Airports Authority Of India vs Satyagopal Roy & Others on 15 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1423, 2002 (3) SCC 527, 2002 AIR SCW 1272, 2002 (2) SCALE 663, 2002 (1) LRI 657, (2002) 3 JT 58 (SC), (2002) 5 ALL WC 4356, 2002 (3) JT 58, 2002 (2) UPLBEC 1185, 2002 (4) SRJ 360, 2002 (2) SLT 537, (2002) 2 UPLBEC 1185, (2003) 1 LANDLR 611, (2002) 2 SCJ 479, (2002) 2 LACC 22, (2002) 2 SUPREME 453, (2002) 3 RECCIVR 404, (2002) 2 SCALE 663, (2002) 47 ALL LR 374

Bench: M.B. Shah, S.N. Variava, B.N. Agrawal

CASE NO.:
Appeal (civil) 2091 of 2002

PETITIONER:
AIRPORTS AUTHORITY OF INDIA

Vs.

RESPONDENT:
SATYAGOPAL ROY & OTHERS

DATE OF JUDGMENT: 15/03/2002

BENCH:
M.B. Shah, S.N. Variava & B.N. Agrawal

JUDGMENT:

Shah, J.

Leave granted.

Appellant-Airports Authority of India has challenged the judgment and order dated 27.7.2000 passed by the High Court of Guwahati at Agartala in First Appeal No. 68 of 1995, whereby the Court determined compensation for cutting of trees by applying the multiplier of 18 years' yield.

It is the contention of the learned counsel for the appellant that the impugned order is against the law laid down by this Court in State of Haryana v. Gurcharan Singh and Another [1995 Suppl (2) SCC 637] wherein this Court has held that under no circumstances, the multiplier should be more

than 8 years when the market value is determined on the basis of the yield from the trees or plantation.

She has also submitted that as such the entire award of compensation to the respondent is also illegal because by Notification dated 15th March, 1979 issued by the Government of India, Ministry of Tourism and Civil Aviation, New Delhi in exercise of powers conferred under Section 9A of the Aircraft Act, 1934 (22 of 1934), respondents were directed that no building or structure should be constructed or erected or no tree should be planted on the land specified therein which included the land belonging to the claimants. She further pointed out that after issuance of the said Notification, compensation was paid for cutting the trees which were existing on the land. Thereafter, similar Notification was issued on 5th January, 1988 for the same purpose and the claimants again claimed compensation for cutting of trees planted by them on the specified land. In our view, the aforesaid submission does not require any consideration as it was neither raised before the High Court nor it was contended before the Arbitrator appointed by the Central Government. Further, this Court has issued notice confined to the question whether multiplier applied by the impugned order is justified in view of the decision in Gurcharan Singh's case (supra). Hence, this submission is not required to be dealt with in this appeal.

Therefore, only question iswhether the multiplier applied by the High Court was justified? It is true that in the decision rendered by this Court in Gurcharan Singh's case, it has been held that in catena of decisions rendered by this Court when the market value is determined on the basis of the yield from the trees or plantation, 8 years' multiplier would be appropriate multiplier.

As against this, learned counsel for the respondents-claimants submitted that this case does not call for any interference because small amount is awarded to the claimants and in number of such cases, this Court has refused to interfere. He referred to various decisions rendered by this Court including State of Madras v. Rev. Brother Joseph [AIR 1973 SC 2463].

Before dealing with the contentions raised by the learned counsel for the parties, we would reiterate that capitalisation means the method used to convert future benefits to present value by discounting such future benefit at an appropriate rate of return. It is the process of converting the net income of a property into its equivalent capital value. While capitalising the income, future income, its duration along with risk factor is to be taken into consideration. Capitalising rate means a designated rate of return which coverts net future benefits to capital value.

It is settled law that in evaluating the market value of the acquired property, namely, land and building or the land with fruit- bearing trees standing thereon, value of both is to be determined not as separate units but as one unit. Therefore, it would be open to the Land Acquisition Officer or the Court either to assess the land with all its advantages and fix the market value thereof on the basis of comparable sale instances. In case where comparable sale instances are not available and where there is reliable and acceptable evidence on record of the annual income, market value could be assessed and determined on the basis of net annual income multiplied by appropriate multiplier for its capitalization. In the case of fruit bearing trees its net yield is to be taken into consideration, that is to say, by deducting expenses incurred for getting the yield and also the value of the timber and

expenses to cut and remove the trees from the land. For capitalising the income, previously income from the gilt- edged securities was the basis, but thereafter rate of interest in nationalized banks where deposits are quite safe is taken into consideration as proper basis. If the interest rate in a nationalized bank or other safe investments, on a long term fixed deposit, say is 10%, and the yield from the trees p.a. is Rs.5,000/-, then for getting the said income, deposits of Rs.50,000/- would be required to be made. Hence, the value of the said trees along with the land can be safely assessed as Rs.50,000/-. In the present case, there is no question of acquiring the land. The land remains with the claimants. The question is limited with regard to payment of compensation for the damages because of cutting of trees. With regard to fruit bearing trees, its life span including risk factor is also required to be taken into consideration. Hence, yield of trees multiplied by an appropriate multiplier for its capitalization after taking into consideration all relevant factors would be the basis for determining the compensation.

Law on this point is discussed in Union of India and Another v. Shanti Devi and Others [(1983) 4 SCC 542], wherein the Court dealing with similar contention, after considering its earlier decisions observed that in India the multiplier which is adopted in determining the compensation by the capitalisation method has been 33 1/3, 25, 20, 16 2/3, 11 and 8 and thereafter held as under: -

> "The number of years' purchase has gradually decreased as the prevailing rate of interest realisable from safe investments has gradually increasedthe higher the rate of interest, the lower the number of years' purchase. This method of valuation involves capitalising the net income that the property can fairly be expected to produce and the rate of capitalisation is the percentage of return on his investment that a willing buyer would expect from the property during the relevant period. It was once felt that the relevant rate of interest that should be taken into consideration was the interest which gilt- edged securities or Government bonds would normally fetch. The safety and liquidity of the investment in bonds were relied on as the twin factors to take the view that the interest on gilt-edged securities should alone be taken into consideration. This was at a time when there were not many avenues of safe investments and investment in private commercial concerns was not quite reliable. But from the year 1959-60 circumstances have gradually changed. There are many State Banks and nationalised banks in which deposits made are quite safe. Even in the share market we have many 'blue chips' which command stability and other attendant benefits such as the possibility of issue of bonus shares and rights shares and appreciation of the value of the shares themselves. They are attracting a lot of capital investment. 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 expected 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. The multiplier for purposes of capitalisation would be about thirteen."

Similarly, dealing with the principle of capitalisation on the basis of yield, this Court in Special land Acquisition Officer, Davangere v. P. Veerabhadarappa and Others [(1984) 2 SCC 120] held that it would be unrealistic to adhere to the traditional view of capitalized value being linked with the gilt-edged securities when investment in fixed deposits with 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.

The Court further observed (paragraph 18 and 21) thus:

> "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 (marketability) 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.
>
> 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".

Now, in the light of the aforesaid two decisions, we would refer to the decision rendered by this Court in Gurcharan Singh (supra). In that case, the Court considered the question whether the High Court erroneously enhanced the compensation by 60% on the basis of price index in a case where Land Acquisition Officer determined the compensation on the basis of market value as well as on the basis of yield as if both were separate units. In those circumstances, the Court held thus:

> "It is settled law that the Collector or the Court who determines the compensation for the land as well as fruit-bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit-bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees Under no circumstances, the multiplier should be more than an 8 years' multiplier, as it is a settled law of this Court in a catena of decisions that when the market value is determined on the basis of the yield from the trees or a plantation, 8 years' multiplier shall be the appropriate multiplier. For agricultural land 12 years'

> multiplier shall be a suitable multiplier."

In that case, after considering the fact that the Collector has given compensation which could not be interfered with by the Court under Section 25 of the Land Acquisition Act, the Court did not reduce the same. However, the Court set aside 60% enhancement of compensation given by the High Court on the basis of price index.

Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in Gurucharan Singh's case (supra) and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years' multiplier. In this view of the matter, in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18.

However, it is true that this Court in State of Madras v. Rev. Brother Joseph [AIR 1973 SC 2463] refused to interfere with the award on the ground that the compensation awarded was meager. Similarly, in Special Land Acquisition Officer, Malaprabha Dam Project, Saundatti and Others v. Madivalappa Basalingappa Melavanki and Others [(1995) 5 SCC 670], this Court refused to interfere where compensation was determined on the basis of annual yield of agricultural land by application of 15 years' multiplier on the ground that the small area of land was acquired and approved the order of the High Court in which it was observed that "it is hardly appropriate to interfere with the award notwithstanding the discernible blemish pointed out by the learned Government Pleader" and also held thus:

> "However, it would not operate as a precedent to any future case or other cases arising from the same notification. All cases need to be decided applying only 10 years' multiplier."

In the present case also, considering the small amount of compensation awarded to the claimants, we do not think that this would be a fit case for interference in this appeal. Hence, the appeal is dismissed with no order as to costs.

.J. (M.B. SHAH) ..J. (S.N. VARIAVA) ..J. March 15, 2002. (B.N. AGRAWAL)