

BOMBAY HIGH COURT

Special Land Acquisition Officer

Vs.

Lakhamsi Ghelabhai

Land Acquisition Ref. No. 10 of 1956

(Shelat, J.)

27.04.1959

JUDGMENT

Shelat, J.

1. The question raised by Mr. Laud is one of importance under the Evidence Act. Mr. Laud urged that the judgment in L. A. Reference Nos. 2, 3 and 4 of 1949 decided by Mr. Justice Tendolkar on 6th July 1953 relating to plots Nos. 66 to 69 situate near the land concerned in this Reference is admissible as evidence to establish (i) the value of those plots and (ii) to regard those plots as Instances and to deduce from the value thereof as determined by Mr. Justice Tendolkar the market value of the plot in question. The learned Advocate General has objected to that judgment being admitted as evidence on the ground that it is not relevant under any of the provisions of the Evidence Act. The question has been argued at considerable length and it being one on which there is hardly any reported precedent, both sides have requested me to give reasons for my decision.

2. Now the parties concerned in those References were different except that one side in all these References is always the Land Acquisition Officer representing Government. The acquisition of those lands took place in January 1946 which was the date as of which the value of those lands had to be ascertained whereas the notification under section 4 of the Land Acquisition Act in this case is of 19th January 1951. Tendolkar J. valued those plots on several Instances of sale and other evidence led before him. Neither those Instances nor that evidence on which that learned Judge came to his conclusion are before me. The point for consideration therefore is whether a judgment in another Land Acquisition Reference not inter partes and with reference to another property, even if situate in the vicinity of the land in question, is admissible as an Instance from which the market value of the land in question can be deduced.

3. The Advocate General contended that the only provisions under which a judgment in another

case is admissible are those contained in sections 40 to 43 of the Evidence Act and that the judgment of Tendolkar J. does not come within anyone of those sections and therefore cannot be admitted. Section 40 enacts that the existence of a judgment which by law i.e. by the provisions of the Code of Civil Procedure or Code of Criminal Procedure constitutes *res judicata* or autrefois acquit or autrefois convict is a relevant fact. In such cases however, the judgment is inter partes. Section 41 deals with judgments which are called judgments in rem, that is judgments which are conclusive not only against parties thereto but against all persons. Section 42 makes those judgments relevant which relate to matters of public nature, though they are not inter partes. Mr. Laud conceded that none of these three sections would be applicable but he relied on Section 43 which provides that a judgment other than those mentioned in sections 40 to 42 is irrelevant unless the existence of such a judgment is a fact in issue or is relevant under some other sections, e.g. sections 8, 11, 13, 54 (Expl. 2) etc. Sections 8 and 54 (Expl. 2) have obviously no application to the question before me and therefore need not be considered. The question then is whether either Section 11 or Section 13 applies.

4. Section 13 enacts that where the question is as to the existence of any right or custom, any transaction by which that right or custom was created, claimed, modified, recognised, asserted or denied or which was inconsistent with its existence or any particular instance in which such right or custom was claimed, recognised or exercised or in which its exercise was disputed, asserted or departed from is relevant. Now the right or custom referred to in this section is not confined to public right or custom but includes all sorts of rights and customs, though they must relate to property in respect of which a subsequent litigation has arisen. But even where in such subsequent litigation the question of right or custom arises, the view as expressed in *Gujja Lall v. Fatteh Lall*¹, at one time was that a judgment, if it did not fall within Sections 40 to 42, would not be relevant. But the Privy Council in *Dinomoni v. Brojomohini*², disagreed with that view and held that certain orders passed under Section 145 of the Criminal Procedure Code were admissible both under general principles and under section 13 to show the fact that they were in fact made and that such orders would be evidence also on the question as to who the parties to the dispute were, what the land in dispute was and who were declared entitled to retain possession. Relying on this decision it has been held since then in a number of decisions that a judgment, even if not inter partes is admissible to prove the fact of a claim to a right having been previously made and the legal effect of such a judgment.

5. But in order to determine whether a particular judgment, not inter partes of course, is admissible, the tests laid down in clauses (a) and (b) of section 13 have to be borne in mind. The judgment must be in a litigation in which a right or custom is created, claimed, asserted, denied etc. If it is relied on as an instance it must be one in which again a right or custom was claimed, recognized, exercised etc. Thus a judgment in a previous litigation to which one party in the subsequent litigation was not a party can be admissible for corroboration of a fact asserted by the other party in oral evidence, viz. that that party had asserted a claim, for instance, over the disputed land at some period. Thus in *Lakshman v. Amrit*³, the question was whether a partition

deed relied on by one of the parties was a genuine document. Ranade J. held that though the decision in the former suit where the same document was dealt with, would not amount to res judicata, still the record and the judgment in that suit would be relevant to show the conduct of the parties therein and their admissions. At p. 398 of the report he observes :

"Except where they are judgments in rem or where they relate to public matters, judgments not inter partes have been always held to be not res judicata, but they

¹ ILR 6 Cal 171 (FB)

³² Bom LR 386

²²⁹ Ind App 24 (PC)

cannot be wholly excluded for other purposes in so far as they explain the nature of possession or throw light on the motives or conduct of parties or identify property."

Similarly in *Govindji Jhaver v. Chhotalal*⁴, Jenkins C. J. and Candy J. held that where a judgment not inter partes is in a suit brought by certain creditors against the same defendants in which the existence of partnership denied in the subsequent suit, was asserted with success, the judgment in the previous suit is admissible, though it is not conclusive on that question. Likewise in *Dharnidhar Dev v. Dhundiraj*⁵, Jenkins C. J. and Batty J. held that for a judgment to be admissible it is not necessary that it should be one inter partes or a judgment in rem. See also *Mahomed Amin v. Husan Mahamad*⁶, where a previous judgment, though not inter partes, was held admissible to prove that a sale deed relied on by the plaintiff was disputed as non-genuine in the previous litigation. A judgment not inter partes may not be proof of facts therein stated, yet it is admissible for the purpose of explaining the character in which possession of a property has been enjoyed and matters of that class.

It is thus a settled rule that judgments not inter partes and though not falling under Sections 40 to 42 are relevant for certain purposes under section 13 where they are relied on as establishing the fact of a right or custom having been previously created, claimed, modified, recognised, asserted or denied.

6. The next section on which reliance is placed is Section 11, which enacts that facts not otherwise relevant are relevant if they are inconsistent with any fact in issue or relevant fact or if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. The contention is that a decision which has determined the value of a property in the vicinity of the property in question is relevant for showing that a certain value claimed for the property in question is a highly probable fact. The question is whether such determination of the value of such a property is a fact.

7. Though Section 11 is expressed in wide terms a series of decisions have expressed the view that it is not to be widely construed. The sort of facts the section is intended to include are those which either exclude or imply more or less distinctly the existence of facts sought to be proved. But there is a distinction between the existence of a fact and a statement as to its existence. It is the former only that is relevant under Section 11. The words "highly probable" in section 11

point out that the connection between the fact in issue and the collateral fact sought to be proved must be so mediate as to render the co-existence of the two highly probable. The admissibility of a particular piece of evidence that is offered must therefore be so closely connected with and in fact must depend on the weight to be attached to that piece of evidence if it is taken into consideration.

8. Is a judgment then a fact which would be relevant under Section 11? Section 2(9) defines "judgment" as a statement given by a Judge of the grounds of a decree or order. In ILR 6 Cal 171 (188) (FB), Garth C. J. said that a judgment is no more than an opinion. The same view has also been expressed by a Full Bench of the Allahabad High Court in

⁴² Bom LR 651

⁶⁹ Bom LR 65

⁵⁵ Bom LR 230

*Collector of Gorakhpur v. Palakhdhari Singh*⁷, Since section 11 talks about collateral facts only as being relevant, a judgment, not being a fact, could not have been intended to be relevant under that section. Section 11 therefore has no reference to judgments which are opinions in regard to the existence or non-existence of certain facts in dispute between parties. So far as Section 13 is concerned a judgment, not inter partes, can be relevant only if it falls under clauses (a) and (b) thereof and not otherwise. It is neither a transaction nor an instance; it is not relevant also under Section 11 as it is not a fact but a mere opinion as to the existence or otherwise of a fact.

9. But it is argued that although a judgment determining the value of another property may not fall either under section 11 or section 13 of the Evidence Act, it would still be admissible on general principles for it would be illogical to admit evidence of a sale of another property and not to admit a judgment which has decided the value of another such property. Such a judgment, it is argued, may not be conclusive even with regard to the value of the property with which it is concerned; nonetheless it is relevant as a piece of evidence showing the value of that property. There are, however, difficulties in acceding to these arguments. The first difficulty is, as argued by the learned Advocate General, that whereas evidence as to a sale is subject to the test of cross-examination, a judgment is not. The second difficulty is that since such a judgment is not conclusive as it is conceded even by Mr. Laud, all the evidence on which that judgment depends must become evidence in a subsequent case and has to be subjected to the scrutiny of cross-examination. If a claimant relies on a previous judgment all that he would have to do would be to produce it and although the burden of proof of showing a certain value of the property in question is on him, that burden in every case where such a judgment is produced would shift on the other side to establish that the determination of the value of the property involved in that case was not correct or valid. The third difficulty is that since such a judgment is admittedly not conclusive it would have to become subject to a review by another Court of an equally co-ordinate jurisdiction. Such a result could not have been intended by the draftsman of section 11 or section 13 of the Evidence Act.

10. But Mr. Laud urged that a judgment in a Land Acquisition Reference must be admitted in evidence as an instance as it is a solemn determination of the value of the property involved in it by a competent Court and has consequently a better sanctity than evidence of a sale effected by private parties. He argued that such a judgment would be both a transaction and an instance within the meaning of Section 13 of the Evidence Act and has been so held in a number of decisions.

11. In support of this argument Mr. Laud first relied on *Madan Mohan v. Secretary of State*⁸, where a Division Bench of the Calcutta High Court held that previous decisions in land acquisition cases are relevant in a subsequent land acquisition case where the market value of land in the same neighbourhood is in issue. There the question as to admissibility of a previous judgment arose in an appeal against an award passed by the Calcutta Improvement Tribunal whose President had disallowed the claimant to adduce evidence with regard to compensation paid to him in respect of other properties belonging to him

⁷ ILR 12 All 1

⁸ AIR 1925 Cal 481

under previous judgments. It was contended that such judgments were admissible and that the ruling given by the President of the Tribunal was erroneous. Dealing with this contention, the learned Judges observed that in assessing the market value of a certain land price paid in transactions relating to other lands in the neighbourhood must be of some value and though what their value is, it is for the Court to decide, a previous judgment for that reason cannot be rejected. For the view taken by them they relied on the decision of the Privy Council in *Secretary of State v. India General Steam Navigation and Rly. Co. Ltd*⁹, stating that that was a clear authority for the proposition that previous decisions in land acquisition cases are relevant in a subsequent case, where the market value of land in the same neighbourhood is in issue. Another decision relied on is that in *Secretary of State v. Amulya Charan*¹⁰, where it was again held, relying on the same decision of the Privy Council, that prices, which are given by the Collector to persons whose lands are acquired and who accept them without protest, constitute valuable evidence in assessing the market value of the property in suit. Similarly in *Pribhu Doyal v. Secretary of State*¹¹, decided by Tekchand and Walker JJ. certain awards made by the Collector in other acquisitions by Government were allowed to go in as evidence. Relying on these cases Mr. Laud urged that awards made by the Collector and accepted by parties and previous judgments in respect of other properties in the neighbourhood of the property in question are admissible.

12. Now, the question as to admissibility of awards stands on a different footing than the one relating to judgments and therefore I will first deal with the question of awards. Now it is well settled that an award made by a Land Acquisition Officer is not an admission binding on Government for the purposes of a Reference under Section 18 of the Land Acquisition Act. The Land Acquisition Officer occupies no better position than that of an agent of Government of the purpose of making an offer. That offer may be accepted or rejected by a claimant, who, if dissatisfied with it, ask for a Reference. When the matter comes before the Court on such a Reference, it is the Court who has to determine the question of valuation on evidence and

evidence alone. The award thus being a mere offer, it is difficult to see how it can become evidence in another case in which different parties and different properties are concerned. Besides, an offer is at best opinion evidence, which cannot become admissible unless the person making the offer gives evidence about it. The decision reported in AIR 1931 Lahore 364, gives no reasons why such an award amounts to evidence binding on a person who is not a party to that award, nor does it mention any of the provisions of the Evidence Act under which it becomes relevant evidence. Allowing an award as evidence, besides, is inconsistent with its very nature for it is nothing which is final. It is at best an offer which is not binding either on the claimant or Government and is subject to its being set aside by a Court. The fact that it was accepted by a claimant without asking for a Reference is also immaterial for a claimant might not seek a Reference for fear that it would involve him into litigation involving costs and time. With great respect to the learned Judges who decided that case it is not possible for me therefore to agree with the principle they are said to have laid down that an award is admissible evidence.

13. With regard to the question as to judgments not inter partes and dealing with other properties, it is necessary to observe that the two Calcutta decisions relied on by Mr. Laud

⁹36 Ind App 200 (PC)

¹¹ AIR 1931 Lah 364

¹⁰ AIR 1927 Cal 874

also do not mention any of the provisions of the Evidence Act under which they are relevant. It is clear from the reports of these two decisions that the learned Judges who decided them relied solely on the decision in 36 Ind App 200 (PC), as an authority. It becomes therefore necessary to see if that decision really lays down the principle which the two Calcutta decisions lay down. Though the Privy Council judgment is reported in 36 Ind App 200, a fuller report of it is to be had in ILR 36 Cal 967 (PC).

14. The case arose out of acquisition of 53 bighas of land situate on Garden Reach Road bearing numbers 6, 7 and 8. The land was acquired for improvement of the Kidderpore Docks at the instance of Port Commissioners of Calcutta. The Special Land Acquisition Judge of the 24 Paraganas in a Reference made to him under Section 18 of the Land Acquisition Act estimated the value of the land at Rs. 500/- per cottah against which an appeal was filed in the High Court claiming Rs. 1,000/- per cottah and challenging the method of valuation adopted by the Special Judge. The High Court rejected the valuation placed by the Special Judge and awarded higher rates against which the Secretary of State appealed to the Privy Council. From the judgment of the High Court which is included in the report it appears that among other evidence two previous judgments of the High Court dealing with other lands in the vicinity were relied on by the claimant. At p. 971 of the report the High Court observed as follows :

"But basing our valuation on the evidence given in this case on both sides and taking into consideration such evidence as to rates of rent, sales and awards, we are inclined to value the land at very much the same rates given by the learned Chief Justice and Mr. Justice Geidt for the land taken up at the corner of Watganj and Garden Reach Roads. This land is very near, if it is not the nearest land to the subject of this Reference, of the value of

which we have evidence."

It is thus manifest that the High Court did take into account at least one of the two previous judgments admitted in evidence, viz., the one of the learned Chief Justice and Geidt J., and relying on it together with the other evidence raised the compensation. Before the Privy Council, Cohen K. C. who appeared for the Secretary of State argued that "the judgment in the previous case relied on by the High Court was not evidence in the present case of the value of the land in dispute. The land to which that judgment related had, by reason of its position in a highly congested business area at the junction of two traffic thoroughfares, a special and extraordinary value and it had nothing in common with the land now in question which could form the basis of comparison between the two in estimating their respective values". He argued further that the High Court had disregarded evidence relating to other lands which were more similar to the land in question and that the High Court had erred in setting aside the method of valuation adopted by the Special Judge and in ignoring the fact of his special knowledge in connection with such valuation. Mr. Laud contended that from the summary of arguments it appeared that counsel for the Secretary of State did raise the question as to the admissibility of a previous judgment in another acquisition case and that the Privy Council assumed that such a judgment was relevant and did not therefore expressly answer that argument. That is not correct. If such a contention was in fact raised, counsel of the eminence of Sir R. Finlay who appeared for the claimant could not have remained silent over it. Lord Collins who delivered the judgment of the Board was also bound to deal with such an important contention. It appears, on the contrary, from the arguments of counsel that the contentions raised were mainly : (1) that the High Court erred in relying on valuation made in the previous judgment in respect of a property which was not comparable and which had special advantages and (2) that it also erred in discarding the method of valuation adopted by the Special Judge in view of his special knowledge of such cases.

15. As I read this judgment it is clear to me that the question whether such a previous judgment or award was admissible under the Evidence Act or not was not argued before the Privy Council and therefore the Board was not invited to decide that question. This is clear still from the judgment itself. At p. 974 of the report, Lord Collins deals with the contentions of Cohen K. C., as follows :

"It seems to their Lordships that there is no principle involved in this appeal. In fact the main argument of the appellant is a practical denial of the right of the High Court to review the findings of the Special Judge, whose great experience in such cases, they suggested, ought to outweigh all other considerations. Indeed, when one comes to close quarters with their objection to the decision, "it seems to resolve itself to no more than this, that the Court gave undue weight to the prices paid on the sale of a particular piece of land in the vicinity as affording a guide to the compensation to be awarded in the case before them. It is by no means clear to their Lordships that there is any good ground for this suggestion."

I do not see either in this passage which deals with the contentions raised on behalf of the Secretary of State or anywhere else in the judgment Lord Collins either assuming or laying down the principle that a previous judgment in another acquisition case is admissible. That question was not raised before the Board and the Board did not answer it as it was not called upon to do so. With great respect to the learned Judges who decided the cases reported in AIR 1925 Calcutta 481 and AIR 1927 Calcutta 874 it is difficult to see how the decision in 36 Ind App 200 : ILR 36 Cal 967 (PC), can be regarded as an authority for the proposition they laid down.

16. Another decision of the Privy Council to which my attention was drawn is to be found in *Atmaram Ghadgay v. Collector of Nagpur*¹², where some 258 acres of land belonging to 25 owners including the appellant were acquired. The Collector treated the entire land as purely agricultural and awarded Rs. 60/- per acre. The other owners accepted the award but the appellant asked for a Reference asserting that the lands should be valued as building sites. The Dist. Judge rejected the Collector's award holding that the lands should be valued on the basis of their being "problematical building sites in an undeveloped form" and valued them at Rs. 300/- per acre. Against this decision Government filed an appeal before the Judicial Commissioner's Court of Nagpur in which the Collector emphasised as his main contention the inference to be deduced from the acceptance of the awards made by him by the owners of lands other than the land of the claimant. The claimant objected to this plea and claimed the right to cross-examine those owners and thereupon the Judicial Commissioners remanded the case to the District Judge to take evidence. Evidence was taken accordingly but strangely those other owners, vouched by the Collector, were left to be called by the claimant and were cross-examined therefore not by him but by the Collector. Even so, the evidence was that they accepted the awards

¹² AIR 1929 PC 92

not because they were satisfied with them but because they did not wish to involve themselves in litigation or because they did not have the necessary funds to launch litigation. Ignoring this fact and the rest of the evidence, the Judicial Commissioners relied only on the fact of the acceptance of the awards by those other owners, and reversed on the strength of that fact the decision given by the District Judge and restored the award of the Collector. The Privy Council held that the Judicial Commissioners erred in ignoring all the considerations pertinent to the claimant's own lands and in founding themselves exclusively on the evidence of the price accepted for other plots by those other owners, the conditions of which were not fully before them.

17. Now it is true that the awards made in respect of lands other than that of the claimant and the fact of their having been accepted were admitted in evidence. Mr. Laud relied therefore on this decision and argued that in this case also the Privy Council did not observe that the awards were not admissible or that they had been wrongly allowed to go in evidence. But that is a wrong way of viewing this decision. The mere fact that the Privy Council did not say that the awards were wrongly inserted in evidence does not mean that their Lordships therefore laid down the proposition that such awards are admissible as canvassed by Mr. Laud. It is clear from the

judgment of the Privy Council that that question was again not raised before their Lordships nor was it dealt with by them. That question was not raised on behalf of the claimant probably because on merits there was clear evidence that those other owners had accepted the awards made in respect of their lands not because they considered them to be satisfactory but because of want of funds to proceed further and because of their unwillingness to involve themselves in litigation. Since acceptance in such circumstances could not make those awards conclusive on the question as to the market value of the claimant's lands, the Privy Council interfered and set aside the judgment of the Judicial Commissioners. The point whether awards in respect of other lands are relevant has thus not been dealt with in this decision. Therefore this decision again cannot be taken as an authority on that point.

18. The last case referred to me was *Ram Ranjan Chauckerbutty v. Ram Narain Singh*¹³, The principle deducible from this decision is that certain decrees previously passed, to which the plaintiff's predecessors-in-title were not parties but which sustained the defendants' claim to hold the lands in dispute at certain fixed rents relating to which the plaintiffs had filed the present suits for ejectment, were admissible in evidence as showing ancient possession and assertion of title many years ago and those decrees taken along with other evidence showed defendants' possession at a uniform rate for so long a period as to raise a presumption that the tenure was of a permanent nature. It is thus clear that the decrees though not inter partes were admitted in evidence as showing the fact of the defendants having claimed as tenants the right to possession in the past and that right having been recognised. The ground of admission of these decrees in evidence is therefore quite different than the one submitted by Mr. Laud for admission of Mr. Justice Tendolkar's judgment. It was a ground which clearly fell under Section 13 of the Evidence Act.

19. In my view the Privy Council decisions relied on by Mr. Laud do not lay down the principle that a judgment not inter partes and relating to other land is admissible as either an instance or one from which the market value of the property in question can be

¹³22 Ind App 60 (PC)

deduced or inferred. Such a judgment cannot obviously fall under Sections 40 to 43 or under Section 11 or Section 13 of the Evidence Act. The decisions of the High Court of Calcutta cited by Mr. Laud cannot with great respect, be accepted as authorities for the proposition that a previous judgment not inter partes and with reference to other land is admissible, for those decisions are based solely on the Privy Council decision in 36 Ind App 200 : ILR 36 Cal 967, which lays down no such principle. So far as the decision in AIR 1931 Lahore 364, is concerned it is one which is contrary to the well-recognised concept of an award of a Land Acquisition Officer and therefore again with respect I cannot follow it. On the other hand I find myself supported in the view I take by the observations of Mr. Justice Macleod, as he then was in *Government of Bombay v. Tar Muhamad*¹⁴, where the learned Judge declined to take into consideration the amount awarded by a previous judgment of this Court for another property remarking that he could not obviously do so without considering all the evidence on which that

judgment was founded as the judgment by itself was no evidence for the market value of the property in question.

20. For the reasons aforesaid I have come to the conclusion that the judgment of Tendolkar J., sought to be included in evidence is not admissible and the contention of Mr. Laud must therefore be rejected.

Answered accordingly.

¹⁴ ILR 33 Bom 325