Koyappathodi M. Ayisha Umma vs State Of Kerala on 13 August, 1991

Equivalent citations: 1991 AIR 2027, 1991 SCR (3) 548, AIR 1991 SUPREME COURT 2027, 1991 (4) SCC 8, 1991 AIR SCW 2260, (1992) 1 APLJ 49, 1991 (2) UJ (SC) 606, 1991 UJ(SC) 2 606, 1991 (2) ALL CJ 1175, (1991) 6 JT 105 (SC), (1991) 3 SCR 548 (SC), (1991) 2 LANDLR 402, (1992) 6 LACC 238

Author: K. Ramaswamy

Bench: K. Ramaswamy, N.M. Kasliwal

PETITIONER:
KOYAPPATHODI M. AYISHA UMMA

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT13/08/1991

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1991 AIR 2027 1991 SCR (3) 548
1991 SCC (4) 8 JT 1991 (6) 105
1991 SCALE (2)332

ACT:
Kerala Land Acquisition Act, 1961--Section 11--Award--Land with fruit bearing trees--Valuation--Methods--Pendency of appeal whether attracts application of Section 30(2) read with Section 23(2), Land Acquisition Act, 1894.
Code of Civil Procedure, 1908--Order 41, Rule 27--Remand--Whether to be made to adduce. fresh evidence when opportunity not utilised.

HEADNOTE:
The notification under section 3 of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962) was published in the

Gazette on February 28, 1967 acquiring six acres of land to construct staff quarters of P & T of Govt. of India.

The Land Acquisition Officer awarded compensation @ Rs.2.30 per cent and also the value of the trees by capitalisation method in a sum of Rs.2,69,421.55 p. towards the land improvement together with 15 per cent solatium and 4 per cent interest.

On reference, the Civil Court enhanced the market value at Rs.500 per cent, i.e., in total Rs.3,00,000 towards land value and confirmed the award of the Land Acquisition Officer of 2,69,421.55 p. towards land improvement. making in all 5,69,421.55 p. with solatium at 15 per cent and interest at 4 per cent from the date of dispossession.

The appeal by the State was allowed by the High Court.

Calling in question the reversing decree of the High Court, this appeal has been filed by the claimant contending that there was an intensive cultivation in the acquired land not only of the fruit hearing trees therein but also using the vacant space for other short term crops to establish, which the appellant sought remand to the Civil Court to adduce additional evidence under Order 41 of Rule 27 etc., which request the High Court had wrongly rejected; that the appellant was entitled to 30 per cent solatium under section 23(2) of the Land Acquisition

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Act, 1894 as amended under the Land Acquisition Amendment Act 68 of 1984; and that the land and the trees together constitute the value of the acquired lands and so were separately valued which would reflect the correct market value, which method the Civil Court had correctly adopted.

The State contended that the lands and. the trees cannot be valued separately; and that the Laud Acquisitiou Act, 1894 and 1984 Amendment Act have no application since acquisition proceedings were admittedly taken under. the Kerala Land ACquisition Act.

On the question, what is the proper method of valuation of the land, this Court, allowing the claimant's appeal,

HELD.1. The methods of valuation to be adopted in ascertaining the market value of the land as on the date of the notification are: (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transaction of the purchase or sale of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not 'preclude the court from taking any other special circumstances obtained in an appropriate case into consideration. As the object being always to arrive as near as possible in an estimate of the market value in arriving at a reasonable correct market value, it may be necessary to take even two or all those matters into account inasmuch as the exact valuation is not always possible as no two lands may be.the same either in respect of the situation

or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. [553B-D]

2. In evaluating the market value of the acquired property, namely, 'land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate.units; it would be open to the Land Acquisition Officer or the court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. [555A-C]

State of Kerala V.P.P. Hassan Koya, [1968] 3 SCR 459; Special

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Land Acquisition Officer v.P. Veerabhadarappa, etc. etc., [1984] 2 SCR 386 and Admn. General of West Bengal v. Collector, Varanasi, [1988] 2 SCR 1025, referred to.

3. SectiOn 30 sub-section (1) of the Land Acquisition Amendment Act 68 of 1984 would reveal the legislative intendment that the transitional provisions could apply to every proceeding for acquisition of any land under the principal Act, namely, 'Act 1 of 1894 (Central Act), pending on the 30th day of April, 1982, namely, the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People; in which no award has been made by the Collector before that date or the award made by the Civil Court at the date of the Amendment Act. It is clear that the Amendment Act 68 of 1984 including sub-section (2) of section 23 per se is inapplicable to the acquisition of the land under the Kerala Land Acquisition Act, 1961. The pendency of the appeals against the award made preceeding the dates in the High Court or this Court would not attract the application of section 30(2) and that, therefore, enhanced solatium under section 30(2) read with section 23(2) is inapplicable. [556H-557B, 557H-558B]

Kanthimathy Plantation Pvt. Ltd. v. State of Kerala & Ors., [1989] 4 SCC 650, referred to.

Union of India & Ors. v. Filip Tiago De Gama, [1990] 1 SCC 277, distinguished.

Union of India & Anr. v. Raghubir Singh (dead) by Lrs., [1989] 2 SCC 754, followed.

4. On the totality of the facts and circumstances, total sum of Rs. 10,000 would be reasonable compensation towards the value of the total trees as fire wood or as for use of other purposes after deducting salvage expenses. The appellant iS not entitled to enhanced solatium at 30 percent: but is entitled to Rs.3,10,000 as enhanced compensation with 15per cent solatium and interest at 4 per cent on enhanced market value from the date of dispossession. [556A-B, 558B-

C]

5. Remand under order 41 Rule27, C.P.C. cannot be made to adduce fresh evidence, when though available but was not adduced; [551H-552A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1036 of 1976.

From the Judgment and Order dated 11.6.1975 of the Kerala High Court in Appeal Suit No. 764 of 1972. T.T. Kunhikannan for the Appellant.

S. Padmanabhan and E.M.S. Anam for the Respondent. The Judgment of the Court was delivered by K. RAMASWAMY, J. This appeal by special leave is against the judgment and decree of the Kerala High Court dated June 11, 1975 made in A.S. No. 764 of 1972. The notification under section 3 of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962) was published in the Gazette on February 28, 1967 acquiring six acres of land in the city Of Calicut to construct staff quarters of P & T of Govt. of India. The Land Acquisition Officer by award dated February 29, 1969 awarded compensation @ Rs.230 per cent and also the value of the trees by capitalisation method in a sum of Rs.2,69,421.55 p. towards the land improvement together with 15 per cent solatium and 4 per cent interest. On reference, the Civil Court enhanced the market value by judgment and award dated February 9, 1972 at Rs.500 per cent i.e., in total Rs.3,00,000 towards land value and confirmed the award of the Land Acquisition Officer of 2,69,421.55 p. towards land improvement making in all 5,69,421.55 p. with solatium at 15 per cent and interest at 4 per. cent from the date of dispossession. In the appeal by the State against the en- hanced compensation, it was contended that the Civil Court committed grave error in fixing market value separately to the land and the trees on capitalisation basis to make up the compensation. That contention was found favour with the High Court and it set aside the award of the Civil Court of the value of the land of Rs.3,00,000 and confirmed the award of Rs.2,69,421.55. Calling in question the reversing decree of the High Court, this appeal has been filed. Two contentions have been raised by Shri Padmanabhan, the learned senior counsel for the appellant. Firstly he argued that there is an intensive cultivation in the ac- quired land not only of the fruit bearing trees therein but also using the vacant space for other short term crops to establish which the appellant sought remand to the Civil Court to adduce additional evidence under Order 41 of Rule 27 etc. The High Court had wrongly rejected the request for additional evidence. we find no force in the contention. It was not the case that the appellant was prevented to adduce evidence in this behalf. Remand under order 41 Rule 27, C.P.C cannot be made to adduce fresh evidence, when though available but was not adduced. Even otherwise it was further argued that the land and the trees together constitute the value of the acquired lands and so are separately valued which would reflect the true and correct market value. The Civil Court has correctly adopted the method and the High Court is unjustified in interfering with.the award of the Civil Court; It is also further contended that the land possessed of potential value as building sites and, therefore, the reliance by the Civil Court on Ex. A. 1 dated February 19, 1964 which worked out at Rs.400 per cent and Ex. A. 2 dated February 17, 1967 under which 14 were purchased worked out at Rs.556 percent and award of market value @ Rs.500 per cent by the Civil Court was not illegal. Ex. B. 1 under which Rs.230 per

cent accepted as claimed by the State cannot be relied upon as the document dated June 3, 1966 does not relate to the lands in the neighbourhood. Admittedly they are situated six furlongs away from the limits of Calicut city and one mile from the acquired lands. On the other hand, the lands under Ex. A. 1 and A. 2 are situated one furlong from the acquired lands. Therefore, they provide the comparable sales for fixation of market value. The second contention is that the appellant is entitled to 30 per cent solatium under section 23(2) of the Land Acquisition Act 1 of 1894 as amended under the Land Acquisition Amendment Act 68 of 1984. The learned counsel appearing for the State has resisted the conten- tions. He argued that Ex. A. 1 and A. 2 relate to small extent of 5 cents and 14 cents together with the buildings situated therein. Therefore, when a large extent of six acres was acquired they offer no comparable price. Small plots always fetch higher price and that, therefore, they cannot form same basis to fix the market value at Rs.500 per cent. He also further contended that the lands and the trees cannot be valued separately. The court should adopt only either the value of the, land or income of the trees with suitable multiplier but not both. The High Court is, there- fore, well justified in rejecting the sale deeds and the total valuation and confirmed the capitalisation method of valuation. He also contended that the Land Acquisition Act, 1894 and 1984 Amendment Act have no application since acqui- sition proceedings were admittedly taken under the Kerala Land Acquisition Act.

The crucial question, therefore, is what is the proper method of valuation of the land in question. The total extent of the land is six acres consisting of 1130 coconut trees; 65 arecanut trees and 45 pepper wines. The Civil Court fixed the market value of the lands at Rs.3,00,000. Admittedly, the appellant did not file any cross objections in the High Court seeking any higher com- pensation. Accordingly the market value of the lands fixed at Rs.3,00,000 became final. The fixation of the market value on capitalisation method also became final. It is settled law that the methods of valuation to be adopted in ascertaining the market value of the land as on the date of the notification are: (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transaction Of the purchase or sate of the lands acquired or the lands adjacent to the lands acquired and possessing similar advan- tages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the court from taking any other special circumstances obtained in an appropriate case into consideration. As the object being always to arrive as near as possible in an estimate of the market value in arriving at a reasonable correct market value, it may be necessary to take even two or all those matters into account inasmuch as the exact valuation is not always possible as tow lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. In State of Kerala v.P.P. Hassan Koya, [1968] 3 SCR 459 the question arose whether the separate valuation of the land and building would be proper method to be adopted to determine the market value of the acquired property.' This Court held that "the land and the building constitute one unit" and the value of "the entire unit must be determined with all its advantages" and poten- tialities. When the property is sold with building it is often difficult to have sale of single land with building approximately in time to the date of the notification. Therefore, the, method which is to be adopted in determining the value of the land and building is the method of capital- isation of return actually received or which might reasona- bly be received from the land or the building separate valuation of the land and building was not approved and the annual rent received with the proper capitalisation was adopted by the courts below was

approved by this Court. In Special Land Acquisition Officer v.P. Veerabhadrappa, etc. etc., [1984] 2 SCR 386 this court held that the method of valuation by capitalisation should not be resorted to when other methods are available. However, where definite materi- al is not forthcoming either in the shape of sales of simi- lar lands in the neighbourhood at or about the, date of notification under s. 4(1) or otherwise,. the court has no other alternative but to fall back on the method of valua- tion by capitalisation. 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 inter- est in money investments. The return which an investor will expect from an investment will depend upon the characteris- tic of income-as compared to that of idle security. The main features are: (1) security of the income; (2) fluctuation; (3) chances of increase; (4) cost of collection; etc. The traditional view of capitalised value being linked with gilt-edged securities, no longer be. rigorous when invest- ment in fixed deposits with nationalised banks, National Savings Certificates, Unit' Trusts and other forms of Govt. securities and even in the share market command a much greater-return are available. The capital in agricultural lands normally when the rate of return on investment was 8.25per cent in the years. 1971-72, the proper multiplier to be applied for the purpose of capitialisation would not, in any event, exceeding 10 per cent. In that case the State had agreed to apply 12-1/2 per cent capitalised value of the lands, this court upheld capitalisation of the value of land at 12-1/2 per cent In Admn. General of West Bengal v. Collector, Varanasi, [1988] 2 SCR 1025 this' Court held that usually land and building there9n constitute one unit. Land is one kind of property; land and building' together constitute an alto- gether different kind of property. They must be valued as one unit. But where, however, the property comprises exten- sive land and the structure standing thereon, do not show that full utilization of potential of the land realised, it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary notification and to add to it the value of the structures as at that time. In this method, building value is estimated on the basis of the prime cost or replacement cost less depriciation. The rate of depricia- tion, generally, arrived at by dividing the cost of con- struction '(less the salvage valued at the end of the period of utility) by the number of years of utility of the build- ing. The factors that prolong the life and the utility of the building, such as good maintenance, necessarily influ- ence and bring down the rate of depreciation. In that case larger extent of 23.66 acres together with building of 25,000 sq. feets comprises of 35 rooms,halls and other appurtenances, and 43 1 fruit bearing and 13 timber trees and 12 bamboo clumps situated in the city of Varanasi were acquired. With regard to the value of the trees, this Court held that where the land is valued with reference to the potentiality for building purposes the trees on the land cannot be valued independently on the basis of its horticul- tural value or-with reference to the value of the yield but this principle does not come in the way of awarding the timber value after deducting costs for cutting and removing them from the lands as salvage value.

It is thus settled law that in evaluating the market value of the acquired property, namely, land and the build- ing or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable' evidence available, on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would

be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land. In this case the award of compensation was based on both the value of the land and trees. Accordingly the determination of the compensation of the land as well as the trees is illegal. The High Court laid the law correctly.

It is seen that Ex. B. 1 relied on by the State was rejected by both the courts and, therefore, it cannot offer any reasonable basis to fix the market value of the land. It is 'equally seen that Ex. A. 1 and A. 2 relate to small extent of land together with buildings standing thereon. Therefore, they too do not also form any reasonable basis Or guide to determine market value of large extent of six acres of the acquired land. The High Court rightly did not place reliance therein. But from the evidence it is clear, as found by the Civil Court, that the lands possessed of poten- tial value as building sites as the lands are situated in the city itself. There was all round development around the lands. The lands are situated half a furlong from the Bom- bay-Kanyakumari National Highway. It also abutts the road to Naduvattom, a busy bus route within the Corporation, Cali- cut. It is situated nearby the industrial area. The Western India Steel Mill, the Premier Steel Mills, Arts and Science College, Cinema Theatre, Police Station and other offices are situated in close proximity to the lands and that, therefore, the lands are possessed of potential value but unfortunately the appellant did not place any material of the prevailing prices as house sites. However, the value of the land as fixed at Rs.3,00,000 became final. The market value of the income from the trees with 15 years multiplier was' worked out at Rs.2,69,42 1.55 p. by the Civil Court and the High Court accepted to be the correct valuation and it was also not questioned. But it is lesser than the value of the land. Being higher in value the appellant is entitled to the value of the land as determined by the Civil Cout at Rs.3,00,000 (three lakhs) in total. The value of the trees as fire wood shall be determined towards compensation. We have noted the number of coconut trees etc. The learned counsel has left to this Court to fix any reasonable compensation and On the totality of the facts and circumstances we are of the opinion that total sum of Rs. 10,000 would be reasonable compensation towards the value of the total trees as fire wood or as for use of other purposes after deducting salvage expenses. Accordingly we hold that the appellant is entitled to total cOmpensation of Rs.3,10,000.

Admittedly, the appellant is entitled to solatium at 15 percent and 4 per cent interest under the Kerala Land Acqui- sition Act. Section 30 sub-section (1) of the Land Acquisi- tion Amendment Act 68 of 1984 reads thus:

> "Transitional Provisions--(1) the provisions of sub-section (1A) of s. 23 of the Principal Act, as inserted by Clause (a) of s. 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,
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> (a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amend- ment) Bill, 1982, in the House of People), in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the com- mencement of this Act".

(2) "The provisions of sub-section, (2) of s. 23 and s. 28 of the principal Act, as amended by CI. (b) of s. 15 and s. 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award' under the provisions of the, principal Act later the 30th day of April, 1982. (the date of introduction of the Land Acquisition (Amend- ment) Bill, 1932, in the House of the People) and before the commencement of this Act".

A reading of the provisions would reveal the legisla- tive intendment that the transitional provisions could apply to every proceeding for acquisition of any land under the principal Act, namely, Act 1 of 1894 (Central Act), pending on the 30th day of April, 1982, namely, the date of introduction of the Land Acquisi- tion (Amendment) Bill, 2982 in the House of the People; in which no award has been made by the Collector before. that date or the award made by the. Civil Court at the date of the Amendment Act, namely, September 24, ,1984.. Thus it is clear that 'the Amendment Act 68 of 1984 including sub- section (2) s. 23 per se is inapplicable to the acquisition of the land under the Kerala Land Acquisition Act, 1961. In Kanthitnathy Plantation Pvt. Ltd. v. State. of Kerala & Ors., [1989] 4 SCC 650 this Court held that,by operation of the Land Acquisition (Amendment) Act 68 of 1984 read with Art 254 of the Constitution, the Kerala Land Acquisition Act, 1961 by necessary implication stood repealed, in its application to the State of Kerala and that the Land Acqui- sition Act 1 of 1984 as amended by Central Act 68 of 1984 stands applicable. Therefore, the proceedings' under the Kerala Act being pending proceedings would be continued from the stage at which they stood at. Shri Padmanabhan then.contends that the ratio in Union of India & Ors. v. Filip Tiago De Game of Veden Vasco De Gama, [1990] 1 SCC 277 would attract the facts in this case and the appellant is entitled to 30 per cent solatium under the amended Act. We are afraid we cannot accede to this contention. The admit- ted facts in this case are that the award was made by the Collector on February 29, 1969. On reference the Civil Court made the award on February 9, 1972. In Filip Tiago's case the award was made on March 5, 1969 and the Civil Court on reference under section 18 made its award on May 28, 1985. In the light of those facts, this Court by processual interpretation of transitional provision of s. 30(2) avoided injustice by eschewing literal construction and advanced justice by mending the law. The ratio is clearly distin- guishable. In Union of India & Anr. v. Raghubir Singh (dead) by Lrs. etc., [1989] 2 SCC 754 a Constitution Bench of this Court, to resolve the conflict of decisions as to the 'applicability of the Amendment Act to pending appeals in the High Court and in this Court, held authoritatively that the award made by the Collector referred to in s. 30(2) is an award made under section 11 of the Parent Act and the award made by the Principal Civil Court of original juris- diction under section 23 of the Parent Act, on reference made to it by the Collector under section 18 of the Parent Act. There can, therefore, be no doubt that the benefit of enhanced solatium intended by s. 30(2) is in respect of an award made by the Collector between April 30, 1982 and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by s. 30(2) to the case of an award made by the Civil Court between April 30, 1982 and September 24, 1984 even though it be upon reference from the award made before April 30, 1982. Thus it was held that the pend- ency of the appeals against the award made preceding the aforestated two dates

in the High Court or this Court would not attract the application of s. 30(2) and that, therefore, enhanced solatium under section 30(2) read with s. 23(2) is inapplicable. Thereby, the appellant is not entitled to enhanced solatium at 30 per cent. As regards interest is concerned it is fairly conceded that the claimant is entitled only to 4 per cent as awarded by the courts below.

Accordingly we allow the appeal, set aside the judgment of the High Court and hold that the appellant is entitled to Rs.3,10,000 as enhanced compensation with 15 per cent sola- tium and interest at 4 per cent on enhanced market value from the date of dispossession. The appeal is accordingly allowed with costs of this Court.

V.P.R. Appeal al-
lowed.