

State Of Kerala vs Chakala Lonoppan Palu (Dead) By L.R.S on 5 December, 1978

Equivalent citations: (1979)3SCC780, 1979(11)UJ170(SC), AIRONLINE 1978 SC 3, 1979 (3) SCC 780

Author: V.R. Krishna Iyer

Bench: A.D. Koshal, D.A. Desai, V.R. Krishna Iyer

JUDGMENT

V.R. Krishna Iyer, J.

1. This is an appeal by certificate under Article 133(1)(a) of the Constitution as it then stood), valuation earning a right of appeal is the only justification for its institution viz. the subject matter is in excess of Rs. 20,000/-.

2. The litigation turns on the quantum of compensation awarded to the owner of the land in a case of compulsory acquisition under the Land Acquisition Act, 1923. The Acquisition Officer awarded a certain sum which was raised substantially in the court. Both sides filed appeals to the High Court which, while dismissing the appeals of the State, enhanced the compensation by a small sum of around Rs. 13,000/-. The total compensation payable, according to the High Court's judgment, was of the order of Rs. 12 lacs. Many points were urged in support of the contention that there had been a gross over-valuation by the Court. We are unable to agree for the short reason that this Court cannot be persuaded to reappraise the evidence or, indeed, to interfere except in those special cases where some principle has been violated or gross injustice perpetrated. We are unable to discern any, despite the strenuous argument or learned Counsel for the State.

3. Contentions such as award of a higher percentage for timber waste, a small increase in price for cement, a small percentage for the architect or for supervision, are such as which we cannot entertain and so reject as virtually out of bounds for this Court.

4. The only serious contentions which engaged our attention were two. One turned on the value of the land per cent and the other on the depreciation of the building which had not been taken note of. So far as the land value is concerned, it is obvious from a perusal of the judgment of the High Court that an appreciation of the documents relating to value of land in the locality has led the court to its assessment. We find a fundamental error or legal flaw has been pointed out. Indeed, the major plea was that when a uniform value was being assigned to the entire extent of 2 acres and 85 cents the facts that some portion of the land was low lying was not considered. We have no materials to indicate

how much of land was low lying and whether it was sufficiently extensive to affect the unit rate to be applied. Nor indeed is there any reflection of this submission before the High Court. We cannot accede to a consideration of it do nove at this level.

5. The last contention, though first put forward, turns on the refusal of the court to make a deduction on the score that the building was five years old and, therefore, suffered depreciation. We must remember that, as on record, it is apparent that the owner had built a large house, marble fountain, and appurtenant office building, with a compound all round, for his own residence. Admittedly, it is an excellent building still in use. It was hardly five years old at the time of acquisition. In these circumstances, the Court declined to make any deduction on the theoretical assumption that by passage of time the building must suffer depreciation. Learned Counsel draw our attention to two decisions of the Privy Council (one following the other) - and AIR 1942 PC 35. The general proposition laid down there is unexceptionable that the older the building the lesser the value. Time spares none. Depreciation, in such circumstances, is a necessary consequence, but then this is not an inflexible rule regardless of the realism of things. Speaking generally, and with a practical sense, builders of homes move in when they are barely ready for occupation, and spend the first months and years to beautify, touch up, tune up, make the edifice liveably and lovable. These years enhance the home-worthiness of the house rather than depreciate its value. There may be exceptions where engineering blunder, defects showing up gross neglect damaging the structure or its finishing may reduce the value. Such deterioration being the exception, the depreciation must be made out and not presumed. In these circumstances, the mere fact that after the house was completed about 5 years had elapsed, could not justify the claim that, mechanically, depreciation must be awarded. We do not think there is any error of law in the judgment of the High Court.

6. In these circumstances, we dismiss the appeal with costs.