

PRIVY COUNCIL

Nowroji Rustomji Wadia

Vs.

Government of Bombay

P.C.A No. 43 of 1924

(Lords Sumner, Blanesburgh CJ., Sir John Edge, Mr. Ameer Ali and Lord Salvesen JJ.)

12.06.1925

JUDGMENT

LORD SUMNER J.

1. In 1917 the Municipality of Bombay acquired a plot of land for purposes connected with an existing hospital, and the usual statutory proceedings took place before the Collector of Bombay to fix the amount of compensation to be paid for the land. The owner, being dissatisfied with the amount awarded, viz., Rs. 98,724, claimed a reference to the High Court, and in 1920 Kajiji, J., varied the Collector's award by increasing the rate to be allowed per square yard superficial from Rs. 8 to Rs. 10. This raised the total compensation to Rs. 1,39,970. Upon an appeal by the Municipality the High Court set aside the learned Judge's decree and dismissed the reference. They thus in effect confirmed the Collector's award. From this decision the claimant now appeals.

2. The value to be placed at a given moment on a plot of land, which is not in the market or the subject of bargain and sale, but owes a large part of any value it possesses to the prospective results of development work, to be undertaken thereafter at an uncertain time and at an estimated cost, is not only in its essence a question of fact but is one upon which, almost above any other, opinions will differ, without its being possible to give irrefragable reasons for any particular conclusion.

3. It has been declared in decisions of the Board, by which their Lordships are now bound, that appeals in valuation cases will only be entertained on questions of principle. (See *Secretary of State v. General Steam Navigation Co., Rangoon Bola tounng Co. Ltd., v. Collector of Rangoon per Lord Macnaghten*" *Charandas v. Ameer*

Khan, per Lord Buckmaster - "this Board will not interfere with any question of valuation" - and *Rai Bahadur Lala Narsingh Das v. Secretary of State for India*, Errors in law, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, are matters that can and will be dealt with on appeal by this Board, but when, as in the present case, a difference of opinion has occurred between two Indian Courts upon the number of rupees per yard to be allowed for a plot of land, as to which their Lordships can form no opinion of their own, it would be alike unprofitable and impracticable to embark on a comparison of the decisions of these Courts. In cases relating to the acquisition of land the whole matter, both of fact and law, is a proper subject of appeal in India, for their local knowledge and experience enable the learned Judges to form useful judgments upon the whole case. The amending Act of 1921 declares awards under the Land Acquisition Act, 1894, to be decrees, so as to bring them within the general rules as to appeals to this Board, but it does not prescribe any special mode, in which they are to be treated. This Board has found it necessary to limit the extent of the inquiry, in order to spare the parties costly and fruitless litigation. Just as in cases where there are concurrent findings of fact in the Indian Courts, it has long been the general rule of the Board not to allow such findings to be re-opened here [Naragunty Luchmedavamah's case, (1861-64) 9 MIA 66 : 1 WR 30 : Suther 460 : 1 Sar 826. (PC), Umrao Begum's case, (1894) 21 Cal 997 : 21 IA 163 : R. and J's No. 135 : 6 Sar 469,] so it has now been settled that this Board will not review the decree of an Indian Appellate Court merely upon questions of value. Where their Lordships have neither the materials nor the experience) on which to found an opinion of their own, in a matter where the opinions of competent Courts in India differ (and a fortiori where they concur), it is not their practice to interfere, as an Appellate tribunal unless there appears to be error in law or miscarriage of justice.

4. In view of this practice the present case may be shortly dealt with. The plot to be acquired was irregular in shape and contour. Except at one point, and there only by a narrow passage, it had no access to any road. Part of it was hollow and low-lying, so that in the rains water accumulated there to the depth of several feet. No transactions were proved in respect of land closely adjacent to or precisely similar to this plot and such transactions as had occurred were cases of development and sale at dates not at or about the material time, viz., 1917. The question, whether or not there had afterwards been an up ward trend in market values generally, was not only highly disputable as a matter of opinion, but was not affirmatively supported by any satisfactory proof. Both parties admitted that the most satisfactory use, to which the

land could be put, was the erection of workmen's dwellings, and the value of the land for this purpose accordingly became the question to which both directed their attention. Development of this kind required the dedication of a considerable part of the surface, in order to provide an access road, and also the raising of the whole surface to one level, free from risk of flooding, by permanently filling in the cavities with suitable loose material. Estimates of the area of land required for the road and of the cost of filling in per cubic yard were accordingly prepared and were agreed on both sides. It does not appear, however, that any allowance was made for the time required to enable the made ground to settle, or for the risk that unexpected settlements might take place and probably these factors were beyond any exact estimation. of course the circumstances that might exist, when the work was done and the realizable value of the developed site could be ascertained, were alike beyond human foresight. Kajiji, J., appears to have addressed himself to the question of the fair compensation for land taken in 1917, to be allowed as at that date, as if it were an algebraic problem, which could be solved by an abstract formula. He sought to ascertain what value per yard the land might be supposed to have, if improved at some uncertain date, by treating the cost of filling in the cavities as a determined sum, to which there could not be any addition, and by deducting this sum alone from the supposed realizable value after future development. From these somewhat abstract factors he arrived at a concrete rate per superficial yard to be paid presently by way of compensation. In doing so he took no account of the factor of interest on the cost of filling in and the other development work during the uncertain interval before the time of realization might arrive.

5. From his conclusions thus arrived at the High Court dissented. Their reasons are not very clearly given, but this may be due to the fact that the evidence, which they discussed, is not very clearly recorded. At any rate, as it appears to their Lordships, they fell into no error of principle in their criticisms of the judgment of Kajiji, J., or in the process by which they arrived at their own conclusions. In dissenting from the method, which the learned Judge seems to have followed, they were certainly right. Factors such as he omitted to notice may be of great importance or of little, or even may be truly negligible, according to the circumstances of the particular case, but it cannot be right to ignore them altogether, as having no place at all in a rigid system of calculation. They were guided by their own view, as they were entitled to be, of the weight of the various pieces of evidence, nearly all of indirect bearing on the problem in hand - and in many cases only imperfectly developed. They thought, as they were entitled to think, that the grounds, on which the supposed rise in general market values

was rested, were so unsubstantial in themselves and so distantly related to the circumstances of the site in question, as not to amount to any evidence on which to rest the judicial conclusion that something should be allowed for a rising market.

6. After carefully examining the evidence and the way in which the High Court appears to have dealt with it in arriving at the conclusion now under appeal, their Lordships are unable to find that there has been any error in principle or in law in the method of arriving at it. They will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

(1909) 36 Cal 967 : 36 IA 200 : 10 C LJ 281 : 11 Bom LR 1197 : 14 CWN 134 : 4 IC 448 : 19 MLJ 645 (PC),

(1913) 40 Cal 21 : 39 IA 197 at P. 201 : 16 CWN 961 : 16 CLJ 245 : 23 M LJ 276 (PC)

AIR 1921 PC 50: 47 IA 255 : 39 MLJ 195 : 28 MLT 149 : 18 ALJ 1095 : 57 IC 606 : 22 Bom LR 1370. (PC)

AIR 1925 PC 91: 6 Lah 69 : 52 IA 133 : 23 ALJ 113 : 48 M LJ 386 : 2 OWN 137 : 6 LR PC 64 : 27 Bom LR 783 : 29 CWN 822 (PC).