PETITIONER:
RAMACHANDRAIAH ETC.

Vs.

RESPONDENT:
LAND ACQUISITION OFFICER, SAGAR

DATE OF JUDGMENT10/01/1973

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
CHANDRACHUD, Y.V.

CITATION:
1973 AIR 701 1973 SCR (3) 261
1973 SCC (1) 352

ACT:
Land acquisition-Lands under personal cultivation of owner and lands under cultivation of tenants-Principles of compensation.

HEADNOTE:
The respondent acquired the lands of the appellants. Some of the lands were cultivated by the appellants themselves and others by tenants. As a result of the Mysore Tenancy Act, 1952, which was amended by Mysore Acts 16 of 1957, 24 of 1962 and 12 of 1963, and, the Mysore Tenants (Temporary Protection From Eviction) Act, 1961, the tenants, though they were inducted originally as annual tenants, they got as deemed tenants, a fixed and secured tenure for additional periods.
The respondent fixed compensation at Rs. 600 per acre for tank-fed lands and Rs. 500 per acre for rain-fed lands. On a reference under s. 18 of the Land Acquisition Act. 1894, the compensation' was increased to Rs. 2500 per acre for tank-fed lands and Rs. 2000 for rain-fed lands. On appeal, the High Court fixed a uniform rate of compensation at Rs. 1250 for all lands, whether tank-fed or rain-fed, and whether self-cultivated or cultivated by tenants.
On the question whether the High Court followed a correct principle, this Court, in appeal,
HELD : The matter should be remanded to the High Court for a fresh calculation of the compensation.
(1) The High Court was in error in equating lands cultivated by the tenants and those under the personal cultivation of the appellants and applying to both a uniform measure. The two kinds of lands ought to have been separately treated and even if the rent in the case of tenant occupied land was taken as a measure for such land, that could not properly be the measure for arriving at the market value of the land under the appellants' personal cultivation, because, the net return to the appellants from each of the two kinds of lands is bound to differ. The annual rent paid by the tenant may not be the correct or real income obtainable by the appellants, the rent agreed upon several years ago may not be the fair rent by reason of several factors and the lands themselves may not be equal in quality, situation or productivity. [265 C]

(2) in view of the provisions of the Mysore Act, it should have been ascertained whether the tenants had any interest in the land and whether they were entitled to any share in the compensation payable in respect of lands under their cultivation, subject to any bar of limitation under s. 18 of the Land Acquisition Act. If the tenants are entitled to any share of the compensation, it should be allocated to them. If this were to be done, the annual income of the lands will have to be ascertained afresh from the evidence on record or otherwise to arrive .it the correct market value. [266 F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1353 to 1355 of 1967.

263

Appeals by certificate from the judgment and Award dated 15th September 1966 of the Mysore High Court at Bangalore in Misc. First Appeals Nos. 199 to 201 of 1963.

R. B. Datar, for the appellants.

M. Veerappa, for the respondent.

The Judgment of the Court was delivered by

SHELAT, J. These three appeals, by certificate, are by three Khatedars, whose lands were acquired for the submersion area of the Linganmakki reservoir in Mysore State. The areas so acquired were all wet lands and measured 29 acres and 37 guntas, 3.32 acres and 8.20 acres respectively. The Special Land Acquisition Officer classified these lands into rain-fed and tank-fed lands, i.e. one crop and two crop lands, and adopting the method of valuation of capitalising the annual rent paid to the appellants fixed Rs. 600 per acre for the tank-fed, i.e., perennially irrigated wet lands, and Rs. 500 per acre for the rain-fed wet lands. He arrived at these figures on, a finding: that the average annual rent in respect of these lands was 1-1/2 pallas of paddy per acre which meant that the gross rent was Rs. 37.50 at the rate of Rs. 25 per palla. Deducting land revenue and bad debts he found that the net annual income was Rs. 30 per acre. On a reference by the appellants under sec. 18 of the Land Acquisition Act, 1894, the District Judge increased the valuation to Rs. 2500 per acre for tank-fed lands and Rs. 2000 per acre for the rain-fed lands. The District Judge also adopted the method of valuation by capitalising the income by 20 years. But what he did was to take the whole of the net income arising from the lands instead of capita-lising, only the rent payable to the appellants by the tenants of some of, the lands.

In appeals filed by the Acquisition Officer against the awards by the District Judge, the, High Court of Mysore reduced the compensation to Rs. 1250 per acre for all the lands, irrespective of whether they were tank-fed or rain-fed lands or whether they were self-cultivated or cultivated by tenants. This. the High Court did on the footing that the income from the land was represented by the rent paid by the tenants. in respect of some of the lands, that such rent on an average came to 2-1/2 pallas of paddy and that at the rate of Rs. 25 per Dalla, by capitalising the rent by 20 years, the compensation would come to Rs. 1250 an acre. The High Court., in addition, awarded interest at 6% per annum on the amount of compensation awarded by it. In modifying the District Judge's award and reducing the rate, of compensation to Rs. 1250 an acre. the High Court rejected the measure adopted by the District Judge, viz,., "that the

geni (rent) plus the quantity which the tenant would retain- for himself would be the net average in
264
come of the land". According to the High Court, the District Judge overlooked the fact that the tenant who get some income by cultivating the land did so because he and the members of his family had to expend labour thereon, and that therefore, both the expenses of cultivation as, also the value of such labour expended by the tenant ought to be taken into consideration. The High Court, held

> "In assessing compensation for lands acquired, on the basis of capitalisation of annual income the usual method adopted is to capitalise the annual rent on the basis of certain number of years purchase."

The High Court also rejected the argument that the land measuring 7 acres 10 guntas, which is the subject-matter of Civil Appeal No. 1354 of 1967 and part of the lands which are the subject matter of C.A. No. 1353 of 1957 were not cultivated by any tenant and were in fact under the Khatedars' personal cultivation and that therefore compensation in regard to them could not be fixed by capitalising the annual rent only. The High Court held that if the measure of capitalised annual rent "is good in respect of the lands leased, it is equally good in respect of the lands personally cultivated by the claimants". On this basis, the High Court allowed the Land Acquisition Officer's appeals, reduced the compensation to Rs. 1250 per acre in respect of all the lands, irrespective of whether they were under tenants' cultivation or under the personal cultivation of the claimants.

The question raised before us is whether the High Court followed a correct principle while awarding an uniform rate of compensation for all the acquired lands. It may be that resort may be had to fair rent as a true measure of income derived from a particular land by its proprietor for fixing the compensation by multiplying it by 20 years as has been done here by the High Court where no other method of valuation is Dossible. But where the acquired land has been under the personal cultivation of a claimant, the annual rent obtained by him from a tenant from another land may not be the correct or real income obtainable by the claimant. The rent of the land under a tenant's cultivation' may have been agreed upon several 'years ago or may not otherwise be the fair rent by reason of several factors. Quite apart from that, the two lands may not be equal in quality, situation and productivity and therefore the rent obtained for one cannot be the same for the other. Obviously therefore, the annual rent obtained by a claimant from his tenant for one acquired niece of land cannot be applied as, a measure for another niece of land which is personally cultivated by the claimant. The net return to the claimant from each of the two lands is bound to differ. Ordinarily rent payable by a tenant would be fixed after calculating approxi-
265
mately the gross income less the tenant's cost of cultivation, cost of labour expended by him and a certain amount of return for all the labour thrown in by him. In the case of land personally cultivated by a claimant, on the other hand, the income derived by such a claimant is arrived at by taking the gross income and deducting therefrom his expenses of cultivation, other expenses and outgoings. The net income thus arrived at is usually multiplied by 20 years purchase and the amount so calculated

would be considered as equivalent to market value. In our view, the High Court was in error in equating the lands cultivated by the tenants and those under the personal cultivation of the claimants and applying to both a uniform measure, viz., the annual rent obtained from the former for fixing compensation. The two kinds of lands ought to have been separately treated and even if the rent in the cases of tenant-occupied land was taken as a measure for such land, that could not properly be the measure for arriving at the market value of the land under the claimant's personal cultivation.

Even in respect of lands cultivated by tenants, no notices appear to have been issued to them either by the Special Acquisition Officer or by District Judge though some of them did appear as witnesses for the claimants for deposing to the income of the land. Presumably, no such notices were issued to them on the ground that they were annual tenants and had, therefore, no alienable interest in the lands cultivated by them. We do not know whether by the expression 'annual tenants' we meant that their tenancy was for one year only and would lapse on the expiry of the year. Even if it were so, by the time the notifications under secs. 4 and 6 of the Act were issued, (in April and August 1960), the Mysore Tenancy Act XIII of 1952 had come into force. Sec. 4 of that Act provided that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if the conditions there set out are satisfied. Under s. 5 (1), there can be no tenancy for less than five years and all tenancies in force on the date of the commencement of the Act shall be deemed to be tenancies for a further period of five years from such date of the commencement of the Act. Under sub-s. 2 of s. 5, no tenancy is terminable before expiry of the period of five years except on the grounds set out in s. 15, e.g., default by such a tenant in paying rent or the fair rent fixed under the Act as the case may be.

The Mysore Tenancy Act, '13 of 1952 was amended first by Mysore Act, 16 of 1957, and again by Mysore Acts 24 of 1962 and 12 of 1963. See. 4 of Act 16 of 1957 provided that every tenancy in respect of which the period of five years specified in s. 5 of Act 13 of 1952 was due to expire during, 1957 shall be deemed to be a tenancy for a further period of one year from the date on which the said period of five years was due to expire. Sub-

266

sec. 3 of sec. 4 further provided that notwithstanding anything contained in any law, notices given before the 11th day of March, 1957 by landlords to tenants terminating their tenancies at the expiry of the said period of five Years referred to in sub-sec. 1 on the ground of such expiry or on the ground that the landlord required the land for his personal cultivation shall be deemed to have been cancelled and shall have no effect and all applications made by landlords for possession of lands in pursuance of rent notices shall on the 11th March, 1957 stand dismissed. In 1961, the Mysore Legislature passed the Mysore Tenants (Temporary Protection From Eviction) Act, 37 of 1961. The Act was to remain in force till March 31, 1962 or such other date not later than one year after that date as the State Government may by notification specify. Sec. 3 of the Act provided that notwithstanding any thing contained in any law or agreement, decree or order of a civil or revenue court or a tribunal, no tenant shall be evicted from the land held by him as a tenant during the period that the Act remained in force. Sec. 4 of the Act staved during the operation of the

Act all suits and proceedings in execution of decree or orders and other proceedings for the eviction of tenants from the lands held by them as such. The result of these provisions would appear to be that though the tenants of the lands in these appeals were inducted thereon originally as annual tenants, they got a fixed and secured tenure for additional periods and as deemed tenants they ceased to be persons entitled to possession only for one year as provided by their original leases. The point, therefore, is whether they acquired as a result of these provisions any share in the compensation.

In view of these provisions the Special Land Acquisition Officer and the District Judge ought to have ascertained (which neither of them did) whether the-tenants had any interest in the land and whether they were entitled to any share in the compensation payable in respect of lands under their cultivation. In the absence of the tenants before us, we find it difficult to into these questions. Nonetheless, we do feel that in fairness to the tenants (if they are still on the land) their interests ought to have been ascertained and if they are entitled in law to any bare. compensation according to the market value of the land should be ascertained afresh and their, bare. if allowable: to them, should be allocated to them. If this were to be done, the annual income of the, lands in question will have, to be ascertained afresh from the evidence on record or otherwise and the net total income after deducting, the costs of cultivation and other outgoing ascertained in order to arrive if the correct market value. If the position of the tenants as a result of the operation of the Tenancy Act has changed so as to make them entitled to a part of the compensation that also will require to be ascertained. This is, of-course. sub-

267

ject to the bar of limitation under s. 18 of the Act-, for, it would prima facie appear that the tenants by appearing as witnesses for the claimants knew of the acquisition and the award and yet had made no application to be made parties to the reference before the District Judge. Even if it is found that the tenants are not entitled to. any share in the compensation, the lands under tenant's cultivation and those personally cultivated by the, claimants cannot be. valued on the same footing for the grounds set out earlier. A fresh calculation of compensation in any event of lands under the claimants' cultivation is called for on the principles set out hereinabove.

We, therefore, allow the appeals, set aside the judgment of the High Court and remand these, appeals to the High Court for a fresh calculation of compensation in the light of the observation,-, hereinabove made and in accordance with law. If for that purpose it may become necessary in the opinion of the High Court for fresh evidence to be led, parties may be given liberty to adduce such further evidence. Costs of these appeals will abide by the result in the High Court.

V.P.S. Appeals allowed.

268