(1907) 11 BOM CK 0008

In the Bombay High Court

Case No : Reference No''s. 7, 8, 9, 12, 14, 15, 16 and 18 of 1906 and 3 and 21 of 1907

In Re: Dorabji Cursetji Shroff

Date of Decision : 17-11-1907

Acts Referred:
Land Acquisition Act, 1894 — Section 6

Citation : (1908) 10 BOMLR 675

Hon'ble Judges : Macleod, J

Bench : Single Bench

Judgement

Macleod, J.—By several declarations appearing in the Bombay Government Gazette-of the 21st September 1905, the 5th October 1905, the 12th October 1905, and the 21st December 1905 respectively-under Section 6 of the Land Acquisition Act (I of 1894) the Local Government notified its intentions of acquiring a large quantity of land at Sewree at the expense of the trustees of the Bombay Port Trust for the purposes of sites for Bulk Oil Installations and other trade purposes. It appears that the Port Trust required an area of nearly three lacs of square yards situated in the Sewree district within the red line shown on the plan Ex. 9. The land roughly forms a square. The smaller plots on the West South and East side were cultivated, the rest were either waste or used for salt pans. Exhibit No. 1 is a plan showing the levels of the ground at the time of acquisition and on that plan Mr. Savile, Deputy Engineer of the Port Trust, marked with a blue pencil the area under the level of 89'' 2" T.H.D. the level of the highest spring tide, which included practically the whole of the area to the North of a line drawn East to West at the North end of Sewree village. Mr. Savile said he had seen the whole of it under water. From Ex. 8 it appears that 1,04,907 square yards of the area required by the Port Trust were Government land, the remainder was held by various owners under foras or toka tenure. For the purposes of the ascertainment of compensation the Collector subdivided the land into various plots according to their survey numbers and sub-numbers and each case before him related to one or more of the sub-numbers. An award was made in respect of each case number, but all the lands belonging to one owner were not included in one case. The result has been considerable confusion. Mr. Shroff, the claimant I am now dealing with, owned many plots which formed the subject of thirteen cases before the Collector. He applied for a reference to the Court in each of these cases and I have now ten references before me. When the first was being heard I intimated to the parties the desirability of consolidation and eventually the following agreement was recorded:-"All the references relating to property owned by Mr. Shroff within the area of the Bulk Oil Installation scheme to be consolidated and the evidence already recorded in case I to be treated as if such consolidation had been effected at the commencement of the hearing, such consolidation to be without prejudice to any of the contentions of either side as to the principle on which the land belonging to the claimant should be valued, or any contention of any nature whatsoever which might have been raised if such consolidation had not been effected.'''' Apart from that agreement I agree with the opinion expressed by Mitra and Casperz JJ. in Fink v. Secretary of State for India, ILR (1907) Cal. 704 that the Collector and the Judge should try to consolidate claims to compensation so far as possible and I infer from that opinion that the Judge has power to consolidate the claims of his own motion Exhibit P gives a list of the references consolidated, the case numbers, survey numbers, area of each plot, the rate per square yard paid by Mr. Shroff and the rate awarded by the Collector. Exhibit A is a plan of the whole area acquired by the Port Trust under the Bulk Oil Installation scheme with Mr. Shroff''s land coloured pink. The Collector has awarded compensation at various rates from Re. I to annas 9 according to the position of the plots. The total area is 15,394 square yards, of which Mr. Shroff purchased 14,828 square yards at 5 annas 6 pies per square yard from one Dhanajee Padma under an agreement of the 15th May 1905 and 576 square yards at 4 annas per square yard from one Ramji Sookul on the 31st July 1905.

2. Though all the land for the scheme was not notified for acquisition on the 21st September 1905 it was conceded that that should be the date for the purpose of my valuation. It is admitted that it would not be fair to value the land as used for agricutural purposes as from its situation it possessed certain potentialities. It is necessary, therefore, to consider the circumstances which have been proved to exist as giving a potential value to land as this neighbourhood and judge the effect they would have on the value of the land in question. In the first place I think that land in the neighbourhood of a town always has a potential value. It will not compare with land with in the limits of the town but if placed in the market purchasers will always be found at a higher rate than one on its existing use. In addition particular circumstances may arise to give it a particular potential value.

3. Before 1899 the general potential value of this land was extremely small. The chance of its deriving any advantage from its being in the neighbourhood of the City of Bombay, was extremely remote, but in November 1899, the Railway Commission assembled in Bombay to consider a Bombay Docks Railway scheme. In February 1900 the Railway Commission published a report recommending the

scheme, with the result that land which the public thought would be in the neighbourhood of the alignment of the proposed railway acquired a particular potential value. At that time it was proposed that the line should take off from the G.I.P. Railway Station, but when the railway was sanctioned and the work put in hand, it was decided that the take off should be from Coorla. This, however, in no way affected the view a purchaser would take as to the potential value of the land in question as it was clear that in any event the line must run through Sewree owing to the configuration of the land to the "West. Soon after the Railway Commission''s report was published, purchasers came forward for the land near what would inevitably be the alignment of the proposed railway at Sewree. Exhibit 3 is a list of sales admitted by the claimant to be made in accordance with a notice to admit Exhibit E, given by the solicitor to Government. Between July 1900 and August 1902 there were seven instances including about 28.000 square yards. It will be seen from the survey numbers that each sale included land near this proposed railway. It seems as if this was the land, the purchasers really were anxious to obtain and that they had to take land to the East as well because the vendors were not willing to part with the land, near the proposed railway without the land further off, I think, therefore, that in considering the average rate obtained from each of these sales it is fair to conclude that land near the railway was worth more than the average and land to the East under the average. It has also been argued that in addition to the particular potential value arising from the railway scheme, the general increase of trade, and the extension of the activities of the Port Trust to the North of Mazagon had affected the value of the land in question by September 1905, Since about 1900 the Port Trust had been evolving vast schemes to meet the requirements of the export and import trade. Cotton and grain were to be accommodated on reclamations at Mazagon and the timber ponds were to be removed from Tank Bunder to a site to the south of the Sewree Promontary shown on Ex. B, and by the beginning of 1905 the question of removing the Bulk Oil Installation from Mody Bay to Sewree was being discussed. On the 27th April the sanction of the Secretary of State for the Harbour Branch Railway was notified for general information in the Bombay Government Gazette, but certain lands had already been notified for acquisition for the proposed new railway in the Gazette of the 6th April. In Ex. 3 there are no instances of sales from May 1902 until March 1905. From March to May 26,000 square yards changed hands. I think it must be conceded that the scheme of the Port Trust by September 1905 had increased the potential value of the land in question. But in assessing the degree in which the railway scheme or the Port Trust schemes would affect the value of the land it is necessary to consider how the land affected would be used and the land within which such use would become effectual. " Future utility is a thing that people have an eye to in buying land and the market price of land is affected by it. Such future Utility must be estimated by prudent business calculation and not by mere speculation and impractical imagination." Rajendra Nath Banerjee v. Secretary of State for India ILR (1904) Cal. 348.

4. This brings me to the question whether I should fix a price on the improved value of the land according to the expected uses and make deductions to ascertain the present value, or assess the value of the land without its potentialities and add what I consider the value of those potentialities. Mr. Narsingham, the claimant''s surveyor, has adopted the first plan and its extreme elasticity is apparent from the different valuation he has made on this basis from time to time. I am of opinion that this method should only be adopted when the expected use is immediately available and is so obvious that its present value can be ascertained ; as, for instance, in the case of a piece of vacant land in the midst of a building area. To adopt such a method with Mr. Shroff''s land would only lead to mere speculation and impractical imagination. The only method applicable to the land in question which is covered by authority is to assess to the best of one''s ability the value of the potentialities attaching to it in the light of the evidence adduced regarding sales in the neighbourhood and expert opinion as to the value of the land as it stands. For this purpose I do not think that I should deal with the land as at present divided into a number of small irregular plots according to the survey numbers and sub-numbers and value each separately according to its situation and particular advantages. When considering the potentialities it must be remembered that that involves an entirely different use to the present. No doubt different kinds of land must be differently valued and the valuation must also vary according to advantage or disadvantage as regards communications but such questions must be dealt with in relation to future utility. The whole area possesses the same potentialities, only in a varying degree, and the claimant is entitled to have included in the market price of his land such speculative advance therein as had already taken place in consequence of the improved prospects of the locality, up to the 21st September 1905. Secretary of State for India v. Charlesworth (1901) L.R. 28 IndAp 121. "If it is shown that a person has paid 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. The probability of a person purchasing the land for a similar purpose is an element for consideration, if the probability is not so remote that it ought to be held to be purely speculative, so that other things being equal, of two blocks of land, the block under acquisition should be taken to be of equal market value with the other block. The general principle cannot be denied." Fink v. Secretary of State for India ILR (1907) Cal 604. So far I am in accord with Mr. Strangman''s argument and I think I should follow as far as possible the principle applied in the matter of An Arbitration between the Mayor of Tynemonth and the Duke of Northumberland (1903) 19 T.L.R. 630, namely, that where there are several adjoining blocks of land with a potential value for a certain purpose, each block should be valued as having such a potential value, though the enhancement may not be the same in each case. The principle is the same whether the blocks are many or few. Generally for the purposes of these references I consider it evident that the area near the railway line is far more valuable than the area to the east near Sewree Fort. Near the

railway line the chances that land will be required for building sites or storage within a reasonable time are fairly good, but the value of the potentialities as regards the eastern portions appear to me to be extremely small. Such as they are, I think, they affect all Mr. Shroff''s land in the eastern area nearly equally, for I think that the value of the rough cart track as existing in 1905 on the southern boundary has been much exaggerated when considering the potentialities of the whole area. Take the land as it exists at present and there is no doubt that a small plot on the road is far more valuable than a number of plots behind at varying distances from the road, but I can only give effect to the claimant''s contention regarding the future utility of his land by considering that the existing appearance of the land will be completely changed. 1 cannot apply one principle to one portion of the land and another principle to the rest. But if I allow an all over rate for the portion of the claimant''s land it does not follow that I should allow a similar rate for neighbouring land belonging to another claimant. Each owner''s land must be dealt with on its merits and though general principles may apply to all, it is open to each owner to rely on those which suit him best provided he is consistent.

5. There are two guides to assessing the value of potentialities : (1) The opinion of experts; (2) evidence of the value the purchasing public has put upon them within a reasonable period prior to the date of acquisition.

6. On the question of expert opinion I can with advantage refer to the judgment of Rampini and Parjiter JJ., in Rajendra Nath v. Secretory of State for India ILR (1904) Cal. 346.

Land is not like ordinary goods, the value of which can be fixed on inspection by a person who has knowledge of them. Its value is the result of various factors working in different ways and degrees, and they cannot be apprehended and estimated aright oil-hand. The advantage of experience in the valuation of land lies in this, that the expert knows what factors should be considered, what information he should seek for, where he should seek it, and how he should test it and apply it. But experience does not enable one to dispense with enquiry; and an honest and useful valuation cannot be made simply by visiting the land and picking up orally some casual and untested information or gossip which may be interested or one-sided. These considerations apply specially to land in or near large towns.

7. The evidence of the experts in the case hardly satisfies the above test. Mr. Narsingham, called by the claimant, gives me no assistance, as he has never devoted his attention to solve the problems now before me. His values are based on imaginary figures which vary from day to day, and are calculated rather to support his values than to create them. Nor does the evidence of Mr. Chambers, on behalf of Government, take me much further. He found the average of the sales in Ex. 3 to be eight annas a square yard and then said that was in his opinion a fair price for the whole land under acquisition including the salt pans and waste land. In cross-examination he was asked to fix a value for each plot,

and did fix some values, but I do not think that a fair line to take. He admitted the land at the west end of the area under acquisition owing to its being better cultivated and close, to the village was more valuable than the rest but if he valued that land separately at Rs. 1-8-0 and Re. 1, it followed that other portions would fall much below eight annas. If Mr. Chambers had had time to comply with Mr. Strangman''s suggestion and value each plot separately it would not have affected his original opinion as to the all over value. I should mention that he also deduced his opinion of the land from the value he had ascertained of far better building land near Dadar. But I am not satisfied that the. all over eight annas rate deduced from the sale of 54,000 square yards of the more favourably situated land is by any means conclusive and I should have been better pleased if those sales had been more critically analysed. However it is quite clear from the cases reported under the Land Acquisition Act that the tendency is for the Courts to rely far more on evidence of sales than on expert opinion. In dealing with the evidence of sales in this case, I think, the instances outside those in Ex. 3 are of very little assistance. The land brought by Mr. Shroff on New Sewree Road was of quite a different character, He had bought 2, 69, 000 square yards in 1886 and 1889 at an average of 10 annas 7 pies a square yard. About 1,60,000 square yards have been leased to mills etc. and nearly a lakh of square yards are still in his hands. During twenty years very little has be disposed of except to mills. The other instances, marked in Ex. K, are also of a different character; in some cases the area is too small to afford any guide, and in others the user of the land is such as this land is quite unfit for. Mr. Strangman also relied on the sales to the Spring Mill, Ex. H. They bought 1,75,000 square yards at an average of about of Rs. 1-7-0 to 1-10-0 a sq. yard; but in the first place, that was in September-October 1906, a year after the date I am concerned with, and, in the second place, it is clear from the evidence of Mr. Chambers that the land in reference could never be utilised for mill purposes. The situation of the Sewree promontary cut off by a range of hills from good ro3ds and land available for building sites, is sufficient reason for there being no other reliable instance of sales except those in Ex. 3 and further purchases by Mr. Shroff in July 1905. I think that it can safely be deduced from those that up to July 1905 land by the proposed Railway line could be purchased for six annas up to Rs. 1-4-0 a square yard and land further east for four to seven annas. Mr. Shroff when the notice was served had bought an additional 10,000 square yards at rates varying from five to seven annas but the conveyances had not been executed. He divided the excess of the Collector''s awards over the purchase prices with the vendors. I do not think however that the fact that he did not ask for references in those cases or that he offered to withdraw from these references and subsequently revoked the offer should prejudice him any way now. I do not deny that a claimant is entitled to the benefit of a good bargain he has been able to make before the land was notified provided he can prove its present value with a reasonable degree of accuracy, but this cannot be done by merely suggesting that within ten or twenty years the land will increase in value : that is a question of chance. It is quite possible that land in Bombay which is now worth five or ten annas a square yard could have been bought fifteen years ago for one anna or less, but the market value of such land fifteen years ago would still be one anna or less. I feel quite certain that these lands were not bought with the idea of making large profits by development, but because they were either a cheap lock up investment or because there was a chance of some portion at least being acquired by the G.I.P. Railway Co. or the Port Trust. Mr. Shroff can hardly expect me to believe that he by himself or in conjunction with a syndicate would have paid Rs. 10 all over for the land, that is to say, would have incurred an expenditure of thirty lakhs with the prospect of having to pay several more lakhs in developing it and without any immediate prospect of disposing of the land when developed. Certainly by July 1905 no sane man would have bought the land with the expectancy of using it for trade purposes without first ascertaining what were the plans of the Port Trust regarding the Bulk Oil Installation. A great deal of evidence has been given relating to the timber trade, on the supposition that the land would inevitably be leased to timber merchants as soon as the timber ponds at Sewree were ready. The timber trade is roughly divided into two departments, one deals with log timber, the other with scantlings. Logs are kept in the timber ponds until required by the owners, scantlings have to be landed from the vessels on to a bunder. It was suggested that the scantling trade would, follow the log trade, until it was proved that there would be no facilities for landing scantlings at Sewree. Take away the scantling trade and only the cutting up of logs is left to be provided for. This, as the evidence of Mr. Mancherjee showed, should be done as close to the water as possible, and the Port Trust have provided sufficient accommodation for this purpose. It is true the Port Trust desire to acquire a large tract of land north of the Bulk Oil Installation for trade purposes but that is only because they wish to round off their estate and because they are bound to look a long way ahead. On consideration of the evidence regarding the land in question and the general development of trade I cannot but come to the conclusion that in 1905 the idea that the land would become valuable for trade purposes was far too remote to affect the potential value except in a very small degree. When I went to view the land in question accompanied by counsel for Government and the claimant, it was pointed out to me as we drove along the Reay Road by Tank Bunder that there was a large amount of land left vacant although trade had as come far north as that many years ago, and the land that was occupied seemed mostly tenanted by scantling merchants. But the Port Trust do not intend to provide any facilities at Sewree for landing any goods except dried fish. The suggestion that this land would be leased for storing building materials appeared to me unsupported by any evidence and in fact when the witnesses were asked in what way they expected this large tract of land to be utilised in future they sought refuge in generalities. It is possible though not probable that a small area might have been occupied by the timber trade when the new timber ponds had been completed but I do not think a prudent man would have counted on any other occupation in the immediate future. As a site for building houses for the working classes the land is unsuitable nor has any demand been shown in the neighbourhood. There are still large areas nearer the city which would first be taken up. Even in New Sewree Road there was only one chawl on Mr. Shroffs land although there were half-a-dozen mills all around. The mill-hands preferred to live nearer the city. Mr. Strangman relied on the sale by the Port Trust to the G. I. P. Railway Co. of land for the Harbour Branch Railway. The Railway Company agreed to pay at the rate of Rs. 5-3-0 per sq. yard for land from Tank Bunder to Sewree but that can be no test of the market value. The Port Trust had reclaimed that land and they charged at the rate which it would cost them to reclaim a similar area further east to replace the land sold. The Collector also decided the rates at which the Port Trust had to pay for the land belonging to Government in the areas required for the Bulk Oil Installation but I do not think those rates give any guide to the market value. As far as I can gather they were based on the awards made by the Collector for neighbouring land privately owned and therefore they do not carry the claimant''s case any further. His land is all held under toka tenure. It was proved that the toka rent was liable to enhancement in 1929, but Mr. Chambers said that that liability was too remote to affect the prices paid for the land from 1900 to 1905 which were based with considerations to the existing rent.

8. I come therefore to the following conclusions:

(1) That the whole area under acquisition had a general potential value over and above its value according to its existing user, on account of its situation in the neighbourhood of the City of Bombay.

(2) That from 1900 to 1905 it acquired a particular potential value: (a) owing to the report of the Railway Commission recommending the construction of the Harbour Branch Railway, (b) owing to the scheme of the Port Trust for increasing the trade facilities of the Port.

(3) That the potential value arising from conclusions (1) and (2) affected the land in the same way although it had been divided up amongst several owners.

(4) That the potential value must mainly be ascertained from prices realised by sales of the land in question and similar lands between 1900 and 1905.

(5) That the land on the western side of the area under acquisition had far greater potential value than the eastern side.

(6) That as all the instance of sale giving an all over rate include land on the western side as well as land further east, the western land must be considered as realising a higher value and the eastern land a lower value than the all over rate, in each instance.

(7) That in 1905 the future utility of the land was too remote to enable it to be valued on the basis of making definite plans and calculations for the development of the land.

(8) That though the whole area was acquired under declarations of different dates and various plots of the land in reference were declared at different dates,

that fact makes no practical difference in the valuation of all the plots which may be taken as of the 21st September 1905.

(9) I group the following survey numbers near the Railway line under one valuation 12A/2322, 3/2312, 6/2320, 8/2320 yards and I find the value to be Rs. 1-8-0 a square yard. 12A/2322 no doubt is not so well situated as the others but it is a Very small plot and in my opinion the grouping should be as few as possible and I have taken the position of the plot into consideration in fixing the above rate.

(10) I group all the other survey numbers together. It is true some are nearer the road than others but my general rate will allow for this, as in my opinion, the particular potential value attaching to the majority of the plots is very small. The area of of these plots is 13,619 square yards and I find nothing in the evidence or the surrounding circumstances which can justify my putting a higher value on them than six annas a square yard. I do not infer thereby that the Collector was wrong in valuing them at a higher rate for the purpose of making an offer On behalf of Government, I think he exercised a wise discretion in favour of the claimants.

9. The result of my conclusions is that the Collector''s awards in all the references now before me except No. 3 of 1907 are left undisturbed. In reference No. 3 of 1907 I award an excess of Rs. 767-14 plus 15 per cent, for compulsory acquisition with interest at six per cent, from the date the Collector took possession until payment.

10. On the question of costs I have been asked by Mr. Robertson not to allow the claimant a proportion of his costs to the extent he has succeeded on the ground that his claim before the Collector was extravagant. On the other hand Mir. Strangman has asked me to proportion costs according to the area for which I have allowed a higher rate than the Collector. I am not disposed to. accede to either of these contentions. The circumstances of the case are not such as to induce me to disallow the claimants his costs so far as he has been successful on the ground that the claim he presented before the Collector was extravagant, nor would it be fair to Government to apportion costs according to the area for which I have allowed a higher rate than the Collector.

11. It is difficult to distinguish one reference from the other and to say that any of the evidence refers more to one than to another. The claimant has succeeded in one reference and must therefore pay only nine-tenth of the costs of the other side. He is entitled to receive one-tenth of his own costs. Mr. Robertson concedes that though the Port Trust have been appearing in the, reference Government and the Port Trust are only entitled to one set of costs, so for the purposes; of taxation as against the claimant only one bill should be submitted, with one set of charges for briefs and instructions as if there had only been one reference, the Taxing Master being at liberty to allow such additional charges as he may think were properly incurred owing to the consolidation having been made after the

hearing commenced instead of when proceedings were instituted. The claimant''s bill of costs should be prepared and dealt with in the same way. But instead of setting off the one-tenth of his costs payable to him against the nine-tenth of the costs of the Government payable by him it may be more convenient to direct him to bear four-fifth of those costs.