
(1908) 01 BOM CK 0011

In the Bombay High Court

Case No : Reference under Land Acquisition Act No's. 4, 5, 6, 7 and 20 of 1907

In Re: Sorabji Jamsetji Tata

Date of Decision : 10-01-1908

Acts Referred:

Citation : (1908) 10 BOMLR 696

Hon'ble Judges : Macleod, J

Bench : Single Bench

Judgement

Macleod, J.—All these references relate to land within the area notified for acquisition by Government on behalf of the Port Trust for the purposes of the Bulk Oil Installation and other trade purposes in or about the end of 1905.

2. By consent the references have been consolidated on the same terms as the references in which Mr. Shroff was the claimant and all the evidence given in those references is to be taken as evidence in these. Some of the plots are intermingled with Mr. Shroff's, and Mr. Strangman, who appeared for the claimants, said he had nothing further to add regarding their valuation beyond what he said when appearing for Mr. Shroff. But Mr. Strangman pointed out that the land in Reference 20 of 1907 admeasuring 57,216 square yards (which I shall call hereafter Heeracoorlee) stood on quite a different footing. The Collector valued it all over at six annas. It is situated to the north of the land I have already valued at six annas and was purchased by the late Mr. J.N. Tata in 1902 from three different owners as salt land. The conveyances are Exhs. 12, 13, and 14. The salt beds were located at the north-east corner, and in connection with each set of salt beds there was a reservoir to the west as can be seen on the plan. It is first contended that the potentialities of the land are the same as the land already valued to the south but that this land has an additional potentiality for a mill site owing to its possessing advantages not possessed by that land, namely, (1) there are over 50,000 square yards, a suitable area for a mill, in the hands of one owner; (2) the tenure is foras, i.e. permanent and the the annual foras rent is practically insignificant whereas the other land was toka and liable to enhancement in 1929. Further, there were many circumstances which made it

most attractive for a mill site; it could be built cheaply owing to its proximity to the quarries and the sea, coal and cotton could be brought by the new railway, and there was open ground all round. Mr. Knowles, partner in the firm of Bradbury Brady and Company, agents for several mills in Bombay, Mr. Wadia, a mill owner with twenty years experience, and Mr. Fakeera, superintendent of the mills managed by Messrs. Currimbhoy Ebrahim and Company, all gave evidence for the claimants to the effect that the site was suitable for a mill. For Government, Mr. Whilter, an engineer with considerable experience of Bombay mills but now carrying on business as Lloyd's surveyor, raised various technical objections to the site, and Mr. Chambers said that in his opinion it was quite unsuitable for a mill. One objection was that there would be no proper foundation for a mill building or at any rate the foundations would prove very expensive, but trial pits were dug during the hearing to ascertain the nature of the foundation which showed that as regards a certain area murrum could be found either close to or within a few feet of the surface. On the evidence it appears to me that there is no insuperable objection to the site being used for a mill. The question is really whether there is any evidence that at the end of 1905 the possibility of its being purchased in the course of time for the purpose of building a mill had added appreciably to its present value, and had affected the market. Although land may possess certain potentialities it does not follow that those potentialities have any present value. In 1905 the mill industry was in a flourishing condition but only two new mills were projected. It is true the value of land had also risen and the difficulty of procuring a suitable area at a price not exceeding Rs. 3, beyond which, Mr. Fakeera said, a mill could not profitably buy land, had correspondingly increased. I think it might be presumed in 1905 that the difficulty would not decrease in the future and that suitable mill land which could be picked up cheap would be a good speculative investment. If mill land at Parel or Dadar could not be bought under three or four rupees purchasers would go where they could get land at Rs. 1/12 or Rs. 2, provided that the land was otherwise suitable for working a mill. I must confess, however, that there is no evidence that in 1905 any one had considered that this land would be sought after in the near future for building a mill. Govind Dadaji, a land broker who had negotiated the purchase of land for many mills in Bombay said the land was worth Rs. 2 to Rs. 2-8 in 1905 for mill purposes but I do not think that opinion was formed in 1905. Although he was always looking out for mill land he never approached the claimants and I feel doubtful whether he ever thought of the land as suitable for a mill until he was asked to give evidence. It has also been argued that there was no access to the road from the site, and I am satisfied from the evidence and from the inspection of the land which was made in the presence of counsel and engineers on both sides that there was no direct access, though this would not form an insuperable difficulty to a speculative purchaser. When valuing land in the rough it is not right to lay too great a stress on its existing position and means of access, as these may be entirely altered when the opportunity comes to bring the land into use. I do not think it necessary to go into further details regarding the construction of a mill; it is quite possible that a

mill could be built there for about the same amount as one at Parel and Dadar but it would be quite impossible to come to any definite conclusion on the point. The circumstances to be considered now are quite different to those existing in 1905 and no one can judge exactly what they will be in the future. So far I am satisfied that the potentiality of this land for being taken up for mill purposes had not affected the market in 1905. If I must attach any value to the potentiality it can only be by weighing the opinions given by the witnesses together with the general conclusions I have already arrived at concerning the land to the south ; and I think Heeracoorlee can be differentiated from the land to the south for three reasons: (1) the tenure is foras instead of toka ; (2) there is a large area in the hands of one owner ; (3) if a mill company were anxious to buy land within this area, it would prefer to buy land from one owner rather than from a number of owners. It does not necessarily follow, however, that Heeracoorlee was more valuable.

3. How would these circumstances affect the mind of a purchaser in 1905? If the prospect of eventually selling to a mill company was predominant, he must exclude all ideas of selling the land for other purposes. The potentialities of the land for mill purposes would be alternative to the potentialities for other purposes and not cumulative. But I am satisfied that in 1905 the prospect of the area being taken up for some profitable use was so remote that no purchaser would have enumerated in his mind the various potentialities and attached a separate value to each. He would buy the land at a price within the amount he was prepared to devote to such a speculative investment on the chance of being able to dispose of it at a profit at some future date. The argument that the land is worth more than the neighbouring land because there is a block of 57,000 square yards under one ownership, can easily be turned against the claimant, for the point to be considered is what circumstances would weigh with a purchaser in 1905, who would only have bought land in this area as a speculation. He might just as well consider it more profitable and less risky to buy small areas than large and if he devoted his attention to large areas might offer a less price. Looking at the land under reference simply as land I find it impossible to hold on the evidence that it was more valuable than the land to the south for the reasons suggested by the claimant. But the question of tenure stands altogether on a different footing. In awarding compensation to an owner it would be wrong to disregard the distinction between foras and toka land. The Collector, adopting the values awarded to owners of toka land by the Special Collector as his basis added on about one-third in order to fix the amount to be paid by the Port Trust for the Government land included in the area. For the Government land to the west and north of Heerawoorlee and practically of the same quality eight annas per square yard were demanded from which it must be deduced (1) that the Collector did not realize that the land in Heeracoorlee was foras and not toka; (2) that the Collector considered the Government land was worth eight annas. Mr. Chambers considered the land worth 6 as., as he had already expressed an opinion that the whole area was worth 8 as., and as the land by the village and

the western boundary was worth more it followed that the inferior land must fall below his average. But Mr. Chambers' average of eight annas was taken from sales of toka land and he had to admit that the question of tenure was very important, and that foras land was better than toka land. Taking all these circumstances into consideration, I have come to the conclusion : (1) that it is impossible to make any distinction between the land in Heeracoorlee and the land surrounding it on the West, North and South; (2) that the potentialities of the land in 1905 were so remote that no purchaser would designate them in his mind so as to give definite values to any one potentiality or group of potentialities such as would influence the price he was prepared to give ; (3) that the Special Collector in making his award omitted to attach sufficient importance to the fact that the land was held under foras tenure.

4. I award for the 57,216 square yards the admitted area of Heeracoorlee (see Ex. T 14) eight annas per square yard.

5. I now deal with the land comprised in the other references. Reference No. 4 comprises the Collector's awards in cases 6, 11, 14, 18, 21, 27, 39, 83 and 101. In the first seven, the land is within the south-eastern area which I have valued at 6 as. Those awards must stand. Case No. 83 comprises seven plots. For the first two, I award 6 as., for the last five $1\frac{1}{8}$ annas. Case No. 101, I award Rs. 1-8-0.

6. Mr. Chambers put this value on the land near the railway after excluding the advantages that would accrue to it after the railway had been completed and considering only the speculative value it had acquired before it had actually been decided to build the railway and I have accepted his valuation. It must be remembered that the land to the north and south of this area had been already certified for the purposes of the New Railway-before this area was certified for the purposes of the Bulk Oil Installation and other trade purposes, and though no doubt it had been arranged that the Port Trust should sell the strip at the west end to the Railway Company, strictly speaking in September 1905, the only advantages which could accrue to this land from the Railway scheme as actually notified were practically worthless, namely, those accruing from a line stopping at its northern and southern extremities without passing through. Mr. Robertson suggested that "trade purposes" included "railways" and that therefore no consideration should be given to any advantage the land might derive from the railway passing through it but I cannot adopt the suggestion. There is no necessity, however, to seriously discuss this question as I think the one argument can well be set off against the other, so that the land can be valued as Mr. Chambers has valued it.

7. Reference No. 5 comprises the Collector's awards in cases Nos. 58 and 62. Case No. 58, I award 6 as. and the Collector's award holds goods.

8. Case No. 62, I award follows:-

sq. yards Rs. 2-3/2321 3542 $1\frac{1}{8}$ 4.11/2327 1723 /6 12.13/2341 739 /6 5/2342

9. With reference to these last two plots I am aware that it has been suggested they would give access to Heeracoorlee from the road passing to the north of the village, but after inspection of this land I attach no particular value to the suggestion. Speaking generally the land is no better than that to the east and west of it except that its proximity to the village may give it the value awarded by the Collector which Mr. Chambers agreed with.

10. Reference No. 6, I award 6 annas, per square yard, so the Collector's award stands. Reference No. 7, Mr. Strangman does not ask for more than the Rs. 2/8 awarded by the Collector.

11. The total excess according to my judgment amounts to Rs. 11,440-14 to which 15 per cent, must be added and 6 per cent interest from the date the Collector took possession, 6th March 1906, until payment.