

## **Important Case Laws on principles of valuation of Real Estate**

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### **- R.C. Cooper Vs. Union of India, (1970) AIR SC 564**

In 1970, the Supreme Court, in its judgement on Rustom Cavasjee Cooper v. Union Of India, popularly known as the Bank Nationalization case, held that the Constitution guarantees the right to compensation, that is, the equivalent money of the property compulsorily acquired. The Court also held that a law which seeks to acquire or requisition property for public purposes must satisfy the requirement of Article 19(1)(f). The 25th Amendment sought to overcome the restrictions imposed on the government by this ruling.

The Twenty-fifth Amendment of the Constitution of India, officially known as The Constitution (Twenty-fifth Amendment) Act, 1971, curtailed the right to property, and permitted the acquisition of private property by the government for public use, on the payment of compensation which would be determined by the Parliament and not the courts. The amendment also exempted any law giving effect to the article 39(b) and (c) of Directive Principles of State Policy from judicial review, even if it violated the Fundamental Rights.

Section 2(a) and 2(b), and the first part of section 3 of the 25th Amendment were upheld by the Supreme Court in Kesavananda Bharati v. State of Kerala in 1973 as valid. However, the second part of section 3, which prevented judicial review of any law that gives effect to Directive Principles, was declared unconstitutional.

### **- Sorab D. Talati Vs. Joseph Michem, Appeal No. 101 Of 1949 in R.A. Application No. 805 of 1948**

In the year 1947, when the Rent Control Act of 1947 was enacted for the first time, methodology of working out Standard Rent was not given in the act and hence in this case, Court evolved valuation principles for fixing Standard Rent. In this case Court approved of investment theory of estimation of rent and for the first time decided that comparison of yield on investment in land and building should be made with returns on investment on Gilt Edged Security which is to be adopted as basis for fair return. Court stated that "On a consideration of all the prevailing circumstances and the fact that the prevalent return on Gilt Edged Security is slightly over 3%, we think that a net return of 4.50% on the value of land and 5.50% on the cost of buildings can not be considered in any sense unreasonably large or excessive for a landlord to expect in respect of his investment in an immovable property". In this case Court allowed 1-1/2% higher return on land value and 2-1/2% higher return than yield on Government Security as fair return on building cost while fixing Standard Rent of the premises.

Rent Control Acts of other States of India had different provisions for Standard Rent. However all these other acts also provided for investments theory as basis of rent fixation. View of linking yield in real estate with yield on Govt. Security was changed by Supreme Court as late as in 1983 in case of Union of India V/s. Smt. Shantidevi (A.I.R. 1983 S.C. 1190). In said case, S.C. approved of comparison of the yield in real estate investments with the other forms of investment also in addition to yield on Govt. Securities.

**- CWT Vs. P.N. Sikand (1977) 107 ITR 922 (SC)**

held that in determining the value of the lease- hold 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 encum- bered or affected by the burden or restriction contained in clause (13) of the lease deed, would have to be reduced by 50 per cent of the unearned increase in the value of the land on the basis of the hypothetical sale on the valuation date.

**- Wenger & Co. Vs. DVO (1978) 115 ITR 648 Delhi HC**

It is one of the settled principles of valuation that market value has to be ascertained by considering sales of similar properties in the same neighborhood or similar environment. If there are no such instances of sales available then capitalisation of rent or making some sort of comparative evaluation of sales of other properties is an acceptable mode of valuation. A certain amount of guesswork would be there if no exactly similar instance of sale is available. In that case an estimate has to be made which need not necessarily be a mathematical calculation. As we find it, the basic material relied upon by respondent No. 1 is the sale price of a similar building in Connaught Place for Rs. 8 lakhs. The calculation arrived at has been cross-checked by him by referring to transactions of ownership of commercial flats in Connaught Place Extension Area and the resolutions of a conference of 200 valuers in India held at Bombay in June, 1972. The estimated rental method adopted by respondent No. 1 was not his innovation but an accepted method.

**-Jawajee Nagnathan Vs. Revenue Divisional Officer (1994) SCC (4) 595 (SC)**

we hold that the basic value of registration has no statutory base. It cannot form any basis to determine the market value of the acquired lands under Section 23 of the Act. The burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette under Section 4(1) of the Act with reference to the sale deeds of the same lands or neighbour's lands possessed of same or similar advantages and features executed between willing vendor and willing vendee or other relevant evidence in the reference court.

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

There was therefore no warrant for ascertaining the present value of Rs.7,000 as if Rs.7,000 would be fetched after 12 years. Now the parcel of land admeasuring 13 acres 7 gunthas comprised in Survey No. 85 which was situated very much in the interior was valued by the Trial Court at Rs. 10,866 per acre (less 20% to account for roads etc.). This parcel of land was valued at Rs.7,000 per acre by the High Court. The High Court had valued the land with the best situation on the Ganeshkhand Road at Rs.20,000 per acre. As against this the appellant's land was valued at mere Rs.7,000 per acre which reflected an unloading by Rs.13,000 per acre which works out at 65%. This pushing down was made to account for its situation in the interior on the premise that development would take about 12 years to reach the land under acquisition. If the appellant's land just adjoined

the land valued at Rs.20,000 per acre it would have been valued at the same figure of Rs.20,000. It has been valued at Rs.7,000 per acre precisely because it is so situated that development would reach the appellant's land after 12 years as estimated by the High Court. But after 12 years it would become land adjoining to developed area and not land which could be treated as in the interior. Therefore, if present value was to be ascertained it should be ascertained on the basis of present value of land which would fetch Rs.20,000 per acre after 12 years and not present value of land which would fetch Rs.7,000 per acre after 12 years. In fact present value of Rs.20,000 payable at the end of 12 years at 8% would work out at Rs.6942 ( $.3971 \times 20,000 = 6942$ )<sup>1</sup>. The High Court was therefore right in valuing the land in interior at Rs.7,000 per acre but wrong in directing that present value of Rs.7,000 payable after 12 years should be ascertained. The last ground is thus well founded .

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

1. smallness of size.

2. proximity to a road.

3. frontage on a road.

4. nearness to developed area.

Minus factors

1. largeness of area.

2. situation in the interior at a distances from the Road.

3. narrow strip of land with very small frontage compared to death.

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.

- **CED Vs. Radhadevi Jalan (1968) 67 ITR 761 (Cal)**

- CIT Vs. Ashima Sinha (1979) 116 ITR 26 (Cal)

- CIT Vs. Anupkumar Kapoor & others (1980) 125 ITR 684 (Cal)

- CIT Vs. Smt. Vimlaben Bhagwandas Patel (1979)118 ITR 134(Guj)

