

(1958) 08 BOM CK 0022

In the Bombay High Court

Case No : First Appeal No. 371 of 1956 and 480 of 1957

Additional Special Land Acquisition Officer, Poona

APPELLANT

Vs

Shantaram Shamrao Ghole

RESPONDENT

Date of Decision : 06-08-1958

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1960 Bom 448 : (1959) 61 BOMLR 95

Hon'ble Judges : Shah, J;Datar, J

Bench : Division Bench

Advocate : Government Pleader and M.A. Rane, Assistant Govt. Pleader, for the Appellant; K.V. Joshi and G.S. Gupte, for the Respondent

Judgement

Shah, J.

(1) By a notification dated 25th February 1952 u/s 4 of the Land Acquisition Act, the Government of Bombay notified part of City Survey No. 369A admeasuring 26010 square feet of Nana Peth, Poona, as likely to be needed for a public purpose viz: vegetable market and a cart stand. The Land Acquisition Officer awarded to the claimant Rs. 61, 470 by valuing the land at Rs. 4-8-0 per square feet because in his view that land could be developed by laying it out into 14 building plots in two rows divided by a road. He awarded Re. 1 for the road-land admeasuring 289" X 25". In addition, the Land Acquisition Officer awarded to the claimant the 15 per cent. solatium. The claimant feeling dissatisfied with the award, applied for a reference u/s 18 of the Land Acquisition Act. The learned Civil Judge, Senior Division at Poona, who heard the reference, confirmed the valuation of the land made by the Land Acquisition Officer. But he awarded to the claimant compensation at the rate of 14 annas per square feet for the area of 289" X 25" reserved under the scheme for the road. The Land Acquisition Officer, it appears, had made certain deductions in respect of the development of the land, such as deduction for expenses for constructing roads, and for providing electricity, water connections, drainage, and those deductions aggregated Rs.

7,443. The learned Judge disallowed those deductions and awarded to the claimant Rs. 15,829-14-0 in addition to the amount awarded by the Land Acquisition Officer. The Land Acquisition Officer contends that the additional amount awarded by the learned trial Judge should be disallowed to the claimant. The claimant claims an additional amount of Rs. 21,879-4-0 being the aggregate value of 395 square feet, and the value of the land reserved for road at the rate of Rs. 3-2-0 per square feet. He has also claimed 15 per cent. solatium on the additional amount.

(2) C. Survey No. 369A Nana Peth is of inamtenure. Out of the land a portion in the northern half, 90 feet in width having a frontage on a public road to its west and 289 feet in length admeasuring in the aggregate 26,010 square feet was proposed to be acquired for the construction of the Poona City vegetable market and cart stand. It appears that out of this land two pieces 1305 square feet on the North-Eastern corner and 75 square feet at the South-East could not be acquitted under this notification as they belonged not to the claimant but to two other persons Parvatibai wife of Bhikoba More, and Mahamad Ali Rehman Baksh. In the southern half of the city Survey No. 369A Nana Peth stood two chawls. These chawls were mortgaged in the year 1947 and that an amount of Rs. 1,543 was due and unpaid was Municipal taxes in respect of chawls standing on this land. The land under acquisition abuts on the west on the Math Road. On the North is the property of another person and to the South is a chawl belonging to the claimant.

(3) The Land Acquisition Officer was of the view that the land had a building potentiality, it being within the built up sector of the Nana Peth Locality. The learned trial Judge agreed with that view, and it is not disputed before us that the land under acquisition has to be assessed as building land, even though at the date of the notification it was lying open and unused.

(4) In the year 1947 it appears that the claimant desired to convert this land into a building site, and he laid out the land into fourteen building plots. Plots 1 to 7 were on the Northern side of the plot, and the remaining plots 8 to 14 were on the Southern side. These two rows of plots were divided by a road of 25 feet in width out of the plots so laid out, plot No. 7 was sold by the claimant by a deed dated 15th December 1949 to one Parwatibai at the rate of Rs. 3-1-0 per square feet. The price charged for this land in half the width of the road on which plot No. 7 abutted. The area of the plot No. 7 was 930 square feet, but the claimant obtained the price from Parwatibai for an additional area of 375 square feet on the footing that he was selling half the width of the road to Parwatibai under the sale deed. In the sale deed there was a covenant under which the purchaser was not to put up any structure in an area to the South of the demarcated plot admeasuring 12'6" X 30" and that she was to put up the structure only on 31' X 30" with the permission of the Municipality. It appears that an area adjacent to Plot No. 14, which was an open piece of land also belonging to the claimant was sold at the rate of Rs. 3 per square feet by sale deed dated 20th August 1951.

(5) There is no evidence of a sale about the date of acquisition of comparable land of this dimension in this sector and it is difficult to arrive at the valuation of the land at an overall rate. The claimant was again not receiving any income out of the land, and the valuation of the land cannot be made by capitalising the net income received by the claimant. The land being building land and undeveloped, valuation by capitalising the income even if some income was received may be unfair to the claimant. Nor is there any expert evidence about the market value of this land. In the circumstances, the only method of valuation which may usefully be resorted to is the method of a hypothetical building scheme, which is often resorted to in valuing lands in built up localities; and both the Land Acquisition Officer and the learned Civil Judge have adopted this method of valuation.

(6) The Land Acquisition Officer valued plots Nos. 1 and 8 which abutted on the Math Road at Rs. 5 per square feet. He valued the two Eastermost plots at Rs. 3. He valued plots Nos. 2, 3, 9 and 10 at Rs. 3-8-0 per square feet, and plots Nos. 4, 5, 6, 11, 12, 13 and 14 at Rs. 3 per square feet. The Land Acquisition Officer computed aggregate price of plots Nos. 1 and 8 at Rs. 17,875 of plots Nos. 2, 3, 9 and 10 at Rs. 18,270 and of plots Nos. 4, 5, 6, 11, 12, 13 and 14 at Rs. 25,830. Adding thereto Re. 1 which he regarded was the nominal value of the land reserved for the Road he awarded to the claimant Rs. 61,976. The Land Acquisition Officer then deferred the value of the land for two years at the rate of 5 per cent. on the view that all the plots may be disposed in four years. He accordingly held that Rs. 56,212 was the value of the land at the date of the publication of the notification.

(7) The learned trial Judge approved of the method of valuation adopted by the Land Acquisition Officer as fully developing all the potentialities of the land. He valued plots 1 and 8 at Rs. 5, and plots 2, 3, 9 and 10 at Rs. 3-8-0, and the remaining plots at the value of Rs. 3. Neither side has in these appeals sought to directly challenge the valuation of the plots. The learned trial Judge was of the view that the Land Acquisition Officer was in error in assessing the market value of the open land compensation for the land reserved for the road should have been taken at 25 per cent of the market value of the land forming the plots, even though that land was to be kept open as reserved for road. In the view of the learned Judge the Land Acquisition Officer was also in error in deducting the amount of Rs. 7,443 for estimated expenses of providing water mains, drainage line and construction of roads. He expressed the view that the claimant had been able to sell plot No. 7 without any amenities such as were contemplated by the Land Acquisition Officer, and there was no condition in the sale deed informing an obligation upon the claimant to provide facility for drainage and a water connection. He observed that the claimant had realised price at the rate of Rs. 3-1-0 per square feet for plot No. 7 without any condition of providing those amenities, and the claimant had also sold a plot to the North of plots Nos. 13 and 14 at the rate of Rs.3 per square feet in the year 1951 and even in that sale deed there was no condition of the sale deed about providing the above

amenities. He then observed:

"It is hence appeared that the prices realised for these plots were without any condition for providing any such amenities to the purchasers of the plots. The same prices he would have realised for his remaining plots without any condition for providing the amenities stated above and hence the valuation of the plots made by the Land Acquisition Officer did not depend upon the condition that the above stated amenities would be provided for by the claimant, for the purchasers. I think, if the claimant had to provide the above stated amenities to the purchasers of the plots, the values of the plots would have gone further more than the values put down by the Land Acquisition Officer and the value actually realised by the claimant for the sales of the plot No. 7 the C. T. S., No. 369 and plot No. 15."

(8) He, therefore, disallowed the deduction of Rs. 7,443 made by the Land Acquisition Officer and awarded compensation for the road land at one-fourth the value of the building land.

(9) The learned Government Pleader who appears on behalf of the Land Acquisition Officer contends that the trial judge misconceived the contention advanced on behalf of the Land Acquisition Officer. He urges that the Court was called upon to decide the valuation of the land on the basis of exploitation for the most lucrative user, which in this case was undoubtedly by laying it out as building plots. Having regard to the locality and the sector in which they are situate, in assessing the market value of the plots demarcated, out of the land, the valuer must take into account the amenities which the persons who may be expected to purchase the plots may look for, and such amenities, according to the learned Government Pleader, in an urban area in the vicinity of a large town are, laid-out roads, electric connections, water mains and drainage connections. In our view this contention must be upheld. In assessing the market value on the basis of a hypothetical scheme for residential building by laying out the land in plots it is not what the claimant may have expected to receive by sale of area of one of two plots out of the land which is to be decisive of the value of the land, but what the valuer may regard as the value of the plots aggregated after taking into consideration the expenses of providing the amenities, which the purchasers may normally expect to obtain in the sector in which the land is situate. Evidently the land under acquisition is a large piece of land, and there is no evidence that the purchaser for this large piece of land. No evidence has been led by the claimant to show that any prospective purchasers had even made offers to him for purchasing the entire land. The land was therefore being valued as land laid-out into building plots; and if prospective purchasers investing large sums of money for purchasing separate plots were to be found, such purchasers would, in our judgment, expect to have the minimum amenities of town life such as water connections, well laid-out roads, drainage facility and electric connections. The value of the land assessed by the learned Judge in respect of the rear plots it comes to Rs. 27 per square yard. The circumstances that one

purchaser was willing to take up a plot without insisting upon the provision of water supply, drainage facility and electrical connection cannot justify the Court in assuming that all the plots may be sold at the rates at which one of the plots is sold. The learned trial Judge was in our judgment in error in assuming that because one person was found, who was willing to purchase plot No. 7 without the benefit of the amenities, which may be normally expected, that the claimant "was not found to provide such amenities" and the land may be valued without making any deduction for expense for the amenities. The question is not whether the claimant was bound to provide for the amenities according to the scheme developed by him, but it is whether it is reasonably possible to develop a piece of land near cart stand as a building site and to dispose of the plots at the rates fixed by the owner without providing for the normal amenities of town life. In our view, it would be difficult if not impossible to develop the scheme in its entirety, unless the amenities to which we have made a reference are provided for by the owner of the land.

(10) In the valuation of the land on the basis of a hypothetical building scheme, the valuer has to ascertain the maximum value of each plot laid out in the most lucrative manner in the light of its potentialities, and in doing so, expenses which may have to be incurred for developing the land in the most profitable manner have evidently to be taken into account. A land cannot be parcelled into building plots for residential purpose unless proper and adequate roads are demarcated and prepared; and it is only by the reservation of land for the roads that the building plots acquire a substantially higher rate than the overall rate of the land regarded as a single unit. In other words, the loss which the owner of land suffers by reservation of parts thereof for road is reflected in the higher price for the formed plots. If the claimant was unwilling to provide such amenities, as he claims he was unwilling to, we think that it would have been impossible for him to get any substantial number of offers for purchasing the lands. It is in evidence that even though the claimant had laid out the plots in 1949, within two years not more than 2 plots were sold. Purchasers who purchase this land at rates varying between Rs. 27 and Rs. 45 per square yard would, it appears not be forthcoming and a large number of plots may remain undisposed of, if the amenities of having well-laid out roads of reasonable width and provision for electrical, drainage and water connection not made. Evidently the land reserved for roads cannot be disposed of and it will have apart from the plots no market value. We are therefore, of the view that the learned Judge in the Court below was in error in allowing to the claimant additional value for the land reserved for the roads at the rate of 25 per cent. of the market value of the hypothetical plots laid out in the land.

(11) In support of his contention that even when valuation of land is to be made on the basis of a hypothetical building scheme, the road width has to be assigned some substantial market value, Mr. Joshi relied upon *Trustees for Improvement of City of Bombay v. Karsondas* ILR 33 Bom. 28, and *Secretary of State Vs. Sm. Dulali Bala Debi and Others*, . In our judgment these cases do not support the

contention advanced by Mr. Joshi. In Karsondas Nathu's case, an appeal was filed against the decision of a special Tribunal under the City of Bombay Improvement Trust Act. In that case the Tribunal appointed u/s 48(3) of Bombay Act IV of 1898 adopted an overall rate in respect of the entire area of land at Rs. 15-11-0 per square yard, and that overall area included the area which was to be set apart for the roads. It was in that context that Mr. Justice Batchelor, who delivered the judgment of the Court, observed that

"when once you have adopted the general principle of a sale of the land split up into parcels suitable for building, it appears not only unnecessary but inappropriate to make a special deduction on account of the small area marked off for the roadway."

That was a case in which the value of the land as a supplement was taken and deduction for expenses for providing road was sought to be made. The Court in that case did not assign value to individual plots but took the overall rate of Rs. 15-11-0 per square yard. If in the overall value the reduction in the value of the land to be reserved for road width was reflected, it is, with respect right to hold that it would be "unnecessary and inappropriate to make a special deduction on account of the area marked off" for the road. But that is not case in the present proceedings. Here we proceed to assess the value of land by valuing the plots separately, and in value of the plot so assessed is reflected the value of the amenity, namely, that adjacent thereto is a well laid out road of a width of 25 feet.

(12) The Calcutta High Court judgment in Secretary of State Vs. Sm. Dulali Bala Debi and Others, has, in our judgment no bearing to this particular question. In that case a building abutting on a common passage and with an interest in the passage was acquired under the Land Acquisition Act and subsequently there was another proceeding for acquisition of the land which was used for passage for that building. In valuing the building the existence of the passage which gave access to the building was taken into consideration and increased value was allowed having regard to the existence of the passage as a means of access. The Court found that the entire proprietary interest of the owners of the land in the subsoil was not acquired. The Court was therefore of the view that because the adjacent building had received a higher value for the existence of the passage, the land covered by the passage did not lose its value to the owners. We are unable to appreciate how that case can have any application to this case. Admittedly the building with appurtenant right of passage and the land of the passage were sought to be acquired in two separate values of the two components, and the fact that in valuing the building the value of the right passage was taken into account did not justify the view that all the rights in the land of the passage were acquired in the earlier proceeding. We are in the present case concerned to ascertain the value of the land laid out in the most lucrative manner for the benefit of the claimant. In laying out the land in that manner it would be unfair to award to the claimant the value of the separate

plots, in which is fully reflected the value of the additional amenity of having well laid out roads, and also separately to pay to the claimant the value of the land reserved for the road. In effect, it will amount to paying compensation twice over for the same land.

(13) On the view taken by us, the claimant's claim for additional compensation for the area of the road cannot be sustained.

(The rest of the Judgment is not material to this report).

(14) Order accordingly.