

CALCUTTA HIGH COURT

Mohini Mohan Saha

Vs.

Province of Bengal

A.F.O.D. No. 148 of 1946

(R.P. Mookerjee and Mitra, JJ.)

09.09.1949

JUDGMENT

R.P. Mookerjee, J.

1. Premises No. 81 Bahir Surah Road, was acquired in connection with Improvement Scheme No. IV - Manicktolla (Supplementary) Excavation Area. The declaration was dated 1-9-1941 published in the Calcutta Gazette on 4-9-1941. There were a large number of claimants and the Collector after hearing the parties fixed the land value at Rs. 250 per cottah as an average rate. Compensation was also allowed for certain trees standing on the land. Most of the claimants accepted the compensation as allowed by the Collector. Eight of the claimants did not accept the award and applied for a reference to the Calcutta Improvement Tribunal. Before the Tribunal evidence was led and experts were examined on behalf of the claimants and the Province. The claim before the Tribunal on behalf of the claimants was at the average rate of Rs. 500 per cottah. The experts on behalf of both the parties agreed that to ascertain the proper market value the valuation should be fixed by dividing the land into different belts. Both the parties were further agreed that the value of the first belt of firm land was Rs. 600 per cottah. The parties, however, differed as to the depth of the first belt. According to the claimants' expert it should be 100' feet while for the Province it was contended that it should be 60' feet. The Tribunal accepted the opinion of the expert on behalf of the Province. The Tribunal, further, found that the value of the portion covered by tank would be two-thirds of the valuation as fixed for solid land, and not half as urged by the Province.

2. The other point raised before the Tribunal was as to the area of the tank in the property in question. The Tribunal accepted the area as put forward on behalf of the Province, viz., 93 cottahs.

3. The experts also differed as to the rate of deduction to be allowed for the size and nature of the

plot. The Tribunal overruled the objection on behalf of the claimant under this head also and allowed a deduction of 20 per cent.

4. In view of the fact that the value of the tank portion was fixed at two-third and not half solid land and also because of the belting method introduced by the Tribunal, the valuation was enhanced by Rs. 4,076-8-0 inclusive of the usual 15 per cent. statutory allowance over and above the Collector's award.

5. The referring claimants were dissatisfied with the amount fixed by the Tribunal and they have preferred this appeal to this Court. Three points have been urged on behalf of the appellant : (1) The area of the tank was not 93 cottahs but much less and that there should be a further enquiry with regard to the correct area. (2) The depth of the first belt should be fixed at 100' feet and not 60' feet. (3) The deduction allowed by the Tribunal at 20 per cent. is too high and should be reduced to

6. There is no dispute between the parties as regards the total area acquired, viz., 8 bighas 12 cottahs 14 ch. This premises was originally a garden with a big and good tank. The area of this tank as it can be ascertained from the acquisition plan is about 93 cottahs. In course of the hearing before the Tribunal on behalf of the Province, another plan was produced which is described to be a "level plan" and is marked as Ex. KK. The contour of the tank as shown in this map is different from that in the acquisition plan. After evidence had been closed and when arguments were proceeding an application was filed on behalf of the Province for being given an opportunity to prove another plan which had been found out from the records of the Calcutta Improvement Trust, the acquiring authority. That prayer was allowed and Ex. LL. came to be marked after examination and cross-examination of a new witness. The size and position of the tank in Ex. LL is the same as in the acquisition plan. There appears to be a marked difference between the position and size of the tank as shown in Ex. KK on the one hand and Ex. LL and the acquisition plan on the other. The Tribunal has accepted the area as in Ex. LL.

7. On behalf of the appellant it is contended that Ex. LL ought not to have been let in at a very late stage of the case and the claimants had no sufficient opportunity to produce further evidence in rebuttal of the same and in support of their own case. In any view it is submitted that Ex. KK is a map produced by Government and the claimants are entitled to rely upon the same in support of their case that the area of the tank is much less than as shown in Ex. LL.

8. On going through the records, it appears that the Tribunal did not fix any date calling upon the parties to produce their documents on which they would rely. It transpired during the hearing before us that this is in conformity with the practice which is followed in the Tribunal. Section 53, Land Acquisition Act, however, provides:

"Save in so far as they may be inconsistent with anything contained in this Act, the

provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act."

Under Section 7, Calcutta Improvement Act (Bengal Act v [5] of 1911) the tribunal is deemed to be a Court and the president of the Tribunal shall be deemed to be the Judge under the Land acquisition Act. The Land Acquisition Act is subject to certain modifications as indicated in Sch, ii. Calcutta Improvement Act.

9. Provisions to be found in the Code of Civil Procedure relating to the examination of witnesses and the production of documents in Court are applicable during the hearing of a reference under the Land Acquisition Act or of the Calcutta Improvement Act. These provisions are followed by Land Acquisition Judges in Courts outside Calcutta. We do not know why and how the practice has grown in the Calcutta Improvement Tribunal, whereby the parties are not required to file in Court documents under their control or to file a list of witnesses as may be required necessary by the parties. We are informed by the learned Advocates appearing in this case that when a valuation reference is actually taken up for hearing, at the opening stage the claimants indicate the detailed grounds for contesting the Collector's award and also the nature of evidence on which reliance will be placed. It is not until these details are indicated by the claimants the Province is not aware of the nature of the attack to be directed against the Collector's award. The Province from this stage takes steps for getting the evidence before Court in support of the Collector's award and to controvert the points as are to be urged by the claimants The claimant adduces evidence as he is regarded as the plaintiff in the suit (*Ezra v. Secretary of State*¹, The burden varies according to the nature of the enquiry made by the Collector under Section 11, Land Acquisition Act. Where the Collector gives no detailed reasons as in the present cape, the burden which is to be discharged by the claimant is very light (*Frink v. Secretary of State*², *Harish Chandra v. Secretary of State*³, *Madhusudhan v Collector of Cuttack*⁴,). The claimant has to begin his evidence first and only after he has completed his evidence that the Government is to rebut it and support the award made by the Collector by positive evidence.

10. On behalf of the Province, it is contended that as evidence in support of the Collector's award cannot be begun until after the close of the claimant's evidence, the date when Ex. KK was filed was regarded to be in proper time and no objection was raised on behalf of the claimants. As the plan Ex. II was filed during the argument the other side was afforded an opportunity of cross-examining the witness who proved it. The provisions contained in Order 18, Rule 2, Civil Procedure Code, however, are attracted in this case and must be applied. The reasons for the delay in the filing of a document particularly one in the possession of the acquiring authority must be satisfactory. The petition which was filed for accepting the plan subsequently marked as Ex. II did not contain any satisfactory reasons explaining the delay and we must hold that the Tribunal was not justified in allowing new evidence to be adduced during the argument for practically no reasons whatsoever. The Court must record the reasons for allowing a document, in the possession of the party, to be filed late. The order as recorded also does not indicate any

sufficient reasons. We must, therefore exclude Ex II from our consideration. We now proceed to consider the rest of the evidence on the record. The area of the tank as can be ascertained from the acquisition plan in 93 cottahs. Claimants' expert H. K. Sircar has filed in Court a key plan for explaining the size and position of the different sites in the locality, the values whereof have been taken into consideration for determining the market value of the plot under acquisition. This key plan has been prepared from Smart's survey which took place more than 30 years before the acquisition. The expert Sarkar states that he had held a local inspection but the map, if any, prepared by him after such local inspection has not been produced in Court. The argument on behalf of the claimants that he was not asked to produce his survey plan cannot be accepted. If the area of the tank is to be determined with reference to the survey by Sircar, the Court must have his map before it. A mere verbal statement that the area of the tank

¹30 Cal. 36 : (7 C. w. n. 249)

³11 Cal w. n. 875

²34 Cal 599

⁴6 C.w.n. 406

was found by him cannot be accepted. He frankly conceded that if there were any difference between his key plan and the land acquisition map, the latter must be taken to be more correct and accepted as such.

11. It is, however contended that Ex. KK shows the area to be somewhat less though the actual area has not been calculated or stated by anybody. But the claimants' expert could not and did not rely on Ex. KK as it was produced in Court only when the Province was supporting the valuation as made by the Collector. Exhibit KK is the level plan. The level of the portion covered by the tank was not measured. The boundaries of the tank as shown on this plan cannot be preferred to those as shown on the acquisition plan. Accepting the opinion given by the claimants' expert it must be held that the acquisition plan is the more reliable one for the purpose of determining the area. As a matter of fact the total area of the acquired land as a whole as given in the acquisition plan has been accepted by the parties and had not been questioned either before the Collector or the Tribunal or even before us. The size and position of the tank as indicated on the acquisition map must, however, be taken as the more reliable one and accepted as such. The area of the tank has been correctly determined by the Tribunal. This contention, therefore, fails.

12. The market value of a particular plot has to be determined with reference to the position, size, shape, road frontage, etc. Plots contiguous to a piece of land under acquisition are not ordinarily precisely the same in all circumstances except sometimes in a purely agricultural area, where one plot does not materially differ from another and the size and shape do not in any way affect the value of the property. Even in such areas, whether the particular plot is low or high, whether irrigation facilities are more advantageous in one than another, have to be taken into consideration. In areas where the plots are ordinarily used as building sites, values differ particularly on the ground of the position, size, shape, road frontage and depth. Additions and deductions made to and from the value of somewhat similar plots in the vicinity have been adopted as a proper method for determining the market value. Expert valuers both in India and England also resort to belting in dealing with shape, size road frontage, depth etc. Land upto a certain depth from the road side is taken at a certain rate per unit of land and other portions of the

same plot, placed at amore disadvantageous position are taken at a lesser rate than the front one. Although this method of dividing the land into belts has been criticized as an arbitrary method but as to the truth of the proposition that for building sites a portion abutting on the road is valued much more than the other portion which is situate further from the road, there can be no doubt or dispute.

13. Following this method both the experts in the present case have recommended division of the area under acquisition into different belts. There is no dispute between the parties as regards the value of the first belt abutting on the road. The difference, however, is as to the depth of the first belt. It appears that the claimants' expert has calculated on the basis of the first belt being 100' ft. The Government expert on the other hand has taken it as 60' ft. Unfortunately, no questions were put to the claimants expert either during the examination in-chief or in course of the cross-examination making a. pointed reference as to the proper depth of the first belt. We have not, therefore, the reasons in support of the contention that the depth of the first belt should be 100' ft. On the other hand, the Government expert was examined at great length about the depth of the first belt. Bose, the Government expert, states that the contiguous plots, on the valuation of which the market value of the plot under acquisition is being ascertained are small ones, plots which vary from 45 to 70' ft., in depth. The unit value of the first belt of the land under acquisition should therefore be made dependent on the first belt being of depth similar to those contiguous plots. When determining the value of the portion of land having road frontage the depth must primarily depend on the nature of the plots, the locality where they are situate as also the character of the use the land is put to. The principal criterion for fixing the value of land on the road frontage depends on the earning capacity of that portion. The depth of the belt depends primarily upon the extent of the effect of the presence of the road. If the area be a commercial one, where buildings erected on the road side fetch a higher rent from shops let out on the road, such depth as can be utilized for the erection of and utilization as shops will be regarded as the reasonable depth of the first belt. The character of the business and the nature of the shops in a particular area may differ from those of another area. In the Burra Bazar area in Calcutta the depth of the first belt may differ from the first belt in the Bentink Street area.

14. For residential areas also, the depth for the first belt allowed in Calcutta varies from place to place. It is well known that the building sites in the purely residential area of north Calcutta differ from those in the more recently developed area in Ballygungs in the south and both differ from those in the Chowringhee area. In places which may be deemed to be factory areas the question as to the application of the belting method or of the depth of the first belt may sometimes become either unimportant or even immaterial.

15. No general or uniform rule can be laid down for all cases where the belting method is applied as to what the depth of the first belt should be. That question has to be decided with reference to the particular area and the nature of the evidence as may be available in particular case. The Tribunal has, in the case now before us, fixed on a consideration of the evidence 60ft. as the

depth of the first belt. This conclusion based on the facts and circumstances of the particular case cannot be questioned in the appeal before this Court. There is no error of law which can justify interference by us.

16. The last point urged is on the question as to what percentage should be deducted, if at all, for the large size of the plot, its irregular shape and the presence of a large tank on the road frontage, etc. Reference is, in this connection, made by the learned Advocate to the following expression of opinion by Atul Krishna Bose, Government witness 2.

He says;

"If i take a depth of 100ft. for the first belt the deduction for shape, size, tank level, etc., in this case would be 2 ½ per cent. Yes, deduction for shape, size, etc., would be different according to the difference in depth of the front belt."

Where this Government expert explains the method adopted by him for calculating the market value of the land under acquisition, he states:

"i have belted the property in question in 60ft. belt for the purpose of comparing the property in question with those small properties. My result is that with 20 per cent deduction for shape and size and the disadvantageous position of the tank and taking Rs. 600 for the first 60ft. belt, the value comes to Rs. 40,000. Collector's award comes to Rs. 38,896. So I find my rate of Rs. 225 is fair." He further states:

"I have deducted 20 per cent. for the largeness of size, shape and disadvantageous position of the tank and level of the land. Now the properties which I am comparing are all less than 60ft. in depth and the size varies from 1 cottah 8 ch to about 3 cottah 8 ch. That is why I deducted 20 per cent. for the property in question."

At another place he states;

"Ordinarily for a 6 bigha plot on a 100ft. belting deduction for size and shape should be 8½ per cent. For the position of the tank alone in the property in question 1 will make a deduction of more than 5 per cent. inasmuch as the position of the tank of the property in question had deteriorated the land value a good deal for the simple reason that all the solid land in front and left of the tank was absolutely unbuildable. Only the portion that is buildable in the property in question was the recess land on the South. Then comes the question of level. In this locality the question of level of land is of great importance because in the rainy season water accumulates in this locality in the land which is of lower level than the road. 5 per cent. deduction should be taken for the level of the land alone."

At two places this expert has stated as quoted above, that for the low level 5 per cent. deduction is to be allowed and for the disadvantageous position of the tank another 5 per cent. Thus for these two items alone a deduction of 10 per cent. is in his opinion proper. For the largeness of the

plot at what rate deduction is to be allowed has been left to be inferred from the fact that out of a total of 20 per cent. a deduction of 10 per cent. is being made on the other two heads. His evidence on the question of deduction to be made under this head, however, is unsatisfactory and inconsistent as would appear from the passages we have quoted above. He has not given any explanation as to why the deduction for largeness of size should be much greater in a case where the depth of the first belt is taken at 60ft. than in a case where it is taken at 100ft, nor was the learned Advocate for the Province able to explain to us why that should be so. We have, on the other hand, the evidence of Mr. Sarkar for the claimants that a deduction of 2½ per cent should be made for largeness of size in this case The evidence of the Government expert does not in our opinion establish a deduction of 20 per cent.

17. At one stage the learned Advocate for the claimant had urged that when land is valued by dividing the property into belts no deduction is allowable under the law for largeness, shape and other special particulars of the plot. This proposition cannot be supported. As indicated already division of a plot into belts is adopted by experts only when an entire property cannot be utilized as being a road-side land. The comparison which is effected between other somewhat similar plots in the vicinity determines whether any deduction is necessary from the value of the land of the nature represented by those contiguous sites; the value of road-side land determines the lower value of the second and third belts. Division into belts does not provide for other special peculiarities of a land in question. If the level of the land to be acquired is lower than that of the road while the level of the contiguous plot from which land value is being determined is a higher one some deduction must be allowed therefore. On the other hand if the instances of the contiguous lands are in respect of low lands while the land to be acquired is higher in level no deduction is to be made but certain percentage is to be added to the value obtained from those near about plots Next, if those instances, from which the market value is being ascertained, be in respect of small plots of lands while the property under acquisition is a very big one some depreciation is to be allowed from the general value ascertained from those contiguous plots. On the other hand, if the land value is ascertained from a big plot it has to be augmented by a certain percentage if the land under acquisition is a comparatively smaller plot. Reference has been made by the expert to the inconvenient position occupied by the very large tank in the front portion of the land in question as also to the largeness of the site, the low level and irregular shape.

18. The judgment of the Tribunal on this part of the case is not a proper judgment dealing with this point. The evidence in the case had not been discussed or considered but a simple statement is made that evidence with regard to the deduction to be allowed is one sided. In making that statement the Tribunal has overlooked the evidence of the claimants' expert that a deduction of 2½ per cent. should be made for largeness of size. We have considered the question whether we should make a remand, and we have come to the conclusion that it is unnecessary to do so as the case should be decided on the evidence already in the record. That evidence, in our opinion, does not support a deduction of more than 12½ per cent. We hold accordingly that the deduction to be allowed be fixed at 12½ per cent. in place of 20 per cent.

19. The appeal is accordingly allowed in part. The Tribunal will determine the value of the land acquired by fixing the deduction to be allowed at $12\frac{1}{2}$ per cent. All the other findings are upheld. As the appellants have succeeded in part they will be entitled to $\frac{1}{4}$ th of the costs of this Court.

Mitra, J.

20. I agree.

Appeal partly allowed.