

CASE NO.:
Appeal (civil) 9937 of 2003

PETITIONER:
Union of India

RESPONDENT:
Savjiram and Anr.

DATE OF JUDGMENT: 17/12/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

1 9771 2000
5 10062-64 2003
1 13692-94 2000
5 10061 2003
1 11709 2000
5 10025-10060 2003
1 16975-17010 2000
5 9938-10024 2003
1 16836-16922 2000
5 10065-10073 2003
1 5966-5974 2001

ARIJIT PASAYAT, J

Leave granted.

In these appeals, two interesting questions of primal importance arise for consideration. They relate to paras 43 and 44 of the Land Acquisition Manual of Madhya Pradesh (in short the 'Manual') applicable to valuation of lands acquired in the State of Madhya Pradesh.

Background facts sans unnecessary details are as follows:

In exercise of powers under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short the 'Act'), the State of Madhya Pradesh acquired certain land for the benefit of Union of India in the town of Mhow. On these acquired land, land owners had also constructed their houses or structures. In the proceedings for determination of compensation before the Land Acquisition Officer (in short the 'LAO) in respect of land and the houses/structures standing on the land, one of the question that arose was as to how the valuation of houses/structures was to be made. The LAO determined the compensation of house after deducting 5% towards depreciation. According to LAO, the houses are also subject to depreciation and accordingly he deducted 5% from the total valuation of house and compensation in so far as it related to house was determined.

At the instance of landowners, the matter was referred to the civil court under Section 18 of the Act. Before the civil Court, the land owners' contention was that LAO erred in deducting 5% by way of depreciation from value of the house. According to them, there was no need to deduct 5% by way of depreciation. The learned reference Judge accepted the aforesaid contention of land owners. In his opinion, there was no question of any deduction of depreciation while calculating the valuation of house. Accordingly, the direction to deduct 5% by way of depreciated value of house was held to be bad and it was directed that the land owners will get the full valuation of house without deduction

of 5% as determined by the LAO. This is what the learned reference Court held in favour of land owners in para 13 of its award:

"Therefore he has right to get the amount on account of 5% depreciation which has been deducted from the amount of award."

Against the award of the LAO, the Union of India filed appeal before the Madhya Pradesh High Court under Section 54 of the Act. Essentially two points were raised before the High Court. The first question related to the question regarding grant of depreciation. The other related to the question about the deductions, if any, to be made for the value of the materials made over to the original proprietor of the land acquired. The High Court found that there was no scope for any determination for depreciation and also for making any deduction for the value of materials made over. Accordingly, the appeal filed by the Union of India was dismissed.

In the present appeals, the two points urged before the High Court were re-iterated with reference to paragraphs 43 and 44 of the Manual. It was submitted that while making the valuation, the age of the building has necessarily to be taken note of and, therefore, depreciation has to be granted per force. So far as the value of materials made over to the proprietors is concerned, it is submitted that in terms of para 43, option is given to the owner to remove any house, building or trees standing on the land to be acquired and the value of such materials as determined in the award has to be deducted from the compensation. In the instant case option was given to the land owners who had removed the materials. Reference is made to a letter of the LAO, Mhow, Distt. Indore in this regard. In essence, therefore, the stand is that the valuation as done by the Reference Court is unsustainable.

Per contra, learned counsel for the claimants-land owners submitted that there is no scope for any depreciation when the present market value is to be determined in terms of para 44. It is the valuation of the land along with infrastructure standing thereon which has to be valued. There is no question of making any deduction on the ground of depreciation for any property permitted and purported to be removed. It was further urged that large number of claimants did not remove anything and this was found to be factually the position by the Reference court.

For deciding the issue relating to grant of depreciation and deduction of materials, paras 43 and 44 of the Manual need to be quoted. They read as follows:

"43: If any house, building or trees standing on the land to be acquired should not be required by the Government, the owner may be allowed the option of removing it within a reasonable period, to be fixed by the Collector, in which case the value of such materials, as determined in the award, will be deducted from the sum payable as compensation, or if compensation has been already paid will be recovered from the owner prior to the removal of the materials.

44: Compensation for houses or buildings should be calculated on the present value of the materials plus cost of construction at present rates, less the value of any materials made over to the proprietor:

Provided that, if the buildings have fallen into disuse, compensation should be allowed on the

present value of the materials only. Separate compensation should be given for the land on which the buildings stand.

When, however, the building and its site together constitute a single property, having a market value as a whole it is unnecessary to go into details of cost of construction, value of materials and value of site. The market value of the property as a whole can be ascertained with reference to the rent that it brings in to the owner, or with reference to the ascertained sale price of similar buildings and their sites".

A bare reading of para 44 shows that it is a method of calculation indicated relating to the computation of the compensation. The compensation for houses and buildings are required to be calculated on (a) the present value of materials (b) in addition to the cost of construction at present rates. Both the components for working out the compensation relate to present value of the materials and cost of construction at present rates less the value of any materials made over to the proprietor. Obviously, the calculation has to be done on the basis of the present value or the present rates, as the case may be. The expression 'present' means in existence at the time at which something is spoken or written, being in a specified place, thing. Grammatically, it means denoting a tense of verbs used when the action or event described is occurring at the time of utterance or when the speaker does not wish to make any explicit temporal reference. It also means the time being, now. Commonly, it denotes existence of a particular thing or a matter at the time of consideration. Obviously therefore after arriving at the cost of construction at the prevalent rate at the time of fixing the compensation or working out the value of the materials there is no scope for making any further deduction.

Generally speaking depreciation is an allowance for the diminution in the value due to wear and tear of capital asset employed by an assessee in his business. Black's Law Dictionary (5th Edn.) defines depreciation to mean, inter alia:

"A fall in value; reduction of worth. The deterioration, or the loss or lessening in value, arising from age, use and improvements, due to better methods. A decline in value of property caused by wear or obsolescence and is usually measures by a set formula which reflects these elements over a given period of useful life of property. Consistent, gradual process of estimating and allocating cost of capital investments over estimated useful life of asset in order to match cost against earnings."

Parks in Principles & Practice of Valuation (5th Edn., at p.323) states that as for building, depreciation is the measurement of wearing out through consumption, or use, or effluxion of time. Paton has in his Account's Handbook (3rd Edn.) observed that depreciation is an out-of-pocket cost as any other costs. He has further observed that the depreciation charge is merely the periodic operating aspect of fixed asset costs.

Above position was noted in Mysore Minerals Ltd., v. Commissioners of Income Tax, Karnataka, Bangalore (1999 (7) SCC 106).

According to Websters' New Word Dictionary, "depreciation" means "a decrease in value of property through wear, deterioration or

obsolescence; the allowance made for this in book-keeping, accounting etc."

To put it differently, depreciation is the measure of the effective life of an asset owing to use or obsolescence during given period.

Therefore, the stand of the appellant-Union with regard to depreciation has no substance.

The other relevant question which needs to be determined is the essence of what is provided in paras 43 and 44 of the Manual. A bare reading of para 43 shows that when any house, building or trees on the land to be acquired, should not be required by the Government. The owner is given the option of removing it within a reasonable period to be fixed by the Collector. The option is to be given by the Collector and it is for the owner to avail the option and remove the materials within such time as may be fixed by the Collector. Once the option of removing the articles is exercised, the value of such materials has to be deducted from the sum payable as compensation, in case payment has not been made already. In case compensation has already been paid, it is to be recovered from the owner prior to removal of articles. Under Para 43 at first Government has to decide whether the house, building or trees standing on the land are required by the Government or not, and in case it is not required the option of removal is given. As provided in Para 44, from the compensation worked out on the basis of procedure laid down in the said para, value of materials made over to the proprietor has to be deducted. The combined reading of paras 43 and 44 make the following position clear. Firstly, the Government has to take a decision whether the house, buildings and trees standing on the land are required by the Government. In case it is not required, the owner is allowed the option to remove the house, building or the trees as the case may be, within a reasonable period. The period has to be fixed by the Collector and the value of materials removed is to be determined in the award. The amount determined has to be deducted from the sum payable as compensation, in case it has not been paid; and if it has already been paid, then there shall be recovery of the amount from the owner prior to the removal of the materials. The value of the materials made over to the proprietor has to be deducted from the compensation.

According to the Union, the option was given to the owners and they had in fact removed the materials. This assertion is disputed by learned counsel for the claimants. According to him, considering the large number of persons whose lands were required, there is no question of any removal of the articles and deduction as contemplated in paras 43 and 44 of the Manual. In any event, when acquisition is of the land with infrastructure, there is no scope for making further deduction.

Whether the option of removal was given to the owner of the land is a question which has to be factually decided. The appellant has placed on record a letter issued by the concerned authorities showing that such option of removal was given. On affidavit it has further been stated that the materials were in fact removed. This assertion, as noted above, is seriously disputed by learned counsel for the claimants. Both the Reference Court and the High Court do not appear to have taken note of the documents on which reliance is placed by the Union and objectively considered the claims, in detail. In the fitness of things therefore, the Reference Court should decide as to whether there was any removal of the materials as claimed by the appellants or there was no removal as asserted by the claimants-respondents. Since the matter is pending for a long time, it would be proper if the Reference Court decides this question alone permitting the parties to place materials and/or evidence in support of their respective stands as to the removal of the materials alone. After giving proper opportunities a fresh decision shall be taken by the Reference Court. We make it clear that we

have not expressed any opinion on the merits of the case so far as that issue is concerned. The appeals are allowed to the aforesaid extent and the matter is remitted back to the Reference Court for adjudicating the limited question as indicated by us (supra) as expeditiously as possible, without delay. There shall be no order as to costs.

JUDIS