ÌØIT E M NO.1O COURT NO.4 SECT I O N I X
[For Judgment]

S UP R E M E CO U R T O F I N D I A
R ECO R D OF P R OC E E D I N G S

CIV I L AP P E A L NOs. 92-105 OF 2004

NAV A N A T H & ORS. Appellant (s)

VE R S U S

STAT E OF M A H A R A S H T R A Respondent(s)

W I T H Civil Appeal NO. 106 of 2004
Civil Appeal NO. 114- 118 of 2004
Civil Appeal NO. 107- 113 of 2004
Civil Appeal NO. 119 of 2004

Civil Appeal Nos.2591- 2597/ 2009 arising out of
SL P(C) NO. 2804- 2810 of 2004
(With prayer for interim relief and office report)

Date: 15/04 / 2 009 These Appeals were called on for hearing today.

For Appellant(s) M / S. Lawyer'S Knit & Co, Adv.

For Respondent(s) Mr. Ravindra Keshavrao Adsure, Adv.
Mr. Sanjay Kharde, Adv.
Ms. Asha G. Nair, Adv.

Hon'ble Mr. Justice S.B. Sinha pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Cyriac Joseph.

Leave granted in Special Leave Petition (Civil) Nos.2804- 2810 of 2004.

The appeals are allowed in terms of the signed reportable judgment with costs. Counsel's fee assessed at Rs.25,000/- .

(Pooja Arora)
Sr.P.A.

(Indu Satija)
Court Master

(Signed Reportable Judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 92-105 OF 2004

NAVANATH & ORS. ... APPELLANTS

Versus

STATE OF MAHARASHTRA ... RESPONDENT

WITH

{C.A. No. 106/2004, C.A. Nos. 107-113/2004, C.A. Nos. 114-118/2004, C.A. No. 119/2004, C.A. Nos.2591-2597/2009(@ SLP[C] Nos.2804-2810/2004}

JUDGMENT

S.B. SINHA, J.

1. Leave granted in Special Leave Petition (Civil) Nos 2804-2810 of 2004.

2. These appeals by special leave arise out of a common judgment and order dated 20th/21st March, 2002 passed by a Division Bench of the Bombay High Court allowing the appeals preferred by the State in part from a judgment and award dated 24.07.1995.

3. The Government of Maharashtra intended to undertake construction of a medium irrigation project on the Uthala River at Patoda Taluka in the District of Beed commonly known as "Uthala Irrigation Project". For the said purpose, lands situated at village Tagadgao were acquired. The total land sought to be acquired measured 182 Hectares and belonged to 274 individual land owners. A notification under Section 4 of the Land Acquisition Act, 1894 (for short, "the Act") was issued on 6.10.1988. A declaration under Section 6 of the Act was made on 6.7.1989. An award was published on 29.06.1990.

4. The acquired lands were classified in two categories; (1) Bagayat lands (irrigated lands); and (2) Jirayat lands (non-irrigated lands but are otherwise cultivable).

In these appeals, we are not concerned with the question as regards classification of the acquired lands as also the amount of compensation computed therefor.

5. Claimants - appellants, however, contend that the lands had fruit bearing trees, wells, pipe lines, structures of cow-shed/Gotha and Bandh etc. Indisputably, the Special Land Acquisition Officer classified the said lands into following six categories:

Group No.	Total Survey Numbers under Acquisition	Total Area Acquired Hec. Are	Total Pot-Kharab Hec. Are	Area Cultivable Hec. Are	Compen--sation paid (per Are) Rs.	Rate
I	8	36.24	0.89	35.35	130.00	
I	19	87.06	1.81	85.25	150.00	
I						
III	13	47.71	0.82	46.89	170.00	
IV	4	10.36	-	10.36	190.00	

V	-	-	-	-	-
VI	2	1.13	-	1.13	230.00
Total	46	182.50	3.52	178.98	

6. The Special Land Acquisition Officer in his award fixed the market value of the said lands from Rs.130/- to Rs.230/- per Acre. In addition thereto, however, compensation was, inter alia, granted for fruit bearing trees, wells, pipe lines, structures of cow-shed/Gotha and Bandh etc. inter alia holding that some of the lands under acquisition were Jirayat and some were Bagayat lands but not notified as such. Most of the lands having dry cultivation are found to be of medium to superior quality. Relying on the 7/12 extract entered in the revenue record for the last three years, it was held that though the lands had been shown as wetlands but they are in fact seasonally irrigated, and hence cannot be treated as bagayat lands. The valuation of the said lands, therefore, was made treating them as Jirayat lands. Statutory allowance at the rate of 30% over the amount of compensation was also granted as provided by Section 23(2) of the Act. Additional compensation at the rate of 12 per centum per annum of the market value from the date of publication of notification i.e., 28.10.1998 till the date of award, i.e., 27.7.1990, was also granted.

7. Reference in terms of Section 18 of the Act was made by the Collector at the instance of appellants herein to the Reference Court.

Dr. Mukund Ramrao Gaikwad (PW2) was examined. He was a Horticulturist.

Appellants also examined one Ramhair Bayaji Ghodake (PW3) a Consulting Engineer.

The State on its behalf examined Ramkrishna Ganpatrao Chaudhari, Horticulture Inspector working in the Office of the Deputy Director of Horticulture, Sangli and Kisan Amrutrao Widekar, sub-Divisional Engineer in the office of Executive Engineer, Aurangabad Irrigation Division on its behalf.

8. The Reference Judge examined all the matters referred to him on a case by case basis. Indisputably, out of 182 reference cases, in 108 matters witnesses were examined and documents were proved. However, in 74 matters neither any witness was examined nor any document was proved.

9. The Reference Court classified the lands principally in two categories. It disagreed with the opinion of the Land Acquisition Collector that only the entries made in the revenue records of right particularly the registers 7 and 7/12 were to be considered for the purpose of determining the market value of the lands acquired opining that the land revenue assessment only is one of the factors but together

therewith, comparable sale instances, quality and fertility of the lands acquired, their potential value, location, etc. were also relevant.

10. Upon considering the materials brought on record by the parties and having regard to the depositions of witnesses with regard to the quality of the soil, the potential value of the lands, nature of cultivation, i.e., whether they were Bagayat or Jirayat, the nature of crops raised therein, i.e. like Sugarcane, Groundnut, Tamarind, Chilly, Cotton, Wheat, etc.; whereas a sum of Rs,1,00,000/- per hectare was fixed as market value for the Bagayat lands; a sum of Rs. 75,000/- per hectare was determined for the Jirayat lands besides other statutory dues.

11. The learned Reference Judge in its judgment, furthermore, considered the question as to whether the appellants were entitled to additional amount of compensation towards the value of fruit bearing trees or not holding that different varieties thereof like Mango, Lemon, Guava, Pomegranate, Coconut, Custard apple, Borr Mosumbi, etc. had also been standing on the said lands at the time of their acquisition and having regard to the fact that no evidence was adduced rebutting the same on behalf of the State, awards on that basis were passed.

12. As regards the potentiality and fertility of lands, the learned Reference Court held that the existence of irrigation facility in the form of wells and development of orchards on the acquired lands shows that they had huge potential value and no evidence in rebuttal was adduced by the respondents on this point. It was furthermore held that sale instances from Village Tagadgaon itself and the sale instances in respect of the lands situated in the vicinity of the acquired lands, which took place on or about the date of notification under Section 4 of the Act, can be considered as comparable sale instances for arriving at adequate market value of the acquired lands.

As regards Bagayat and Jirayat lands, the learned judge held the sale instance dated 25.4.1985 having been executed three years prior to the date of publication may also be taken into consideration in terms whereof the Bagayat land was sold at Rs.1200/- per Are. Similarly, sale instances dated 3.9.1983 executed three to five years prior to the date of publication was also taken into account whereby Bagayat Land was sold at Rs.750/- per Are. Considering the above two sale instances, the learned Reference Court awarded Rs.1000/- per Are for Bagayat Land. The post sale instances dated 18.8.1990 and 1.4.1993 were moreover taken into account for fixing the market value for Jirayat Lands, in terms whereof said lands were sold at the rate of Rs.1375/- per Are and Rs.1562/- per Are. The learned Reference Judge fixed the market value for Jirayat Lands at the rate of Rs.750/- per

Are. It was also noticed that the possession was taken on 1.8.1990.

As regards fruit bearing trees, it held that no reliance can be made either on the evidence adduced by the Respondents or claimants. It was observed that as it is difficult to arrive at exact figure of damages, some guess work was necessary. The valuation report was prepared as per the Guidelines issued by the department. It was furthermore held that unless exact age of the trees as well as their fruit bearing capacity was ascertained, it was not possible to fix the exact value of the damages with regard thereto.

13. The State preferred an appeal thereagainst before the High Court questioning the correctness of the said award of the Reference Court, inter alia, on the following grounds:

i. The sale instances relied upon by the Land Acquisition Collector being genuine and comparable; the Reference Court was not justified in discarding the same.

ii. The sale instances which were being relied upon by the Reference Court involved transactions between two real brothers and therefore not genuine.

iii. No additional amount of compensation for the fruit bearing trees and for building of 'Bundhs' etc. could be awarded because the amount of compensation was determined on the basis that the nature of the lands was Bagayat.

14. By reason of the impugned judgment and order, the High Court allowed the said appeals in part upon re-classifying the entire land under acquisition into four groups, namely, (i) Pot-Kharab land; (ii) dry land under cultivation; (iii) land under seasonal irrigation; and (iv) land under perennial irrigation.

On the basis of the aforementioned sub-classification, the market value was determined at (i) for perennially irrigated land at Rs.1,00,000/- per hectare; (ii) for dry land at Rs.50,000/- per hectare, (iii) for land under seasonal irrigation at Rs.75,000/- per hectare and (iv) for Pot-Kharab land at Rs.10,000/- per hectare.

In support of the said conclusion, the learned judge opined:-

i. both the parties agree that the comparable sales instances method of valuation as adopted by the Reference Court has been rightly adopted.

ii. 7/12 extracts show the cultivation in different seasons, plantation of fruit bearing trees as well as the seasonal and perennial nature

of irrigation available either by well water or by lift irrigation.

iii. The Land Acquisition Collector had set out in the award E-Statement of three types of lands viz. dry, seasonally irrigated and perennially irrigated lands. In addition, number of fruit bearing trees had been counted which was not disputed.

iv. Land Acquisition Officer granted compensation for the fruit bearing trees on the basis of capitalization method in addition to the market value of the land. The Reference Court had also done the same thing on the basis of evidence of Expert.

v. Compensation granted separately for the land as also on the basis of valuation of the fruit bearing trees is impermissible in law.

vi. When the potential of the land is taken into consideration the irrigation facilities available and the crop pattern, the acceptable method of fixing market value should be only comparable sale instances.

vii. Plantation of fruit bearing trees having commenced from the year 1986-1987, no compensation was payable thereto.

viii. When the Section 4(1) Notification was issued the trees planted were of the age of two to three years and, thus, possibility of obtaining undue advantage therefor by the land-owners by planting trees cannot be ruled out.

ix. Acquired lands should be reclassified into four groups.

x. Reference Court while fixing the market value of the Bagayat Land at Rs.1,00,000/- per Hectare wrongly decided the market value of Jirayat Land at Rs.75,000/-, and reduced the value of Jirayat Land at Rs.50,000/- per hectare.

xi. The Land Acquisition Officer did not step into the witness box and none of the sale instances relied on by the State was brought on record.

xii. It is appropriate to hold that the perennially irrigated land could be valued at Rs.1,00,000/-.

xiii. No additional compensation is payable for well, fruit bearing trees and the pipe line etc.

xiv. The claimants would be entitled for loss of structure like cow

shed or storage facility and compensation for the big trees like tamarind, Mango and Neem Trees on the basis of the value of the timber wood or fire wood, as the case may be.

xv. The Correct value for the timber wood for these trees could be fixed at Rs.500/- for Babool, Neem and Tamarind trees. So far as the Mango trees are concerned, the value of fire wood would be Rs.200/- per each tree.

xvi. No extra compensation is payable on account of fire wood or timber wood in respect of fruit bearing trees.

xvii. Compensation for structures like Cow-shed/Gothas be paid as per the Report at Ex.96 made by Kisan Amrutrao Wadekar (Horticulturist Inspector).

Aggrieved by and dissatisfied with the impugned judgment, appellants are before us.

15. Mr. Shyam Divan, learned Senior Counsel appearing on behalf of appellants would contend:

i. The State could not have questioned the classification of land or valuation of the fruit bearing trees in view of the award made by the Land Acquisition Collector.

ii. In view of the findings of fact arrived at by the High Court itself though the sale instances brought on record by appellants before the Reference Court were genuine and there was no evidence brought on record by the respondent- State to rebut the same, it must be held to have committed a serious error in passing the impugned judgment.

iii. The High Court committed a serious error in re-classifying the acquired lands into four categories although no material had been brought on record contradicting the evidence adduced on behalf of appellants.

iv. The State, having accepted the amount of compensation at the rate of Rs.75,000/- per hectare in respect of land of an adjoining village, namely, Padali, could not be permitted to question the rate of compensation awarded in respect of the Jirayat land situated in the village in question, namely, Tagadgao.

v. The High Court furthermore committed a serious error in interfering with the amount of compensation awarded by the Reference Court in respect of fruit bearing trees, well, pipe, lines, structures of cow-shed/

Gotha and Bandh etc.

16. Mr. Chinmoy Khaladkar, learned counsel appearing on behalf of the respondent, on the other hand, would contend:

i. The Special Land Acquisition Officer having proceeded to classify the land as also the amount of compensation payable in respect of the trees on the basis of the revenue records and in particular 7/12 extracts, the impugned judgment is unassailable.

ii. The High Court cannot be said to have committed any error in holding that a survey was conducted prior to issuance of the notification under Section 4 of the Act, it can be presumed that the land owners planted fruit bearing trees for obtaining higher amount of compensation as has been observed by this Court in K.A.A. Raja & ors. vs. State of Kerala & anr. [(1994) 5 SCC 138].

iii. Amount of compensation cannot be determined for the land both on the basis of its classification as also on the basis of fruit bearing trees separately.

iv. The Land Acquisition Officer having considered the 7/12 extracts for determining the age of the trees, the Reference Court committed a serious illegality in interfering therewith.

17. The purpose for which the lands have been acquired is not in dispute. We have noticed hereinbefore that a large tract of lands situate in different villages were acquired. Evidently, they belong to different categories. Some of the lands were Pot - Kharab lands, i.e., waste lands.

A holder of a land has a statutory right to ask the Collector by a written application that the matter be referred for determination of the court in regard to amount of compensation in terms of Section 18 of the Act while taking objection to the amount of compensation awarded by the Collector. The owner of the land may raise various contentions including the measurement of the land, the amount of compensation, the persons to whom it is payable, etc.

For the purpose of getting the amount of compensation determined, the applicant may furthermore raise contentions as regards classification of land, non-grant of compensation under different heads, non-grant and/or inadequate grant of compensation under different Heads, etc.

18. The Reference Judge, thus, has a duty to consider all such objections. For the said purpose, opportunities must be given to the applicants to establish that the findings arrived at by the Collector in his award in respect of grant of compensation

were based on a wrong classification of land and/or ignoring the relevant materials therefor.

19. At least in 108 cases, applicants examined themselves. Their oral depositions as regards classification of land, the number and nature of fruit bearing trees, the age of the trees and other relevant factors were brought on record. Apart from examining the owners of the lands individually, common evidence by examining a Horticulturist, namely, Dr. Mukund Ramrao Gaikwad and a Consulting Engineer, namely, Ramhair Bayaji Ghodake was adduced.

20. The State, however, did not examine any witness except one Ramkrishna Ganpatrao Chaudhari, Horticulture Inspector and one Kisan Amrutrao Widekar, Sub-Divisional Engineer.

The Reference Court gave detailed reasons as to why the amount of compensation awarded by the Collector should be enhanced having regard to the classification of lands as also on the ground that there were fruit bearing trees thereupon. The learned Reference Judge found that in the matter of the number and nature of trees as also value thereof, there does not exist much difference between the opinion of the experts examined on behalf of appellants and those examined on behalf of the State.

21. The High Court, however, while accepting that there were comparable sale instances and as regards the quality of the land, crops pattern and the irrigation facilities as well as the development of orchards/sericulture, observed:

> "They show the cultivation in different seasons, plantation of fruit bearing trees as well as the seasonal and perennial nature of irrigation available either by well water or by lift irrigation. The cultivation pattern of different crops has not been seriously disputed and they are Jowar, Bajari, Onions, wheat, sunflower, turmeric and sugarcane (though in selected few cases). So far as the fruit trees are concerned, undoubtedly there are some claims which involved the trees like tamarind and mangos which have grown on their own but there are some orchards which were developed and they contained the trees like mangos, pomegranates, Guava, Paper Lemon and Sweet Lime. Out of these fruits, it is of common knowledge that only the plantation of sweet lime trees may require irrigation facility round the years, whereas all other fruits, including chikoo fruit trees, do not require such round the year irrigation facility. Similarly, amongst the crops it is only sugarcane which requires irrigation facility round the year. Even if there is water source available by way of a well in a particular land, it could be a source of irrigation seasonally and there is no guarantee that it could be a perennial source of income."

22. The High Court despite noticing that the Land Acquisition Officer had also granted compensation on the market value as also separate compensation for the fruit bearing trees on the basis of the valuation made by the Horticulture Inspector,

opined that compensation granted separately for the land and valuation of the fruit bearing trees is impermissible in law. The High Court, however, accepted that while the award of the Reference Court can be set aside having regard to the provisions contained in Section 25 of the Act, the amount of compensation awarded by the Land Acquisition Officer in terms of Section 11 of the Act should not have been interfered with.

23. The opinion of the High Court that saplings varying from 1 to 3 years of age are available for plantation from the Government as well as private horticulture nurseries is based on surmises and conjectures. The State does not appear to have raised such a contention, nor any material for formation of such an opinion was brought on record.

24. In certain cases, the conduct of a person claiming higher amount of compensation by taking recourse to certain acts to show development of the lands for obtaining better compensation may be a subject matter of the judicial notice as has been done by this Court in K.A.A. Raja (supra), but even therein some materials were available for arriving at a conclusion as would appear from the following observation:

> "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 was maintained of high standards and in good conditions which was belied 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."

It is on the aforementioned premise, this Court opined that 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 age, yield, in particular where capitalization method is to be adopted to determine the market value of the acquired land. Relying upon its earlier decision in Periyar and Pareekanni Rubbers Ltd. vs. State of Kerala [(1991) 4 SCC 195] it was held:-

> "In Periyar and Pareekanni Rubbers Ltd. v. State of Kerala [(1991) 4 SCC 195] 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 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.

25. Each case, however, must be considered on its own facts. Whereas in K.A.A. Raja (supra) a proposal was made to acquire 52.88 acres of cardamom plantation, in Periyar and Pareekanni Rubbers Ltd. (supra), the proposal was to acquire land where rubber trees were grown. It is, therefore, in our opinion, impermissible to take recourse to surmises and conjectures across the board that even the agriculturist of a remote village whose lands are being acquired for undertaking an irrigation project, would take recourse thereto.

26. No rule in absolute terms, in our opinion, can be laid down therefor. In the instant case, the learned Reference Judge had made a scrupulous enquiry in regard to each and every claim. It had taken into consideration the evidences adduced on behalf of both the parties not only with regard to the classification of the land but also the number of trees, their age, the quality, etc.

27. We may notice that the learned Reference Judge determined the question in regard to the classification of land on the basis of the evidences adduced before it by individual land owners; by way of example, having regard to the fact that claimants had failed to prove that the land had any irrigational facility, the learned Reference Judge classified the lands as Jirayat lands. If the State was aggrieved thereby, it was bound to show that the findings arrived at by the Reference Court is not sustainable having regard to the materials brought on record. The finding of fact arrived at by the learned Reference Judge on the basis of the materials brought on record, in our opinion, could not have been interfered with by the High Court on the surmises and conjectures. Apart from the fact that the State had not examined any witness in support of its case, no oral or documentary evidence other than the revenue entries was adduced. We may notice that even the Horticulturist examined on behalf of the State made its report in terms of the guidelines issued by the State itself.

It is one thing to say that any circular letter issued by the State allowing certain guidelines are not applicable but it is another thing to say that when the officers of

the State themselves prepare a report on the basis thereof, the High Court would interfere therewith on certain assumptions. In short, if the Reference Court had considered the matters on case by case basis, the State should have pointed out before the High Court as to on what basis it intended to question the correctness of the said finding.

28. Reliance has been placed by Mr. Khaladkar on P. Ram Reddy and Ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors. [(1995) 2 SCC 305], wherein one of the questions formulated was the effect of non-cross-examination or ineffective cross-examination of witnesses for the claimant. It was held:

> "It is, no doubt true, that whenever oral evidence is adduced by parties on certain matters in controversy, it may become difficult for Court to overlook such evidence, if it is not shown by effective cross-examination of such witnesses who have given such evidence or by adducing contra-evidence that the oral evidence was unreliable or the witnesses themselves are not credit worthy. But, in land acquisition references before Civil Courts, when witnesses give oral evidence in support of the claims of claimants for higher compensation the in-effective cross-examination of such witness, is not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the Stale, Indeed, when a question arose before this Court whether the Court is bound to accept the statement of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduce, it was observed by this Court in Chaturbhuj Pande and Ors. vs. Collector; Raigarh AIR (1969) S.C. 255, thus :
>
> 'It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The Judges are not computers.....they are bound to call into aid their experience of life and test the evidence on the basis of probabilities.'"

The said decision would not, however, apply in cases where not only there had been effective cross examination but also where evidence had been adduced in rebuttal of the evidences adduced by the claimant. It is furthermore not a case that there had been no effective cross examination of the witnesses and in fact no such ground had been taken before the High Court. The High Court has also not arrived at such a finding. We, therefore, fail to appreciate as to why the said decision has been relied upon.

29. Determination of compensation of lands on the basis of capitalization method in relation to fruit bearing trees is well known. It has been so held in Kerala State Electricity Board vs. Livisha & ors. [(2007) 6 SCC 792], stating:-

> "11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case. We may, incidentally, refer to a recent decision of this Court in Land Acquisition Officer, v. Kamandana

> Ramakrishna Rao [(2007) 3 SCC 526] wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, same principle has been reiterated in Kapur Singh Mistry v. Financial Commission and Revenue Secretary to Govt. of Punjab and Ors. 1995 Supp. (2) SCC 635, State of Haryana v. Gurcharan Singh and Anr. 1995 Supp. (2) SCC 637, para 4, and Airports Authority of India v. Satyagopal Roy (2002) 3 SCC 527. In Airport Authority (Supra), it was held: (SCC p.533 para 14)
>
> '14. Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in Gurucharan Singh's case and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years' multiplier. In this view of the matter, in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18.'

In State of J & K vs. Mohammad Mateen Wani & ors. [(1998) 6 SCC 233], it was categorically held:

> "10. As regards the compensation in respect of fruit bearing trees and tubewells the High Court had relied upon the Government circular which allows compensation in respect of fruit bearing trees and tubewell separately. Nothing contrary has been brought to our notice and, therefore, we do not think it proper to disturb the said finding."

30. It is of some significance to notice that the 'Horticulturist' examined on behalf of the State itself had referred to the table which is considered to be an authority for the purpose of determining the compensation payable in respect of the fruit bearing trees.

Not only the authority of the said table has been resorted by the Horticulturist examined on behalf of the State but also acknowledged by the Horticulturist examined on behalf of appellants.

31. Our attention, however, has been drawn to a decision of this Court in State of Haryana vs. Gurcharan Singh and another etc. [1995 Suppl. (2) SCC 637] by Mr. Khaladkar to contend that the determination of compensation for land on the basis of its valuation and again on the basis of the fruit bearing trees should not be done separately.

32. Indisputably, valuation of agricultural land on the one hand and valuation of orchard and forest on the other would stand on different footings. Whereas in the former case, the known legal principles particularly with reference to the exemplars will have to be applied, in the latter a different principle, namely, multiplier of eight or ten, as the case may be, on the basis of the multiplicand, namely, yield from the trees or plantation would be applicable. [See Kerala State Electricity Board vs. Livisha & ors. (2007) 6 SCC 792, where multiplier of eight was used and Assistant Commissioner-cum-Land Acquisition Officer, Bellary vs. Sri S.T. Pompanna Setty

[(2005) 9 SCC 662] where multiplier of ten was used]

In some decisions of this Court even higher multiplier was used.

33. The legal principle laid down in this behalf in a catena of decisions of this Court is that the market value of the land cannot be determined both on the basis of sale instance as also on capitalization method keeping in view the fact that it had fruit bearing trees. But, in this case, nothing has been pointed out before us that the fruit bearing trees in large numbers were existing in the agricultural land itself and the Reference Court had valued the same land by adopting two different methods. Had such a position been existing, the Land Acquisition Officer himself and/or the Horticulturist and the Consulting Engineer appointed on behalf of the State would not have taken recourse thereto. They are experts in their own fields. The Land Acquisition Officer is presumed to know the legal principles governing valuation. Furthermore, as noticed hereinbefore, recourse to the determination of amount of compensation of fruit bearing trees have been taken keeping in view the guidelines issued by the State itself.

34. It is furthermore not a case where the same land has been valued twice once as an agricultural land and again as an orchard or forest. When an orchard is acquired the nature thereof can be found from the revenue records of right and similarly when an agricultural land is acquired the nature thereof can be ascertained from the revenue records. If, however, on an agricultural or other categories of land including the other categories referred to by the Reference Judge or by the High Court in which a few trees stand, the question as regards the valuation of the said trees as such must be ascertained for the purpose of finding out the actual market value of the land acquired. The Land Acquisition Collector and the learned Reference Judge had merely taken recourse to the said procedure. A distinction must further be borne in mind where common evidences are adduced in respect of a large number of parties by both sides and, in particular, the principle of valuation having regard to the peculiar features of the village in question and acquisition of land which belongs to one or two persons and specific features of the land for the said purpose may have to be taken into consideration.

35. Indisputably, for the purpose of computation of amount of compensation a large number of factors have to be taken into consideration, namely, nature and quality of land, whether irrigated or unirrigated, facilities for irrigation like existence of well etc., presence of fruit bearing trees, the location of the land, closeness to any road or highway, the evenness thereof whether there exists any building or structure. [See Union of India vs. Ranchod (AIR 2008 SC 938).

36. Recently, in Kerala State Electricity Board (supra), this Court held that so far as the compensation in relation to fruit bearing trees are concerned, the same would also depend upon the facts and circumstances of each case; in support whereof it, inter alia, noticed the decision of this Court in Airports Authority of India vs. Satyagopal Roy [(2002) 3 SCC 527], wherein it was stated:

> "Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in Gurcharan Singh case and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years' multiplier. In this view of the matter, in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18."

The manner, in which the High Court has dealt with the issue, in our opinion, cannot be appreciated.

37. A court of law must base its decision on appreciation of evidence brought on record by applying the correct legal principles. Surmises and conjectures alone cannot form the basis of a judgment.

38. We, for the foregoing reasons, are not in a position to agree with the judgment of the High Court. It is set aside accordingly and that of the Reference Court restored. The Appeals are allowed with costs. Counsel's fee assessed at Rs.25,000/-.

Sd/-

.....J.
[S.B. Sinha]

Sd/-

.....J.
[Cyriac Joseph]

New Delhi;
April 15, 2009