

Dinanath Mahajan and Others

Vs

Collector, Land Acquisition, Jammu

Civil Appeal No. 2926 of 1980

(A. C. Gupta, E. S. Venkataramian JJ)

09.12.1980

JUDGMENT

GUPTA, J. -

1. The correctness of the judgment under appeal is questioned on two grounds. The first ground is that in determining the compensation for the acquired portion in the first, second and third floor of the premises of methods adopted was not correct. Our attention is drawn to Rule 46 (3) of the Rules made under the Land Acquisition Act which reads :

In regard to house property, average market value of the last ten years or twenty times the annual rental should be adopted.

The High Court found that there was no material on record to indicate the market value of the property. It appears that the High Court also thought that as the premises concerned had not been let out the second part of the rule would also not apply. In state of Kerala v. P. P. Hassan Koya this Court held :

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 Section 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 and the buildings.

The High Court was therefore in error in thinking that the second part of Rule 46(3) would not apply unless the acquired portion was in fact let out. There is nothing in the rule to suggest that it does not permit capitalization of return which might reasonably be received from the premises in question.

2. The other ground is that the High Court has determined only the express for the shifting of the office located on the ground floor and the compensation payable for the room in question has not been determined. The judgment is not very clear on this point and it required clarification and reconsideration if necessary.

3. The appeal is allowed to the extent indicated above. The High Court will dispose of the case in accordance with law. No order as to costs.

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