State of Kerala

Vs

P. P. Hassan Koya.

Civil Appeal No. 588 of 1965.

(J. C. Shah JJ)

19.03.1968

JUDGMENT

SHAH, J-.

On December 8, 1954, the Government of Madras issued a notification under s. 4 of the Land Acquisition Act notifying for acquisition for a public purpose, viz. widening the Madras-Calicut Road at Palyam, seven units of land with buildings. One of the units was T.S. No. 298/2 admeasuring 3911 sq. ft. together with a building standing thereon used for business purposes. Notification under s. 6 of the Act was issued on December 12, 1954, and possession of the land was taken soon thereafter.

The Receiver of Patinhare Kovilakam Estate held T.S. No. 298/2 in Jenmi right. The respondent in this appeal held in that land the rights of a Kanamdar under a deed dated March 27, 1954. The buildings constructed on the land belonged to the respondent and were let out to tenants at an aggregate monthly rent of Rs. 332.50. The Land Acquisition Officer determined the compensation payable to the persons interested at the rate of Rs. 10,000/- per acre for the land, and for the houses standing thereon "at their break-up value". In a reference at the instance of the respondent under s. 18 of the Land Acquisition Act (in which the Receiver of Patinhare Kovilakam Estate did not join) the Subordinate Judge, Kozhikode, was of the view that the method adopted by the Land Acquisition Officer for determining compensation by separately valuing the lands as garden lands and the break-up value of the houses was "manifestly unjust and improper". In his view, each unit had to be valued as a composite property. He then proceeded to adopt the method of determining the market value by capitalizing the net rent received from the unit, and taking into consideration the return from gilt-edged securities at 3-1/2 per cent, at the relevant date, the learned Judge awarded compensation for the unit in which the respondent was interested at 35 times the net annual rental.

Against the award of the Subordinate Judge, the State of Kerala appealed to the High Court of Kerala at Ernakulam. The High Court determined compensation by multiplying the net rent 33-1/3 times that being in their view the true multiple derived from the return based on the current return from gilt-edged securities. Against the award made by the High Court, this appeal has been preferred by the State of Kerala with certificate under Art. 133(1)(a) of the Constitution.

Two questions were urged in support of the appeal :

> (1) that the Receiver having accepted the award of the Land Acquisition Officer, the respondent could claim compensation only for the right which he had in the land and the buildings and the method adopted by the Land Acquisition Officer was in the

circumstances the only appropriate method; and

(2) that the rate of capitalization was unduly high.

In our judgment, there is no force in either of the contentions. When land - which expression includes by s. 3(a) of the Act benefits to arise out of land and things attached to the earth or fastened to anything attached to the earth - is notified for acquisition, it is notified as a single unit whatever may be the interests which the owners thereof may have therein. The purpose of acquisition is to acquire all interests which clog the right of the Government to full ownership of the land, i.e. when land is notified for acquisition, the Government expresses its desire to acquire all outstanding interest collectively. That is clear from the scheme of the Land Acquisition Act. Under s. 11 of the Land Acquisition Act, the Collector is required to enquire into the objections raised by the persons interested in the land and into the value of the land at the date of the publication of the notification under s. 4, sub-s. (1), and into the respective interests of the persons claiming the compensation, and then to make an award determining - (i) The true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the compensation among all the persons known or believed to be interested in the land, whether or not they have respectively appeared before him. By the compulsory acquisition of land, all outstanding interests not vested in the Government are extinguished. It is therefore the duty of the Land Acquisition Officer to determine in the first instance compensation which is to be paid for extinction of those interests, and then to apportion the compensation among the persons known or believed to be interested in the land. The Subordinate Judge had also, when a reference was made to him, to assess the value of the unit and then to apportion the compensation among persons entitled thereto. The rule could not be departed from merely because the Receiver in whom the Jenmi rights in T.S. No. 298/2 were vested failed to raise an objection to the quantum of compensation awarded to him. Again the respondent was the holder of kanam rights in the land, and the buildings on the land belonged to him. The respondent being Kanamdar, he had an interest in T.S. No. 298/2, and as Kanamdar the respondent was entitled to apportionment of compensation even in respect of the land.

We agree with the trial court and the High Court that the method adopted by the Land Acquisition Officer for determining compensation payable for extinction of the interest of the holder of the land and the buildings separate was unwarranted. In determining compensation payable in respect of land with buildings, compensation cannot be determined by ascertaining the value of the land and the "break-up value" of the building separately. The land and the building constitute one unit, and the value of the entire unit must be determined with all its advantages and its potentialities. Under s. 23 of the Land Acquisition Act compensation has to be determined by taking into consideration the market value of the land at the date of the publication of the notification under s. 4(1) and the damage, if any, sustained by the persons interested under any of the heads mentioned in secondly to sixthly in s. 23(1) of the Land Acquisition Act.

As observed by the Judicial Committee in Raja Vyricherla Narayana Gujapatiraju v. The Revenue Divisional Officer, Vizagapatnam [L.R. 66 I.A. 104.] at p. 114 :

> "There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar position, and this is what must be meant in general

by "the market value" in s. 23."

An instance of a sale which is proximate in time to the date of the notification under s. 4(1) of the Land Acquisition Act in respect of land similarly situate and with similar advantages and which is proved to be a transaction between a willing vendor and a willing purchaser would form a reliable guide for determining the market value. The value which a willing vendor might reasonably expect to receive from a willing purchaser in respect of a house generally depends upon a variety of circumstances including the nature of the construction, its age, situation, the amenities available, its special advantages and a host of other circumstances. When the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification under s. 4. Therefore the method which is generally resorted to in determining the value of the land with buildings especially those used for business purposes, is the method of capitalization of return actually received or which might reasonably be received from the land the buildings.

That method was rightly adopted by the trial court and the High court. The unit under acquisition is used for business purposes and has a prominent situation in the town of Calicut. There was clear evidence about the rental of the building, and the trial court proceeded to capitalize the net annual rental, having regard to the rate of return of 3 1/2 per cent from gilt-edged securities, by multiplying it by 35 times. The High Court has slightly reduced the multiple.

It cannot be laid down as a general rule applicable to all situations and circumstances that a multiple approximately equal to the return from gilt-edged securities prevailing at the relevant time forms an adequate basis for finding out the market value of the land. But in this case the trial court and the High Court were of the view that a multiple based on a return from the gilt-edged securities was the appropriate multiple for determining the value of the property under acquisition, and no ground has been suggested for not accepting the basis and the rate of capitalization adopted by them. It is relevant to note that the same multiple which has been adopted in other cases relating to lands and buildings acquired under the same notification under which the land of the respondent was acquired has not been challenged by the State.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.##

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