SUPREME COURT OF INDIA

R.Saragapani

Vs.

The Special Tahsildar, Karur-Dindigul Broadguage Line

C.A.No.5797 of 2002

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

23.09.2011

JUDGMENT

G.S.Singhvi,J.,

1. These appeals are directed against judgment dated 5.10.2001 of the Madras High Court whereby the compensation determined by the Reference Court vide award dated 2.4.1993 passed in LAOP Nos. 29 and 30 of 1988 was substantially reduced.

2. On a requisition sent by Executive Engineer (Construction), Southern Railway for the acquisition of land for construction of Karur-Dindigul Broad Gauge Line, the Government of Tamil Nadu issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') , which was published in the official Gazette dated 30.5.1984 for the acquisition of 19.72 acres land including land comprised in survey Nos. 658/2, 663/3B, 664, 665/1, 667/1 and 668 owned by R. Saragapani and Soundararajan (both of whom are now represented by their legal representatives) situated in village Vembur, Vadasandur Taluk, Dindigul District. The Special Tahsildar inspected the acquired land and submitted report dated 6.1.1987 to District Revenue Officer, Anna, District Dindigul indicating therein that value of the acquired land and coconut trees available at the site including 30% solatium would be Rs.3,70,190.50.

3. Land Acquisition Officer and Special Tahsildar, Karur-Dindigul Broad Gauge Railway Line, Unit II, Dindigul (for short, the Land Acquisition Officer') passed award dated 19.5.1987 and declared that the landowners are entitled to compensation at the rate of Rs.6,500/- per acre. He also awarded Rs.160/- per yielding coconut tree and Rs.30/- per young coconut tree (trees with flowers and flowering stage).

4. Feeling dissatisfied with the award of the Land Acquisition Officer, the land owners filed applications under Section 18 of the Act. Thereupon, the Collector made reference to the Court for determination of the compensation payable to the landowners. The same were registered as LAOP Nos. 29 and 30 of 1988. In what was described as the counter statements

filed by them, the landowners claimed that they were entitled to compensation at the rate of Rs.1,50,000/- per acre. They also claimed that the coconut trees were capable of giving crop for 50 years at the rate of Rs.500/- per annum.

5. During the pendency of reference, the Reference Court appointed an Advocate Commissioner for inspection of the acquired land to ascertain the number of trees and their age. The Court Commissioner took the assistance of Village Administrative Officer and Shri P. Nagarajan, Agricultural Development Officer Panchayath Union, Vedasandur and inspected the acquired land on 7.11.1992 after giving notice to both the parties. The landowners and their Advocate Shri K. Subramanian were present at the time of inspection but none appeared on behalf of the respondent. After inspecting the site, Shri P. Nagarajan submitted report dated 7.11.1992 with the finding that the trees were 17 years old and would give better yield for a further period of 70 years. He also opined that each tree will give a total income of Rs.29,890/-. Thereafter, the Advocate Commissioner submitted report dated 20.11.1992 to the Reference Court endorsing the report of Shri P. Nagarajan.

6. The Reference Court first considered the question as to how many trees existed on the acquired land, referred to the evidence of the parties as also the Advocate Commissioner's report and observed:

> "What is the number of coconut trees present in the lands acquired in L.A.O.P. No.29/1988? It is found that the number of trees mentioned in the award is wrong Exhibit R6 would show that the same is wrong. Exhibit R6 would show that the same is wrong. Exhibit R6 is the report filed by the Land Acquisition Officer after inspection on 06.01.1987. It is shown in the report that there are 9 yielding and 46 young coconut trees in S.F. No. 658/2, that in S.F. No. 665/1 there are 6 yielding coconut trees, 59 coconut trees with flowers, 199 young coconut trees, that there are 11 coconut trees in S.F. No. 668, that there are 56 coconut trees and 6 very small coconut trees of not yielding and no value in S.F. No.667/1. Thus it is shown in the above said document separately the yielding coconut trees, coconut trees yielding stage, young trees, nut yielding value less coconut trees. Hence the number of trees as mentioned in the award is not correct. When the railway line was being laid under this broad guage plan few coconut trees were cut. Exhibit R8 is the letter dated 24.02.1987 written by the railway department to the Special Tahsildar. It is stated in the said letter that 13 coconut trees were cut and 94 young coconut trees had dried/perished due to the hot sun and want of water. Thus 107 coconut trees had been destroyed. The property had been taken into possession is seen as 19.05.1987. Thus 107 coconut trees has been destroyed before taking possession, due to laying the railway line by the railway department. It has to be seen as to how many trees belonging to whom had been destroyed. Exhibit R1O would render much help in that extent. The Land Acquisition Officer has mentioned in Exhibit R7 as follows:

"It has been stated that the coconut trees in the place where the present broad guage line has been laid were cut by the railway department and then the railway line laid up".

Further the Village Administrative Officer in his statement would state that it was true that coconut trees were cut but he does not know how much trees were cut. Therefore it can be confirmed after enquiring that there were more trees then that are present now. It is further stated in Page 6 that it has to be considered that 9 trees were cut in S.F. No. 658/2, that in S.F. No. 665/1: 12 trees were cut, 15 trees were cut in S.F. No. 668, 37 trees were cut in S.F. No. 667/1. RW1 in his evidence has admitted in Exhibit R10 that it was stated that 64 trees were present in S.F. No. 658 and 9 trees were cut, 15 trees were cut in S.F. No. 668 and 11 were remaining. That there was a total of 276 coconut trees in S.F. No. 665/1 the trees cut were 12, that in S.F. No. 667/1, total of 99 trees cut were 37. Hence based on Exhibit R6 and on comparing Exhibits R7, R10 and the admission of RW1 the coconut trees present in the land has to be seen calculation. S.F. No. 658/2 belongs to the claimant in L.A.O.P. No. 29/88 and the claimant, in L.A.O.P. No. 30/88. Hence taking into account, what has been stated in the award, I am allotting the balance to L.A.O.P. No. 30/88. Therefore in S.F. No. 658/2 there are 9 yielding trees and 13 young coconut trees. In S.F. No. 665/1 according to Exhibit R6 there are 6 yielding trees, 59 flowering trees, young coconut trees 199. 12 coconut trees which were cut were in this number. I included this cut down trees with young trees. Therefore the young trees are 199 + 12 = 211. Similarly in S.F. No. 668 there are 11 trees along with 15 cut trees the total is 26.(ie) the young trees present in this survey field. It is shown in Exhibit R6 that 56 young coconut trees are present in S.F. No.667/1. It has also been stated that 6 coconut trees do not have any value in both L.A.O.P.s 29/88 and 30/88. 37 trees were cut from it, including the said trees the total comes to 93 trees. The statement in Exhibit R6 that there are 6 coconut trees of no value in S.F. No. 667/1, is accepted. Thus after taking into consideration the character of the coconut trees the cut trees are included along with the number of young coconut trees."

7. The Reference Court then adverted to the question as to what would be the annual income of the coconut trees and held that average annual income of one tree would be Rs.200/-. The process of reasoning by which the Reference Court arrived at this conclusion is reflected in paragraph 24 of its award, which is extracted below:

"24. The annual income of a coconut tree must now be seen PW1 would state that a good variety of coconut tree will yeild one in 45 days, that about 30 to 45 nuts can be fot, and there will be 8 harvest in a year and 100 nuts would sell from Rs. 350/- to Rs. 500/-. PW2 would state that the coconut trees had grown very well, that they yeilded good nuts, that it belongs to the fall variety, that the yeild is about 200 to 250 nuts in a year and each nut has been sold at Rs. 3.30 to Rs. 4/-. PW3 the owner of the lands adjacent to the acquired land in his evidence would state that the coconut trees were planted in the lands 17 years back, that it has red soil and each tree would yeild about

200 to 250 coconut in a year. PW4 the Vedasandur Agricultural Development Officer who has been in Government service for the past 19 years would state in his evidence that these coconut trees are of the tall variety, it has good growth, that there would be 12 to 13 flowerings in a year in these trees and each flowering would have 10 to 15 nuts and there would be an yeild of 100 to 150 coconuts in a single tree and the trees would be 17 years old and each tree would yeild 120 coconuts. He in his report Exhibit C3 given to the Commissioner has stated all about the income, age, and type of the coconut trees present in the land belonging to the claimant. Sarangapani which is near the acquired lands. PW7 Rathina Nadar of Chozhavandan has stated that he used to purchase coconuts for a price from Sarangapani and Exhibit C8 is the bill given to Sarangapani on 04.03.1983. He has purchased 15190 nuts for Rs. 37,644/-. He has stated that the rate of the nuts would be arounds Rs. 2.50 to Rs. 3.00. It is argued on behalf of the petitioner on the basis of the said evidence that the annual income from a tree is Rs. 375/¬and excluding the expenses the income is Rs. 334/- and the same is of minimum scale and it is insisted that the annual income of a single coconut tree must be calculated on the above said basis. The evidences let in would show that the coconut trees in the acquired lands belong to a good variety. There was proper irrigation facility. It is also shown that it has been properly cultivated. But it is definite that the annual income from a single tree has been shown to be very high on behalf of the claimant. Because the cost to maintain the coconut trees cannot be stated in a planned way. Further the annual income of the coconut tree under Section 4(1) of the act as per notification on 30.05.1984 amended as per order in I.A. No. 289, 290/93 of 30.04.1993, must be calculated as on that date. If the period for calculating the income, the expenses involved in maintaining the coconut tree and the evidence are taken into calculation then I consider, it correct and justifiable to fix the annual income of a coconut tree at Rs. 200/- Therefore I find the annual income of a coconut tree to be Rs. 200/-."

8. The next question considered by the Reference Court was as to what would be the value of the remaining land, i.e. the land not covered by the trees. After examining the oral and documentary evidence produced by the parties, the Reference Court observed:

"Exhibit R4 is the sale deed taken by RW1 for calculating the market value. It is given in No. 9 in Exhibit R3. RW1 says that on that basis the value of one acre is Rs. 6,500/- when it was suggested to RW1 that it was a dry land and the well in it had no water, he denied the same. But he has also said that he has not seen the said land. The statement of RW1 that the said land was equivalent land for calculating the market value without seeing it cannot be accepted. He has only functioned in a manner so as to show the value of the land as very low. The land should be taken for comparison to be an irrigated garden lands. The argument placed on behalf of the claimant that they were not given an opportunity to cross examine the purchaser or the seller of lands taken for comparison, regarding its nature as they have not been examined on behalf of the government and the seller and buyer have not been examined only because of the lands are not eligible for comparison, has to be accepted.

PW5 states that she sold 21 cents of land for Rs. 41,500/- vide Exhibit C4. PW6 would state that she purchased the land near the acquired lands for Rs. 44,280/- vide Exhibit C5. The lands sold vide Exhibit C4 have again been sold vide Exhibit C5. 21 cents of land has been sold for Rs. 31,500/- as per Exhibit C4. The value of the well is shown to be Rs. 5,000/-. The value of the motor is shown as Rs. 5,000/-. The land sold is marked as No. 25 in Exhibit R3. The land acquisition officer has taken these lands for comparison. It is shown as No. 25 in the sale deed taken up. But he has rejected it on the ground that it was not similar. This is a dry land cultivated with irrigation facility. Further Exhibit B3 would only show that these lands situate near to the lands acquired. It is clear that only this land has to be taken for comparison for a calculating the market value of the land. Therefore the lands sold vide Exhibits C4 and 5 are taken for comparison. This sale would show the market value. 21 cents has been sold for a sum of Rs. 31,500/- Therefore the value of one cent is Rs. 1,500/-. The market value of one acre is Rs.1,50,000/- "

9. The respondent challenged the award of the Reference Court by filing appeals under Section 54 of the Act, which came to be registered as Appeal Suit Nos.976 and 977 of 1993. On being noticed by the High Court, the landowners filed Cross Objection Nos. 23/1995 and 111/2001 and claimed that they were entitled to additional compensation.

10. During the pendency of the appeals and the cross objections, the land owners filed CMP Nos. 15193 and 16047 of 1997 for placing on record letter dated 17.2.1995 sent by Deputy Chief Engineer (Southern Railway), Gauge Conversion Arasaradi, Madurai to the Special Tahsildar (Land Acquisition) in which it was mentioned that the Railway Department entered upon the acquired land comprised in survey Nos. 658/2, 663/3B, 664/2, 665/1, 667/1 and 668 of village Vembur, Vedasandur Taluk, Dindigul, Anna District on 11.3.1985.

11. The Division Bench of the High Court re-evaluated the evidence produced by the parties and held that the trees existing on the acquired land must have been 2 - 4 years old only. The reasons assigned by the High Court for recording this conclusion are extracted below:

"It is pertinent to note that at the time of inspection, there were only 354 numbers of trees (6 yielding trees and 325 young trees) and as matter of fact, R-l in his statement given by the claimant before the Award Officer dated 22.4.1987, he has admitted the particulars of the land and the nature of his cultivation. He had stated that he knew the extent of the land that is sought to be acquired and he had also stated the extent of the land that he was been in enjoyment and that he had no objection for the land being taken over and agreed to receive the compensation determined. All the tender or young trees were planted after coming to know of the acquisition. The claimant admits to have purchase 1500 tender/young trees, but he had not obtained receipts for them. Though in his cross¬examination as P.W.l he has stated that the said statement was signed because he was asked to sign, it cannot be accepted. In the light of the fact that the existing yielding trees in the extent of the land, i.e. six will not constitute a

thope, since minimum 80 trees per acre are required to claim it as thope and for valuing it by capitalising the income of the trees by 20 years of purchase. The Award Officer taking into account that the tender or young trees were planted on or about the date of proposal and considering its age, determined the value of the trees as timber. We do not find any illegality in the same. Ex. A.7, the report of the Agricultural Officer is based on the inspection dated 7.11.1992 at the instance of the Advocate Commissioner appointed before the sub court. The Reference Court failed to take note of the fact of lapse of 8 years from the date of notification and nearly 12 years from the date of proposals for the Railways. The court did not go into the question of planting the coconuts during 1980's and in any event, at the time of 4 (1) notification in the year 1984, these trees must have been 2-4 years old only. Hence there is no scope of valuing them on the basis of capitalisation method. The decision of the Supreme Court in K.A.A. Raja's case referred to above squarely applies to this case."

12. The High Court did not agree with the method of valuation adopted by the Reference Court for determining market value of the acquired land and held that the landowners are entitled to compensation at the rate of Rs.1,00,000/- per acre. The reasons assigned by the High Court for recording this conclusion are as under:

"The Reference Court has taken Exs A.4 and A.5 as data sale deeds. By Ex. A.4 21 cents of land was sold on 8.9.1982 for a sum of Rs. 41.500/-. The same land was sold by Ex. A.5 on 6.7.1983 for a sum of Rs. 41,500/-. The Court below has taken this sale deed as representing the correct market value and found that the value per cent will be Rs.31,500/-- '21=> Rs. 1,500/-. Based on that, he fixed the market value of the land per acre at Rs. 1,50,000/-. In our view, the said method of valuation is not correct as the said value cannot be taken for comparison. Besides, the parties to the sale deed were not examined to find out under what circumstances these 21 cents of land were sold. From the Award and the judgment it is seen that the Land Acquisition Officer has taken the valuation at the rate of Rs 6,500/- per acre. In his evidence as D.W.1, he has stated that the document referred to in the Award dated 20.5.1982 was taken as a data sale deed and the rate was fixed at Rs. 6,500/¬per acre. The Officer has not given full particulars as to how he considered this as comparable to the acquired land. Hence the said document cannot be relief on for fixing the market value. Therefore, we are left with only Ex A.4. However, considering the small extent of land, the value as determined on the basis of this data sale land can be taken into account provided development charges of 33.33% are deducted from this value. If so deducted, the value will be Rs.1,00,000/- per acre. The claimant is entitled to get compensation at this rate for the 1.52 acres of land acquired from him, plus the value of trees as assessed as timber by the Award Officer, i.e. Rs.24,375/-. The claimant shall be entitled to interest and solatium on this amount as per law on the value of the land plus trees."

13. Shri L. Nageswara Rao, learned senior counsel for the appellants argued that the impugned judgment is liable to be set aside because the determination of market value made by the High Court suffers from multiple errors and fallacies. Learned senior counsel submitted that the Reference Court had rightly relied upon the report of the Advocate Commissioner, which was founded on the report of Shri P. Nagarajan, Agricultural Development Officer for the purpose of determining the number, age and yielding potential of the coconut trees existing on the acquired land and the High Court committed serious error by upsetting the said finding by assuming that the trees were planted by the landowners after coming to know about the proposed acquisition of their land. Learned senior counsel submitted that this observation of the High Court is based on pure conjectures because no evidence was produced by the respondent to show that the landowners had prior knowledge of the requisition received from Executive Engineer (Construction), Southern Railway for the acquisition of their land. Shri Nageswara Rao further argued that the High Court was not at all justified in treating the flowering trees as timber for the purpose of fixing their value. He then submitted that the Reference Court had rightly relied upon the sale deeds Exts. A4 and A5 vide which land measuring 21 cents was sold in 1982 and 1983 for Rs.41,500/- and the High Court committed an error by discarding the two sale deeds only on the ground that the same related to small piece of land. Learned senior counsel emphasized that the respondent had not produced any evidence regarding the cost required to be incurred for making the land fit for construction of Broad Gauge Line and argued that the High Court was not at all justified in applying 1/3rd cut towards development charges. Shri Nageswara Rao then argued that both, the Reference Court and the High Court committed an error by awarding interest w.e.f. 20.5.1987 despite the fact that possession of the acquired land had been taken by the Railway Department on 11.3.1985. In the end, the learned senior counsel submitted that in terms of the judgment of this Court in *Sunder v. Union of India*[1] the appellants are entitled to interest on solatium and additional amount.

14. Shri R. Sundaravaradan, learned senior counsel for the respondent, supported the impugned judgment and argued that the determination of market value by the High Court is based on correct application of the settled principles of law and does not merit reconsideration by this Court. Learned senior counsel submitted that the Reference Court had erroneously fixed the age of coconut trees, which were newly planted and were only at the flowering stage. Shri Sundaravaradan submitted that the new trees could not have been taken into consideration for fixing the value of yield of the total number of trees. He then argued that the determination of market value of the remaining land by the Reference Court was per se erroneous inasmuch as the sale instances relied upon by the land owners related to small parcel of land measuring 21 cents and the High Court rightly applied the rule of 1/3rd cut towards the development charges.

15. We have given serious thought to the respective arguments and scrutinized the record. At the outset, we consider it proper to observe that the High Court committed serious error in deciding the appeals without even adverting to CMP Nos. 15193/1997 and 16047/1997 along with which the appellants had placed on record letter dated 17.2.1995 written by Deputy Chief Engineer (Southern Railway), Gauge Conversion Arasaradi, Madurai to the Special Tahsildar (Land Acquisition) clearly indicating therein that possession of the acquired land

had been taken on 11.3.1985. In our opinion, the letter of the Deputy Chief Engineer is conclusive of the date on which possession was taken, i.e. 11.3.1985 and both, the Reference Court and the High Court committed an error by awarding interest with effect from 20.5.1987.

16. Adverting to the arguments of the learned senior counsel on the issue of fixing market value of the trees, we find that while the Reference Court had relied upon reports dated 7.11.1992 and 20.11.1992 of Shri P. Nagarajan, Agricultural Development Officer and the Court Commissioner for the purpose of recording a finding that as on the date of notification under Section 4(1) of the Act, the age of the trees could be 8 to 9 years and in due course even the flowering trees would become fruit bearing trees and yield income for next 60 to 70 years. The High Court totally ignored the two reports and fixed market value of young trees by treating the same as timber. Learned senior counsel for the respondent could not put forward any tangible argument as to why the report of an expert should not be relied upon for the purpose of fixing value of the trees with reference to their expected yield. Therefore, we are convinced that the High Court committed an error by upsetting the view taken by the Reference Court on the issue of market value of the trees.

17. Equally erroneous is the approach adopted by the High Court in fixing market value of the remaining land. Although, the appellants' argument that the Reference Court should not have segregated land covered by the trees for the purpose of fixing market value of the remaining land may not be acceptable because once market value of the trees was separately fixed, there could be no justification for clubbing the two types of land for the purpose of fixing market value, the High Court committed serious error by ignoring the two sale instances - Ext. A4 and A5 and, at the same time, applying 1/3rd cut. It is true that the two sale instances related to a small parcel of land but, in the absence of any other exemplar, such sale instance could be relied upon for the purpose of fixing market value of the acquired land, on which trees had not been planted, after applying an appropriate cut. By Ext.A4 dated 8.9.1982, 21 cents land was sold for a sum of Rs.41,500/-. The same piece of land was sold vide Ext. A5 dated 6.7.1983 at the same price, i.e. Rs.41,500/-. The notification under Section 4(1) was published on 30.5.1984. If the rule of escalation in the land price evolved by this Court is applied, then a minimum increase of 10% is to be added to the price specified in Ext. A5. Thus, as on the date of Section 4(1) notification, the approximate value of 21 cents land would be Rs.45,550/-. This would be equivalent to approximately Rs.2,169/- per cent and Rs.2,27,750/- per acre. Though, the respondent did not produce any evidence to show the amount, which was likely to be spent on making the land useful for the purpose of laying Broad Gauge Line, if 1/3rd cut applied by the High Court is considered reasonable in view of the principles laid down by this Court in *Kasturi v. State of Haryana*[2] which were reiterated in *Tejumal Bhojwani v. State of U.P*[3]*. V. Hanumantha Reddy v. Land Acquisition Officer & Mandal Revenue* [4]*Officer H.P. Housing Board v. Bharat S. Negi*[5] *and Kiran Tandon v. Allahabad Development Authority*[6] market value of the acquired land will be about Rs.1,50,000/- per acre.

18. We also agree with Shri Nageswara Rao that the appellants should be given the benefit of the principles laid down by the Constitution Bench in Sunder v. Union of India (supra). It appears that attention of the High Court was not drawn to that judgment else it would have, in all probability, extended the benefit of that judgment to the appellants.

19. In the result, the appeals are allowed. The impugned judgments are set aside and the award passed by the Reference Court is restored with modification that the appellants shall be entitled to interest on the enhanced amount with effect from 11.3.1985, i.e. the date on which possession of land was taken by the Railway Department. They shall also be entitled to interest on solatium and additional amount in terms of the judgment in Sunder v. Union of India (supra). The respondent is directed to pay the balance amount of compensation and interest to the legal representatives of the landowners within a period of 3 months from the date of receipt/production of copy of this judgment.

Judgment Referred.

[1]*(2001) 7 SCC 0211*
[2]*(2003) 1 SCC 0354*
[3]*(2003) 10 SCC 0525*
[4]*(2003) 12 SCC 0642*
[5]*(2004) 2 SCC 0184*
[6]*(2004) 10 SCC 0745*