

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

LAAS.NOS.991 AND 1016 OF 2007

COMMON JUDGMENT (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Government issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') dated 30.03.1990, for acquiring the lands of the appellants/claimants, along with fruit bearing trees existing therein, in an extent of Ac.1.62 cents and Acs.3.35 cents respectively in Reach Nos.59 and 60 of Dachur Village for the purpose of offshore submersion of Kandaleru reservoir under Telugu Ganga Project. The Land Acquisition Officer, after due enquiry, passed Award Nos.2 and 3 of 1992-93 dated 14.09.1991. Seeking enhancement of the compensation awarded by the Land Acquisition Officer, the claimants sought reference under Section 18 of the Act. The Reference Court i.e., the court of Senior Civil Judge, Gudur, in L.A.O.P.Nos.16 and 18 of 1994, confirmed the amounts granted by the Land Acquisition Officer for landed property and for other fruit bearing trees, except for pomegranate trees. In respect of pomegranate trees, the Land Acquisition Officer fixed the compensation at Rs.41.50 to Rs.52/- per tree and paid the compensation for a period of two years. The Reference court enhanced the said amount to Rs.65/- per tree. Not being satisfied with the amount enhanced by the Reference Court for pomegranate trees, the claimants filed the present appeal, seeking enhancement of compensation at the rate of Rs.900/- for each pomegranate tree.

2. The learned counsel for the appellants/claimants and the learned Assistant Government Pleader for appeals would submit that the issue of

enhancement sought for pomegranate trees, is squarely covered by the judgment of a Division Bench of this court delivered in A.S.No.1749 of 2004 and Cross Objections (SR) No.3962 of 2008 dated 1.3.2013, where-under the appeal filed by the Special Deputy Collector (Land Acquisition) was dismissed and the cross-objections filed by the claimants were allowed in part holding that the claimants are entitled to compensation at the rate of Rs.2,000/- for each pomegranate tree with all statutory benefits on the enhanced amount. The learned counsel further submitted that the appeal filed by the Government in Special Leave to Appeals (c) Nos.23576-23577 of 2014 was dismissed by Apex Court by order dated 29.08.2014. Following the same, another Division Bench of this court in L.A.A.S.No.1104 of 2011 dated 19.11.2014, considering the present acquisition under Telugu Ganga Project, enhanced the compensation granted by the Reference Court in respect of pomegranate trees at the rate of Rs.2,000/- per tree.

3. The learned counsel for the appellants/claimants further submits that land acquisition notification before the above Division Bench in A.S.No.1749 of 2004 and Cross Objections (SR) 3962 of 2008, was of the year 1977 and this court enhanced the compensation at Rs.2,000/- for each pomegranate tree. In the present case, the acquisition is of the year 1990 and hence this court may consider for grant of some reasonable amount more than the amount awarded in the above judgment of the Division Bench.

4. The learned Assistant Government Pleader for appeals opposed the learned counsel for the claimants to the extent that the claimants are not entitled to more than the amount awarded in the case mentioned in above para.

5. In the present case, the claim of the claimants is that they used to get net income of Rs.300/- from each pomegranate tree and they will give economical yielding for a period of twelve years and they claimed compensation of Rs.3,600/- per each tree. The trial court in paragraph No.14 noted that “ . . . In this case also it is an admitted fact by the time of draft notification the age of the pomegranate trees is 3 years old and they are fruit bearing trees. It is an admitted fact that the pomegranate plant will start yielding after attaining age of 2 years from the date of its plantation being its gestation period and it will be give economical yield for a period of twelve years. . . . It is also an admitted fact by both parties that most of the pomegranate plants raised by the claimants are of Ganesh variety and they are hybrid variety they will give more fruits than other pomegranate trees.” In spite of these admissions on record, the trial court granted compensation for each pomegranate tree at Rs.65/-.

6. In this appeal the appellants/claimants claimed an amount of Rs.900/- for each pomegranate tree. The Apex Court in **ASHOK KUMAR vs. STATE OF HARYANA**¹, held that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the court to award just and fair compensation taking into consideration the true

¹ (2016) 4 SCC 544

market value and other relevant factors, irrespective of the claim made by the owner. The relevant portion is as under:

“7. The pre-amended provision puts a cap on the maximum: the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, puts a cap on the maximum: compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

13. Therefore, these appeals are disposed of fixing the land value at Rs.200 per square yard and the appellants shall also be entitled to all the statutory benefits. The amount as above shall be paid and deposited after adjusting the deficit court fee, if any, before the executing court within a period of three months from today.

7. The Division Bench of this court in A.S.No.1749/2004 and Cross-Objections (SR).No.3962 of 2008 dated 1.3.2013 for the notification dated 29.12.1977, granted an amount of Rs.2,000/- lump-sum for each pomegranate tree and the same was confirmed by the Apex court. In the present case, the notification is dated 30.03.1990. Therefore, following the Division Bench judgment of this court dated 1.3.2013, which is upheld by the Supreme Court in **ASHOK KUMAR**'s case (supra) and for the reasons mentioned therein and also considering the afflux of time and the facts and circumstances of the present appeals, we deem it appropriate to award an amount of Rs.2,500/- as compensation for each of the pomegranate tree.

8. Accordingly, the appeals filed by the claimants are allowed and the appellants/claimants are awarded an amount of Rs.2,500/- (Rupees two thousand five hundred only) for each pomegranate tree with all statutory benefits on the enhanced amount.

9. The appellants/claimants are directed to pay the deficit court fee on the enhanced amount before the executing court within a period of four weeks from the date of receipt of a copy of this order.

10. No order as to costs.

11. Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

N.BALAYOGI,J

DATE:07—09—2017

AVS/BCJ/ajr

