(1950) 08 AP CK 0002

In the Andhra Pradesh High Court

Case No : Second Appeal No. 86/4 of 1358 F

The Government of Hyderabad APPELLANT

Vs

Govindu Bai RESPONDENT

Date of Decision : 21-08-1950

Acts Referred:

Citation : AIR 1950 AP 70

Hon'ble Judges : Siddiqi, J;Shripat Rao, J

Bench : Division Bench

Advocate : Mohd. Zaklullah Khan, for the Appellant; Mohomed Ali Baig, for the Respondent

Final Decision : Allowed

Judgement

Shripat Rao, J.—This is an appeal on behalf of the City Improvement Board from the judgment of the Land Acquisition Court dated 20 Shehrwar 1348F. allowing Rs. 8694 as compensation to the respondent for the house which has been acquired. The Divisional Officer of the City Improvement Board had calculated the value of the house at Rs. 1,900 and odd. After deducting that sum this appeal is to the extent of Rs. 6,794. The ground on which the lower Court allowed the compensation was on the basis of annual rent, and this was held proved to be RS. 60 per month or Rs. 720 per annum.

2. The learned advocate for the appellant while conceding the principle of rental basis to be correct, urges that the actual rent of the property accused can be estimated to be not more than Rs. 12 per month. The respondent filed a deed dated 22-1-1337 F. Ex. A-12 which is described as "Munafanama". This deed has been executed by one Shiva Pershad in which he states that in lieu of Rs. 60 per month he will have the right to work the licensed wine shop and to occupy the house in which that shop is situated. There is Anr. rental deed dated 16-2-1880 F. executed by Tuljaram, Jagannath and Shivalal, in favour of the then owners of the house in dispute agreeing to pay Rs. 20 per month as rent (page 83 of the printed book). It appears from the records that one Tuljaram is the owner of this

house who had mortgaged the same in favour of Ramparshad, the husband of the present respondent Govinda Bai, and 3 Ors. . This is evident from the mortgage deed dated 14 Amardad 1385 P. (page 16 of the printed book). By this deed the mortgagor mortgaged not only the house but also his licensed liquor shop in favour of the mortgagees. There is a prior mortgage deed (page 9 of the printed book) dated 13th Thir 1335 F. by which the mortgagor mortgaged the house and also the licensed liquor shop in favour of the said mortgagees. It is made dear in this document that the house is mortgaged for the amount of Bs, 9,000 and the right to work the liquor shop in lieu of as. 4,000. In all, Rs. 6,000 is mentioned as the mortgaged money and Rs. 60 is agreed to be given to the mortgagees in possession as the profit (Munafa) per month for the said amount. It is clear from this document that the rent of this house in lieu of internet was fixed at Rs. 90 per month and Rs. 40 is the profit to be given to the mortgagor for working his licensed liquor shop. The lower Court has come to the conclusion that the rent of the house should be assessed at Rs. 60 in view of the said document. We are unable to agree with this conclusion when the document itself mentions that Rs. 40 out of RS. 60 are in lieu of the right to work the liquor shop. In our opinion the rent of the house was RS. 20 per month and we have to award compensation to the respondent accordingly. The said document has been proved by the evidence of Shiva Parshad. The learned advocate for the appellant argued that the evidence of appellant''s witness Muhamed Hussain Khan goes to prove that the rent of the house can approximately be Rs. 12 or Rs. 13 per month, but we cannot attach much importance to such surmises in the face of actual rent deed entered into between the landlord and the tenant of the house. Taking RS. 20 as the monthly rent, the annual rent comes to Rs. 240. If we deduct (sic) as municipal and other expenses the net annual income from the house to the owner cornea to Rs. 180 per year. In 37 Aleen Deccan page 314 it has been laid down that its of the annual income should be deducted for arriving at the nor annual income. We have now to decide as to how much the respondents are entitled towards compensation in view of this net annual income. In Radha-Krishna Chetiar v. Province of Madras AIR 1949 Mad. 171, it has been held that the proper method of valuation to be adopted relating to houses and ground situated in a municipality and fetching a regular income is to assess the value oil the basis of capitalization of the net annual income. Taking this ruling cited by the learned advocate for the respondent into view and also the facts that rata of interest on Government securities was not leas than 3 per cent, per annum, the annual rental value will be capitalised at 331/3 years'' purchase and the amount would thus come to Rs. 6,000. In our opinion, therefore, the respondent is entitled to as 6,000 as compensation. The lower Court has awarded Rs. 8,694. We set aside the decree of the lower Court to the extent of the excess amount awarded and grant a compensation of Rupees 6,000 to the respondent. The appeal by the Government is, therefore, allowed to that extent. The decree of the lower Court will be modified accordingly. Each party will pay the other party the costs to the extent of their success in this appeal.

3. Appeal allowed as above and the decree of the Lower Court modified.

Siddiqi, J.

4. I agree.