State of Madras Vs. Aissabi

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Court : Kerala

Decided On : Oct-09-1957

Reported in : AIR1958Ker67

Judge : Sankaran and; Raman Nayar, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4, 4(1), 9 and 18

Appeal No. : A.S. No. 1284 of 1953 (M)

Appellant : State of Madras

Respondent : Aissabi

Advocate for Def. : K.A. Mohammad and; S. Nataraja Iyer, Advs.

Advocate for Pet/Ap. : K.N. Narayanan Nair, Govt. Pleader

Disposition : Appeal dismissed

Judgement :

Raman Nayar, J.

1. This appeal by the State is against the award of the enhanced compensation (to the tune of Rs. 9,445-5-3) by the Subordinate Judge, Kozhikode, on a reference made to him under Sections 18 and 19 of the Land Acquisition Act.

2. The land acquired is a portion of T.S. No. 1516 of Kozhikode town and is registered as garden land. It is 96 cents in extent and has been separately sub-divided as T. S. No. 1516/2. It was acquired on behalf of the Kozhikode Municipality for the construction of scavengers' quarters. The following description of the land to paragraph 9 of the Judgment under appeal is amply borne out by the evidence on record, even by the evidence or the witnesses examined on the side of the Government, and its correctness can scarcely be disputed :

The land in question is practically now a building-site with trees standing on it. There is a disused well and the basement of an old shop. It is bounded on two sides by important roads and it is situated in a crowded locality in Calicut town. It is a compact area suitable for building purposes. There are residential buildings near it and also shops.'

We might add that the land is in a built up area, that it is in the vicinity of two bazaars, ' the Eranhipalam Bazar and the Nadakkavu Bazaar, that there is a Municipal cart-stand and a petrol pump and a big mosque adjoining the- land, and that at one time there was, as the title deed Ext. A-l dated 5-10-1936 shows, a big dwelling house and a row of 23 shop rooms in the land Itself.

3. Before the Collector, pursuant to the notice under Section 9 of the Act, the owner of the land claimed a compensation of Rs. 40,000 as the value of the bare land in addition to a sum of Rs. 2,000 as the value of a well and a basement, and a sum of Rs. 7,000 as the value of cocoanut trees, standing thereon. There being no sales of similar lands in the neighbourhood in recent years the Collector valued the land on the basis of the Income it yielded as garden land and, assessing the net income from the 44 bearing cocoanut trees standing on the land at Rs. 554-5-11, arrived at the market value of the land by capitalising this at twenty years' purchase. To this he added the value of the cocoanut trees past bearing and of some miscellaneous trees and structures on the land and, inclusive of the 15 per cent solatium, arrived at the total compensation of Hs. 13,700-11-3. He allowed no compensation for the well and basement on the ground that they were not visible on the land.

4. No evidence was adduced of any sales of this land itself or of similar land in the vicinity before the lower Court, and the Court had therefore to adopt the same method of valuation as that adopted by the Collector. It accepted, the Bet, income as assessed by the Collector, but, re-lying on the decisions in The Collector of Kiftna v. Zamindar of Challapalli, TLB (1938) Mad 431. (AIR 1938 Mad 33) (A), Land Acquisition Officer v. Subba Rao, AIR 1941 Mad 684 (B) and Radhakrishna v. Province of Madras, AIR 1949 Mad 171 (C), adopted the multiple of. 33-1/3 instead of 20 for the purpose of capitalisation. In doing so it accepted the statement in the owner's petition under Section 18 of the Act that the rate of interest on government securities on the date of the notification under Section 4(1) of the Act was 3 per cent, this statement not having been controverted before him by the Government.

5. The main contention before us has been that the multiple of 20 adopted by the Collector was correct and that the Court below should not have enhanced it to 33-1/3. In support of this, reliance is placed on the decisions in Sub-Collector, Raj annum dry v. Parthasarathi, AIR 1943 Mad 739 (D), Revenue Divl Officer v Vararachari, AIR 1944 Mad 271 (E) and Lakshmi Narasimha V. Revenue Divisional Officer, AIR 1949 Mad 962 (F). In upholding the multiple of 33-1/3 adopted by the Court below, the respondent has cited the very decisions upon which that Court has relied.

6. We are afraid that having regard to the facts of this case, these decisions can afford, us little guidance. What they do lay down is that there is no hard and fast rule regarding the multiple to be adopted for purposes of capitalisation. It must vary according to the case, and the Court, having regard to the materials placed before it, must choose that multiple which in its opinion will enable it to reach the price which a willing buyer would pay a willing seller. A certain amount of arbitrariness is necessarily involved in this method of computation. Generally speaking, it might be. said that the return from landed property reflects the prevalent rate of interest on money investments. A person who invests money in landed property in a town or in the melvaram interest in Zamindari lands usually expects no greater return than what gilt-edged securities would bring him, while a person investing in ordinary argicultural land of no higher potential value would

look for a higher return to compensate for his trouble in attending to the land and the risks involved in its cultivation. Therefore while a multiple based on the current rate of interest on gilt-edged securities might be adopted in the case of the former type of landed property, a multiple of 20 would be a safer basis for arriving at the market value of purely agricultural land.

7. This is the sum and substance of the decisions that have been cited. But, in the present case, we are dealing with a land which though registered as garden land is really a building site stituated in an important locality of a city. The very fact that the land has been acquired for the purpose of building houses shows that it must have been regarded as suitable for the purpose. At one time there was a house and a row of shops standing upon it and although In its Present condition for which the fact that it is wakf is probably responsible the only income derived by the owner is that afforded by the cocoanut trees standing on it, it is obviously unfair to value the land merely on the basis of that income, it is well established that land is not to be valued merely by reference to the use to which it is being put at the time of the notification under Section 4(1) of the' Act but also by reference to the uses to which it is reasonably capable of being put in the future. AS observed by Lord Darner in Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam, AIR 1939 PC 98 (G).

'No one can suppose in the case of land which is certain, and even likely, to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is being used for agricultural purposes that the owner, however, willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that in ascertaining its value the possibility of its being used for building purposes would have to be taken Into account'.

8. In the case of land having a potential value as building site, especially in a city, it is hardly fair to arrive at its market value by capitalising the income at a certain number of years' purchase. But in the absence of any other material that is the only method that is open in this case. The question then is whether the Court below was justified in adopting the higher multiple of 33-1/3 per cent as against the

multiple of 20 adopted by the Collector. We think it was, but not entirely for the reason that gilt-edged securities were at the time fetching only a return of three per cent. In the first place it is notorious that land which is suitable and in demand for building, especially when situated within a town, fetches a far higher price than its income when put to agricultural uses would warrant. In the second place the land now in question has not been fully exploited even as agricultural and. Portions of it are occupied by the basement of buildings and although it is 96 cents in extent there are only 44 bearing cocoanut trees on it. Ordinarily the number of trees in a cocoanut garden is about 120 per acre and this would indicate that only about half the land is covered by trees. Even assuming that the multiple to be adopted is 20. it would follow that the compensation awarded by the Collector is only for about one-half of the land. So, in any view of the matter the Court below was fully justified in adopting the higher multiple of 33-1/3.

9. It is said that even the owner's karisthan who was examined on her behalf only claimed that one acre of land in the locality would fetch Rs. 15,000 whereas the award by the lower Court for 96 cents comes to Rs. 18,000 -and odd. But it seems to us that the witness was merely hazarding an opinion on little more than conjecture and further that, following the method adopted by the owner, he was valuing the bare land excluding the trees thereon.

10. In paragraph 5 of the memorandum of appeal it is stated that the observations of the lower Court in paragraph S of its judgment are not correct and that the Court should have had regard to the condition of the land at the time of the notification under Section 4(1) of the Act and not to its present condition. This criticism is unjustified and the description of the land given by the lower Court is as true of its condition at the time of Section 4(1) notification in 1950 as it is today.

11. With regard to the well and the basement standing on the land, the Court below adopted the valuation fixed by the Commissioner appointed by it. The Commissioner arrived at the valuation by determining the present cost of construction and making a deduction for depreciation in accordance with the condition of the structures. This is a fair method of valuation and we see no force in the argument that since the owner was not putting the structures to any use and

was deriving no Income from them, they can be of no value. Nor do we agree that the structures should have been valued at what the materials would fetch if removed and sold. The basement could be used for putting up shops and the well would be a very useful adjunct to any building put up on the land and they are certainly structures for which full value must be paid.

12. The appeal fails and is dismissed with costs.