
(1975) 03 MAD CK 0055

In the Madras High Court

Case No : Appeal No. 210 of 1970

S. Manicka Chetty

APPELLANT

Vs

The Collector of Madras-1

RESPONDENT

Date of Decision : 19-03-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1), 6

Citation : (1975) 03 MAD CK 0055

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : K.G. Maniekavasagam and K.G. Subramanian, for the Appellant;

Judgement

Ramaprasada Rao, J.—At the instance of the Commissioner of Madras, property bearing R.S. No. 3711 of George Town measuring about 1 ground 1066 square feet, on which there are admittedly superstructures and a building, was sought to be acquired under the provisions of the Land Acquisition Act. A notification under S. 4(1) of the Land Acquisition Act was, thereafter, published in the Fort St. George Gazette on 29th November, 1961. For purposes of evaluating the totally of the Property the Land Acquisition Officer enquired into the matter after a due declaration made under S. 6 of the Act. He express the view that there are no sales of vacant land in the vicinity and so, the property has to be valued on the well known principles of capitalisation of the rent. Pursuing his opinion, be obtained a departmental report according to which the premises was said to be 60 years old and the rent that it was fetching at of about the time of the notification under S. 4(1) was Rs. 130/-. On the has is of such (sic) made available to him, he arrived at the not rental value of the promises and adopted the multiple of (sic) arrived a the valuation of the property alter annual net rental value. The owner was not satisfied about the compensation so awarded by the Land Acquisition Officer. He caused a reference to be made under S. 18 of the Land Acquisition Act by the Lard Acquisition Officer to the City Civil Court and the IV Assistant Judge who dealt with the reference slightly increased the

compensation by adopting the multiple of 18 instead of 15 as was done by the Land Acquisition Officer. The court however accepted the net annual value as fixed by the Land Acquisition Officer, and it also gave on the increased compensation the usual 15% solatium. The Court took into consideration that the age of the building has 60 years, the source of such information being the report of the Executive Engineer who was apparently asked to send his report by the Land Acquisition Officer. The said Engineer was examined as C.W 1 and he reiterated that the building is 60 years old. Finally, a compensation of Rs. 20,657.16 was allowed by the Court with the usual solatium. The claimant appeals. The principal contentions raised by Mr. K.G. Manickavasagam, learned counsel for the appellant, are that the gross rent of Rs. 130/- adopted by the Court as well as the Land Acquisition Officer was not correct and that they failed to take into consideration the earlier history of this acquisition in that a similar attempt was made by the corporation of Madras in 1954 and that proceeding was dropped resulting in the appellant not securing a good and permanent tenant thereafter. According to him, the rent which the property was fetching in or about 1954 was about Rs. 150/- and that after the said proposal as there was a lurking fear in the minds of the tenants whether the property will be compulsorily acquired, after 1954 he had to suffer a loss in such rents as is seen from the fact that under Exs. C-23 and C.24 he could only secure a reduced rent of Rs. 130/- per month. Therefore, it is contended that the rate of gross rent which has to be fixed in the instant case should be taken as Rs. 150/-, in any event, and not as Rs. 130/- the second contention of the learned counsel for the appellant is that the multiple of 18 adopted by the court below is neither just nor proper and having regard to the well laid decisions of our court in the matter of evaluation of properties of which clear and clinching evidence as to sales of similar properties are not available in the vicinity, only the capitalization method has to be adopted and the multiple should be arrived at with reference to the yield which the gilt-edged securities and the rate per cent of interest paid thereunder need not be adopted, the multiple of 18 based on an arbitrary method which has not been fully explained by the Court below ought not to be followed and that he would be entitled, in any event, to a multiple of 25 being adopted, as according to the appellant, the normal rate percent which an approved security could yield at or about the time of notification under S. 4 (1) was 4 percent. The learned Government Pleader, however, while accepting the general principle that the property acquired should be valued at the capitalisation method, would say that there is no justification for refixing the rent at Rs. 150/- or revising the multiple from 18 to 25. He would stress on the age of the building and would refer to a decision of our Court reported in *State of Madras v. Balakrishna Mudaliar* 80 L.W. 374 and say that the compensation granted by the court below needs no revision. We shall first consider the situation of the property.

2. There is evidence in this case that the acquired property is situate at the north eastern corner of North Beach Road and South eastern corner of Ebrahimji Sahib Street which is one of the important roads in the city.

x x x

[The discussion relating to facts is omitted Ed.]

3. After having considered the situation of property and its nature and as it is not in dispute that the principle of capitalisation of the rent is the best method or probably the only method by which the acquired property could be valued, it is necessary to consider certain relevant decisions of our court which expressed its view differently at different times in the matter of the invocation of the rule as to capitalisation. In *Land Acquisition Officer v. Subba Rao* 1941 II M.L.J. 75: 54 L.W. 742 a Division Bench of our High Court following the well-known principles laid down in *Collector of Kistna v. Zamindar of Challappalli* 1937-2-M.L.J. 744 : 46 L.W. 877 said:

In arriving at the proper value in 1935 of a site with building there on for purposes of awarding compensation under the and Acquisition Act the proper course will be to capitalise the annual rental value of the property at 33 1/3 years" purchases in accordance with the practice in this Presidency to calculate the profits from any of landed property as equal to the profits made by investing money in gilt-edged securities.

Three years later, a Division Bench of our Court was again considering the same principle in *Revenue Divisional Officer Vs. S. Varadachari*, . They observed as follows?

Although the tenants may agree to pay him a fixed rent in money, yet if a fall crop is not raised on the land either through failure of rain or because of pests or for any other reason, it is extremely difficult for the landlord to realise the rent. For these reasons landlord naturally expects an appreciably larger return than he would expect from the gilt-edged securities which he leaves in the Bank and for the realisation of interest on which he is put to no trouble whatsoever.

After referring to the Division Bench decision in *The Land Acquisition Officer Vs. S.V. Subba Rao and Another*, they said that on the facts of the case under consideration before them 20 years purchase gave the nearest approach to the value of the land. In *State of Madras v. Balakrishna Mudaliar* 80 L.W. 274 the learned Judges accepted the process by which the capitalisation method should be applied, but on the facts held that 18 times of the net annual value would be a fair multiple to be adopted for arriving at the just compensation to be paid to a composite property consisting of land and the building. That was also a case which arose from the city. In *Varadarajulu Naidu Vs. Revenue Divisional Officer, Tirukoilur*, to which one of us was a party after reviewing the cases observed as follows:?

The number of years purchase no doubt varies in accordance with the prevailing rate per cent of approved securities at OF about the time of the notification and also the process by which the annual rent is derived.....It is no doubt true that the number of years adopted must depend on the rate of interest which a first

class security will yield in the money market. But in the case under consideration the rate of interest cannot be blindly fixed with reference to Government securities, for the rent derived from properties used as public markets, shops and business places will certainly be higher than the well recognised approved Government securities.

Having regard to the fact that the land in question therein was village site used for a shandy, the Bench adopted the multiple of 11 for capitalisation.

4. It is thus seen that the multiple adopted by Courts has been varying from time to time and such a change of variation is certainly capable of being explained. Prior to our Constitution the gilt-edged securities were apparently looked upon as the only safe security during the British bureaucratic days and it was that security which was understood to be secure by persons in our country. But after the Constitution, such a hallucination has been given the go by and this is because several securities which are equally secure and if not more secure have come into the law merchant and such other alternative available securities have attracted persons who are inclined to invest rather than seek a gilt-edged security alone for the purpose of investing. This accounts for the variation in the multiple from time to time while invoking the doctrine of capitalisation for arriving at the cost of a composite property acquired under the Land Acquisition Act. It is, therefore, necessary in the instant case to find out as to what ought to be the just multiple which could be taken into consideration for arriving at the value of the acquired property.

5. Whilst the Government Pleader would say that the age of the building in 60 years, Mr. K.G. Manickavasagam would contend that such is not the case. But whether the age of the buildings could be taken into consideration for the fixation of the multiple is yet another matter. In *R. Ranganna v. The Special Land Acquisition Officer, City Improvement Trust Board, Mysore* AIR 1959 Mysore 123 a Division Bench of that Court said:

The yield by way of rent in respect of the property particularly a property which consists of a building is not the only factor that has to be taken into consideration while fixing the market price. There are a number of other factors such as the materials used, the future life etc., which also go to affect the market price.....It is neither sound nor fair to arrive at the market price merely on the basis of the interest on gilt-edged securities..... Due consideration will have to be paid to this as well as to the other factors.

To the above mentioned principle we would add the age of the building as well. If, therefore, the age of the building is one of the relevant considerations while arriving at the just multiple for capitalisation purposes, we should scan the evidence in this case to find out whether R.W. 1's evidence has to be accepted in toto. The learned IV Assistant Judge gave a very unimpressive reason for holding that the property is not a valuable building. According to him as the property was used as a workshop, it can safely be said that the property is not a valuable one.

We do not agree. R.W. 1 when he gave evidence would rely upon some report which he secured from different shop owners in the vicinity and would say that he got the information about the age of the building. Later, of course, he corrected himself by saying that he tested the materials. In one sentence, the learned City Civil Judge brushed aside the evidence of C.W.1 who was examined on commission. The engineer who was examined on the side of the claimant has an experience of 28 years as a Civil Engineer and a licenced surveyor. No doubt, he valued the land as well as the building independently. The total value, according to him, is about Rs. 84,865/-. In cross-examination he gave meticulous details as to how he arrived at the price and how his estimate is correct. We are only referring to this to find whether, having regard to the manner in which the estimate has been prepared by C.W.1, the report made by R.W.1 should not totally accepted and the testimony of C.W.1 totally eschewed. A *via media* has to be found out. The only result of such an attempt to it would be to hold that there is not ample material to show that the building is 60 years old.

6. It is in this back-ground that we have to fix the rent which the premises could have fetched at or about the time of notification. It is said that there was an abortive attempt, to acquire this property in 1954. It is easy to conceive that if such attempts were made by a public body to acquire a valuable property in the City, then it would be difficult for the owner to secure a permanent tenant or a regular tenant thereafter. According to the claimant, the premises was fetching a rent of Rs. 150/- even in 1949. It can therefore be fairly presumed that such rent continued till the first attempt to acquire the property was made in 1954. Thereafter, however, we find that the rent, as is seen from Exs. C.23 and C.24, which the property has fetched was only Rs. 130/- Mr. K.G. Manickavasagam rightly attributes the less yield to the quondam abortive attempt to acquire the property. There is a controversy whether the premises did fetch Rs. 150/- or more, but we are not however concerned with it. We shall take it at any rate and we are bound to assume reasonably that at or about the time when the property was acquired the market rent would be not less than Rs. 150/- per month. This, we are assuming, because the lesser yield of the property at or about the time of the present notification under S. 4(1) is attributable to the attitude of the Corporation who attempted to acquire it in 1954 and dropped it soon thereafter.

7. If we, therefore, assume having regard to the peculiar circumstances of this case that the rent which the property could have fetched in 1961 could be not less than Rs. 110/-, than the net annual value of the premises after having worked it out in Court is reported to be Rs. 1,387.62.

8. The next immediate question is what would be the reasonable multiple, with which the above annual value should be multiplied so as to arrive at the capital value of the property. We have already referred to the various principles governing the invocation of the rule of capitalisation of the annual rent. In 1961 it cannot be said that $33\frac{1}{3}$ times is the proper multiple to be adopted, having regard to a communication made by the Reserve Bank of India as is seen from

Ex. R-4. Ex. R. 4 is a communication received from the Reserve Bank of India showing that the market quotation of Government of India 3% conversion loan 1986 as on 29th November 1961 was Rs. 72.75. This is neither helpful to the claimant nor to the respondent. In the year 1961, it cannot be said that an accepted security could not yield 5% on its investment. If we accept this rate of interest on securities which could have prevailed in 1961, then the multiple which is to be adopted in this case is 20. The appellant would, therefore, be given compensation by multiplying 1387. 62 with 20 and for the additional compensation awarded by us he would be entitled to the 15% solatium under the Act. The appeal is partly allowed with proportionate costs.

9. In the light of our judgment as above the memorandum of cross-objections fails and is dismissed. There will be no order as to costs.