
(1954) 03 KL CK 0023

In the High Court Of Kerala

Case No : A.S. No's. 366 and 367 of 1951

State of Travancore-Cochin

APPELLANT

Vs

Ramakrishna Iyer Narayana Iyer

RESPONDENT

Date of Decision : 16-03-1954

Acts Referred:

Citation : AIR 1954 Ker 132

Hon'ble Judges : Vithayathil, J;Sankaran, J

Bench : Division Bench

Advocate : K.N. Narayanan Nair, for the Appellant; S. Bhoothalinga Iyer in A.S. No. 366/51 and K.K. Mathew in A.S. No. 367/51, for the Respondent

Judgement

Vithayathil, J.—Both these appeals relate to Land Acquisition References. A.S. No. 366 of 1951 is from the decision in Land Acquisition Reference No. 9 of 1123 on the file of the Kottayam District Court and A.S. No. 367 of 1951 is from the decision in Land Acquisition Reference No. 10 of 1123 on the file of that Court. The appeals are by the State. In A.S. No. 367 of 1951 the plaintiff has filed a memorandum of objections. Both the Land Acquisition References were tried together, and evidence was taken in L.A.R. No. 10 of 1123. In that case an extent of 10.08 cents in Sy. No. 665/1/39, Lalam Pakuthy, with a building thereon, was acquired by the State under S. 18. Travancore Land Acquisition Act. L.A.R. No. 9 of 1123 relates to 3.92 cents acquired from the same Survey number. The declarations relating to these acquisitions were in Vrischigom 1120 (November 1944). The property originally belonged to P.W. 9. He sold 20 cents out of it with the buildings that stood thereon to the Lalam Church under Ex. II, dated 5-1-1115. The plot acquired in L.A.R. No. 10 of 1123 is a portion of the property conveyed under Ex. II. The plot acquired in the other case forms part of the portion retained by P.W. 9.

2. In L.A.R. No. 10 of 1123 the Land Acquisition Officer awarded Rs. 1,000 for the building and Rs. 1,512 for the land at the rate of Rs. 150 per cent. The church claimed land value at Rs. 2,000 a cent. The value of the materials of the

building was stated to be Rs. 7,000. Compensation was claimed under other heads also. Additional amount claimed in the District Court was Rs. 22,288/-. That Court awarded Rs. 6,250/- for the building and enhanced value to Rs. 400/- a cent. The space occupied by the building was not valued and for the remaining area Rs. 4,000/- was awarded as land value. The total amount awarded in L.A.R. No. 10 of 1123 is Rs. 10,250/-. The usual solatium of 15 per cent was also allowed. In A.S. No. 367 of 1951 objection is taken by the State to the additional amount awarded by the Court below, viz., Rs. 8,935-8-0 including solatium.

3. In L.A.R. No. 9 of 1123 the Land Acquisition Officer awarded land value at Rs. 150/- a cent as in the other case and Rs. 9 as value of three coconut trees. The total amount awarded by the Land Acquisition Officer in that case was Rs. 597/-. The plaintiff claimed Rs. 1,000 per cent as value of the land. The District Court enhanced the value of the land to Rs. 400 a cent and awarded Rs. 1,577/- as the value of the land and trees. In A.S. No. 366 of 1951 objection is taken by the State to the additional amount awarded by the District Court, viz., Rs. 1,127/- including solatium.

4. In the memorandum of objections filed by the respondent in A.S. No. 367 of 1951 claim is made for an additional amount of Rs. 10,500/- exclusive of solatium.

5. In A.S. No. 367 of 1951 the question for decision is whether the building and the land were properly valued by the Court below. In A.S. No. 366 of 1951 the dispute relates only to the value of the land.

6. In A.S. No. 367 of 1951 the Court below determined the value of the building by capitalising the rent at 8 and 1/3rd times. In the sale deed, Ex. II, executed by P.W. 9 in favour of the church, the land and the building together were valued at Rs. 4,500/-. No separate value was given for the building. The building was given on rent to P.W. 9 himself. He says that he does not remember on what rent he took the building. P.W. 8, the agent of the church, swears that the rent was Rs. 200 per annum. After the acquisition of the property Government did not construct the road for which it was acquired and let out the building on rent. On the basis of the evidence of P.Ws. 4, 5 and 6 the Court below held that the building was rented in 1122 for Rs. 1,180/- a year. Making due allowance for the rise in the rent of buildings from 1120 to 1122 the learned Judge held that Rs. 750/- would be a fair rent of the building in Vrischigom 1120 when the property was acquired by the State. Capitalising this at 8 and 1/3rd times the value of the building on the date of the acquisition was fixed at Rs. 6,250/-.

7. It was argued for the State that the method adopted by the Court below for fixing the value of the building was not correct and that the value should have been fixed on the basis of the value of the materials. No commission was taken out by the plaintiff to assess the value of the building on the basis of the value of the materials. According to learned counsel for the respondent the Court below ought to have fixed the value of the building and the site in this case at 20 times

the net rent. According to him, that is the correct method of determining the value of lands with buildings in urban areas. Reference was made to - "Rathnamasari v. Secy. of State", AIR 1923 Mad 332 (A). In that case, it was contended that the land and the buildings should be valued separately and that the total value should be awarded as compensation. This contention was repelled by the learned Judges who observed:

That is hardly the way in which property consisting of a house and a garden is valued in the market. A plot consisting of a house and a garden is much more satisfactorily valued at 20 years' purchase by capitalising the rental, in the absence of other evidence which would give a more satisfactory value.

Reference was also made to - The Sub-Collector Vs. Pillarisetti Parthasarathi Naidu and Another, in which case Krishnaswami Ayyengar J. observed:

Where definite material is not forthcoming either in the shape of sales of neighbouring land at or about the date of the notification or otherwise, the Court can only proceed to do the best it can under the circumstances. In the present case we think we shall not be erring on the wrong side if we say that the market value should be fixed by capitalising the net annual income at twenty years' purchase.

Vide also Gosh on Land Acquisition Acts, third edition, pages 180 to 184; Om Prakash on Compulsory Acquisition of land in British India, second edition, page 237; and Sanjiwa Rao's Law of Land Acquisition and Compensation, third edition, page 238. The Cochin High Court adopted this method of valuation in - "Haji Ahammad Sait v. Sirkar", 36 Cochin 273 (C).

8. If valuation is to be made on rental basis, it is admitted that it should be on the basis of the net rent. According to Om Prakash the following is the method to be adopted:

The gross rent is first taken. From this are deducted all amounts which have to be paid by the owner of the property either under any law enforcing any rates and taxes upon the owner of landed property or in order to maintain the property, such as expenses on account of repairs, insurance, etc. A deduction is also made on account of the losses which the owner may have to suffer, i.e., for bad debts or vacancies, etc., and expenses likely to be incurred by him in collecting his rents are also deducted. The result after these deductions is the net rent. This is capitalised at a certain rate per cent. The result gives the capital invested which is the value of the property. (page 238).

The number of years purchase will have to be determined on the basis of the market-value of money and the security of investment. Twenty years purchase is regarded as an approximately correct estimate of the value of a substantial building which is likely to stand for a reasonably long period. The Madras Land Acquisition Manual contains a provision to that effect.

9. In this case the Court below has not found what the net rent of the building

will be, and there are no materials in the case on the basis of which the net rent can be fixed for the purpose of joining the property on the rental basis. We do not think that the method adopted by the Court below in valuing the building by capitalising the gross rent at 8 and 1/3rd times is correct, if the land and the building are to be separately valued the proper method is to find out the value of the building on the basis of the value of the materials by issuing a commission for the purpose and the value of the land on the basis of the value of lands in the locality similarly situated.

The plaintiff produced Exs. A and B to show the value of lands in the locality. Exhibit A is a sale deed dated 18-3-1119 for 4 cents of land with an upstairs building for Rs. 9,000/-. The plot is marked B in the group sketch, Ex. 1, prepared by the Proverthicar. No separate value is given in the sale deed for the building and there is no reliable evidence in the case to show what the value of the building will be. The Court below was of opinion that the value given in Ex. A could not be adopted since the property covered by it is situated in a more prominent part of the town and since there is no reliable evidence to show the value of the land alone. Exhibit B is a sale deed dated 24-1-1119 for 3 cents of land with a building thereon in S. No. 665/16A. The consideration is Rs. 4,500/-. This plot is not marked in Ex. I. In the case of this sale deed also there is no reliable evidence to show what the value of the building will be. It is seen from the evidence of P.W. 3, who is the vendee under Ex. B, that the property is situated in a more prominent locality. For these reasons Ex. 11 also was discarded by the learned Judge.

10. Exhibits II and III are the documents produced on behalf of the State. Exhibit II is the sale deed relating to the property in dispute. As stated already, it is of the year 1115, when the value of properties was very low. Exhibit III is a sale deed dated 17-1-1119 for 4 cents of land with a building thereon in S. No. 665/2. The consideration is Rs. 1,470/-. No separate value is given in the sale deed for the building. The plot is marked C in Ex. I. It is admitted that it is situated in a less prominent locality when the plots acquired in these two cases. Although the properties covered by Exs. A and B are more advantageously situated than the plots acquired by the State, it cannot be said that these sale deeds can be of no assistance in the matter of determining the value of the plots acquired. The sale deeds are of the year 1119, not long before the date of the acquisition. But the real difficulty in finding out the value of the lands covered by these documents is that there is no reliable evidence in the case to show the Value of the buildings existing in the properties.

11. Whether the property is to be valued on the rental basis or whether the land and the building are to be valued separately, we do not think that there is sufficient material in the case on the basis of which a proper value can be fixed by us. We are, therefore, constrained to send back the case to the Court below for fresh disposal after giving the parties an opportunity to furnish the necessary materials. The value of the land in L.A.R. No. 9 of 1123 was fixed by the Court

below on the basis of the value fixed for the land in L.A.R. No. 10 of 1123. Hence that case also has to be sent back to the Court below for fresh disposal.

12. We, therefore, set aside the decisions in L.A.R. Nos. 9 and 10 of 1123 and send back the cases to the Court below for fresh disposal according to law and in the light of the observations made above. The appellant will get refund of the court-fees paid in both the appeals, and the respondent in A.S. No. 367 of 1951 will get refund of the court-fee paid on the memorandum of objections. The other costs incurred in this Court by the respective parties will be borne by them.