

(1907) 12 BOM CK 0019
In the Bombay High Court
Case No : Reference No. 19 of 1906
In Re: Dhanjibhoy Bomanji

Date of Decision : 16-12-1907

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : (1908) 10 BOMLR 701

Hon'ble Judges : Macleod, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Macleod, J.—By a declaration, u/s 6 of the Land Acquisition Act, dated the 13th December 1904, and published in the Bombay Government Gazette of the 15th December 1904, the Local Government notified its intention to acquire certain plots of land in Mazagon at the expense of the Trustees of the Port of Bombay for the construction of a proposed Railway. Two of the plots referred to belonged to one Dhunjibhoy Bomanji, to whom the Collector awarded Rs. 2,64,702-10-2 as compensation inclusive of the 15 per cent, for compulsory acquisition. Dhunjibhoy dissatisfied with the award requested the Collector to refer the matter to the Court. The two plots dealt with by the Collector under cases Nos. 31 and 33 respectively are shown on the plan Exhibit 27, and for the purposes of my valuation have been admitted to admeasure 21,500 and 381 square yards respectively. They are situated in the centre of a portion of the Mazagon district which is bounded by Bhandarwada Hill on the west, Dockyard Road on the north, the sea on the east and Hospital Lane on the south. They are separated by a tank, but the whole belonged originally to one owner and formed a specious compound, containing buildings and a considerable garden area. The tank was afterwards dedicated to the public and the land under reference eventually came into the hands of a Parsi family of the name of Cooper. The executors of Cowas-Cooper put up this property with several others for sale in 1900 and this property was purchased by one of the sons, Hormusji Co-wasji Cooper at the auction for a little over Rs.75,000. The present claimant bought it from Hormusji by private treaty on the 12th February 1901 for one lakh. To the west and south of this

property there are streets mainly occupied by Native Portuguese. On the north are streets occupied mainly by Hindus. To the east is Moojawar Pakhadi Road. On the foreshore from north and south are situated the P. & O. Dockyard, the Viegas Patent slip, the British India Dock and the Port Trust Workshops. Between the Moojawar Pakhadi Road and the British Indian Dock there were a large number of small houses of which those towards the south were occupied by Native Portuguese and Europeans. In the north east corner between the road leading to the British Indian Dock and the Viegas Patent slip was Mazagon Koliwada inhabited by Kolis. In 1906 the British India Company were desirous of extending their property as far as the Moojawar Pakhadi Road. The claimant who has described himself as the general agent, contractor and right-hand man to the British India Company was then in Europe and so Mr. Jehangir Sorabjee, his solicitor who held his power of attorney, was consulted. Exhibit E. is a plan showing the position of the British India Dock and the areas the Company was desirous of acquiring. Mr. Jehangir was successful in buying up (he land surrounded with a blue line in Exhibit E. After the claimant's return in 1900 he made an arrangement in January 1901 with the Company regarding Koliwada under which in consideration of four lakhs he agreed to transfer to the Company all the land in Koliwada except two plots marked V1. and V2 on Exhibit E, and the public streets and passages surrounding the houses within a year and a half. The remaining properties surrounded by a blue line on Exhibit E-were to be bought by the claimant acting as agent for the Company and he was to get the building material for his remuneration. The claimant then proceeded as part of the scheme from his point of view to buy up all the land he could get on the west side of the Moojawar Pakhadi Road, partly in order to be able to give accommodation to the displaced Kolis and partly because he foresaw that that land would increase in value on account of the acquisition by the British India Company. Lists of the various sales have been put in admittedly correct as to the survey numbers areas and purchase prices. Exhibit D comprises the purchases effected by Mr. Jehangir. Exhibit F, the purchases effected by claimant on his own account. Exhibit G, the purchases in Koliwada, and Exhibit H, the purchases by claimant for the Company on the east of the Moojawar Pakhdi Road up to the date of the declaration. It has been necessary to detail at some length the history of the transactions of the claimant and the British India Company as it has considerable bearing as to what weight is to be attached to those transactions as evidence of values. Exhibit I gives particulars of three other sales in this neighbourhood, excluding the sale of the Viegas Patent Slip, apparently the only ones, except the sale to Chotani hereinafter referred to, between parties other than the claimant and the British India Company within a reasonable period before the declaration, of which evidence could be found. Admittedly the suggestions made before the Collector that this was a dying locality was incorrect. It has now been described as a stagnant locality, because up till 1904 it had remained much in the same condition for the last fifty years. But apart from the land in reference there was very little land unbuilt upon in the locality and I do not propose to attach much importance to the argument of stagnation

merely because houses did not tumble down to make land vacant for improved buildings or because purchases of land with buildings thereon do not seem to have been frequent, provided I am satisfied that other circumstances are fairly normal. The question arises how is the land in case No. 31 to be valued. Admittedly as it stood in 1904, mostly garden land with a few old buildings on it realising a rent of about 300 rupees a month, it was not properly developed. The Collector's valuation is apparently based on an hypothetical building scheme but neither side have relied on it before me or attempted to argue that this was a correct method of valuation. It was necessary, however, I should decide whether or not it was a correct method; and issue 6 was raised accordingly. As it had a direct bearing on what evidence should be brought by the parties, I treated it as a preliminary issue and decided it in the negative before any evidence was called. No doubt, in *In Re: Government of Bombay*, , at page 1267, the judgment says: "The hypothetical method appears to me open to no reproach if the hypothesis is based on inferences from ascertained facts." But it appears to me that in the case of an hypothetical building scheme this can never be done. The scheme depends on imaginary buildings fetching imaginary rents. The valuation starts from those imaginary rents and I fail to see how they can be inferred from ascertained facts, when they can only be inferred from imaginary buildings. If from the above quoted words it is to be presumed that a hypothesis can be based on inferences from ascertained facts, which is not altogether clear, I must venture with all due respect to the learned Judge who decided that case to differ. I think it will be found, when this so called method of valuation is carefully analysed, that it is a mere delusion to consider that one arrives at the market value of a large area of land by means of an hypothetical building scheme. I have little doubt that this method originated in the necessity experts found there was to give specific reasons for the high value they placed on land, which could not be supported by direct evidence. The principal ingredient in such a scheme is the gross rent expected to be obtainable from the buildings it is imagined will be erected on the land and it is imagined that the value of the land can be arrived at by making certain deductions from the gross rent. Now if the valuer first determined the rent, and the various deductions, and was prepared to abide by the result of the calculations made therefrom, it might be said that his valuation was based on an hypothetical building scheme. But apart from the fact that such a valuation would almost certainly be wrong it is quite clear from the Collector's decision in this case and from Mr. Chambers' evidence that this is not what is done. As a matter of fact the valuer has a preconceived opinion of the value of the land. It is 100 to 1 against his calculation fitting that opinion at the first time of asking, so he shapes and moulds his calculations until they do fit. By quite an easy step he deludes himself into thinking that his hypothetical calculations are the reason for his opinion. Mr. Chambers said in effect, fix your price for the land and I can make a scheme to fit it; show me a scheme that fits my valuation and I shall consider that a reasonable scheme, which shows that the scheme and the valuation have no relation to each other. The main question in dealing with the valuation of land is whether it can in general be put to some profitable use such

as is adapted to the locality in which the land is situated. It is wrong to attempt to go further into the future and estimate the exact user to which the land may be put and the profit to be derived therefrom. Such calculation must be purely hypothetical and cannot possibly be based on ascertained facts. In my opinion there are only two ways in which the land under reference can be valued: (1) by determining its then value as a whole as it existed at the date of the notification, (2) by ascertaining its then value on the basis of its being laid out for sale in building plots. It must be admitted that the latter is open to the objection that it may be too artificial but there is no doubt that it is a well-established method of valuation. It lies with the claimant to choose which method is most to his advantage. He has chosen the second, so there is no necessity to consider the first, but it may be well to deal at this point with the contention of Government that the market value of the property must necessarily be the price which could be realized from one purchaser on the date of the Notification. It is admitted that that price may be based on the purchaser's expectations of what he will realise for developed plots, but it is argued that what the owner may realise by developing the land must not be taken into consideration. I demur entirely to this proposition. Government cannot dictate to an owner the way in which he should dispose of his property. He is entitled to rely on the most advantageous way of realizing it; but (1) his calculations must be based on the market values and conditions existing at the date of the Notification; (2) the scheme must be capable of being carried out immediately; and (3) it must be adapted to the locality. The valuation must proceed as follows. The amount of building land available for sale after laying out the land must first be ascertained and then the amount it should realize; from this should be deducted the cost of laying out the ground and the balance should be written back for half the period allowed for developing and disposing of the property. This will give the theoretical present value of the property to the owner. But at the hearing I raised the question whether some deduction should not be made from the theoretical present value, representing the advantage the owner gets from being paid in cash instead of having all the trouble of disposing of the property and incurring the risk of the results falling short of his expectations. Mr. Delves, a witness for Government who had had considerable experience of valuation work in England, was of opinion that such a deduction should be made and that it should amount to at least (1) per cent for the period written back. Mr. Stevens for the claimant thought the deduction depended entirely on three conditions : (1) the size of the property to be developed, (2) the amount to be expended in development, (3) the character of the locality; and that in this case these conditions were so much in favour of the claimant that no deduction should be made. Mr. Chambers could not get out of his mind the idea that the property must be valued as being sold to one purchaser and it appeared as if the suggestion, I made to the expert witnesses that the valuation should be based on what the owner, and not a purchaser, would realize by development, was new to them in reference to cases under the Land Acquisition Act. Mr. Chambers however agreed with me that the valuation should proceed on the simplest lines. The difficulty of arriving at a

sound conclusion must necessarily be great and this has been fully recognized by the Privy Council. In the Secretary of State for Foreign Affairs v. Gharlesworth, Pilling & Co. (1901) L.R. 28 IndAp 121, their Lordships say :

It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Every one who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight; according to his experience and personal sagacity. In such an inquiry as the present, relating to subjects abounding with uncertainties and on which there is little experience, there is more than ordinary room for such guess-work and it would be very unfair to require an exact exposition of reasons for the-conclusions arrived at.

2. In that case the Court was required to value land wholesale by the acre but the above remarks apply equally well to more detailed valuations by the square yard.

3. It is obvious then that the principle of valuation which requires the fewest ingredients is likely to cause the least difference of opinion and to produce the best results. There are six questions to be determined:

(a) The building area.

(b) The cost of development.

(c) The value of the building area when laid out for sale.

(d) The time required for development and disposal.

(e) The present value of the sale proceeds.

(f) The deduction to be made for the advantage to the owner of getting cash payment and so being saved the trouble and risk of development.

4. I deal with (f) first and I have no hesitation in finding that this deduction should be made. All the three conditions on which Mr. Stevens said it depended apply to the property in reference in varying degrees. The area is large, the amount to be expended in development cannot be considered small, and the character of the locality cannot be said to entirely favour the owner. I think it advisable to deduct one percentage from the sale proceeds rather than a percentage for the average period of development, as suggested by Mr. Delves, though on the question of principle involved I attach great weight to his opinion. On the basis that my findings on (a) (b) (c) (d) (e) will be reasonably normal, that I shall accept every thing that can be reasonably urged in favour of the owner, and that Mr. Stevens' conditions, have been carefully weighed with respect to this property, I think this deduction should certainly be ten per cent.

5. I fix the deduction first as I think it should be fixed on -a general view of the

case irrespective of the theoretical present value arrived at by the determination of the first five questions. Otherwise there is a great temptation to trim the deduction according to those results.

6. I now proceed to determine the first five questions in their order.

(a) Area available for building on the assumption that the total area was 21,586 square yards. Mr. Stevens has allowed for roads a deduction of 4,644 square yards and Mr. Robertson has not seriously disputed this. The total area has now been admitted to be taken as 21,500 square yards but Mr. Stevens has shown that the deductions of 86 square yards can be taken from the space he has allowed on the west between Ramji street and his building plot, without decreasing the latter. I, therefore, find the area available for building plots, to be 16,942 square yards.

(b). The cost of development. Mr. Stevens' method of laying out the land is perfectly practical and adapted to the locality. His estimates for costs of roads Rs. 11,171, surface drainage Rs. 7875, sewers Rs. 5125 and lighting Rs. 4221, as per statements B, D, and E, and Engineer's fees, Rs. 1,419 as in statement G of his report Ex. G, have been accepted. Mr. Stevens has also deducted items for brokerage and loss of interest on 2 cost of development. Mr. Strangman, however, argued that brokerage should not be deducted just as it was not deducted when property was valued as it stood without development. In my opinion both these deductions are refinements of detail which should be excluded from item (b) and taken if at all as included in item (f). I take, therefore, the cost of development in round figures at Rs. 30,000.

(c) The value of the building plots when laid out for sale. This item is really the crux of the valuation. It must be omitted at once that it is impossible to value the plots in any other way except in classes according to the position and advantages possessed by each. The acknowledged vagaries of the purchasing public cannot in any way be gauged. As Mr. Stevens said, he had known two exactly similar plots being put up for sale by auction on the same day and one realized double the price of the other. Further it is useless to attempt to particularise what use the purchasers will make of their plots. See *Fink v. Secretary of State for India* ILR (1907) Cal. 599: "If any person, or a Company could and did pay a certain price for a block of neighbouring land similarly situated and possessing similar advantages, with a view to some profitable disposition thereof, there is no reason why another block of land, the subject of acquisition, should not be similarly valued." A great deal of evidence has been led to prove that there is a large quantity of labour employed in the P. and O. Dockyard, the British India Docks and the Port Trust Workshops, which would live in the locality if only it could find accommodation there. Moreover the acquisitions by the British India Co. by 1904 had seriously diminished the available accommodation in the neighbourhood. No doubt some of the employees may prefer to live in Dongri, Parel or other parts of the native town in spite of the distance owing to particular reasons; but I am perfectly satisfied that the

demand for accommodation on the land in reference would be amply sufficient to give the plots a marketable value for building purposes.

7. Mr. Stevens has divided his plots into four classes. I. Those facing Moojawar Pakhadi Road. II. Those facing his main road, Church street, and Nawab Tank Road. III. Those facing his cross-road, and, IV. Two interior plots which he values at Rs. 35, Rs. 30, Rs. 25 and Rs. 20 respectively.

8. As regards the plots in classes two, three and four I shall also divide them into three classes but I shall deal differently with the three plots in class one. The claimant by the date of the declaration had completed a building on plot 35 except for the drainage. The cost of the building has been accepted at Rs. 14,595. To these Mr. Stevens has added what he considers the value of the land, to give the value of the whole. I cannot admit this method.

9. The fallacy of valuing land and building separately and taking the total as the value of both seems too obvious to require being exposed. It by no means follows that if a man spends Rs. X on land and Rs. Y on building he produces a property worth Rs. X + Y. The property must be valued according to what it is worth in the market and not by what it costs. This property can only be valued according to the income to be derived from it as no one would purchase it on any other basis unless he wanted the land only in which case he would never include in his price the cost of a new building. Plot 35 must be valued on the rental basis. The other exception is plot 19. It is obvious that the plot with a comparatively narrow frontage cannot be placed in the same class with plot 20 with a double frontage. Mr. Chambers admits that Mr. Stevens' plots were of the most favourable size for the locality. But he differed very considerably as to their value. There can be no doubt that the frontage on the Moojawar Pakhadi Road is the most valuable but while Mr. Stevens values it at Rs. 35 Mr. Chambers considers it worth only Rs. 10. Mr. Chambers' opinion is not even consistent with the general opinion he gave regarding the value under ordinary circumstances of land required: for (a) chawls; (b) shops and chawls; (c) and flats, as it is quite certain that the situation would be a natural one for shops, and Mr. Chambers admitted lands so situated would be worth up to Rs. 20. But as far as I could gather he declined to pay any attention to the sales relied on by the claimant. He would not get away from the Rs. 4 a square yard paid by the claimant in 1901. However it is certainly necessary for me to deal with the sales which have been proved. I attach no importance to the sales in Koliwada, detailed in Ex. G., that land appears to have been worth acquisition at Rs. 100 a square yard to the British India Co., and the claimant had a very large margin for making a profit out of his bargain. The sales in Exs. D and H, effected for the company by Mr. Jehangir and the claimant, require more consideration, but it must be remembered the surrounding circumstances D: were quite abnormal. The British India Co. wanted all the land up to Moojawar Pakhadi Road and once having begun to buy they had to go on. The buildings were of no use to them and they were evidently prepared to pay a very high price to get the land. It is admitted

that the owners were not bought out by being paid on the rental basis and I am not prepared to believe they were so entirely ignorant of the plans of the British India Co. and the advantageous position they occupied as sellers, as Mr. Jehangir and the claimant imagined. The owners of the properties in Ex.D certainly knew the British India Co. were the purchasers; some like Mr. Dubash before the bargain was closed, others afterwards as the conveyances were made to the Company. As regards the properties in Ex. H there is no doubt that in most cases the prices paid were higher than the market prices. In the next place, I am not satisfied that the rate per square yard as worked out in those statements shows even approximately the value of the land in the cases when there were existing buildings even assuming the value of those buildings to be correctly estimated, which I doubt. It is true the British India Co. practically paid the whole consideration for the land, but the rate which the British India Co. were willing under special circumstances to pay for the land on the east side of Moojaware Pakhadi Road is not a satisfactory criterion of the market-value of land on the west side unless it can be shown that the British India Co. would be likely to bid for that land when in the market. This has not been attempted although the claimant suggested that he had at one time offered to arrange with the Municipality to shift the Mazagaon Pakhadi Road to the west on to his land so that the British India Co. could acquire the present site of the road. Nor can I adopt Mr. Stevens' suggestion that after deducting the estimated value of the buildings as existing at the date of the sales, the balance of all the purchase money paid by the British India Co. divided by the total, area will give the average value of the land, which can be applied to the land in reference. This method when adopted for ascertaining the proper number of years purchase was described as crude in *Raghunathdas Gopaldas v. Secretary of State* (1905) 7 Bom. L.R. 569 It is obvious that abnormally high prices should not be included so as to increase the average just as abnormally low prices should not be included to decrease the average. Nor should the average be affected by sales of properties evidently dissimilar in quality and quantity to the land to be valued. The proper way to deal with a number of instances of sales is to pick out those which relate to land approximately similar to the land to be valued and then carefully sift the circumstances surrounding each instance. The greater the total-number of sales, the greater the chance of their being some which can be useful. But to throw them all into the average can only result in injustice to one side or the other. Generally speaking what must strike one at the outset in looking at Exs. D and H is (1) is the smallness of the area in most cases, and (2) the extraordinary range of prices arrived at. The highest and lowest can be eliminated at once and I detail the only ones which appear to me to afford real assistance. (1) F 1 and 1 A. Mr. Dubash sold 907 square yards of vacant land adjoining the original limits of the British India Dock at Rs. 23 per square yard. He knew that the British India Co. were buying, that they could not extend without buying from him and after making his calculations, he accepted Rs. 23. Though the area was large the sale cannot be considered as effected under entirely normal circumstances. The other sales in Ex. D are useless (2) H. 8;

On the 12th February 1901 Mr. Dubash agreed to sell Survey No. 36267 a piece of vacant land measuring 168 sq. yards to the East of the Moojawar Pakhadi Road to the claimant for Rs. 20 (see Ex. 16) and a piece of vacant land measuring about 150 square yards in Koliwada at the same rate. He knew the British India Co. were buying and that affected the price. (3) H. 25. On the 8th October 1902 Dharamsey Purshotum sold to the claimant Survey No. 3253 a piece of vacant land measuring 379 sq. yards facing the Moojawar Pakhadi Road almost opposite claimant's land at Rs. 22.42 per sq. yard. (4) H. 30. On the 22nd August 1903 Vithal Morar sold to the claimant Survey No. 3248 a piece of vacant back land measuring 78 sq. yards at Rs. 15.38 per sq. yard. These instances seem to me quite sufficient to show that vacant land to the East of the Moojawar Pakhadi Road could be bought in 1900 to 1903 under circumstances most unfavourable to the purchasers at from 15 to 25 rupees a sq. yard. And even looking at the other instances relied upon by the claimant and taking his own figures it will " be seen that in the majority of instances he can only bring out the value of the land at between 20 and 30 rupees. Looking at the purchases in Ex. F effected by the claimant to the west of the Moojawar Pakhadi Road on his own account, and taking his own figures he purchased 3468 sq. yards of land in Nawab Tank Road from Mr. Dubash at Rs. 10 per sq. yard. I accept the claimant's statement that the buildings were practically worthless. He purchased 1114 sq. yards, of the adjoining land from one Awabai for Rs. 7.18 per sq. yards, again, admitting the buildings to have been worthless. These two instances must be treated as wholesale. He purchased 353 sq. yards of land fronting on the Moojawar Pakhadi Road from Adenwalla at Rs. 18.44, though he paid about Rs. 30, assuming the buildings to have been very old and practically worthless, and he bought 63 sq. yards of vacant interior land at a High Court sale at Rs. 11., Taking the other purchases where there were buildings existing, except N 5 which is obviously useless, he cannot make out the land in any case to be worth more than Rs. 23.57, and that only in the case of an area of 66 sq. yards. The purchase by Bhikaji Ravji of Survey No. 3380 in October 1902 for 5400 was evidently made on the rental basis. The claimant also relies on the evidence of Fakirji Nanabhoy Chinoy. He bought 89 f sq. yards of land at the corner of the Moojawar Pakhadi Road and Nawab Tank Road with a shed on it on the 13th April 1901 for Rs. 3101 i. e. about 33 a sq. yard as he considered the" shed to be worth only 50. He wanted a liquor shop for his brother who had been turned out from his shop on the East side of Moojawar Pakhadi Road by the claimant. He spent Rs. 2 000 in improving the structure and now let it to his brother for Rs. 40 getting a fair return on his capital. He also said he wished to purchase Survey Nos. 3372 and 3373 adjoining his first purchase in order to pull down all the buildings and build afresh and offered Adenwalla Rs. 10,000, but those properties were sold to claimant for Rs. 13,000 two days later, apparently before he could make up his mind to offer more, though he did say he would have gone up to 14,000. In answer to the Court he said he did not calculate how much the land comprised in Survey Nos. 3371-3 was worth per square, yard. He calculated to get six per cent for his capital invested in land and buildings. This is probably

the usual object of small building capitalists. They do not calculate as they should do according to the text books that they will get so much per cent on what they pay for the land and so much per cent on what they spend on the building. They wish to get a certain return on their capital expenditure. Any attempt to value land by fixing the proportion the ground rent should bear to the rack rent must necessarily fail in Bombay. In the first place it is impossible to lay down any settled rule as to the proportion which will vary according to circumstances even on land of the same quality and will necessarily decrease as land gets more valuable. Opinions as to the proper proportion and as to the rackrent will therefore vary in each case in the same way as they vary as to the value of land so that the only result of attempting to work this theory is that the same opinions are given as without it only in a more complicated form. The user of capital in building and the result to be obtained therefrom vary so enormously according to the land built upon and the capacities and opportunities of individuals, that they cannot be standardized. In the second place the conditions on which the theory is based do not prevail in Bombay and there is no evidence that it has ever been adopted by purchasers of land. Take for instance the example of Fakirji Nanabhoy's purchase of Survey Number 3371. He gets Rs. 40 rent a month, say Rs.30 nett or Rs. 360 per annum. Assuming $\frac{1}{6}$ is the proper proportion for the land Rs. 60 capitalized at 4 per cent comes to Rs. 1500 which should according to the theory represent the value of the land but he paid over Rs. 3,000 and would have paid more. Another instructive case which shows the danger of theorising is the purchase of a piece of land at the corner of Carpenter Street by one My a Mahomed Haji Jan Mahomed Chotani in 1903. He paid Rs. 5600 for the land or about Rs. 11 a square yard but there were foundations and a plinth on it according to the evidence of his manager Oosman Rahimtulla, which were utilised in building a chawl. The chawl was fully occupied within a few days of its completion, the total rent being Rs. 349 per mensem or over Rs. 4 per 100 square feet. Mr. Strangman relied on that as showing there was an ample demand for accommodation in the neighbourhood at a high rent. Mr. Robertson relied on the price paid for the land and on the fact that if the foundations and plinth were worth about Rs. 5000, i.e. one-sixth of the total cost of construction as estimated by Mr. Stevens, the land cost a little more than Re. 1 a square yard. But if you take $\frac{1}{6}$ of the nett rack rent, the land should be worth over Rs. 13000, i. e, over Rs. 26 a square yard. Mr. Narsimham admitted that he would not advise his client to pay more than Rs. 15 per square yard for land in Church Street, Dolka Street Nawab Tank Row and other equally narrow streets. Lastly it has been urged by Mr. Strangman that land in this locality has risen in price between 1901 and 1904 (1) on account of the operations of the British India Company, (2) because it was known that the new railway would pass through it, and (3) because the Port Trust were planning large reclamations on the foreshore within a mile of it. There can be no doubt that the purchase of the British India Company considerably reduced the land in the locality available for building and displaced a large population which had hitherto been living on the land purchased. Also the market might calculate that as it was known the Railway

would require land, the available area would still further be reduced and it is quite possible that the Port Trust works to the North might cause in the future an increased demand for accommodation, but I consider that all these reasons for increase in land values are sufficiently reflected, though no doubt in a varying degree, in the sales on which Mr. Strangman relies. I think, however, they entitle me to entirely disregard the price paid by the claimant for the land in reference in 1901, as I do not think any of these reasons were present to the mind of the vendor. Having considered the evidence of prices realised for land in the neighbourhood, the opinions of the experts and all the various factors which might affect the value of land, remembering too that the owner is entitled to have points stretched in his favour rather than against him, I proceed to determine the value of the various plots in the plan Ex. Q. Undoubtedly the best plot is 30, with a double frontage on Moojawar Pakhadi Road and the new Road to be constructed, The utmost value I can put on that is Rs. 30. No. 19 though partly on the Moojawar Pakhadi Road obviously has not the same advantage as number 20 and I value it at Rs. 25. Numbers 4, 5, 11, 15, 18, 32, 29, 26, 23 and 21 fronting on the new centre road and 28 fronting Church Street I value at Rs. 20. Numbers 33, 34 facing China Ramji Street, 2 and 3 looking over the tank, 5, 6, 7 and 10 on the side road to Nawab Tank Row I value at Rs. 15. For the remaining plots on the side roads which are not thorough-fares I agree more nearly with Mr. Chambers' views and think that the highest value that can be put on them is Rs. 10. With them I class No. 9. It is the largest plot of all and has the most wastage. On this valuation the gross sale proceeds of the plots will amount to Rs. 2,57,265 as per schedule A hereto. To this must be added Rs. 8524 for old materials and the value of plot 35 with the building thereon on a rental basis. I think that Rs. 200 is the highest rent that could be expected for the building and I value the property at six per cent at Rs. 30,000, from which Rs. 1000 have to be deducted for cost of completion making a gross total of Rs. 2,94,789.

(d) Period for development and disposal. Mr. Stevens has allowed six months for development and eighteen months for disposal and written back at 6 per cent for 1 1/4 years. No serious objection has been made to this, and I accept it but considering the prices I have allowed for the plots the period is none too short.

(e) Deducting cost of development Rs. 30,000 from the gross proceeds leaves Rs. 2,64,789. In order to write back 6 per cent for 1 1/4 years this must be multiplied by .9294 making the gross, present value Rs. 2,46,094.

(f) Deducting 10 per cent leaves a balance of Rs. 2,21,485 which is the nett present value of the property in case 31.

10. The property in case 33 consists of an irregular piece of land measuring 381 square yards of which nearly half is wastage. There are about 210 square yards forming a well shaped plot at the corner of Uma Ramji Street and Nawab Tank Row, but I cannot agree with Mr. Stevens that this is worth anything like Rs. 30 per square yard. In my opinion Mr. Chambers' valuation is the most reliable and

I fix the rate at Rs. 10 all over making Rs. 3810.

11. The total value of the properties in case 31 and 33 is Rs. 2,25, 295 from which Rs. 1585-12-3 have to be paid to Government leaving Rs. 2,23,709-3-9 for the owner.

12. Adding 15 per cent for compulsory acquisition approximately Rs. 33,557 the total amounts to Rs. 2,57,266-3-9. This is substantially below the amount offered by the Collector. The valuation will be found in Schedule B. Issues 7 to 13 raise a question which must be kept entirely distinct from the valuation of the property, namely whether the award can be increased by correcting arithmetical and other errors if any in the calculation on which the Collector based his offer. This must be decided if the claimant wishes it before I finally pronounce judgment. [His Lordship recorded his findings on the issues,]

13. The claimant having expressed his intention on the 9th January 1908 of not contesting issues 7 and 13, I dismiss the Reference with costs, one set of costs being allowed to Government and the Port Trust.