

BOMBAY HIGH COURT

Bombay Improvement Trust

Vs.

Mervanji Manekji Mistry

(Macleod, C.J. and Coyajee, J.)

08.02.1926

JUDGMENT

Macleod, C.J.

1. This is an appeal from the decision of the Tribunal of appeal constituted under the City of Bombay Improvement Trust Act. A reference lay before them with regard to Case No. 58 in Scheme 60 comprising 22,896 sq. yards, situated on the Bhoivada Road. The date of notification was September 11, 1919, and the date of declaration was December 4, 1919. The tenure was Pension and Tax, and the Land Acquisition Officer had awarded ₹ 1,83,968/- as compensation for all interests at ₹ 8/- a square yard. The land had a frontage on the Bhoivada Road of 130 feet and a depth of 460 feet, while there was a passage on the north and another passage on the south. At the time of the acquisition, it was practically vacant. The building materials thereon were valued at ₹ 800/-. The claimant before the Land Acquisition Officer had asked for 'compensation at the rate of ₹ 25/- a square yard. Before the Tribunal he asked for compensation at the rate of ₹ 15/- a square yard plus. ₹ 800/-, the value of the building materials, which had not been disputed.

2. The assessors were of opinion that ₹ 12/- a square yard should be awarded-for all interests in the claimant's land. The President of the Tribunal was of opinion that the Land Acquisition Officer's award was sufficient. In accordance with the opinion of the majority of the Tribunal, the award of the Land Acquisition Officer was increased from ₹ 1,83,968/- to ₹ 2,75,552/-, and this latter sum was awarded as; the value of all interests, with interest' at six per cent, from the date of taking possession until payment into the Tribunal. An application was made to the President to grant a Certificate that the case was a fit one for appeal, and in granting a Certificate the President said:

Two members of the Tribunal slate in the judgment that they rely on certain of the

claimant's instances as showing market value but give no reasons to show how they have considered the objections which were urged against those instances and why they do not act on the> instance proved by the Trust, and they increase; the award by ₹ 91,000.

3. It was contended for the claimant that the Tribunal was a technical body appointed to consider such questions, but the facts of this reference were free from all technicality and the points raised were really more appropriate for consideration by a Court of law than by a Tribunal. In August 1917, the claimant had purchased a total area of 45,636 square yards for ₹ 62,000/-, and immediately thereafter he framed a plotting scheme for the development of the land fronting on Bhoivada Road. The plan at page 4 of the book of plans shows the lay-out of the scheme.

4. Plot No. 1 was sold in August 1917. Plot No. 2 was sold in June 1918 at ₹ 8/- a square yard. Plot No. 3 was leased to J. H. Karanjia for six years on July 9, 1919, on the basis of a price of ₹ 15 per square yard with an undertaking to purchase at the expiration of that period at that rate; and Karanjia passed it on to P.E. Homa Vazir, on July 16, 1919, for an increase of ₹ 1,000 which brought the rate up to ₹ 16-4-0/- per square yard. Plot No. 4 was leased on July 21, 1919, to the claimant partner, Mr. Wadia, for five years on the basis of ₹ 15/- per square yard with an undertaking to purchase at that rate at the end of the period. Plot No. 5 was agreed to be sold outright, on July 16, 1919 to Torekhan Gaffurkhan at ₹ 14/- per square yard and was conveyed on September 1, 1919. Plot No. 6 was leased, on December 7, 1917, to Abdul Kadar Mahomed for twenty-five years with an option to purchase within five years at ₹ 10/- per square yard.

5. These were all frontage plots, of which only Plots Nos. 3 and 4 "were acquired by the Trust, while only Plots Nos. 1, 2 and 5 were sold outright. In any event, those transactions would show that, about the date of the notification, the land fronting on the Bhoivada Road would be worth in the market from ₹ 10/- to ₹ 16/- a square yard. But with the interior land the case is far different. The land sloped down from the road and was absolutely undeveloped. There were no roads, no drainage, no water, and no lighting; and all that was done was to mark out certain plots on a plan such as is now before us. The claimant is entitled to rely upon the fact that before the property was notified he obtained the signatures of various persons on agreements of lease, which are set out in the judgment, and it would appear that five plots had been let out at rates varying from ₹ 13/- to ₹ 15/- a square yard based on the rentals with an undertaking to purchase at that rate at the end of a fixed period. But the period, on which these leases were to commence was October 1, 1919, after' the date of the notification.

6. It is to be noticed that in these agreements to lease, the lessee undertook to build half the road

in front of his plot, and to pay rent for it at the same rate as the actual plot acquired for building, so that he would be paying a higher rate than that mentioned in the lease for the land available for building.

7. Now these agreements require to be very carefully scrutinized, and all that appears from the judgment, so far as we are concerned with the opinion of the assessors, is the following passage:

In the opinion of the majority of this Tribunal all the transactions referred to relating to plots on the land in acquisition are a fair indication of the market value of plots on the land. Taking into consideration the terms and conditions of the agreements for leases and entered into by the several persons herein, the majority of the Tribunal are of opinion that ₹ 12 per square yard should be awarded for all interests in the claimant's land.

8. The President has dealt with the evidence at far greater length. He begins by referring to the original purchase by the claimant in January 1917, which was consistent with the price paid by Mr. Boda a little later for adjoining land with a much larger frontage. However, we are not really concerned with the price of land in 1917, and if the claimant can prove that the land has increased enormously in value since the date of the purchase, he is entitled to get the benefit of that increase. Then, the President dealt with the plots which were leased. I have paid due attention to all that has been urged before us, by the respondent's counsel relating to the constitution of the Tribunal, consisting, as it does, of a President, who is acquainted with the law, and two assessors who are intended to advise him with regard to all technical details with regard to the amount of compensation to be awarded. But, in this particular case, the question really is whether the evidence has been properly appreciated, and for that purpose the President of the Tribunal is better qualified than the assessor. It appears to me that the assessors have not discounted sufficiently the evidence with regard to these agreements of lease as would at once occur to a lawyer trained to deal with evidence. The President was able to appreciate the evidence of the witnesses who were called before him, and reading that evidence, as it now appears in the print before us, we cannot say that the President was wrong in coming to the conclusion that the evidence with regard to these agreements of lease was of very doubtful value.

9. It must be remembered that these agreements were absolutely uncovered, and though the lessees may have been induced to agree to pay rents based on an excessive value of the land, it would be open to them not to carry out their agreements on pain of forfeiting the small deposits they might have made. In any event, an agreement to lease is a very different matter from an agreement to sell outright. And we have to consider in this class of cases what a Claimant would have been likely to realize on the date of the declaration, if he had put the land on the market, in the light of what a prospective purchaser would have given. He would, no doubt, have in view the sale of the interior land, but he would deduct a very large discount from the gross sale proceeds which he might expect to realize by the time the land had been plotted out and disposed of. This question has been dealt with in many judgments in the Tribunal and in this Court, and, in

my opinion, there has been a tendency to favour the claimants by not making sufficient deductions from the gross realizations. It must be remembered that in all 'cases where there is a large area of undeveloped land under acquisition, it is the market value of the undeveloped land which has to be considered, and it is too often forgotten that a purchaser of such land will ordinarily expect to make a large profit on the original outlay because in addition he will have further expenditure to make, and there will be the risk that it will be some time before he can dispose of the whole of the land.

10. It may be in this particular schema a purchaser would expect that some of the better plots would soon be disposed of. But the other interior plots would certainly not realize anything like the same rate, and some of them might not even be sold for a Considerable period. So that when a purchaser buys in this wholesale fashion, although he may be "beyond the class of speculators, he must make a very large deduction from the gross proceeds before he arrives at the price he is willing to give. When tested in the light of these considerations, it is inevitable that the award, approved of by the assessors cannot possibly stand. The question to be asked is, whether any purchaser would have been bound to give ₹ 2, 75, 552/- for this area. In order that he might make a reasonable profit on the outlay, having special regard to the risks of engaging so large a Capital in the enterprise, he would have to expect to realize for the inferior plots far higher prices than were realized by sale of the frontage plots immediately before the date of the notification.

11. Frontage land derives its value from the advantage of much higher rents being received from shopkeepers from the ground floors of the buildings raised thereon, than can be paid by the tenants of tenement buildings, and as the interior land sloped away from the road and would require considerable outlay upon it before it could become attractive to purchasers even for such buildings, one of the most important elements, which the assessors have not considered at all, would be the period of time within which it could be reasonably expected by the purchaser that the whole of the area would be disposed of. Now the prudent purchaser, whom we are supposed to have in mind in all land acquisition cases, would not base his calculations on the expectation of realizing the highest prices for the land he was about to purchase within the shortest possible time. He would only expect to realize reasonable prices within a reasonable time, and if his estimate turned out to be falsified by favorable circumstances, he would accept the additional profit as one of the incidents of the of the risk he had undertaken. Valuation cases must be dealt with just as much from the point of view of the hypothetical purchase as of the claimant. The valuation itself must often be more or less a matter of guesswork. But it is obviously wrong to fix upon a valuation which, judged by everyday principles, no purchaser would be likely to give.

12. The assessors were entitled to express their opinion as to the value of the claimant's land, and I have given all due consideration to that opinion. But I do not think that they could have had in their minds all the various elements which have to be weighed when valuing undeveloped land. I have always been adverse to elaborate hypothetical calculations which are no more likely to lead to a fair conclusion than far simpler methods. But, in any event, no harm can be done by testing a

Conclusion arrived at in one way by a Conclusion arrived at in another. Text-books on the subject do not give one much information; that can only be gained from persons experienced in the business of land valuation. A very simple method of valuing land wholesale from retail prices is to take anything between one and half one-third, according to circumstances, of the expected gross valuation, as the wholesale price. I do not say that that should be relied upon by itself, but it affords a useful test of valuations arrived at by more detailed calculations, with regard to the cost of development, the area to be deducted for accommodation, the period to be allowed for disposal and, the purchaser's profit. Now, in this case, no purchaser could have expected to realize as much as ₹ 15/- a square yard for the whole, and the assessors' valuation would be far nearer the gross proceeds for the land retailed than the wholesale price. It must follow that ₹ 8/- a square yard was an extremely liberal valuation of the land as it stood at the date of the declaration.

13. In my opinion, the President's appreciation of the evidence led before the Tribunal is far more consistent with logic and commonsense than the expression of opinion we have on the part of the assessors, which is not supported by any reasons at all. Therefore, the appeal succeeds, and, agreeing with the President we restore the award of the Land Acquisition Officer. The appellants will be entitled to their costs in this Court and in the Tribunal. The cross-objections are dismissed with costs.

Coyajee, J.

14. I am of the same opinion.

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