

A. Premchand and ors. Vs. Inspecting Assistant Commissioner of Income-tax and ors.

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Court : Karnataka

Decided On : Feb-27-1985

Reported in : (1986)53CTR(Kar)153; ILR1985KAR1151; [1985]153ITR774(KAR); [1985]153ITR774(Karn)

Judge : K.S. Puttaswamy and ;N.R. Kudoor, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 269A, 269B, 269B(2), 269B(3), 269C, 269D, 269D(1), 269D(2), 269D(3), 269E, 269F(6), 269G and 269G(2); [Wealth Tax Act, 1957](#) - Sections 7

Appeal No. : Income-tax Appeal Nos. 5 to 8 and 25 to 29 of 1976

Appellant : A. Premchand and ors., inspecting Assistant Commissioner of Income-tax and ors.

Respondent : inspecting Assistant Commissioner of Income-tax and ors.; A. Premchand and ors.

Advocate for Def. : K. Srinivasan and ;H. Raghavendra Rao, Advs.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Puttaswamy, J.

1. These appeals and cross appeals are directed against a common order made by the Income-tax Tribunal, Bangalore Bench (Tribunal), on May 6, 1975, in Appeal Nos. I.T.A. (Acq.) Nos. 17 to 20 and 23 of 1974-75 reversing the order No. CR 62/1808/73-74/Acq. (B) dated November 30, 1974, of the IAC of Income-tax Acquisition Range, No. 41, Bangalore ('IAC'), made under Chapter XX-A of the I.T. Act of 1961 (Central Act No. 43 of 1961) ('the Act').

2. House property bearing old No. 76/89, new No. 111 situated at Diagonal Road, Visveswarapuram, Bangalore-4 was owned by one D. S. Anantha Rao, respondent in I.T.R. No. 29 of 1976 ('transferor'). On October 10, 1973, by a registered instrument of transfer, the said Anantha Rao sold the same to Sriyuths (i) A. Kheemraj, (ii) A. Premchand, (iii) A. Hukmichand, and (iv) B. Parasmal of Bangalore ('transferees') for a sum of Rs. 2,00,000.

3. On March 21, 1974, an inspector attached to the office of the IAC reported the said transfer to the IAC. On an examination of that report, the details of the property and the apparent consideration stipulated in the instrument of transfer, recording his reasons thereto on the same or next day as required by s. 269C of the Act, to the effect that the fair market value of the property exceeded the apparent consideration by more than 15 per cent., directed the issue of notices on that very day under s. 269D of the Act. While the notice issued under s. 269D(1) of the Act was published in the Government of Indian Gazette dated July 6, 1974 (vide Part-III(1) at page 4050), the notices issued to the transferees and transferor under s. 269D(2)(a) of the Act were served on March 29, 1974, and April 2, 1974, respectively. In conformity with this and other provisions of that very section, notices on the tenant who was in occupation of the building, on the notice board of the office of the IAC, on a conspicuous part of the property and the locality were also effected.

4. In response to the notices served on them, the transferees and the transferor filed their objections before the IAC, inter alia, contending that the approach consideration stipulated in the instrument of transfer was the real consideration paid and received and the same was the fair market value of the property as on

October 10, 1973. On an examination of the objections filed, the evidence placed before him and affording an opportunity of hearing, the IAC with the previous approval of the Commissioner made an order on November 30, 1974, under s. 269F(6) of the Act for the acquisition of the said property under Chapter XX-A of the Act.

5. Against the order made by the IAC, the transferees and the transferor filed appeals in Appeals Nos. 17 to 20 and 23 of 1974-75 under s. 269G of the Act before the Tribunal. Before the hearing of their appeals, the appellant sought the leave of the Tribunal to urge an additional ground to the effect that the proceedings initiated by effecting service of notice on them even before the publication of the notice in the Official Gazette was an invalid assumption of jurisdiction by the IAC and the completion of proceedings for acquisition were void at law and invalid. On allowing the said additional ground to be urged, the Tribunal by its common order dated May 6, 1975, has accepted the same and has allowed the said appeals, however holding against them on the fair market value of the property acquired by the IAC.

6. Aggrieved by the finding recorded by the Tribunal on the fair market value, the transfers have filed I.T. As. Nos. 5 to 8 of 1976 before this court. Aggrieved by the order of the Tribunal invalidating his order, the IAC has filed I.T. As. Nos. 25 to 29 of 1976 against the transferees and the transferor respectively. In the appeals filed by the transfers, the IAC is the common respondent. In the appeals filed by the IAC, the transferees and the transferor are the respondents. In the course of our order hereafter, we will refer to the transferees and the transferor as the appellants and the IAC as the respondent.

7. Sri G. Sarangan, learned advocate, has appeared for the appellants. Sri K. Srinivasan, senior standing counsel for the Income-tax Department, has appeared for the respondent.

8. Both sides have relied on a large number of rulings in support of their respective cases. We will refer to them at the appropriate stages.

9. On the contentions urged before us, two points arise for our determination and they are :

(i) Whether the issue of notices to the appellants under s. 269D(2)(a) of the Act, before the publication of the notice under s. 269D(1) of the Act in the Official Gazette, vitiates the jurisdiction of the IAC and the order made by him thereto under Chapter XX-A of the Act

(ii) Whether the determination of fair market value of the property by the Tribunal and the IAC are legal and valid

10. We will deal with them in their order.

11. Re : Point No. 1.

12. Sri Srinivasan has urged that the Tribunal committed an error of law in allowing the belated additional ground urged by the appellants before it and the acceptance of the same was plainly illegal.

13. Sri Sarangan has sought to support the decision of the Tribunal on the very grounds found by it and other grounds also which will be noticed and dealt with by us in due course.

14. Before the IAC, the appellants did not urge that the notices issued to them under s. 269D(2)(a) before the publication of the notice in the Official Gazette vitiated his jurisdiction and the proceedings initiated against them were ab initio void. In their objections before the IAC, the appellants did not object to his jurisdiction on the above or any other ground, participated in the inquiry and had a decision at his hands. Even in their appeal memo, the appellants did not urge the aforesaid ground. But, the appellants sought the permission of the Tribunal to urge the same as if that was a plea of inherent want of jurisdiction. We have no doubt that the Tribunal as the appellate authority under the Act with no restrictions placed on the exercise of its appellate powers was competent to allow an additional ground, particularly if the same was one of inherent want of jurisdiction, deal with the same and accept it also, if it found merit in the same. But, the question is whether the additional ground sought to be urged before it was one

such.

15. We are of the view that what was sought to be urged by the appellants as an additional ground was not a ground that really touched on the jurisdiction of the IAC and at the highest rally touched on the regularity of the proceedings before him. A contention based on the regularity or otherwise of the proceedings cannot properly be allowed to be urged for the first time in an appeal unless such irregularity in the proceedings had occasioned grave frailer of justice which was not also the case of the appellants. We are considered to observe that the Tribunal did not clearly come to grips on the true concept and content of jurisdiction and had elevated the irregularity in the proceedings to errors of jurisdiction. We are, therefore, of the view that the Tribunal committed an error of law in allowing the additional ground urged by the appellants and allowing the appeals solely on that ground. We do not, however, propose to rest our conclusion on this view only. We, therefore, propose to examine the correctness of the view expressed by the Tribunal.

16. The Tribunal noticed the additional ground urged before it in these words :

'The ground urged is that the competent authority having issued the notice upon the transferees in accordance with section 269D(2) earlier than the publication of the notices in the Official Gazette, there was no proper assumption of jurisdiction and, hence, the acquisition proceedings are void and the acquisition order is not maintainable in law.'

17. On this ground, the Tribunal expressed thus :

'When there is service of notice on the transferor/transferees before the publication in the Official Gazette, it is premature and ineffective and in the absence of any new notice served on the person concerned after the publication of the notice in the Official Gazette, the proceedings could not be said to have been properly initiated.'

18. In reaching this conclusion, the Tribunal followed an earlier decision rendered by it in I.T. (Acq.) Nos. 15 to 16 of 1974-75 dated April 20, 1975, which is also in

challenge before us in I.T. As. Nos. 23 and 24 of 1976 in which also it has accepted a similar ground concurring with the views expressed by the Bombay Income-tax Appellate Tribunal ('Bombay Tribunal') in Smt. Hirubai Kisan Koli v. IAC, Acquisition Range (I.T. Appeals Nos. 231 to 235 (Bom.)/74-75 dated December 2, 1974) on similar facts and on a similar ground urged before that Tribunal. We have carefully read the order made by the Tribunal challenged in I.T.A. Nos. 23 and 24 of 1976 and the order made by the Bombay Tribunal in Hirubai Kisan Koli's case.

19. We find it difficult to hold that the conclusions of the Tribunal in these cases can be understood as one of inherent want of jurisdiction. We are of the view that the conclusions appear to suggest and hold that the defect, if any, was only an irregularity in the proceedings before the IAC and was not a case of inherent want of jurisdiction to entertain the cause and decide the same. But, that is how the Tribunal has understood in all other cases, in particular in its order challenged in I.T. As. Nos. 23 and 24 of 1976, and the counsel for the both sides have addressed their argument before us on that basis only. We, therefore, propose to deal with the same on that basis.

20. We first consider it necessary to ascertain the true meaning of the term 'jurisdiction' and the legal concepts touching on the errors within and without jurisdiction.

21. The term 'jurisdiction' with varied and different meaning is a much misunderstood concept English law (vide opening para. of Chapter IX 'the Concept of Jurisdiction' by Amnon Rubinstein in his Treatise 'Jurisdiction and Illegality' 1965 edition) and has been defined in Black's Law Dictionary as hereunder :

'Jurisdiction. The word is a term of large and comprehensive import, and embraces every kind of judicial action. Federal Land Bank of Louisville, Ky. v. Crombie, 258 Ky. 383, 80 S.W. 2d 39, 40. It is the authority by which courts and judicial officers take cognizance of and decide cases. Board of Trustees of Firemen's Relief and Pension Fund of City of Marietta v. Brooks, 179 Okl, 600, 67 P. 2d 4, 6; State v. True, Me., 330 A. 2d 787. The legal right by which judges exercise their authority. Max Ams, Inc. v. Barker, 293 Ky. 698, 170 S.W. 2d 45, 48. It exists when court

has cognizance of class of cases involved, proper parties are present, and point to be decided is within powers of court. *United Cemeteries Co. v. Strother*, 342 Mo. 1155, 119 S.W. 2d 762, 765; *Harder v. Johnson*, 147 Kan. 440, 76 P. 2d 763, 764. Power and authority of a court of hear and determine a judicial proceedings. *In re : De Camillis' Estate*, 66 Misc. 2d 882, 322 N.Y.S. 2d 551, 556. The right and power of a court to adjudicate concerning the subject-matter in a given case. *Biddinger v. Fletcher*, 224 Ga 501, 162 S.E. 2d 414, 416.

Areas of authority; the geographic areas in which a court has power or types of cases it has power to hear.'

22. Halsbury's Laws of England, 4th edition, vol. 10 at para 715 (p. 323) defines the said term thus :

'Meaning of 'jurisdiction'. By 'jurisdiction' is meant the authority which a court has to decide on matter that are litigated before it or to take connivance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and and may be extended or restricted by similar means.'

23. In *Raja Soap Factory v. Shantharaj*, : [1965]2SCR800 , the Supreme Court dealing with the question whether this court had original jurisdiction to entertain a civil suit or not and grant a temporary injunction, explained the meaning of the said term in these words (pp. 1450-51) :

'Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits.... By 'jurisdiction' is meant the extent of the power which is conferred upon court by its constitution to try a proceeding; its exercise cannot be enlarged because what the learned judge calls an extraordinary situation 'requires' the court to exercise it.'

24. Amnon Rubinstein in this Treatise 'Jurisdiction and Illegality' explains the fundamental concept of jurisdiction very tersely thus :

'A general theory of jurisdiction, which stands for purity of concept, claims to solve the dilemma. Briefly stated, this doctrine equates power to determine with the existence of jurisdiction; a Tribunal which is authorised to inquire into any matter does not lose its jurisdiction by reaching a wrong decision, and consequently its decision is binding and conclusive in all collateral proceedings. There is some logic in maintaining that authority to decide embodies a privilege to bind despite error, a privilege which is inherent in every judicial function. Hence, this theory of jurisdiction is acclaimed as the only logical solution to this perturbing problem.'

25. H. W. R. Wade in his 'Administrative Law' EL-BS, 1984 edition, in Chap. 9 : 'Jurisdiction over fact and law' at p. 250 describes the narrow meaning of the term with great clarity, simplicity and terseness thus :

'In this area 'jurisdiction' is a hard workers word. Commonly it is used in its broadest sense, meaning simply 'power'. In some contexts it will bear the narrower sense, of 'power to decide' or 'power to determine', but there will be no technical difference. In fact, except in the special case of error on the fact of the record, the principle here at work is simply that of ultra vires which is synonymous with 'outside jurisdiction' or 'in excess of power'.'

26. The ruling of the Supreme Court in M. L. Sethi v. R. P. Kapur, : [1973]1SCR697 , dealing with the meaning of jurisdictional defects for exercise of revisional power under s. 115 of the Code of Civil Procedure, on which strong reliance has been placed by Sri Sarangan does not lay down a different proposition. We are of the view that the enunciation in this case should be confined only to the understanding of the term 'jurisdictional defects' for purposes of exercising revisional powers under s. 115 of the Code of Civil Procedure and not to ascertain the true meaning of the term 'jurisdiction' and 'errors of jurisdiction' with which we are concerned. What emerges from these authorities is that the term 'jurisdiction' in its narrow and legal sense connotes the 'power to decide' or 'competence to decide' and has nothing to do with the power to decide rightly or wrongly on a cause or subject on which it has competence to decide.

27. In pure legal theory, 'jurisdiction' as meaning 'power to decide' or 'competence to decide' a cause or subjects can be conferred on a court, tribunal or an

authority as is the case only by the Constitution of the country or by a law made by a competent legislature and not by the act or consent of parties. When a court, tribunal or an authority has not been invested with jurisdiction, meaning 'the power to decide' or 'competence to decide' but still decides a matter, it is outside its jurisdiction or in excess of its jurisdiction and that cannot be cured by the Act or consent of parties. Rubinstein clearly explains this principle neatly in his Treatise 'jurisdiction and Illegality' in these words :

'Want of jurisdiction denotes action taken beyond the sphere allotted to the tribunal by law and, therefore, outside the area within which the law recognises a privilege to err. Furthermore, want of jurisdiction is regarded as usurpation of power unwarranted by law. Consequently, it is considered so radical a defect that it cannot be cured by the acquiescence or consent of the parties concerned. Jurisdiction does not originate in the consent of the parties and cannot be re-established, where it is absent, by such consent or acquiescence. Being independent of the parties' behaviour, want of jurisdiction can be raised by any person wherever the resulting act is relied upon.

These symptoms are generally accepted as characterising want of jurisdiction. Accordingly, as will be seen later, bias cannot be considered as going to jurisdiction since it is a defect which can be waived and which cannot be raised by the person who 'benefited' by the alleged bias.

Nevertheless, as one would suspect, this rule is not without its exceptions. In certain circumstances, a party may be precluded by his behaviour, from raising an objection to jurisdiction, though, admittedly, such an objection would have nullified the disputed proceedings. The courts have not evolved, with regard to this matter, a general guiding principle. A distinction is sometimes made between total or general want of jurisdiction, which cannot be cured by consent and acquiescence and other jurisdiction defects which can be thus cured. General want of jurisdiction is taken to relate to the subject-matter over which the tribunal has jurisdiction, But, this distinction has never been clearly formulated.'

28. A case of inherent want of jurisdiction can be set up at any stage of the proceedings. But, an irregularity in the exercise of jurisdiction cannot be set up at

any and every stage of the proceedings [vide *Ledgrad v. Bull* ILR [1886] All 191; 13 IA 135 (PC) and *Hira Lal Patni v. Sri Kali Nath*, : [1962]2SCR747 . Bearing these principles, it is necessary to examine whether the defect in the issue of notice under s. 269D(2)(a) of the Act before the publication of the same in the Official Gazette has affected the assumption of jurisdiction or is a case of inherent want of jurisdiction or is only an error in the exercise of jurisdiction of the IAC.

29. Chapter XX-A of the Act is a complete code in itself. Chapter XX-A has been enacted by the Union Parliament conferring power on the named authority to be appointed by the Central Government by a general or special order under s. 269B of the Act with power to acquire immovable property to counteract evasion of tax. The power on the competent authority or the IAC is conferred by Chapter XX-A and the order made thereto by the Government. The named IAC or the IAC authorised by the Government and not all the officers of the Department, whether high or low, has alone the power to decide the cause or the subject-matter dealt in Chapter XX-A of the Act. Without any doubt, Parliament with due regard to the interests of the State and the persons affected by the extraordinary power conferred on the authorised IAC, has placed many limitations and safeguards in the exercise of the extraordinary powers conferred by Chapter XX-A of the Act. But all those limitations and safeguards cannot be treated as touching on the jurisdiction of the authority to acquire if the circumstances contemplated in Chapter XX-A exist, however conforming with the requirements of the provisions made therein. Every error committed by the IAC in the exercise of his own jurisdiction, cannot be treated as outside his own jurisdiction. They are all errors in but not of jurisdiction. We are clearly of the view that the errors, if any, committed by the IAC in issuing notices under s. 269D(2)(a) before the publication of the notice in the Gazette was an error within his own undoubted jurisdiction and was not a case of 'assumption of jurisdiction' or usurpation of power or outside the jurisdiction of the IAC and the Tribunal is holding otherwise and invalidating the proceedings on the ground was clearly in error.

30. Sri Sarangan has urged that the jurisdiction of the IAC to deal with the matter arises only on the publication of the notice in the Official Gazette and not before that.

31. What we have said earlier answer this contention of Sri Sarangan. Section 269D(1) which provides for the publication of the notice in the Official Gazette and the period within which such publication should be made is not a provision that confers jurisdiction on the IAC to initiate proceedings under the Act. As held by us earlier, the jurisdiction to initiate proceedings is conferred on an IAC by Chapter XX-A of the Act and the order made by the Government appointing him as the authority to decide the cause. The proviso to s. 269D only fixes the period of limitation within which proceedings can and should be initiated and no more. A provision stipulating the period of limitation cannot be interpreted as touching on the jurisdiction of the authority at all. The fact that a cause is barred by time and the court or authority is compelled to dismiss such a cause has nothing to do with the the jurisdiction of the court or the authority to decide the cause itself.

32. Even s. 269B(3) of the Act on which reliance is placed by Sri Sarangan deals with the what is called as objections to territorial jurisdiction of an IAC that is somewhat analogous to s. 21 of the CPC. Section 269B(2)(a) of the Act regulates cases where the property is exclusively situated within the territorial jurisdiction of the IAC appointed by the Government. Section 269B(3)(b) regulates case where the property or properties are situated within the territorial jurisdiction of more than one IAC. In the former, no difficulty arises, but in the latter, difficulties arise. In the latter the IAC specified by the Rules made by the Central Board of Revenue has to exercise jurisdiction. Admittedly, this is not a case regulated by the latter situation at all. Section 269B(c) requires a person objecting to the jurisdiction of an IAC on any ground to urge the same within the time stipulated therein and not thereafter. In this case, the question of construing that period also does not arise. But, one thing that is clear is that s. 269B(3) of the Act regulating objections and the period within which such objections should be urged has hardly any relevance to decide the question of jurisdiction of the IAC conferred by the Act. We see no merit in this contention of Sri Sarangan and we reject the same.

33. Sri Sarangan has urged that the locality notices and individual notices must follow the notice published in the Official Gazette and those requirements in all their details were mandatory and any disobedience in the performance of any of the Acts renders every one of the proceedings under the Act ab initio void.

34. Section 269D does not provide for the publication of the notice in the Official Gazette first and then only for service of locality notices and individual notices to the transfers and transferor and the person in occupation of the property. Section 269D of the Act does not provide for such a formal compliance and much less of invalidation on the failure of such formal compliance at all. After all, the locality notice and the individual notices are effected only to provide a better opportunity to the affected persons and person claiming interest in the property and not for any other purpose. The service of notices is not an end in itself but is only a means to afford a proper opportunity and adjudicate the matter fairly and justly. Section 269E providing for the filing of objection within 45 days from the date of publication in the the Gazette or a period of 30 days from the date of service on the person, whichever period express later, being beneficial to the person on whom the notice is served far from supporting the case of the appellants. supports the case of the respondents in sustaining the validity of the proceedings initiated and completed by the IAC. We are to the view that the requirements of sub-ss. (2) and (3) of s. 269D of the Act, at any rate those relating to the mode of service and the time of service, on any principle cannot be interpreted as mandatory requirements and any disobedience in respect of those matter do not nullify the proceedings as contended by Sri Sarangan.

35. On the true scope and ambit of s. 269D as also some of its sub-section, in particular of sub-s. (2) of that section, that is not so far concluded by an authoritative ruling of the Supreme Court and there is divergence of opinion among the various High Courts in the country. We consider it unnecessary to refer to all of them and state our views on each one of them. We are, however, of the view that what has been expressed by a Full Bench of the Punjab and Haryana High Court in CIT v. Amrit Sport Industries on the scope and ambit of s. 269D(2) of the Act, if we may say so with great respect, is correct. Therein the full Bench, speaking through Sandhawalia C.J., has expressed thus (p. 122) :

'The proceedings under s. 269D(2) of the Act being procedural and supplementary, are in on way jurisdictional. Any defect or irregularity therein consequently cannot affect the assumption of jurisdiction by the competent authority and, therefore, in on way vitiates the initiation of proceedings once validly

done. Therefore, a default in service of the persons interested or even of publication under sub-s. (2)(b) does not affect the jurisdiction of the Competent Authority by at the very highest pertains to the exercise of the power thereunder. It is well settled that an erroneous exercise of power does not vitiate the proceedings, but merely calls for correction, be it in the appellate, revisional or any other jurisdiction.'

36. We are in respectful agreement with the views.

37. On any legal principle, we find it difficult to hold that prior service of notices on the transferees and the transferor or person in occupation of the building before the publication of the notices in the Official Gazette affects the jurisdiction of the IAC and vitiates the proceedings before him. We, therefore, hold that the conclusion reached by the Tribunal on point No. 1 is erroneous in law and the same calls for our interference.

38. Re : Point No. II.

39. Sri Sarangan has urged that the fair market value if the property was as stated in the instrument of transfer and the finding to the contrary recorded by the Tribunal overlooks or ignores the correct legal principles in that it had failed to allow 40 per cent. as outgoings on the rental value of the property. In support of his contention, Sri Sarangan has strongly relied on a Division Bench ruling of the High Court of Gujarat in CIT v. Smt. Vimlaben Bhagwandas Patel : [1979]118ITR134(Guj) followed and approved by a Division Bench of this court consisting of Venkatachaliah and Vithala Rao JJ. in Special Land Acquisition officer (Railways), Mangalore v. C. P. Mohammed (M.F.A. No. 468 of 1975 decided on 11/12-2-1980).

40. Sri Srinivasan in supporting the finding of the Tribunal has urged that the Tribunal had correctly applied the rental value method as expounded by a Division Bench of this court in CWT v. V. C. Ramachandran : [1966]60ITR103(KAR) and of the Calcutta High Court in CED v. Radha Devi Jalan : [1968]67ITR761(Cal) and CIT v. Panchanan Das : [1979]116ITR272(Cal) .

41. As on the day the property was sold, it was in the occupation a of tenant, namely, the Karnataka State Secondary Education Examination Board, a Department of the Government of Karanataka, and that tenant was paying a rent of Rs. 2,500 per month, being the fair rent fixed by the Rent Controller under the Karnataka Rent Control Act of 1961, is not in dispute. On this basis, the departmental valuer opined thus :

'The building has been occupied by the Karnataka State Secondary Education Examination Board on the allotment made by the House Rent and Accommodation Controller. The rental approach to valuation is considered more appropriate in this case. Rs. Gross annual rent 30,000 Less : All outgoings at 25% 7,500-----Net annual value 22,500-----

42. For capitalization, we may adopt 6-1/2 return as the income is well secured; years purchase for expected future life of 30 years - 13.059.

Rs.1. Capitalised value = $22,500 \times 13.059 = 2,93,827$...12. REVERSIONARY VALUE OF LAND. The present value of land is Rs. 150 sq.yd. The land value at the end of 30 years for purposes of valuation canbe assumed as the present value itself.Rs.Value of site at the end of 30 years = $15,000 \times 150/9 = 2,50,000$ Present value of Re. 1 deferred for30 years @6 1/2 = 0.15119 Present value of the site deferredfor 30 years. = $2,50,000 \times 0.15119 = 37,797$23. Reversionary value of net tumble down value of the building would besmall and is ignored.Total value of property =(1)+(2)= $2,93,827 + 37,797 = 3,31,624$ Say Rs. 3,32,000Fair market value of the property is Rs. 3,32,000.'

43. The IAC after referring to the importance of the locality, the details of the property, the building and the improvements effected from time to time, virtually adopted this valuation and found that the fair market value exceeded the apparent consideration by 25 per cent.

44. The Tribunal also adopted the rental method of valuation. But, in adopting the same, it excluded the reversionary value and then gave deduction of a sum of Rs. 8,376 as outgoings, towards municipal taxes of Rs. 3,376/and repairs of Rs. 5,000 and, found the net rental income of the property at Rs. 21,624. On that net income,

the Tribunal adopted 12.5 years' purchase and found the fair market value of the property at Rs. 2,70,300 and on this basis sustained the finding of the IAC that the fair market value was more than 25 per cent. of the apparent consideration.

45. Both sides have not taken exception to the rental method of valuation adopted by the Tribunal and the IAC. But, their objection is on the working of that method and the extent of outgoings to be allowed. Both sides have pressed hard their respective view-points and urged to give finality to these proceedings somewhat regretfully pending before this court itself for nearly a decade. We will first examine whether the correct principles of valuation have been applied and whether the evidence on the record enables us to finally determine the case.

46. The fair market value of the property must be determined as on the date on which the transaction is recorded in the instrument of transfer and not before that or thereafter also.

47. The term 'fair market value' in relation to immovable property transferred by way sale, that being the position in the present case, has been defined in s. 269A(d) of the Act, as 'the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property'. Whether there is a sale of immovable property, the Tribunal and the IAC must determine the price that the property would have ordinarily fetched on sale in open market. This very definition projects or brings to the fore the concept of 'comparable sales method' or 'the sales analysis approach' or a mythical willing seller who is under no compulsion to sell and a willing buyer who is under no compulsion to buy in awarding compensation to lands and buildings acquired for public purposes under the Land Acquisition Act. There is nothing like a general market value for immovable properties as in the case of a commodity like sugar or shares [vide *Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatnam*]. But, that does not necessarily mean there is no market value for the property and the same cannot be ascertained. In many a case, it becomes difficult to report to this method and determine the market value and, therefore, courts and valuers have adopted other modes or methods called 'capitalization method' and 'rental value method', etc. But, the other methods must

be resorted to only when the fair market value cannot be determined applying the comparable sales method or the sales analysis approach and not otherwise. We are of the view that this is more true and necessary due to the primacy given to the same by the very definition of the term 'fair market value' in s. 269A(d) of the Act.

48. On the soundness of the comparable sales method, the Supreme Court in an appeal arising from our High Court awarding compensation to agricultural lands under the Land Acquisition Act in *Special Land Acquisition Officer v. P. Veerabhadrapa* ILR [1984] Kar 411, reviewing all the earlier cases, had expressed thus :

'7. The function of the court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under section 4(1) of the Act and the methods of valuation may be; (1) Opinion of experts. (2) The prices paid within a reasonable time in bona fide transaction of purchase or sale of the lands acquired or of the lands adjacent to those acquired and processing similar advantages. And (3) A number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available.

8. It is axiomatic that the best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of sales of comparable properties, proximate in time to the date of acquisition, similarly situate and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchaser. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under section 4(1) or otherwise, the court has no other alternative but to fall back upon the method of valuation by capitalization. In valuing land or an interest in land for purposes of land for purpose of land acquisition proceedings, the rule as to

number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in money investments. The return which an investor will expect from an investment will depend upon the characteristics of income as compared to that of an idle security. The main features are : (1) Security of the income; (2) fluctuation; (3) chances of increase; (4) cost of collection, etc. The most difficult and yet the most important and crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property.

9. The traditional concept of capitalization was indicated by this Court in *Rustom Cavasjee Cooper v. Union of India* : [1970]3SCR530 . It was stated to be :

'capitalization of the net annual profit out of the property at a rate equal in normal cases to the return from gilt-edged securities. Ordinarily value of the property may be determined by capitalising the net annual value obtainable in the market at the date of the notice acquisition.

It is thus clear from the above enunciation that the method of determining the value of the property by application of multiplier to the net annual income of profit should only be adopted when there is no evidence of comparable sales of similar lands in or about the neighbourhood at the relevant time, i.e., on the date of the notification under section 4(1) of the Act. In certain circumstances, however, the court has no other alternative but to fall back upon the capitalised value.

10. Alfred D. Jahr in 'Law of Eminent Domain' (1953 edn.), after a general discussion regarding the valuation of property, sums up at pp. 100-101 :

'It is evident, therefore, from the foregoing definitions as well as from numerous other definitions which may be cited, that the fair market value of property taken by eminent domain is the price that the property will bring when offered for sale by one desiring, but not obliged, to sell; and purchased by one desiring to purchase, but under no necessity of buying. It is the price which a piece of property will bring in the market when offered for sale and purchased by another,

taking into consideration all the elements of the availability of the property, its use, potential or prospective, and all other elements which combine to give a piece of property a market value.'

The learned author then deals with the fixation of market value on the basis of rental income at pp. 226-229 and states :

'It is far sounder practice to avoid the use of rental value capitalization, if better evidence of market value is available. In any event, the courts are inclined to give greater weight to sales of similar properties in the market than to evidence of leasehold rentals.'

Jahr then deals with the method of capitalization of income and says at p. 230 :

'It is quite evident from the formula that the lower the rate of return applied, the higher capitalised sum will be. However, the rate of return on money invested is dependent upon many varied factors; (1) safety of principal; (2) liquidity of investment; (3) certainty of income; (4) possible market fluctuations; (5) appreciation of principle or income; and undoubtedly other elements too numerous to mention. The interest rate current in the security market must be considered, as well as the investment rate to be obtained from high grade bond or common stocks and commodities traded on the several exchanges.' The principle deducible from the above passage is that the basic factor in applying the method of capitalization of income for ascertaining the market value of property is the rate of return that an ordinary investor would reasonably get on his investment, having due regard to all the relevant circumstances.

11. In the classical economic sense, as adopted by the Privy Council in *Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatnam* [1939] ILR 66 IA 104, the meaning to be placed upon the phrase 'market value' of the land under section 23 of the Act is the price at which the land acquired could actually be sold at the relevant time, i.e., on the date of notification under section 4(1) of the Act by a fictitious willing buyer in a hypothetical market, with the qualification that a forced sale is not to be assumed. The price at which the property would sell 'as between a willing buyer and a willing seller' raises the problem of valuation. The value of

any object of wealth is simply a capitalization of the services or income which actual or potential owners of the property expect to derive from it, i.e., earning power as a basis of valuation. The rule of number of years' purchase is not a theoretical or legal rule, but depends upon the economic factors such as the prevailing rate of return which a prudent investor in the class of properties in question would expect. The most important of such economic factors is the prevailing rate of interest at the relevant time, i.e., on the date of the notification under section 4(1) of the Act. It is first necessary to ascertain the gross income from the acquired property. The next step should be to ascertain the net income. Having ascertained the net annual income, it must be capitalised by computing the number of years' purchase.'

49. We need hardly say that these principles apply on all fours to the concept of the fair market value and the principal of determining the same by comparable sales method as also other methods.

50. On the same topic, the Manual of Land Tax Administration published by the Department of Economic and Social Affairs of the United Nations Publications as document No. ST/ECA/103 (Sales No. E. 68. XVI. 3) sets out the soundness of the principal in these words :

'36. The best evidence of market value is the price at which property changes ownership. The utilisation of these date in the appraisal process is known as the sales analysis approach and is generally conceded to be the most accurate basis for the determination of property value, provided there have been a sufficient number of transactions that have occurred reasonably near the time of the appraisal and for which reliable date are available. It is necessary to analyse the conditions under which transactions take place before accepting the price as a valid indication of the market value of the property because some exchanges take place under abnormal conditions.

37. Sales information is not restricted necessarily to transactions that have been consummated, although it is obvious that these are the most conclusive evidences of value. Offers to sell, and offers to buy, provided they are genuine, also provide valuable date to be given consideration. Asking price, in the nature of things,

probably are indications of maximum value; and bid price are probably indications of minimum value. The true value no doubt is an amount between these limits.

38. In addition to being one of the best evidences of market value, the use of sales data in the sales analysis approach is susceptible to comparatively simple application. This is especially true in determining values for assessment purposes. Sales data are utilised primarily in the valuation of land. In the case of improved parcels, the procedure involves segregating the value of the improvements from the sales price by estimating the amount to be attributed to the improvements and deducting it from the sales price. The residual amount is imputed to the value of the land.

39. Comparisons of the values of individual parcels, as indicated by the sales, reveal both similarities and variations. Analysis, in most instances, will disclose the factors that contribute to the differences in sale prices. As a rule, there will be sales data for only a small number of the properties being appraised; and some of these we have to be discarded because the transactions, for various reasons, are not acceptable as evidence of the market value of the property. The various factors that influence the value are analysed and the degree of weight given to each is determined by appraisers, based on their knowledge, experience and judgment.

40. The procedure that is followed in utilising sales data to estimate the market value of individual parcels is to compare the properties for which values have been established, on the basis of the sales transactions, with similar properties for which there are no data. The values thus established are tentative and become final only after giving consideration, if applicable, to income and cost, the other two approaches to the determination of value.'

51. What is described here is also in accord with what has been expressed by the Supreme Court in Veerabadrappa's case ILR [1984] Kar 411.

52. Unfortunately, the Tribunal and the IAC have not even borne in mind the above principle of valuation that was more relevant to the determination of the fair market value of the property and on a total misapprehension of the legal principles, the

parties have also not place all relevant evidence to enable us to finally decide the matter also. When there is no evidence placed on the issue, we are compelled to remit the case to the IAC rather than to the Tribunal.

53. On the above discussion, it also follows that the rental method had to be resorted to only when the determination cannot be made by applying the comparable sales method and not otherwise. As seen earlier, the Tribunal and the IAC have resorted to the rental method without even attempting to ascertain on the comparable sales method and its nonavailability on the facts and circumstances. From this also, it follows that their orders cannot be upheld.

54. We will assume that the facts and circumstances justified the application of the rental method. But, then also, that method, as very rightly pointed out by the Gujarat High Court in Vimlaben Bhagwandas Patel's case : [1979]118ITR134(Guj) , with which this courts has expressed its concurrence in Mohammed's case, cannot be applied in isolation and to the exclusion of other recognised methods of valuation. Even here, the Tribunal and the IAC have not applied this principle and evidence has not been placed on all the available methods. From this also, it follows that a remand to the IAC becomes inevitable.

55. We are of the view that the principles stated by this courts in Ramachandran's case : [1966]60ITR103(KAR) , in determining the estimated value of immovable property on the date of valuation, for purpose of s. 7 of the W.T. Act for every assessment year, has no relevance to decide the fair market value of the property as on the date of instrument. The language, scope and ambit of that Act are entirely different to the determination of fair market value under the Act. We are of the view that the said ruling does not conclude the controversy and does not bear on the question at all. The principles stated therein may have some relevance when it becomes necessary to apply the rental method and not otherwise. But, at this stage, we do not consider it necessary to examine this aspect and express our opinion finally. What is true of Ramachandran's case : [1966]60ITR103(KAR) (Mys) is also true of Radha Devi Jalan's case : [1968]67ITR761(Cal) decided by the Calcutta High Court arising under the E.D. Act. We are of the view that Panchanan Das' case : [1979]116ITR272(Cal) decided by the same High Court

under Chapter XX-A of the Act, in so far as it relates to the fair market value of the property applying the rental value methods is only a decision on the facts of that case and does not lay down any legal principle. Assuming that it does so, with great respect to their Lordships, we regret our inability to subscribe to their views for the very reasons stated earlier by us.

56. In *Vimlaben Bhagwandas Patel's case* : [1979]118ITR134(Guj) , the Division Bench has expressed 'that the impression that properties in cities are appreciating in value is not well founded'. With respect to their Lordships we do not subscribe to these views. We are not far wrong when we say that after the Second World War, the phenomena in every part of the world, except probably in Communist countries, is that there is a phenomenal increase in the immovable property values, in particular in the fast growing cities like Bangalore, which is one of the fastest growing cities in the world and that investment in immovable properties is never considered to be a risk investment but as a very safe and attractive investment. In determining the fair market value, the IAC must necessarily have regard to this aspect in addition to other relevant aspects.

57. Before determining the fair market value, it is undoubtedly open to both sides to lead all such further evidence as they propose to learn before the IAC who, on an examination of the same and the evidence already placed before him, has to determine the question fresh.

58. An appeal under the Act before the Tribunal had to be accompanied by a fee of Rs. 200 from June 1, 1981, (vide s. 269G(2) of the Act). Prior to June 1, 1981, the fee payable : was Rs. 125. But, very strangely, the fee payable on a second appeal under the Act before this court is only Rs. 10 under the Karnataka Court Fees and Suits Valuation Act of 1958. We need hardly say that this situation requires to be remedied by the legislature, without undue loss of time. We direct the Register to forward a copy of this order to the Secretary to the Government, Law Department, Government of Karnataka, to examine this aspect and initiate appropriate legislative measures to remedy the situation.

59. In the result, we make the following orders and directions :

(i) We allow these appeals, set aside the orders of the Tribunal and the IAC.

(ii) We remit the case to the IAC with a direction to him to restore the proceedings to its original file and redetermine the proceedings initiated by him in accordance with law and the observations made in this order after recording all such further evidence as may be placed before him and to be collected by him, with all such expedition as is possible in the circumstances of the case. But we, however, direct the IAC not to permit the appellants to urge any contention on the validity of Chapter XX-A of the Act or on the validity of the proceedings initiated by him on the ground urged before the Tribunal or before us and found against them in this order.

60. Income-tax appeals are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

61. Let this order be communicated to the respondent in I.T. As. Nos. 5 to 8 of 1976 within 10 days from this day.

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