
(1913) 07 BOM CK 0012
In the Bombay High Court
Case No : Appeal No. 194 of 1912

Daya Khushal

APPELLANT

Vs

The Assistant Collector

RESPONDENT

Date of Decision : 23-07-1913

Acts Referred:

Citation : AIR 1914 Bom 284 : (1913) 15 BOMLR 845

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

Bench : Division Bench

Judgement

Batchelor, J.—This is an appeal from an award by the learned District Judge of Surat under the Land Acquisition Act. Two acres and thirty gunthas of land belonging to the appellants have been acquired by Government for the B. B. & C. I. Railway, and it is important to note that the land has been acquired for the purpose of quarrying.

2. The short point involved in the appeal is, whether the special adaptability of the land for quarrying is a matter to be excluded from consideration or not. The learned Judge below was of opinion that it should be excluded because the appellants had never obtained from the Government permission to quarry, and u/s 65 of the Land Revenue Code the right of Government to mines and mineral products in land such as this is expressly, reserved.

3. Now, to begin with, the appellants are entitled to claim that the compensation should be awarded to them on the footing that the " value of the land is determined, not necessarily according to its present disposition, but laid out to its most lucrative and advantageous way in which the owner can dispose of it" : see In the matter of the Land Acquisition Act X of 1870; Munji Khetsey ILR (1890) Bom. 279. It is quite true that u/s 65 of the Land Revenue Code the appellants are not entitled as of right to work the minerals in their land. That circumstance, however, is not decisive of the question as to the market value of the land. For, under Rule 39 of the Rules framed u/s 214 of the Land Revenue Code it is provided that " the Collector may, at his discretion, sell by public

auction or otherwise dispose of the right to remove stone or any other material which is the property of Government for such purposes, in such quantities and on such terms as he thinks fit." By this rule the Collector is empowered, if he so chooses, by private treaty with the appellants to authorize them to quarry in this land. It is admitted before us that in actual practice it is common for the occupants of such lands to obtain the Collector's permission to quarry on the payment of certain fees, and this admission receives countenance from the circumstance that a special scale of fees has been sanctioned for the removal of stone and other materials from the soil. So far, therefore, the appellants appear to be in no worse case than would be the owners of agricultural land for which, on its acquisition, the claim is made that the market value should be estimated on the footing of its building site value, because in the case of agricultural land its conversion into a building site equally requires the permission of Government and is equally subject to the levy of certain fees. Yet in *Bhujabalappa v. Collector of Dharwar* (1899) 1 Bom. L. R. 455 it was held that certain land, though technically agricultural land, was rightly valued on the basis of its being suitable for building purposes by reason of its proximity to a large town. The case, therefore, appears to us to fall within the principle which was laid down by the Court of Appeal in England in *Lucas and Chesterfield Gas and Water Board, In re* (1909) 1 K. B. 16. That was a case where the land was acquired for the purpose of making a reservoir. The land had a special adaptability for the construction of a reservoir, and it was laid down that the tribunal assessing the compensation ought to include in its consideration this special adaptability as an element of value, and that the consideration of this element was not to be excluded merely by reason of the fact that the land could not be actually used for the reservoir unless statutory powers for its compulsory purchase were first obtained. In delivering judgment Lord Justice Vaughan Williams quoted what was said by Mr. Justice Grove in *In Re Countess Ossalinsky and Manchester Corporation* referred to in [1909] K. B. 16 to the following effect:- "If the land has what I may call an adventitious value, that is, something beyond its mere agricultural or normal value, and that is a marketable value in this sense, that persons wishing, for a purpose for which the land is peculiarly applicable, to purchase that land would give a higher price for that land, than the arbitrator has a fair right to take that into consideration ; it is a matter no doubt contingent, but still it is a matter which is not to be ignored or put out of consideration by an arbitrator." So, here, it seems to us that the special adaptability of this land for quarrying is a matter which ought to be considered. In the result it may or may not be that the market value of the land will be held to be enhanced owing to the special adaptability. But the question is one which, we think, ought to be included in, and not excluded from, consideration. What the Court has to determine is the market value of this land, and it may be that a willing purchaser would increase the price otherwise payable for the land by reason of its adaptability for use as a quarry, and that the price so offered would still be an increase on the ordinary agricultural price notwithstanding that the purchaser had to allow deductions on account, first, of the risk of not obtaining the Collector's permission under Rule

39, and, secondly, of the fees which would be payable to the Collector in the event of permission being had. But the matter is one which, as we say, ought, in our opinion, to be considered, and since the learned Judge below has declined to consider it, we must now reverse his award and remand the case to him in order that he may decide it afresh in the light of the foregoing observations.

4. It will be open to either party to adduce fresh evidence with a view to throwing light on the question what is the market value of this land considered as a parcel of land with special adaptability for use as a quarry.

5. Costs will be costs in the reference.

6. We note for possible future guidance that the question as to the land's adaptability as a quarry, which we have discussed above, is the only question urged on behalf of the appellants.