Supreme Court of India
K.A.A.Raja vs State Of Kerala on 26 April, 1994
Equivalent citations: 1994 SCC (5) 138, 1994 SCALE (2)1059
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
K.A.A.RAJA

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT26/04/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC (5) 138 1994 SCALE (2)1059

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This appeal by special leave arises from the judgment of the Division Bench of the Kerala High Court dated 21-1-1991 in LAA No. 226 of 1990 and cross-objections. The appellants are the claimants. The Government of Kerala proposed to acquire 52.88 acres of cardamom plantation situated in Mappara Village in Peermade Taluk of Idukki District of Kerala State by a notification issued under Section 3(1) of the Kerala Land Acquisition Act, 1961, Act 21 of 1962, for short 'the Act' and published in the State Gazette on 10-1-1984, for Periyar Tiger reserved forest. Possession was taken on 7-5-1984 and the same was handed over to the Forest Department on 8-6-1984. The Land Acquisition Officer by his award dated 10-10-1985 determined the market value of the said land in a sum of Rs 14,75,385.25. On reference under Section 18 of the Act, the Land Acquisition Court (Subordinate Judge) enhanced the market value of the said land by his judgment and decree dated 22-2-1990 to Rs 1,97,77,772.60. On consideration of the appeal by the State and also the cross-objections filed therein, the High Court while allowed the appeal of the State, dismissed the

cross-objections. It determined the market value of the said land at Rs 23,73,967.74. Dissatisfied therewith, the appellants have filed this appeal seeking enhanced market value of the lands acquired.

2.The contention of the learned counsel for the appellants was that the High Court had committed grievous error in accepting Exs. B-4 and B-5(a) in fixing the average of the yield at 100 kgs per hectare and also the price per kilogram at Rs 220. The learned counsel has taken us through the evidence and the findings recorded by the Land Acquisition Court (Subordinate Judge) as well as the High Court. As seen from its judgment, the High Court has committed gross mistakes in computing the income from the estates acquired. Ex. B-4 is a statement made by the Reserved Forest Officials on 16-6-1984 to the effect that the plantation was not properly maintained and that on the date of taking over, there was considerable damage to the crop. There is no reason to dispute the same. Ex. B-5(a) is the certified copy of the record relating to assessment of the agricultural income secured by the Land Acquisition Officer. It was marked in the civil court by consent of the parties and the Government has relied upon it. We find therefrom that for the years 1980-81, 1981-82 and 1982-83, the appellants have submitted nil income returns for the assessments of the income derived from the lands but the Agricultural Income Tax Officer had assessed the income by best of judgment. Therein the Agricultural Income Tax Officer had relied upon the statement made by the eight sets of claimants in the assessments. They concluded that total land was 52.88 acres and the yield for the year 1982-83 was 3079.5 kg. which we have rounded at 3080 kg. Though the learned counsel sought to rely upon the auction sales held in the year 1983 at the relevant time for Rs 4459 of 6.3 kg and Ex. B- 13 Rs 472.81 for auction held on 13-12-1983 and Rs 483.22 for the auction held on 6-12- 1983 and the average was worked out by the civil court at Rs 471.87 per kg. The High Court has rightly rejected the working out the average at the aforesaid rate for valid reasons. It had determined at the rate of Rs 220 per kg. as the reasonable prevailing price taking into account the prevailing price for three years prior to the year 1982-83 and worked it out at the average and determined the price at Rs 220 per kg. The method adopted by the High Court is fair and just, and that it meets the exigencies of the situation. The High Court also found that there were 8 hectares of the plantation where five years old plants were found, in 7 hectares of the plantation where six years old plants were found and 6.14 hectares plantation where 9 years old plants were found. It was agreed that maximum period which the plants would yield cardamom would be 15 years. On that basis the learned Judges worked out the capitalised value at 10 years, 9 years and 6 years yields respectively and determined the market value evolving multipliers for those years. It worked out to average yield at 100 kgs. per hectare. This principle adopted was not correct since actual yield as assessed by the Asstt. Income Tax Department for the purpose of income tax was there and it had attained finality. The State produced and relied upon this assessment order as evidence. It is clear that the income assessed by the Agricultural Income Tax Officer, as having been derived by the appellants from the lands in question during the relevant years, was accepted by appellants and suffered the tax. For the relevant year 1982-83, the Income Tax Officer estimated the total yield of cardamom as 3080 kgs. If it is multiplied by Rs 220 per kg Rs 6,77,600 would be estimated gross income derived by the appellants. High Court also found that the expenditure incurred by the appellants was Rs 3036 per acre which worked out to be for 53 acres at Rs 1,60,590.00 (sic). Thus after deducting the expenditure from the gross income the net income would be Rs 5,17,000. The question then is what would be the appropriate multiplier that would be applied

in a case like this.

3.That long delay would occur from the date of the proposal to acquire a particular land for a public purpose till final decision in that behalf is taken and a notification under Section 4(1) of the Land Acquisition Act is issued and published in the Gazette. In the meanwhile it would become a matter of common knowledge, in particular, the owners will come to know that their lands will be proposed for acquisition. Instances are not uncommon where attempts will be made to boost up the value of the acquired lands. Sometimes fruit-bearing trees are planted and reports are obtained of the existence of the trees with reference to their specific ages. This case itself establishes from the record that, but for the report of the Forest Officer, the report given by the Subordinate Officers of the Revenue Department would have persuaded the courts to accept the report of the Revenue Officers that the plantation maintained was of high standards and in good condition which was belled by the report of the Forest Officials, as accepted by the High Court. Therefore, it would be necessary in every case to place a correct report before the reference court, the true state of affairs regarding the number of trees, their ages, their yield, in particular where capitalisation method is to be adopted to determine the market value of the acquired land. In Joginder Singh Saini v. State of Haryana' this Court held that the mother trees are to be valued as wood and the nursery plants are not to be separately valued, but with a direction to be taken away by the owner. In Periyar and Pareekanni Rubbers Ltd. v. State of Kerala2 this Court held that it is the duty of the court to determine just and fair market value and the conduct of the Land Acquisition Court or Officer in that behalf, if found to be a misconduct, the officer was amenable to disciplinary proceedings for misconduct. That apart the claimants should produce necessary evidence on the value of land since the burden of proof is on them to establish the higher compensation claimed. Equally the officer-in-charge has responsibility and duty to place all material and relevant evidence in rebuttal of the enhanced claim. As a part thereof the condition of the trees, the ages of the trees, their number and the total yield derived from the trees being material and relevant 1 (1990) 3 SCC 276: AIR 1990 SC 1219 2 (1991) 4 SCC 195 : AIR 1990 SC 2192: 1990 Supp 1 SCR 362 facts to adjudge not only the value of the produce, but also to apply suitable multiplier to determine the market value as compensation. The court equally has duty, on an overall consideration of the facts and circumstances available in the particular case on hand, while determining the number of trees, their ages, the yield and the price fetched or likely to fetch in the open market should apply appropriate multiplier in determining the market value of the grove or plantation etc. In any case for want of appropriate evidence as to multiplier adduced by either party, we take seven years' multiplier for purpose of capitalisation of net income, though income may vary depending on evidence.

4.We have seen from the evidence the nature of the trees and their yield accepted by the Income Tax Authorities and the price fixed by the High Court. On an overall consideration of the prevailing prices though for one year there may be higher prices, but on an average it was found that the price would be at Rs 220 per kg. To apply the capitalisation method, on the facts and circumstances, we consider that in assessing the market value of the plantation of a large extent of the lands acquired in the notification, the suitable and proper multiplier could be taken as 7 years.

5.Therefore, applying the 7 years' multiplier with reference to the year of acquisition for the purpose of capitalising the net income, we consider that the just and proper market value would be round

figure of 36 lakhs. The appellants, therefore, would be entitled to the market value in a sum of Rs 36 lakhs for the total extent of 52 acres 88 cents. Therefore, the appellants are entitled to the market value of Rupees Thirty-six lakhs for their lands with everything thereon and usual benefits of 30% solatium on the enhanced market value and interest at 9% for the first year from the date of taking possession and 15% interest from the date of expiry of one year till date of making payment of compensation. The entitlement with regard to the payment of the interest under Section 23(1-A) would depend upon the decisions to be rendered by the Constitution Bench in K.S. Paripoornan case and the authority depending upon the judgment would work out that benefit also.

6.The appeal is allowed to the above extent. But in the circumstances, the parties are directed to bear their own costs.