in which Rs. 79,000/- was awarded by the Land Acquisition Officer himself for the sugarcane growing lands by way of a consent award dated 20.10.1997 in respect of the lands which were acquired under preliminary notification dated 08.08.1996 at Vadahalli Village in Bagalkot Taluk. Relying on the same, the counsel for the appellants submitted that even if the claim of the appellants for fixing the market value of land at Rs. 1,00,000/- per acre is not accepted by the court, the market value should be fixed on the basis of the market value fixed for sugarcane growing lands of Vadahalli Village in Bagalkot Taluk as per the award of Land Acquisition Officer dated 20.10.1997.

9. Counsel appearing for the respondent, however, supported the impugned judgments and orders and relying on the same submitted that the said orders do not call for any interference by this Court.

10. In the present case we are concerned with the acquisition of irrigated lands and dry lands. By issuing the aforesaid preliminary notification issued under Section 4(1), lands of the appellants were acquired. Having carefully scrutinized the judgment of the Division Bench of the High Court, we find that the High Court has examined the issue of determining fair and just market value of the lands from various angles.

11. Appellants drew the attention of the High Court to a certified copy of the sale deed relating to sale of one acre of land in Sy. No. 109/2 [Exhibit P-26] of Kallahalli Village situated at a distance of 3 kilometers from the acquired lands. The said sale deed indicates that the aforesaid land was sold at the rate of Rs. 75,000/- per acre on 05.07.1994 which is about one year prior to the date of the preliminary notification in the present case. The encumbrance certificate relating to Sy. No. 1/5 of Kallahalli Village, which shows that the said land measuring 1 acre 25 guntas was sold for a consideration of Rs. 1, 15,000/- per acre and was marked as Ex. P-27, was also produced before the High Court by the appellants.

12. The aforesaid documents, filed on behalf of the appellants to justify their claim at Rs. 1,00,000/- per acre, were not accepted by the High Court as the aforesaid lands covered by the said sale deeds were lands which were situated at a distance of 2 to 3 kilometers from the acquired lands. There is no definite evidence to indicate the nature and quality of the said land, and hence there is nothing on record to show their comparability with the acquired lands. We are of the considered opinion that the High Court rightly kept the said sale deeds out of its consideration for lands situated about 2 to 3 kilometers away, which could not be said to be comparable lands with that of the acquired lands. There was no other direct documentary evidence which could prove and establish or act as a guide in determining the market value of the acquired lands. Therefore, the High Court fell back upon the capitalisation method of valuation for the acquired lands and in that process it relied upon the extract of the Fully Revised Estimate of Area, Production & Average yield of Commercial Crops in Karnataka for 1995-96 published by the Directorate of Economics and Statistics. According to the Division Bench of the High Court the said document was the safe guide to determine the market value of the acquired lands on the basis of capitalisation method.

13. The High Court considered the said document of Directorate of Economics and Statistics and found therefrom that during 1995-96, the relevant year in which the notification for acquisition of the land in the present case was issued, the average yield of sugarcane per hectare was 90 tonnes for the State of Karnataka and the average yield per hectare for Bijapur District was 106 tonnes and, therefore, according to the Division Bench average yield per acre was 36.422 tonnes [rounded off to 36 tonnes] for Karnataka and 42.89 tonnes for Bijapur District.

14. There was no dispute with regard to the fact that price of jaggery at the relevant time was Rs. 700/- per quintal and on the basis thereof and after making calculation, the High Court came to the finding that the market value on the capitalisation method would come to Rs. 75,600/- for the acquired sugarcane growing irrigated lands. The calculations on the basis of

which the aforesaid figure was arrived at by the High Court in its judgment are stated at para 18 which reads as follows: -

"18. It is well-settled and recognized that one ton of sugarcane will yield one quintal of jaggery. If Rs. 700/- is the price of jaggery per quintal, 40% has to be deducted towards cost of conversion of sugarcane into jaggery, overheads, profit of dealer, and transportation.

The balance will be Rs. 420/-. Out of it, 50% will have to be deducted towards cost of cultivation. Therefore, net realization will be Rs. 210/- per tonne of sugarcane. For 36 tonnes the realization will be Rs. 7,560/-. Thus the value of net yield will be Rs. 7,560/-. Thus the value of net yield will be Rs. 7,560/- per acre after expenses. By applying the multiplier of 10, for capitalisation, the market value will be Rs. 75,600/-."

15. The aforesaid calculation made by the Division Bench of the High Court was challenged before us by the counsel appearing for the appellants contending inter alia that the aforesaid document on which reliance was placed by the High Court, although issued by a Government Department, the same should not have been accepted as it was not produced in the evidence. It was also submitted by her that reliance instead should have been placed on the certificate produced by her dated 24.02.1996 issued by the Assistant Director of Agriculture, Sindgi giving particulars of the yield in respect of the lands in Devangaon Village indicating standard yield of sugarcane as 60 tonnes per year per acre.

Relying on the said document, it was submitted by her that 10 as one tonne of sugarcane could yield about a quintal of jaggery and hence the yield of jaggery would be 60 quintals of jaggery which is of the value of Rs. 42,000/- and if 50 % was deducted towards cost of cultivation, the net yield was Rs.21,000/- and by capitalizing it with the multiplier factor of , the market value would be Rs. 2,10,000/- per acre.

16. When we consider the aforesaid submission in the light of the records we find that at least in two respects there is agreement between the parties, i.e., to the extent of sale price of jaggery being Rs. 700/- per quintal and that for capitalizing the market value the multiplying factor should be 10.

17. The aforesaid certificate dated 24.02.1996 was shown to have been issued by the Assistant Director of Agriculture, Sindgi but Assistant Director himself was not examined nor anybody from his office was examined to indicate as to under what circumstances the aforesaid certificate was issued and what is the basis of giving such a certificate and also to show what is the method of calculation to arrive at the aforesaid statistics. The said document was produced by the appellants very casually and without there being any further evidence in support of the aforesaid contents of the certificate. It is not safe to rely on such a certificate, shown to have been issued by a Government officer without the author of the said certificate being produced for testing the veracity of the certificate and the contents thereof.

18. Reliance was also placed by the counsel appearing for the appellants on the consent award which however again was not accepted by the High Court and rightly so, we feel, because the same was a consent award which cannot be said to be binding on the parties hereto. Therefore, there was no valid document in the instant case wherefrom it can safely be deduced as to what the exact market price of the land in question could be. Therefore, there was no other option but to fall back upon the capitalisation method of valuation as there is no other safe and reliable evidence available on record. While calculating market value of the land on the basis of such capitalisation method of valuation, the High Court relied on the aforesaid Government document published by the Directorate of Economics and Statistics which was also pertaining to the relevant year in question, i.e., 1995-96. According to the said document which was accepted as a reliable document, average yield per acre was 36.422 tonnes [rounded off to 36 tonnes] for Karnataka and 42.89 tonnes for Bijapur District. The High Court accepted the main statistics for arriving at the market value of the land. On going through the format and method of calculation as appearing from paragraphs 16 and 18 of the judgment and order of the Division Bench of the High Court, we do not find any reason to interfere with the same as the said calculation is found to be just and appropriate. Without any disputing material on record, we do not see as to why we should not accept the deduction of 40 per cent towards cost of conversion of sugarcane into jaggery and if that is accepted the remaining basis of the calculation is found to be appropriate, as even according to the appellants, 50 per cent could be deducted towards cost of cultivation which was also the submission of the counsel appearing for the appellant as appearing from paragraph 7 of the judgment itself.

19. Having decided thus, with regard to the determination of market value of the irrigated lands, we now focus our attention to the determination of the market value for the dry lands which was fixed by the High Court at Rs. 38,000/- per acre. There again, the High Court relied upon the earlier decision of the Division Bench in respect of the land of the same village which was also acquired for the same purpose by the same notification. The aforesaid decision on which reliance was placed by the High Court in its judgment is also placed on record and on going through the same we find that the aforesaid decision to fix the market value of the land at Rs. 38,000/- was arrived at on the ground that the market value of the irrigated lands would be taken as about one-and-half times of the value of dry lands. After making 25% deduction from the market value fixed for the sugarcane growing irrigated lands, the Division Bench of the High Court arrived at a finding that the market value of the other irrigated land would be around Rs. 57000/-per acre, and consequent thereto, the High Court fixed the amount of Rs. 38,000/- per acre for the dry land taking notice of one and half time calculation. The aforesaid calculation given by the High Court could not be assailed by the counsel appearing for the appellants by giving any other justification.

20. Once we have agreed with the findings of the Division Bench of the High Court to fix the market value of the sugarcane growing irrigated lands at Rs. 75,600/- per acre, necessarily, for the dry land the market value shall have to be held to be fixed at Rs. 38,000/- per acre, by

following the aforesaid criteria which is ordinarily accepted and followed and also to be rational.

21. In that view of the matter we do not find any reasonable ground to interfere with the decisions of the High Court for fixing the market value of sugarcane growing irrigated lands at Rs. 75,600/- and at Rs. 38,000/- for the dry lands. We, therefore, find no merit in these appeals which are dismissed, but we leave the parties to bear their own costs.