

SUPREME COURT OF INDIA

Nelatur Sampooramma W/O Srinivasulureddy

Vs.

Special Deputy Collector, L.A., Telugu Ganga Project, Podalakur
At Nellore, Andhra Pradesh

C.A.No.9287 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

19.07.2017

JUDGMENT

R.Banumathi, J.,

SLP(Civil)No.14839 of 2015

1. Leave granted.

2. This appeal by way of special leave under Section 54 of the Land Acquisition Act, 1894 has been preferred by the claimant assailing the judgment and order dated 12.03.2014 in L.A.A.S. No.989/2007 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad by which the High Court concurred with the order of the Reference Court estimating the income from each pomegranate tree at Rs.65/- and increasing the multiplier of “9” instead of “2” along with statutory benefits, there by awarding the total compensation of Rs.26,325/- (45*65*9) for 45 pomegranate trees.

3. The Executive Engineer, Telugu Ganga Project, Division No.1, Nellore sent a requisition for acquisition of lands of Dachur Village for foreshore submersion of Kandelara Reservoir under Telugu Ganga Project to an extent of Acs.56.53. Out of this, upto Acs.30.85 is patta land and the remaining is Government land. Out of Acs.30.85, award was already passed for an extent of Acs.30.70 in the office of Executive Engineer under Award proceedings A.15/91-92 dated 05.03.1992. In respect of the remaining 0.15 cents award could not be passed since the land was covered by pomegranate fruit bearing trees for which valuation was not given by the Assistant Director of Horticulture for want of guidelines from the Government.

4. The appellant herein is the owner of the land admeasuring 0.15 acre along with 45 pomegranate trees in Sy. No.592/2, Reach No.57 of Dachur Village of Kaluvoya Nandal of

SPSR Nellore District of Andhra Pradesh. On 30.03.1990, a Notification was issued under Section 4(1) of the Land Acquisition Act for acquisition of the said land. After declaration under Section 6 and after conducting enquiry, award was passed in Award No.1/92-93 dated 14.09.1992.

5. On 14.09.1992, Award No.1/92-93 was passed after fixing the market value for the rain-fed dry lands at Rs.7,500/- per acre which works out to Rs.1,125/- for the land of 0.15 cents and of the pomegranate trees which were three years old at Rs.42.17 P. per tree which totally works out to Rs.1898/- as recommended by the Assistant Director of Horticulture and Engineering Department. The compensation was accordingly paid. The claimant appellant received the compensation under protest and made application under Section 18 of the Land Acquisition Act to refer the matter to the Civil Court for enhancement of compensation.

6. On reference, O.P.No.64 of 1994 was heard by the Senior Civil Judge, Gudur, Nellore District. In the Reference Court, the case of the claimant appellant was that while passing the Award, the Land Acquisition Officer assessed the market value of each pomegranate tree at Rs.31/- to Rs.52/- per year which is a very low rate and paid for two years only and that the Land Acquisition Officer assessed the market value of the trees without resorting to the capitalisation method of valuation. The claimants also submitted therein that each pomegranate tree earned a gross yield of Rs.325/- per annum and expense of each tree was Rs.25/- from gross income per year. The claimant contended that nearly 100 fruits from each tree and each fruit was valued at Rs.325/- on the date of notification and the net value estimated was Rs.3,600/- for each pomegranate tree adopting multiplier of '12' .

7. In the Reference Court, claimants examined C.Ws 1 and 2. R.W.1 was examined on behalf of the Referring Officer. Exhibits A1 to A8 and Ex.B1 were marked. Vide judgment and order dated 27.09.2004, the Senior Civil Judge, Gudur, Nellore District applied the multiplier of '2' based on G.O.Ms. No.601 dated 19.06.1992 and enhanced the market value of each pomegranate tree to Rs.65/- and also awarded solatium and other statutory benefits.

8. Being dissatisfied with the order of the Reference Court, the claimant approached the High Court by way of an appeal being L.A.A.S.No.989 of 2007. The High Court based on the evidence on record arrived at a conclusion that the pomegranate trees existing on the land at the time of acquisition were three years old and as per G.O. Ms. No.601 dated 19.06.1992 marked as Ex.A2, fruit bearing period being 12 years, the relevant multiplier adopted should have been "9" and not "2" .

9. Aggrieved by the order of the High Court, the appellant is before us by way of special leave to appeal.

10. Learned counsel for the appellant submitted that when the land with orchard of the appellant was acquired and possession was taken by the Government pursuant to a Notification under Section 4(1) of the Land Acquisition Act published on 30.03.1990, as per letter No. F(3) 2164/89 dated 26.11.1989 of the Director of Horticulture, Government of

Andhra Pradesh at Hyderabad, the revised net valuation of pomegranate trees was at Rs.300/- per tree per annum and adopting 12 years as fruit bearing period, the High Court ought to have awarded higher compensation. Learned counsel for the appellant has relied upon the decision of this Court in Civil Appeal Nos. 11404-405 of 2016 dated 29.11.2016 whereby this Court has awarded compensation of Rs.3,000/- per pomegranate tree in connection with lands acquired for Somashila Project submergence. The learned counsel for the appellant prayed that the same amount of compensation of Rs.3,000/- per pomegranate be awarded to the appellant. Learned counsel for the appellant further submitted that the reduction of market value by 10% on the purported ground that there are no optimum irrigation facilities is unsustainable as the Award itself records that there exists a well in Survey No.505/6 which is the land belonging to junior maternal uncle of the appellant and that the acquired land was being irrigated from the said well as per the understanding that existed between them.

11. Per contra, supporting the judgment of the High Court, learned counsel for the respondent submitted that as per the evidence on record all the 45 pomegranate trees existing on the land are three years old and the fruit bearing period is twelve years and thus the relevant multiplier “9” was rightly applied for the purpose of determination of the compensation for the pomegranate trees. Insofar as the judgment in Civil Appeal Nos.11404-11405 of 2016 is concerned, it is submitted that the said order relates to Somashila Project submergence of which the award was of the year 1999 and the same cannot be applied to the present case.

12. Heard the learned counsel for the parties at some length. Perused the impugned judgment and considered the documents and other materials placed on record.

13. As stated by the learned counsel for the appellant as per Letter No. F(3) 2164/89 dated 26.11.1989 of the Department of Horticulture, the revised value of fruit bearing trees viz. pomegranate was fixed at Rs.75/-. On the date of Section 4(1) Notification i.e. 30.03.1990, it is evident that the very same Notification was in effect and that being so, the Reference Court as well as the High Court committed an error in fixing the rate of the pomegranate trees at Rs.65/- relying on the subsequent G.O.No.601 dated 19.06.1992 which was not in existence on record on the date of publication of Section 4(1) Notification. Neither the Reference Court ought to have fixed the value of tree at Rs.65/- nor the High Court should have affirmed it. Insofar as the multiplier applied is concerned, after having given our thoughtful consideration, we are of the view that as per the Notification of the year 1989, the fruit bearing period being not less than twelve years and the trees being three years old, the High Court has rightly applied the multiplier of “9” .

14. Planting, raising and making commercial use of fruit bearing trees is a painstaking affair and cost of the same is consistently on rise as the years are passing by which is to be kept in view. Award of compensation in relation to fruit bearing trees depends on facts and circumstances of each case. It has been held in *Kerala State Electricity Board v. Livisha and Ors'*, in the following terms:

“11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case. We may, incidentally, refer to a recent decision of this Court in Land Acquisition Officer v. Kamandana Ramakrishna Rao AIR 2007 SC 1142 wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, same principle has been reiterated in Kapur Singh Mistry v. Financial Commission and Revenue Secretary to Govt. of Punjab and Ors. , State of Haryana v. Gurcharan Singh and Anr. [1995] 1 SCR 408, and Airports Authority of India v. Satyagopal Roy [2002] 2 SCR 505.”

15. The appellant has sought compensation of Rs.3000/- per pomegranate tree relying on judgment of this Court dated 29.11.2016 in Civil Appeal Nos.11404-11405 of 2016. In the facts and circumstances of the said case, considering the cost of planting and efforts involved in growing trees in general and in particular raising the pomegranate tree over the efflux of time, this Court deemed it appropriate to award Rs. 3000/- as compensation for each of the pomegranate tree. However, the compensation of Rs. 3000/- per pomegranate tree, as has been awarded in the abovementioned case, cannot be made applicable to the present case, considering the fact that award of compensation by Land Acquisition Officer in the said case dated 08.03.1999, as opposed to award in the present case which is dated 14.09.1992. A period of about seven years is a considerable period to be taken note of while computing cost of planting and raising fruit bearing trees. It is obvious that seven years back a fruit bearing tree would have fetched lesser income than it would fetch now. Accordingly, in the facts and circumstances of the present case, we deem it appropriate to award Rs. 2,000/- per pomegranate tree as compensation to the appellant. To this extent the order of the High Court stands modified.

16. The appellants are awarded compensation of Rs.2,000/- per pomegranate tree. The appellant shall also be entitled to all statutory benefits like solatium and interest on the same. The appeal is partly allowed in the above terms.

Judgment Referred.

¹(2007) 6 SCC 0792