

State of U.P. Vs. Panch Narain Vikram Shah Alias Panch Narain Raja Sahib (D) Through L.Rs.

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SooperKanoon Citation : sooperkanoon.com/488715

Court : Allahabad

Decided On : Jul-14-2008

Reported in : 2008(4)AWC4003

Judge : S.U. Khan, J.

Appellant : State of U.P.

Respondent : Panch Narain Vikram Shah Alias Panch Narain Raja Sahib (D) Through L.Rs.

Disposition : Appeal allowed

Judgement :

S.U. Khan, J.

1. At the time of hearing no one appeared for the respondent hence only the arguments of learned standing Counsel for the State appellant were heard. This appeal is directed against judgment, award and decree dated 18.11.1978 passed by 1st Additional District Judge, Varanasi in L.A. Reference No. 184 of 1975. For constructing All India Radio Studio Centre in Varanasi, property in dispute which was in the form of plot No. 209 area 2.54 acres alongwith building standing on a portion thereof was acquired.

2. The property in dispute was popularly known as Nepali Kothi situate in Mahmoorganj which was within the limits of Municipal Corporation, Varanasi. Notification under Section 4 of Land Acquisition Act was published In the Gazette on 17.2.1973. Municipal number of the building was D63/6. Special Land Acquisition Officer determined the market value of land, constructions and trees separately. Total valuation determined was Rs. 3,45,274.54.

3. 15% solatium was also awarded. In this manner total compensation of Rs. 3,97,065.72 was determined and offered. Dis-satisfied with the offer of compensation respondent applied for making reference under Section 18 Land Acquisition Act which was accordingly made and decided by the impugned judgment. The learned Additional District Judge enhanced the market value of the land and the constructions.

4. The following chart demonstrates the market value of different items and compensation as determined by S.L.A.O. and A.D.J. and their difference.

Market value	by	Market value by Difference	Market value by S.L.A.O.
A.D.J. value	Rs. 3,12,143.96	Rs. 2,36,099.66	Land
Rs. 76,044.3		Rs. 1,07,300	Constructions
Rs. 1,07,300		Rs. 2,74,200	Trees
Rs. 1,874.88	Rs. 1,874.88 NIL		
Total market value	Rs. 3,45,274.54	Rs. 6,95,518.84	
15% solatium	Rs. 51,791.18	Rs. 1,64,327.63	
Total Compensation	Rs. 3,97,065.72	Rs. 7,99,846.64	

Valuation of land:

5. S.L.A.O. divided the land into two strips; the first one being alongside road and measuring 330' x 66', i.e., 1/2 acre. The remaining land and measuring 2.04 acres was classified as second strip. S.L.A.O. had determined the rate of the first strip at Rs. 1,163.05 per decimal (decimal is 1/100th part of acre, i.e., 48.4 Sq. yards) equivalent to Rs. 2.67 per sq. feet. S.L.A.O. accepted the sale deed dated 11.2.1972 as best exemplar through which 2248 sq. feet area of land was sold for Rs. 6,000 i.e., at the rate of Rs. 2.67 per sq. feet. Before the reference court claimant-respondent filed a sale deed dated 28.10.1969 which was in respect of land adjoining to the acquired land. Through the said sale deed an area of about 2248 sq. feet was sold for Rs. 8,000 at the rate of Rs. 3.53 per sq. feet. Learned A.D.J, also found that the sale deed dated 11.2.1972 relied upon by S.L.A.O. related to a piece of land which was situated at some distance from the acquired land.

6. The other sale deeds copies of which are filed by the claimant were rejected by learned A.D.J, on the ground that they related to portions of land which were situated at some distance from the acquired land.

Placing reliance upon the sale deed of 1969 the learned A.D.J. fixed the market value of the first strip of the land at the same rate on which land was sold through the sale deed dated 28.10.1969 (Rs. 3.53 per sq. feet). S.L.A.O. had determined the market value of second strip of the land at 3/4th of the market value of the first strip of the land.

7. Learned A.D.J, also followed the same formula and fixed the market value of the rest of the land (second strip) at Rs. 2-64, i.e., 3/4th of the valuation fixed by him for the front (first strip).

I do not find least error in fixation of market value of land by learned A.D.J. Appropriate (nearer) sale deed was taken as exemplar (which had been executed 3 to 4 years before date of notification under Section 4, Land Acquisition Act).

Valuation of construction:

8. There is vast difference between valuation of the construction fixed by Government valuer and accepted by S.L.A.O. and determined by valuer of the respondent and accepted by reference court. The difference is of about Rs. 2,75,000.

Structures with 100 years life (rd)75502520

The values arrived at will be exclusive of cost of land, water supply, electric and sanitary fittings, etc. and will apply to those buildings only which have been properly maintained. If the repairs had been neglected in the past and the present condition is bad or dilapidated suitable deduction should be made from which is more than three and a half times. The standard formula of determining the market value of existing construction as provided by the instructions issued by U.P.P.W.D. and applied by both the valuers is given below:

$$D = P (1 - rd/100)^n$$

9. Under Chapter-IX of P.W.D., B and R Branch, Uttar Pradesh Maintenance Manual, Part-II Buildings, it is provided under Chapter 9.02 as follows:

9.02. Permanent Buildings

The buildings should be divided into four parts, viz. (i) walls, (ii) roof, (iii) floors, and (iv) doors and windows, and the cost of each part should first be worked out on the present day rates. The life of each of the four parts mentioned above, should then be ascertained with the help of Form I, Annexure-B to Chapter XIII of the Financial Handbook, Volume V, Part I (see Appendix 37) and the depreciated value calculated with the formula-

$$D = P (1 - rd/100)^n$$

Where (D) is the depreciated value, (P) is the cost at the present market rate, (rd) the fixed percentage of depreciation and (n) the number of years the buildings had been constructed. The values of (rd) may be assumed as noted below:

... .. 1.0... .. 1.3... .. 2.0... .. 4.0... .. 5.0the value as deducted above, for neglected repairs (not for ordinary repairs).

The present value of land and water supply, sanitary and electric fittings, etc. should be added to the valuation of the building to arrive at total valuation of the property.

It would be seen from the above that no hard and fast rule can be laid down as to the extent to which deduction should be made for neglected maintenance.

10. Under Form-I, Annexure-B to Chapter XIII of the Financial Hand Book, Vol. 5, Part I, it is provided that life of masonry work (walls) should be taken to be everlasting if it is brickwork in lime or bouldermasonry or coursed rubble in lime mortar or cut stone work, rough or fine. Thereafter, life of work in flooring is provided under Items No. 11 to 14, for roofing under Items No. 15 to 26. Thereafter, doors and windows etc. are provided. Under aforesaid Form No. 1, life of work is not provided as everlasting either for flooring or for roofing. Everlasting life is therefore, to be confined to walls only.

12. As far as Assistant Engineer, Construction Division, P.W.D., Varanasi is concerned, he submitted rather scatchy report. He calculated only the covered area and multiplied that by flat rate of Rs. 48 per square feet for double storey building and by Rs. 15 for single storey servant quarters. Thereafter, separate valuation for 8 feet diameter wall was calculated. Under the aforesaid Form as provided in the Maintenance Manual, walls, floors, roofs, doors and windows should have separately been valued.

12. As far as depreciation is concerned Assistant Engineer, P.W.D. estimated the life of brickwork to be 100 years, hence rd of one was applied. Main building was estimated to have been constructed 80 years before. Different ages were estimated for other constructions, i.e., shop, quarters and 8 feet diameter wall.

13. The report of the private valuer submitted by owner is very exhaustive. Private valuer also determined the age of the main building to be 80 years. Owner's valuer valued the main building at Rs. 2,68,000. Under Item No. 2 Lekhori brickwork in lime and surkhi in F and P (may be foundation and plinth) has been calculated to be about Rs. 19,000, @ Rs. 68.20 per cubic feet. Under Item No. 3, similar brickwork in superstructure @ Rs. 72.05 per cubic feet has been calculated to be

Rs. 45,615. Under Item No. 4, dressed stone fine in plinth course dow chowkats and columns @ Rs. 10.80 per cubic decimetre has been calculated to be about Rs. 50,000. Under Item No. 9, dressed stone work in roof has been calculated to be Rs. 33,634.

14. Thereafter, different items have been valued including stone flooring C.C. floor lime, concrete terracing roof, chhajja, parapet, cement water tank, iron work, teak wood shutters etc. Thereafter, 10% addition was made as according to the valuer, he had applied Central P.W.D. rates of 1972. Thereafter, total depreciation of about Rs. 16,000 was allowed. Thereafter, cost of electric installation was estimated to be about Rs. 35,000 and about Rs. 23,000 for water supply and sanitary installations and 20% deduction therefrom was made. In this manner, figure of Rs. 2,68,000 was arrived at.

15. Thereafter Rs. 43,000 was estimated as valuation of annexe. After making some deduction, figure was arrived at Rs. 43,000. About Rs. 26,000 was the valuation of the shops, Rs. 5,800 cost of servant quarters and motor garage, about Rs. 5,000 for marble temple and about Rs. 25,000 for boundary wall. Cost of a well was estimated to be Rs. 8,600 and another well Rs. 4,739. Khandhar cattle trough was also estimated at about Rs. 2,600.

16. As far as main building is concerned, claimant's valuer allowed depreciation only in Items No. 6, 7, 11, 12, 13, 22 and 23, which related to salwood work, lime concrete terracing in floor, shutters, stone flooring.

For dressed work in roof, no deduction was applied while under aforesaid Form-1, there is no item in the roofing, which has got everlasting life.

17. Moreover the valuer of the owner has not calculated value of the walls on the basis of flat rate percubic feet or cubic meter. Unfortunately, at the time of arguments in this appeal, no one appeared on behalf of owner respondent to show the rates of C.P.W.D. as applied by his valuer and the formula provided under C.P.W.D., Manual for determining the market value of different items.

18. I am of the opinion that State valuer undervalued and expert of the owner overvalued the cost of construction. After passage of so much time (three and a half decades), it will be rather cruel to remand the matter to the reference court for fresh determination of market value of the constructions.

18. In my opinion, under the facts and circumstances of the case and to give a decent quietus to the dispute, it will be appropriate to take the average of the two reports, which comes to Rs. 2,44,000.

19. This is being done in view of Supreme Court authority in Executive Director v. Sarat Chandra Bisoi AIR 2000 SC 2619 : 2000 (3) AWC 2332, concluding part of Para 6 of which is quoted below:

We make it clear that we have followed the abovesaid approach not so much by way of any principle but more by way of finding out a reasonable solution so as to give a quietus to this litigation. The lands were acquired in early eighties and by this time a period of about 20 years has elapsed. We are convinced of the need of avoiding a remand to record further evidence in this regard except to the extent considered unavoidable by the High Court. We are told that there are still large number of cases pending and awaiting finalisation of land acquisition compensation and they all need to be disposed of expeditiously.

20. Accordingly, it is held that respondent is entitled to following amount as compensation:

Rs. 3,12,143.96 as cost of land, Rs. 2,44,000 as cost of construction, Rs. 1,874.88 as cost of trees etc., total Rs. 5,58,018 (rounded off Rs. 5,60,000). 15% solatium on the aforesaid amount comes to Rs. 84,000.

21. In this manner, total comes to Rs. 6,44,000. Interest at the rate of 6% as awarded by the reference court shall also be paid.

Appeal is therefore allowed in pari as above with proportionate cost.