

# **BOMBAY HIGH COURT**

The Borough Municipality of Ahmedabad

Vs.

Jayendra Vajubhai Divatia

Civil Revision Application No. 326 of 1936

(John Beaumont, Kt., C.J.)

02.12.1936

## **JUDGMENT**

### **John Beaumont, Kt., C.J.**

1. This is an application in revision under Section 115 of the Civil Procedure Code, it being alleged that the learned Judge has exercised a jurisdiction not vested in him. The point raised is of some importance in connection with compulsory purchases under the Bombay Municipal Boroughs Act, 1925. Under Section 118 the Municipality can lay down lines of the public streets, and acquire land for adding to a street, and then Sub-section (3)(c) provides that compensation, the amount of which shall in case of dispute be ascertained and determined in the manner provided in Section 198, shall be paid by the Municipality to the owner of any land added to a street under Clause (b) of Sub-section (3) for the value of the said land. So that, what is to be paid is compensation for the value of the land compulsorily taken. Then Section 198 provides for the method of assessing compensation. If the amount is not agreed, the parties have to appoint arbitrators, who are to select a sirpanch, and in the event of this panchayat not arriving at a decision, then the matter shall, on application by either party, be determined by the District Court, which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court, with the two exceptions which are referred to in the proviso following. Now the question is whether the District Court, in fixing compensation for the value of the land, is entitled to allow fifteen per cent, on account of the compulsory nature of the acquisition. There is no express provision in the Bombay Municipal Boroughs Act allowing for such addition to the compensation, but under the Land Acquisition Act fifteen per cent, is allowed in respect of the compulsory nature of the acquisition, and the question is whether that provision in the Land Acquisition Act can be treated as incorporated into Section 198 of the Bombay Municipal Boroughs Act as being part of the procedure provided by the Land Acquisition Act. I agree that, prima facie, a provision of this sort, adding to the compensation to

be payable for the value of the land, is not aptly described as Procedure, but still one has to look at the Land Acquisition Act and note the phraseology adopted. One finds Part III headed "Reference to Court and Procedure thereon." Then there are provisions for referring disputes as to compensation to the Court, and certain procedure is laid down, and then Section 23 provides in Sub-section (1) that in determining the amount of compensation to be awarded for land acquired under the Act the Court shall take into consideration certain matters therein specified, and then Sub-section (2) provides that "in addition to the market value of the land as above provided, the, Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition." Then Section 24 provides that the Court shall not take into consideration certain specified matters, of which the second is, any disinclination of the person interested to part with the land acquired, and then Section 25 contains more provisions as to the method of calculating compensation. It seems to me that Sections 23, 24 and 25 of the Act constitute a Code laying down the principles on which the District Court is to act in arriving at the compensation to be paid, and it is quite impossible to leave out of that code Sub-section (2) of Section 23, as Mr. Shah has invited me to do. His contention is that the fifteen per cent, is an allowance of something in addition to the value of the land, which has to be paid for under the Municipal Act. But the truth is that the sections determine the basis on which the value of the land is to be ascertained on compulsory purchase and the allowance of the fifteen per cent, must be set off against matters disallowed under Section 24. These provisions in the Land Acquisition Act are contained in a Chapter entitled "Reference to Court and Procedure thereon," and I think that they must be treated as applicable to proceedings in the District Court under Section 198 of the Bombay Municipal Boroughs Act. In my opinion, therefore, the judgment of the learned District Judge was correct, and he was entitled to allow the fifteen per cent, for compulsory purchase. The two cases on which Mr. Shah relied and which are referred to in the judgment of the lower Court, *The Municipal Commissioner for the City of Bombay v. Patel Haji Mahomed Ahmed Janu*<sup>1</sup> and *Municipal Commissioner for the City of Bombay v. Syed Abdul Huk*<sup>2</sup> were cases in which there was no provision similar to that in Section 198(3) of the Bombay Municipal Boroughs Act incorporating the procedure under the Land Acquisition Act. Therefore those cases afford no assistance to me in deciding the present case. The application must be dismissed with costs.

Application dismissed.

<sup>1</sup> I.L.R. (1890) Bom. 292

<sup>2</sup> I.L.R. (1893) Bom. 184