

CASE NO.:
Appeal (civil) 6050-6051 of 1998

PETITIONER:
APPROPRIATE AUTHORITY & ANR.

Vs.

RESPONDENT:
KAILASH SUNEJA & ANR.

DATE OF JUDGMENT: 07/08/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan

JUDGMENT:

RAJENDRA BABU, J. :

The property comprised in No. G-4(Old No. C-62), Maharani Bagh, New Delhi on a plot measuring about 800 sq. yards was agreed to be sold pursuant to an agreement dated July 1, 1993 for a sale consideration of Rs.79 lakhs. The property consists of two floors - ground and the first - and is in occupation of the tenants. The agreement provided for symbolic delivery of the possession while it was open to the purchaser to make use of the portion over the roof on the first floor. An application in Form 37(I) was filed on 9.7.1993. The Appropriate Authority worked out the fair market value of the property and the apparent consideration fell short by 24 per cent of the fair market value. The Appropriate Authority compared the property in question with three different properties as sale instances to arrive at the correct market value of the value of the property in question : (1) G-8, Maharani Bagh, (2) D-18, Maharani Bagh, and (3) N-62, Panchsheel Park. The High Court went into the mode of calculation of fair market value adopted by the Appropriate Authority and stated that in respect of property comprised in D-18, Maharani Bagh the agreement had been entered into on 25.6.1991 and on account of the time gap of 24 months, the adjustment of plus 24 per cent was to be made and in respect of property comprised in G-8, Maharani Bagh, there was basement potential and, therefore, adjustment of minus 10 per cent was to be made by the Appropriate Authority on that count. This basis is termed to be perverse. In identical circumstances when the valuation adopted by the Appropriate Authority was challenged in Appropriate Authority & Anr. vs. Sudha Patil (Smt.) & Anr., 1998 (8) SCC 237, this Court after examining the decision in C.B.Gautam vs. Union of India, 1993 (1) SCC 78 and the absence of provision of filing an appeal against the order made by the Appropriate Authority, had stated that the conclusion of the Appropriate Authority regarding the fair market value in a matter of compulsory acquisition of immovable property after considering all the germane and relevant materials should be accepted and the same should not be made a subject matter of the examination as if it is an appeal. Reasons set forth by the Appropriate Authority are as follows :

Subject property

Ist sale instance

Sale agreement

9.7.93

Apparent sale
consideration

Declared land rate works
out at Rs.21,821 per sq.
mt. Value to be increased
at 1% per month for 24
months 24%

Sale deed dated
25.6.91, 24 months
earlier sale agreement

Has no
basement
10% to be
deducted

Thus value to be added is
14% (24%-10%) if 14% is
added the land rate of
subject property would
come to
Rs.21,821 x 14%
Rs.24,875 or Rs.25,000
per sq.mt.

Value of land
Rs.1.30 crores

Depreciated value of the
structure
Rs.9,35,758

Total value of the subject
property
Rs.1,39,33,758

The property is
tenanted

Depreciated value for 6
years at 8% is calculated
at :

Rs.87,78,267
(Rs.1,39,33,758 x .63)

(a) Thus the value of the
subject property is

Rs.87,78,267

(b) To this rent for 6 years
is added

Rs.1,42,092

Has barsati
potential of the
area is 149.90
sq. mts.

Has no barsati
potential
Rs.37,27,500

(c) This is to be added.
The value of the subject
property is fixed at

Rs.1,26,42,859
Or
Rs.1,26,45,000

This is 58% more than
the apparent considerat-
ion of the subject
property

(Rs.79,99,390)

Subject
property
D-18 (known as
I-15), Maharani
Bagh

2nd sale instance

Sale agreement

Sale deed dated
1.12.1992
Rs.1.11 crores

Adjusted declared land
rate works out at
Rs.29,587 per sq. mt.

Value to be increased at
1% per month 7 months
earlier to sale agreement

For 7 months + 7%

FAR (not so
much as the
2nd instance)

FAR (140-100) - 28%

Side open (not
available/
which is
available in 2nd
instance)

- 5%

Has no
basement
potential

- 10

7%

- 43%

- 36%

Declared land rate
deducting 36%
29,587 x .64

= Rs.18,950 per sq.
mt.

Value of the land of the
subject property

Depreciated value of the
structure

52 x 18,950
Rs.98,54,000

9,33,758
Rs.1,07,87,758

Tenanted

Depreciated value at the
rate of 8%
Rs.67,96,287
(Rs.1,07,87,758 x .63)

Rental increase for 6
years
Rs.1,42,092.00
= Rs.28,21,655

Barsati
potential

148.90 sq.mt. x
18,950

Total value of the subject
property

Rs.97,60,034
22% higher than to
AC

Subject
property

Sale agreement

9.7.1993

3rd sale instance
N-62, Panchsheel
Park 800 sq.yds.
having FAR

Land rate declared works
out at Rs.28,455 per
sq.mt.

If the rate of increase of
1% per month

4 months + 4% time gap
29.4.1993
sale agreement consid
eration
Rs.1,56,00,000

Rs.35,02,220

Rs.1,91,02,220

No open area

Falling open area

-5%

No basement
potential

Basement available
10%
4% - 15%
= -11%

The land rate works out
at Rs.25,333

(28,455 x .89)

Depreciated
value of the
structure

Land rate of subject
property (ground floor ,
1st floor) 520 sq. mts.

= 25,333 x 520 =
Rs.131,73,160

= 1,31,73,160.00

=9,33,758.00

Rs.1,41,06,918.00

The Appropriate Authority added one per cent every month. The basement and barsati potential was also taken into account. The Appropriate Authority took into account the subject property was tenanted and made certain calculations such as 6 years deferred value at 8 per cent and 6 years rent was added to the value arrived at by the above process.

The High Court disapproved this process of arriving at the figures and that the apparent consideration fell short of the fair market value by more than 15 per cent and, therefore, the High Court held that the action is incorrect.

The Department contends that the learned Judges of the High Court could not have sit on judgment over the manner of calculations made by the Appropriate Authority. If any of the factors set out therein had been ignored in the matter of arrival of fair market value, the same would have affected the consideration made by the Appropriate Authority. There are several methods of arriving at fair market value such as comparative sale method or the capitalisation of the rent, i.e., yield method or any other appropriate method. But when the Appropriate Authority adopted one or the other method and in that process there is no inherent error or the factors taken note of by the Appropriate Authority being relevant, it is submitted that it is not open to the High Court to have interfered with such a matter. This Court in Sudha Patils case [supra] has stated that when the Appropriate Authority comes to the conclusion one way or the other after giving due opportunity to the parties concerned and there has been under-valuation on that basis by more than 15 per cent of the fair market value, the Appropriate Authority had jurisdiction to interfere with the same.

The High Court took the view that there is nothing on record to suggest as to what were the special reasons for making a purchase order in respect of wholly tenanted property. Even assuming that there was some justification for the authority to initiate proceedings for the pre-emptive purchase of the property under Chapter XX-C of the Act, the method of valuation of the fair market value had to be just and reasonable. The authority has compared the values of incomparable properties. While considering comparable instances, the instances of tenanted properties had to be taken into consideration and not vacant properties by discounting without any factual or legal basis. While the agreement in relation to property at Maharani Bagh had been entered into in June 1991, the agreement for the property in question was entered into on July 1, 1993. Therefore, there is no basis for adding 24% on the hypothetical basis that there would be increase of 1 per cent every month.

In respect of tenancy, the plea taken before the High Court is that the purchaser had mutual terms to get the property vacated from the tenant. While the ground floor tenancy was from the year 1979 and the first floor tenancy was from the year 1967, there is hardly any justification to presume that the tenants would vacate in 5/6 years. The sale instance in respect of property comprises in S-39-A, Panchsheel Park, which was substantially tenanted without any justification, was

not taken into consideration, though rent capitalisation method was applied in that case. Why in respect of one tenanted property rent capitalisation method was applied to work out the fair market value and in the other case land and building method was applied is not clear. It is on this basis the High Court allowed the writ petition before it.

It is no doubt true that the scope of interference under Article 226 of the Constitution is very limited, but that is only in the nature of a judicial review of the proceedings and not by way of appeal or revision where the scope of interference is much wider. In cases of the present nature where several methods are available for finding out the value of the property and if one or the other method is adopted by the Department and that may be reasonable, it may not call for any interference. However, if there are loopholes or lacunae in the process of reasoning adopted by that authority in reaching the conclusion as in the present case that the tenanted property would be vacated soon or that the property is close to the vicinity of the situation of the subject property if compared, adopting different methods of valuation, then the parties who appear before the authorities will definitely have a reason to have a heart burn. If one method of valuation is adopted and benefit is given to one party and why that method is not adopted in the other case to reach the conclusion the other way is not clear and in our opinion it is unjustifiable. If in this background the High Court examined the matter and arrived at a conclusion one way or the other, we do not think it is necessary for us to interfere with that finding in a proceeding arising under Article 136 of the Constitution. Hence these appeals shall stand dismissed. No costs.

...J.
[S. RAJENDRA BABU]

...J.
[K.G. BALAKRISHNAN]

August 07, 2001.