

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10362 OF 2010
[Arising out of SLP(C) No.35413/2009]

REVENUE DIVISIONAL OFFICER,APPELLANT
KURNOOL DIST.

Versus

M. RAMAKRISHNA REDDY(D) BYRESPONDENTS
LRS.

O R D E R

R.V. Raveendran, J.

Leave granted. Heard.

2. Respondents were the owners of a sweet lime orchard measuring 4 acres 38 cents situated in Survey No.395/3A and 395/4A in Singanapalle village, Owk Mandal, Kurnool District in Andhra Pradesh. The said lands, alongwith surrounding lands (in all 58 acres 30 cents) were acquired for construction of a percolation tank. Possession was taken on 8.6.1988. However, the preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued only on 27.8.1993. The Land Acquisition Officer, by award dated 30.6.1994, offered compensation at the rate of

Rs.16,000/- per acre. The reference Court determined the market value of the entire extent of 4 acres 38 guntas as Rs.12,28,500/- by capitalisation of yield method. It awarded the said sum as compensation with additional market value at 12% per annum on such market value from the date of notification under Section 4(1) of the Act till date of award or possession whichever was earlier, 30% solatium on the market value and interest at 9% per annum from date of possession for a period of one year and thereafter at 15% per annum till date of payment on the aggregate of compensation, additional market value and solatium.

3. The appeal by the appellant, challenging the quantum, as being excessive, was dismissed by the High Court by the impugned judgment dated 19.3.2009. The said judgment is under challenge in this appeal by special leave. The only question that, therefore, arises for consideration is whether the compensation determined at Rs.12,28,500/- for 4 acres and 38 cents of land is excessive.

4. In the year 1987, the claimants had filed a writ petition for stopping construction of a percolation tank, alleging that there were 350 sweet lime trees in their land and that the construction of the percolation tank would destroy their sweet lime

garden. The Land Acquisition Officer submitted a report dated 1.2.1991 to the Collector confirming the existence of 350 sweet lime trees in the claimants land on 8.6.1988 when possession was taken and the destruction of all those trees due to stagnation of water on construction of the percolation tank. They filed a subsequent writ petition (WP 8665/1992) seeking a direction for payment of compensation for the land and 350 sweet lime trees, as they were dispossessed, without there being any acquisition. The High Court of Andhra Pradesh directed the State Government to pay compensation at the earliest in respect of the land and 350 sweet lime trees. It is thereafter that the acquisition proceedings were initiated, by issuing a notification dated 27.8.1993 under Section 4(1) of the Act. The Land Acquisition Officer, while making the award, did not value the land as a sweet lime orchard. He ignored the sweet lime trees in the land and valued it as bare land at Rs.16,000/- per acre (Rs.70,080/- for the entire land). The Reference Court, after referring to the factual background and the evidence, adopted the yield capitalisation method, to arrive at the compensation. It held that the net annual income realised by the respondents was Rs.270/- per sweet lime tree per annum or in all Rs.94,500/- from the entire orchard with 350 trees. It adopted the multiplier of 13 and arrived at the compensation for the acquired land

with the sweet lime trees as $94500 \times 13 = \text{Rs.}12,28,500/-$
(that is Rs.280,479/45 per acre).

5. In this appeal, the State is aggrieved by the multiplier of 13 adopted by the Reference Court. It is pointed out that though the High Court had found the multiplier of 13 to be on the higher side, it failed to interfere with the judgment of the Reference Court. Mr. I. Venkatanarayana, learned senior counsel for the appellant submitted that the appropriate multiplier should be 8, but under no circumstances it should be more than 10. On the other hand, Mr. R. Venkataramani, learned senior counsel appearing for the respondent relied upon the decision of this Court in *Union of India Vs. Shanti Devi*, (1983) 4 SCC 542 where this Court held that a multiplier of 13 would be appropriate for determining market value by capitalisation of income. The decision in *Shanti Devi* relied on by the respondents did not relate to a fruit tree grove, but an agricultural crop land. The decision refers to other decisions where multiplier of '8' was adopted.

6. This Court has considered this issue in several decisions - *State of Haryana Vs. Gurcharan Singh* - 1995 Supp.(2) SCC 637, *Land Acquisition Officer Malaprabha Dam Project Saundatti Vs. Madivalappa Basalingappa Melavanki* - (1995) 5 SCC 670, *State of*

Gujarat Vs. Rama Rana - (1997) 2 SCC 693, (4) *Krishi Utpadan Mandi Samiti Vs. Malik Sartaj Wali Khan & Anr.* - (2001) 10 SCC 660 and *Airports Authority of India Vs. Satyagopal Roy & Ors.* - (2002) 3 SCC 527. In *Madivalappa Basalingappa Melavanki*, this Court held that generally a multiplier of 10 would be appropriate but depending on the special facts and circumstances, the multiplier may vary. In *Rama Rana* and *Krishi Utpadan Mandi Samiti*, this Court adopted a multiplier of 10. In *Gurcharan Singh and Airports Authority of India*, this Court applied a multiplier of 8 for arriving at the market value of orchard land. The general trend is to adopt a multiplier of 8 to 10 in regard to plantations, fruit groves and orchards and a multiplier ranging from 10 to 12 to agricultural crop land.

7. There are no special circumstances to apply the higher multiplier of 12 or 13 or the lower multiplier of 8. Having regard to the evidence in regard to the nature, standard and position of the orchard, we are of the view that the standard multiplier of 10 should be applied. Therefore, the compensation would be Rs.94,500 x 10, that is Rs.9,45,000/- for the entire extent of 4 acres 38 cents (land with the trees).

8. The Reference Court has awarded additional amount under Section 23(1A) at 12% per annum

from the date of preliminary notification (27.8.1993). Award of additional amount under Section 23(1A) of the Act would arise only where the possession is taken after the notification under Section 4(1) of the Act. Section 23(1A) permits additional amount to be awarded from the date of notification under Section 4(1) of the Act, to the date of award of Collector or the date of taking possession of the land, whichever is earlier. Where possession is taken prior to the date of notification under Section 4(1) of the Act, no additional amount is awardable under Section 23(1A) of the Act. Award of such amount cannot be sustained.

9. This appeal raises yet another issue. The reference Court has awarded interest under Section 28 of the Act from the date of possession, that is 8.6.1988, and not from the date of notification under Section 4(1) of the Act. The High Court has not interfered with the award of such interest. The appellant relied upon decisions of this Court in *R.L. Jain(D) by LRs. Vs. DDA & Ors.*, (2004) 4 SCC 79 and in *Special Land Acquisition Officer Vs. Karigowda & Ors.*, (2010) 5 SCC 164 to contend that interest could be awarded only from the date of notification under Section 4(1) of the Act, even where possession had been taken on a date prior to the date of preliminary notification. We, therefore, hold that interest under Section 28 of the Act could have

been awarded only from the date of preliminary notification, even if possession was taken prior to the date of the preliminary notification.

10. Though respondents are not entitled to interest under Section 28 of the Act, from a date prior to the date of preliminary notification, they are entitled to damages for wrongful use and damages of the lands from the date of possession till date of notification under Section 4(1) of the Act. In *R.L. Jain* (supra), this court held:

"In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend

support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

11. The above position is reiterated in *Karigowda* (supra). It is clear that even if the land owner may not be entitled to interest from the date of possession but only from the date of preliminary notification, he will be entitled to compensation for wrongful use and occupation from the date of actual dispossession till the date of notification under Section 4(1) of the Act. In this case, there is already a clear finding that the loss of income per year is Rs.94,500/- from the acquired lands. Therefore, instead of relegating the parties for a further enquiry in regard to damages for wrongful use and occupation from the date of dispossession to date of preliminary notification, we proceed to determine the same at Rs.94,500/- per annum for the period from 8.6.1988 to 27.8.1993 (which is rounded off to five years) with interest at 6% per annum from 30.6.1994 to date of payment.

12. In view of the above, this appeal is allowed in part as follows:

(a) The compensation for the land acquired (4 acres 38 cents) is determined as Rs.9,45,000/- with solatium under Section 23(2) of the Act.

(b) The respondents will also be entitled to damages of Rs.4.72,500/- (at the rate of Rs.94,500/- per annum) for use and occupation, for the period between date of dispossession and date of preliminary notification.

(c) The respondent will be entitled to interest on the amount due under para (a) less the amount awarded by the Land Acquisition Officer, at the rate of 9% per annum for one year from 27.8.1993 and thereafter at the rate of 15% per annum on the enhanced amount, under Section 28 of the Act.

(d) The respondents shall be entitled to interest on the amount due under para (b) above, at the rate of 6% per annum from 30.6.1994 (date of award) till date of payment.

(e) Parties to bear their own costs.

.....J.
(R.V.

RAVEENDRAN)

New Delhi;
December 08, 2010.

.....J.
(A.K. PATNAIK)