

State of Kerala Vs. Chacko

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Court : Kerala

Decided On : Mar-14-1977

Reported in : AIR1979Ker52

Judge : Subramonian Poti,; Khalid and; Chandrasekhara Menon, JJ.

Acts : Kerala Land Acquisition Act, 1962 - Sections 25 and 60

Appeal No. : L.A.A. 48 and 50 of 1975

Appellant : State of Kerala

Respondent : Chacko

Advocate for Def. : P.C.B. Menon, Adv.

Advocate for Pet/Ap. : M.M. Abdul Khader, Adv. General

Judgement :

Subramonian Poti, J.

1. These are appeals by the State of Kerala against the decision of the court below in L. A. O. Ps. 215 of 1971 and 492 of 1971. These cases were tried along with a number of other cases and a common judgment has been delivered by the learned Subordinate. Judge. We have to-day disposed of appeals against the other cases independently. We have taken up these cases separately because, unlike in the

other cases, the State has not chosen to file objections to the commissioner's report on the basis of which market value has been found by the court below. At the bearing learned Advocate-General urged very serious objection to the commissioner's report and particularly the method of crop cutting experiment conducted by the commissioner. Possibly this objection could have been valid and might have influenced this Court to remit the case back to the court below for fresh consideration had such objection been taken before the court below. In the absence of objection to the method adopted and in the absence of any evidence to show that the commissioner's report ought not to have been acted upon it is not for this Court to set aside the report or to set aside the judgment of the court below based upon such report. The court below has accepted the report and determined the market value on the basis of 16 years' net income.

2. In both these appeals objections to the commissioner's report were filed in this Court with a petition that these objections may be accepted. We have gone through these petitions. Absolutely no reason is shown why these objections could not have been filed in the court below at the proper time. We would have expected a more detailed petition placing before court all material which would be relevant in considering whether the failure to file objections was bona fide. If it was due to sheer negligence of those who conducted the case, it is not for us to reopen the case at the instance of the State. It is more so because it would be unfair to the claimants to do so, now that all evidence of the trees in the lands has disappeared by reason of the area submerging in water. Hence we see no reason to entertain the objections. Consequently the appeals are dismissed.

3. There is a cross-objection in L. A. A. 50 of 1975. An important question is raised by the respondent in the cross-objection and that is urged with considerable force by learned Advocate Sri Balakrishna Menoa appearing for the respondent. In all the cases which came up before us relating to acquisitions in the same area for the same purpose we have determined market value by adopting 16 years' net income as the basis. But it is the case of the respondent that 20 years' net income ought to have been adopted and that alone would be adequate as the market value of the property. The question, had engaged attention of this Court on previous occasions. A Full Bench of this Court had occasion to consider in Poyyeri

Rarukutty v. Special Tahsildar and L. A. Officer (1973 Ker LT 573): (AIR 1973 Ker 254) the multiple to be adopted. Even 16 times net income is not a universal rule. It may be less in appropriate cases. It would not be possible to lay down any rule as to what should be the number of years to be taken into account to determine the market value in regard to any particular item of property. That depends upon the nature of the property.

4. It has been indicated earlier in the decisions of this Court that though at one time this Court and other courts had adopted a higher multiple as applicable for determining the capitalised value of acquired land that is no longer relevant since the interest on gilt-edged securities and bank deposits has gone up in the recent years. Ultimately the question is one of determining what value a willing purchaser would pay to a willing seller. 'Market value' is a term not defined in the Land Acquisition Act. The question has been considered in detail in the Full Bench decision adverted to above. Isaac, J., in paragraph 2 of the decision (1973 Ker LT 573): (AIR 1973 Ker 254) (Para 2). refers to this thus:

'2. Section 25 of the Act enumerates the things to be taken into consideration in determining the amount of compensation. The first thing is the market value of the land at the date of the publication of the notification under Section 3(1) of the Act. The other considerations are not relevant here. Land as defined in the Act includes benefits arising from it and things attached to the earth. So the compensation payable for a land with buildings in such a case is the market value of that property on the relevant date. The term 'market value' is not defined in the Act, nor is there any provision in the Act or the Rules thereunder as how to decide it. The Land Acquisition Bill, 1893 contained a definition of 'market value'. But the Select Committee which scrutinized the Bill dropped that definition, and it stated that no attempt should be made to define that term; and that 'the price which a willing vendor may be expected to obtain in the market from a willing purchaser' should be left to the decision primarily of the Collector and ultimately of the Court. The Law Commission of India, 1957 agreed with the above view. The Privy Council stated in *Narayana Gajapatiraju v. Revenue Divisional Officer*, AIR 1939 PC 98:

'The compensation must be determined therefore by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser.' The definition of market value as enunciated by the Privy Council in the decision in *Narayana Gajapatiraju v. R. D. O.*, AIR 1939 PC 98 has been adopted by courts in India. In every case where the question of market value arises for decision the determination by the court must be of the price which a willing vendor might reasonably expect to obtain from a willing purchaser. One of the methods and probably the best, to determine the market value is to ascertain the value of land similarly situate. But sometimes such evidence may not be available. Even when evidence of transactions relating to property in the neighbourhood is available the property may not be similarly situate for reasons such as existence of building in it or considerable difference in the advantages of such properties. When the property is one which yields a regular income the determination of market value on the basis of such income is a well accepted method. That is because in regard to such property any purchaser would naturally consent to a transaction of purchase taking into account the income that will be derived regularly from such property. Usually it may be a purchase as an investment. There may be exceptions such as where a person purchases a house for his residence. But where one purchases a property by way of investment it would be reasonable to assume that such purchaser would expect a proper return. The question would be what would be the return which such a purchaser would expect from a purchase made at the relevant time. It is in that context that this Court had occasion to consider the gradual increase in the rate of Bank interest in the last two decades. It has also been noticed that though at one time deposits in banks were not very popular and therefore the test of interest on gilt-edged securities had been adopted that is no longer the case particularly when deposit in Banks is a very safe form of investment. Therefore the return obtained by depositing money in a Bank may indicate what return a prudent investor would expect if his investment is made in immovable property for the purpose of getting income as return. Our attention is also drawn to the fact that the question would also be whether the corpus is likely to fade out in due course or whether the corpus would always remain intact. Taking into account all these this Court said in *State of Kerala v. Madhavi Amma* (1974 Ker LT 143) that even the rule of taking 16 years' net income as the market

value adopted in some cases may not be appropriate in the present context. We may. in this context, quote a passage from the decision in Poyyeri Rarukutty v. Special Tahsildar and L. A. Officer (1973 Ker LT 573 at p. 579) : (AIR 1973 Ker 254 at pp. 257, 258) (FB). The learned Judge Isaac. J. said:

'11. We shall also refer to another autho-ri-ty on the subject. 'Law of Eminent Domain' by Alfred D. Jahr (1953 Edition). After a general discussion regarding the valuation of property, the learned author sums up at pages 100-101 :

'It is evident, therefore, from the foregoing definitions at 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.' He deals with the fixation of market value on the basis of rental income at pages 226 to 229. and sums up as follows:

'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 a greater weight to sales of similar properties in the market than to evidence of leasehold rentals.' Dealing with the method of capitalisation. of income, the learned author says at page 230 :

'It is quite evident from the formula that the lower the rate of return applied, the higher the capitalized 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 principal 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 bonds or common stocks and commodities traded on the several exchanges.'

12. It is evident from the above passage that the basic factor in applying the method of capitalisation of income for ascertaining the market value of a real property is the rate of return that an ordinary investor would reasonably get on his investment, having due regard to all relevant circumstances. Our attention has been drawn to a few decisions where the market value of lands has been fixed from 25 times to 33 $\frac{1}{3}$ times the annual income. The High Court of Madras seems to have taken a firm view that investment on landed property should be treated on a par with investment in gilt-edged securities, and that the market value of such a property should be equal to the amount that has to be invested in a gilt-edged security for bringing an income equal to the annual income of the property. In other words, if the rate of interest paid on gilt-edged securities is 3%, the market value of a landed property fetching an annual income of Rs. 3/- would be Rs. 100/- ; that is to say 33 $\frac{1}{3}$ times the annual income. We shall only refer to a Division Bench decision of the Madras High Court in Radhakrishna v. Province of Madras, AIR 1949 Mad 171 wherein Rajamaimar, C. J., after a review of its earlier decisions, stated :

'(5) After a consideration of all these cases, it appears to us that both on principle and on account of the similarity of facts, the valuation in this case should follow the basis adopted by King and Patanjali Sastri, JJ. in Land Acquisition Officer, Calicut v. Subbarao (1941 2 Mad LJ 75 : AIR 1941 Mad 684). There, as here, the property acquired was land with building thereon. The number of years' purchase was arrived at by taking into account the interest yielded by Government securities at the time of the notification under Section 4(1) of the Act. In the present case it appears from the judgment of the lower Court that it was not disputed that gilt-edged securities were carrying interest at three per cent at the time of the acquisition. The annual rental value must therefore be capitalised at 33 $\frac{1}{3}$ years'

purchase.' 13. The above view has been followed by the High Court of Kerala in some of its decisions. In *State of Madras v. Aissabi* (1957 Ker LT 1076) : (AIR 1958 Ker 67) and *State of Kerala v. Govindan* (1962 Ker LT 811) the Court fixed 33 1/3 times the annual rent as the market value of land with buildings situate in a municipal town. The method of fixing the market value of land by treating it on a par with gilt-edged security has been adopted occasionally by other High Courts also. We are constrained to point out that this is an unrealistic method. One would not have erred grievously in adopting such a method for valuing landed property a few decades ago, when channels for investment of money were very limited, and investment on land was considered very prudent and safe. Yet allowance has to be made in the case of a land with building for recurring depreciation of the building, its age and probable period of future existence, besides other factors. In the case of gilt-edged securities there is the assumption that the corpus is safe and not subject to diminution. At any rate, that is the basis on which the rate of interest obtained on such securities is adopted as the standard for determining the market value of land. That assumption does not apply to a land with building, since the building is subject to depreciation. No reasonable person would now invest on land unless he can get as much return as can be obtained from any other investment. The rates of interest for gilt-edged securities have also gone up much higher than what they were a few decades ago. We have nationalised banks which give more than 6% interest on fixed deposits. With growth of industry, channels for investment and rates of return have also increased. These are all relevant considerations in fixing the market value of land. We have already discussed in detail the various principles to be applied in determining the market value. Capitalisation of annual income is only one of the methods. Whether it is a suitable method in a given case, and if so, at what multiple of the annual income the market value can be fixed would depend on a variety of circumstances. To put it briefly, the object is to ascertain what a willing vendor might reasonably expect to obtain from a willing purchaser, and the method that should be adopted to arrive at that amount should be the one most appropriate on the facts and circumstances of the case.'

Again in the same decision one of us said thus : 'Before closing, I must express my agreement with the views expressed by Isaac, J. as to the number of years'

purchase to be adopted for the purpose of capitalisation. Time there was when investment in landed properties was considered to be the safest form of holding assets. With the various legislations affecting agricultural property and in particular the laws relating to agrarian reforms and those affecting urban property such as rent control legislations investment in land has no longer the same appeal as it had two or three decades ago. Investments in stocks and shares, provided one is not too speculative, is considered worthwhile and it yields better returns. Even deposit of cash in Banks is attractive enough. The result is that today no prudent man ever thinks of investing in land or buildings unless he expects quite a good return for his money. Possibly it may be said that investment in land may be advantageous as there may be appreciation in value. The temporary phase of appreciation of value of properties need not necessarily be taken by any investor as a perennial feature. Besides, when such possibility of phenomenal appreciation in prices is shown, the court may consider it as indication of the potential of the property and in determining the number of years' purchase for capitalisation this may have a bearing. All told it will be unreasonable to expect a prudent investor to sink his money in purchase of properties with buildings unless he is assured of an appreciable increase in the income return, from what he could safely obtain by depositing his money with a Nationalised Bank and earn, say 7 per cent as yearly interest. I am only indicating that the indent concept of return on gilt-edged securities as the basis for capitalisation may no longer be appropriate.'

5. Our attention has been drawn by learned counsel for the respondent to the decision in *State of Tamil Nadu v. Joseph* (AIR 1973 SC 2463), *State of W. B. v. Shyama-Pada* (AIR 1975 SC 1723) and *State of Kerala v. Mariamma* (AIR 1969 Ker 265). We do not find consideration of this question in any of these decisions. The question as to what should be the multiple to be adopted did not arise in any of these cases. The decision in *State of Tamil Nadu v. Joseph* (AIR 1973 SC 2463) concerned an acquisition under a notification of March 7, 1956. The Land Acquisition Officer found in his award, that the value should be determined by capitalising the net income at 20 years' purchase. The Subordinate Judge and the High Court agreed with this. It is in this context the court said that a fair method has been adopted to arrive at the market value of the topes. The court referred to the decisions in *Rajatmmal v. Head Quarters, Deputy Collector, Vellore* (AIR 1915

Mad 356 (2)) which had adopted 20 years' annual rental, *Kompalli Nageswera Rao v. Special Deputy Collector, Land Acquisition Bapatla* (AIR 1959 Andh Pra 52) which had adopted capitalisation at 15 years' purchase for determining the market value of a coconut garden and *Elias M. Cohen v. Secy. of State* (AIR 1918 Pat 625 (2)) which had adopted 15 years' purchase to determine the market value of an orchard. The Court did not express any disapproval of the views taken by the courts in those cases. Apart from the fact that the interest rate in 1956 was considerably lower than that in 1969, we do not see any rule laid down by the Supreme Court that the capitalisation must be at 20 years' purchase. The decision in *State of W. B. v Shyama-Pada* (AIR 1975 SC 1723) concerned an acquisition under a notification of 17-1-1952. While considering the question of compensation for the property acquired by the State the Supreme Court observed that (at p. 1724)--

'....As sale deeds regarding sales of land on which sabai grass is grown are not available in this case, the compensation to be awarded to the land owners should be at 20 times the annual income from the land'.

May be this was because the year with which the court was concerned was 1952. 5 per cent return was a reasonable return then. Here again we find no authority for the case urged before us that in the case of the acquisition with which we are concerned 20 times the annual value must be adopted. We do not find any consideration of the question in the decision in *State of Kerala v. Mariamma* (AIR 1969 Ker 265) also. In paragraph 16 of the judgment the plea by the State that the traditional multiple of 30 or thereabouts must be considerably reduced was considered by the learned Judges. The court noticed that the gilt-edged securities were no longer gilt-edged and therefore the land with possession was still regarded by most people as the safest mode of investment. Reference is particularly made to the market value as in the year 1958. The learned Judges noticed that there was no material for holding that the threatened land-ceiling law threw such a lot of land into the market in 1958 as to depress land value to an extent calling for a multiple lower than 20 in the case of land valued on the basis of income. The situation between the years 1958 and 1969, the year with which we are concerned is considerably changed. What was possibly a threat in 1958 had

materialised into a statute by the date of the acquisition with which we are concerned here. Kerala Land Reforms Act I of 1964 came into force on 1-4-1964. It came into force prior to the date of acquisition. Therefore whatever might have been said in regard to the acquisition in 1958 cannot be adopted in the present context or in the context with which we are concerned, namely 1969.

6. It is necessary to caution here that it is not possible to lay down a hard and fast rule that 16 times the annual value has to be adopted in every case for determining the market value. There may be cases where the multiple may even be lower than 16. That is not for us to determine in this case, for, the cross-objection only calls for further enhancement from 16 times. It is sufficient to say that there is no justification for further enhancement as contended for by the respondent. The cross-objection therefore fails.

In the result, the cross-objection is dismissed.

Parties are directed to suffer costs in the appeals as well as in the cross-objection.

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