



INTRODUCTION :

1. Vide the syllabus prescribed by the IBBI - the item 'h' deals with "Important case laws on principles of valuation of Real estate". There are 13 case laws to be studied for the purpose of preparing for the Registered valuers examination.
2. I have consolidated all these judgements and given here for the sake of valuers so that they can go through and get their knowledge enriched.

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**H. Important case laws on principles of valuation of real estate :**

**1. *K.P. Varghese vs ITO (1981) 131 ITR 597 (SC)***

In the case of K. P. Varghese<sup>1</sup>, Supreme Court held, "It is well known fact borne out by practical experience that the determination of fair market value of a capital asset is generally a matter of estimate based to some extent on guess work and despite the utmost bona fides, the estimate of the fair market value is bound to vary from individual to individual. The postulate underlying Sub sec. (2) is that the difference between one honest valuation and another may range up to 15 % and that constitutes the class of margin cases which are taken out of the preview of sub-sec (2) in order to avoid hardship to the assessee." Here, the court considered 15 % variation between two estimates as normal.

**2. *Gold Coast Trust Ltd. vs Humphray (1949) 17 ITR 19***

In case of Gold Coast Selection Trust Ltd.<sup>1</sup>, justice Viscount Simon stated, "If the asset is difficult to value but none the less of a money value, the best valuation possible must be made. Valuation is not an exact science. Mathematical certainty is not demanded, nor indeed is it possible. It is for Commissioners to express in terms of the money value, attributed by them to the asset .their estimate, and this is a conclusion of fact to be drawn from the evidence before them".

**3. *Rustam C Cooper vs Union of India AIR 1970 SC 564***

In Bank Nationalisation Case <sup>2</sup>, the Supreme Court has explained the word property as, "In its normal connotation 'property' means the "highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy: it includes ownership, estates and interests in corporeal things, and also rights such as trademarks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts, and signifies a beneficial right to or a thing considered as having a money ' value, especially with reference to transfer or succession, and to their capacity of being injured". Thus the court has included all types of property viz. tangible.

**4. *Hays Will Trust vs Hays and Others (1971) 1 WLR 758***

In case of Hayes Will Trusts<sup>4</sup>, Ungood-Thomas J. of Chancery Division held : "They are directed to the sale being in such manner as would obtain the best possible price in the market. It does not mean that the price to be fixed by valuation is the highest possible price that might be obtained. It has been established time and again in these courts, as it was in our case, that there is a range of price, in some circumstances wide, which competent valuers would recognise as the price which 'property would fetch if sold in the open market. "The most likely price, in the absence of consultation between the valuers representing conflicting interests, would presumably be the mean price."

**5. *V.C. Ramchandran vs CWT (1979) 126 ITR 157 Karnataka HC***

In case of V. C. Ramachandran<sup>51</sup>, the Karnataka High Court stated, "In our opinion the principle applicable for the interpretation of taxing statutes cannot be imported and applied to the valuation of property in a given case, which constitutes a question of fact. If there are more than one valuation of the same property, the one which is reasonable and nearer to the correct market value, having due regard to all the relevant facts and circumstances of the case alone should be accepted. Therefore, in such a case if the higher valuation between several valuations appears to be a reasonable one, the same has got to be accepted. We are unable to accede to the submission that in cases where value of the property is ascertained under more than one method, the lowest should be accepted."

**6. *Subh Karan Choudhury vs IAC (1979) 118 ITR 111 Kolkatta HC (Special Value / FMV)***

In the case of Subhkaran Chowdhury<sup>6</sup>, Calcutta the High Court held, "Valuation of

fully tenanted property should be made on the basis of capitalisation of rental method.”

**7. *Wenger & Co. vs DVO (1978) 115 ITR 648 Delhi HC (Combination of Methods)***

In the case of Wenger & co.<sup>7</sup>, Delhi the High Court, held, “District Valuation officer adopted two methods to value the property. For owner occupied portion he calculated the value on the basis of what were the rates prevalent for sale of commercial flats in connaught place extension area. For the tenanted portion he capitalised the rental value. It is well-known fact that giving possession of buildings, though previously rented out, fetches better market price. It cannot be assumed that the hypothetical purchaser would let out the self-occupied portions which he buys from the hypothetical seller or would let out such portions in the condition in which he buys them. The method adopted by District V. O. and his approach is not only acceptable but also in accordance with the principles of evaluation. “

**8. *Sorab Talati vs Josheph Michem Appeal 101 of 1949 - Vol.- 2 of SOC - page 162 (Bombay) (Invest Theory of Rent)***

In 1949, Small Causes Court of Bombay, for the first time, laid down principles of Rent Fixation (Standard Rent) in the case of Sorab Talati<sup>1</sup>. In this case, the Court approved of Investment Theory in preference to Comparable Rent Theory to fix Standard Rent of the rent controlled premises. In this case, the court considered return or yield from Gilt Edged Security as the basis for determining fair return to the landlord on his investments in land and buildings. Considering and comparing alternative forms of sound investments viz. Govt. Security and immovable property, the Court upheld following returns as fair returns to the landlord on his capital investment in land and buildings.

1.50% return i.e. more than the average yield on long term government security was approved as fair return on land investment and 2.50 % return more than the average yield on long term government security was approved as fair return on investment in buildings. For leasehold properties, 1% extra yield on both types of investment was considered fair, to account for extra risk of investing capital, in leasehold properties. Obviously, these norms and principles continued to be followed for several years for all types of rented properties and even for other purposes.

**9. *CWT vs P.N. Sikand (1977) 107 ITR 922 SC***

In case of P. N. Sikand<sup>32</sup>, the Supreme Court held, “It is clear on the application of this test that in present case, 50% of the unearned increase in the value of the land

would be diverted to the lessor before it reaches the hands of the assessee as part of the price. The assessee holds the leasehold interest on condition that if he assigns it, 50 % of the unearned increase in the value of the land will be payable to the lessor." Court further stated, "it must be held that in determining the value of the leasehold interest of the assessee in the land for the purpose of assessment to wealth tax, the price which the leasehold interest would fetch in the open market were it not encumbered or affected by the burden or restriction contained in clause (13) of the lease deed, would have to be reduced by 50%. of the unearned increase in the value of the land on the basis of the hypothetical sale on the valuation date."

**10. *SLAO (Eluru) vs Jasti Rohini (1995) 1 SCC 717 SC***

In case of Sp.Land Acq. Officer Elura<sup>13</sup>, the Supreme Court held, "Value fetched by sale of small extent land cannot be adopted for large extent land. Loss of land for road and park, expenses for development should be deducted".

**11. *Shubh Ram and Others vs State of Haryana (2010) 1 SCC 444***

In the case of Subhram<sup>15</sup>, the Supreme Court discussed this entire process in following words.

"The value of one Sq.Yds. of undeveloped land is not the same as one Sq.Yd. of developed residential plot. If there is large tract of agricultural or undeveloped land, obviously the entire extent cannot be sold as residential plots. If such land has to be sold as residential plots, it is first necessary to make a layout of plots in such land. This would mean that a provision will have to be made for roads Jo provide access to each plot in the layout. In hypothetical layout method of determination of market value, as a first step, the areas that will be used for roads, drains, parks/playgrounds and community areas, will have to be excluded from the total extent of the acquired land. But merely deducting the areas required for roads, drains, parks will not convert a large tract of undeveloped land into developed 'residential layout. For that, considerable financial outlay has to be made.

The land will have to be converted from agricultural to non agricultural residential use by paying necessary fees to the revenue authorities. Then the roads will have to be asphalted or concreted. Drains will have to be dug and lined with R.C.C. or stone, for drainage of rain water. Electricity, water and sewage lines will have to be laid. Deposits will have to be made to the authorities dealing with electricity, water and sewage removal. The development will also involve the service of surveyors, engineers and developers. All these involve considerable expenditure. Further, as there

will be time gap between the expenditure for development and the actual sale of plots, the cost of development will also have an element of interest on investment. The developer who undertakes the development and invests monies for development would also expect a reasonable profit when the plots are sold. All these expenditure and factors are standardised into 33% 'deduction towards expenses of development.'"

**12. *Jawaji Nagnathan vs REV. DIV. Officer (1994) SCC - 4 Page 595 SC***

In case of Jawajee Nagnatham, the Court held, "It is therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned there under in instrument brought for registration. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the land acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value."

**13. *Chimanlal Hargovinddas vs SLAO - Pune, AIR 1988 SC 1652***

The following factors must be etched on the mental screen:

- (1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.
- (2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.
- (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

- (4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose. (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).
- (6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.
- (7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.
- (8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).
- (9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.
- (10) The most comparable instances out of the genuine instances have to be identified on the following considerations:
  - (i) proximity from time angle,
  - (ii) proximity from situation angle.
- (11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.
- (12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors (14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. smallness of size.	1. largeness of area.
2. proximity to a road.	2. situation in the interior at a distances from the Road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to depth.
4. nearness to developed area.	4. lower level requiring the depressed portion to be filled up.
5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition.	6. some special disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor

can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

- (16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.
- (17) These are general guidelines to be applied with understanding informed with common sense.

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