

(1922) 03 BOM CK 0019
In the Bombay High Court
Case No : First Appeal No. 339 of 1920

K.P. Frenchman

APPELLANT

Vs

The Assistant Collector

RESPONDENT

Date of Decision : 17-03-1922

Acts Referred:

Land Acquisition Act, 1894 — Section 8

Citation : (1922) 24 BOMLR 782

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—This is an appeal from the decision of the District Judge of Poona in a reference u/s 18 of the Land Acquisition Act. The land in reference is a square piece of land measuring 4.77 acres with good frontages on Connaught Road and Wellesley Road. In the far corner of it there was a bungalow, which undoubtedly at the time the property was notified for acquisition on the 25th April 1919, was in a state of disrepair. The property is situated certainly near the centre of the business part of the Poona City, excluding of course the city proper. All round there are public offices, hotels, churches, shops and other such premises. I think the Judge is right in saying that it is not quite in the best situation, either for being used for residential purposes or for shops which are patronised by European customers. At the same time it cannot be doubted that the property is in the centre of what I may call the business quarter of the town.

2. The claimant bought the property from Mrs. Sassoon for Rs. 92,500 in July 1918. Mrs. Sassoon had not been in India for some years, and her affairs were being looked after by her agents. The property had not been very well looked after. The bungalow was rented by Mr. Defreece at Rs. 150 a month, and we may safely say that however favourable the situation of the property may have been, it does not appear from the evidence that there had been much demand for it before its acquisition. But for whatever reasons the claimant bought the property

in 1918, there can be no doubt that that was a purchase by a willing purchaser from a willing seller, and it is, in the first place, direct evidence of the market value of the property in July 1918. It would be open to the claimant to show that in this neighbourhood there has been a general rise in the value of property between July 1918 and April 1919, but he has absolutely failed to produce any evidence to show that the value of property in this neighbourhood has increased. Of course it may be said that from the very nature of the use to which the surrounding properties are put, it would not be likely that many of these properties would come into the market. Still if the claimant wishes to show that his property in April 1919 was worth more than what he gave for it, he would have to produce evidence to that effect.

3. On the other hand it would be open to Government to show that the claimant, when he purchased the property, had taken a far too sanguine a view of its possibilities in the future. The Acquisition Officer without considering the price which the claimant had paid for the property has in the offer he made to the claimant done everything he could to cut down the value of the property. He has valued the bungalow on a rental of Rs. 300 a month with a life 26 years. To that he has added the deferred value of the site at the end of the period and the value of the compound 14334 square yards at Rs. 6,000 an acre or a little more than a rupee a square yard, the whole giving a total of Rs. 55,688, to which had to be added the 15 per cent. for compulsory acquisition. Now that was a very low offer to make to a man who had purchased the property a few months before for Rs. 92,500. On the other hand the claimant went to the other extreme. He produced a report by Mr. Fritchley, another by Mr. Bhedwar, and a third by Mr. Batley all containing fantastic conglomerations of figures produced for the purpose of satisfying the Court that the property which the claimant had purchased for Rs. 92,500 in July 1918 was worth over two lacs in April 1919. They are obviously worthless.

4. This is one of those numerous cases which show how undesirable it is that valuations for compulsory land acquisition should be brought before a Court of law. If this case had gone before an arbitrator, the whole of these elaborate calculations would have been swept aside in a few words. But in a Court of law such evidence cannot be excluded and the Court of first instance has to seriously consider all the various hypothetical considerations produced on the one side or the other. Speaking for myself, in dealing with the case in appeal, it is open to us to express an opinion that all those calculations are of no assistance whatever in enabling the Court to come to a decision with regard to the market value of the land in April 1919.

5. The two most important questions are (1) whether the claimant has paid so high a price that the Court may consider that he had not displayed the ordinary caution which a purchaser of land should display; (2) whether there has been any increase in the value of property in the neighbourhood within the few months which elapsed between his purchase and the Government Notification to

show that the property in April 1919 was worth more than what he gave for it. I see no reason to think that the price of Rs. 92,500 which the claimant gave for the property in July 1918 was not a fair market value of the property. But I think he has failed entirely to prove that there was any chance of a purchaser being found in April 1919 who would give more than that price for the property. No doubt, in considering the question of value from a purely hypothetical point of view, it would be open to both sides to try and show, the one that in whatever manner the property was developed, the property would not realize as much as Rs. 92,500, the other that it would realise considerably more. One side would be inclined to cast as much doubt as possible on the probabilities of profitable user, while the other side would endeavour to show that every portion of the property would be put to a very profitable use; so that the capital value would amount to very much more than the purchase price.

6. But all those considerations are purely hypothetical, and a great deal of the arguments used by the experts on both sides, the one to appreciate, the other to depreciate the value, if one took the trouble to analyse them would be found to have very little value. It seems to me that when Government notified this property for compulsory acquisition in April 1919, they were bound to offer the claimant what he had given a few months before for the property, unless they were able to show conclusively that he had not given a fair value for the property. After all the Government have very wide powers under the Land Acquisition Act to deprive a man of his property, and it is only fair that he should be recouped on a liberal scale; any endeavours to unduly depreciate the value of properties that have to be acquired in order that Government may acquire as cheaply as possible, should be condemned equally with the exaggerated valuations put forward by claimants.

7. It seems to me, on a consideration of all the evidence in the case, that it all amounts to this, that the claimant has not proved that he could have realised more for this property in April 1919 than what he paid for it. The Government have not proved that if it was put in the market it would realize less. From the evidence it is difficult to see how a fair rent could have been obtained for the bungalow without spending a considerable amount in repairing and furnishing it. The property as it stands can best be valued at an all over rate per acre giving the fullest consideration to its situation. Looking at it in the way the claimant paid about 16,000 rupees an acre. This on the evidence was a very fair rate and even the witness Hormasji Sorabji did not put the value of the land higher than Rs. 15,000 an acre, though he undoubtedly put an exaggerated value on the bungalow. Therefore I think that the claimant should be awarded Rs. 92,500 together with 15 per cent. for compulsory acquisition. I would once more refer to the futility of elaborate calculations which purport to enable one to ascertain the marketable value of property almost to annas and pies, and I would draw attention, in illustration of that, to the calculations made by the District Judge by which he arrived at the conclusion that the property was worth Rs. 90,193. The valuation of Immovable property is not an exact science, and the very best

efforts of an expert or a Court to fix a market value for a property like this can never amount to much more than a quasi scientific guess, which the Court should in the case of compulsory acquisition temper with liberality. Considering the appellant made a claim of two lacs even here, there will be no order as to costs.

Shah, J.

8. I agree that the market value in this case should be fixed at Rs. 92,500, which is the amount paid by the claimant for this property in July 1918. I do not think that under the circumstances of this case the figures supplied to the lower Court on certain hypothetical bases afford any assistance to the Court in determining the true market value. The only safe basis Which on the facts of this case is most favourable to the claimant, is the price which he paid for the property in July 1918. In spite of the argument of the learned Advocate General to the contrary, there is nothing on the record of this case to show that that was not a fair market price at the time when he purchased the property. The fact that he paid that amount is indicative of the then value of the property and unless there is any thing definite on the record to justify the result that the market value was really less than what he paid for it at the time, that argument could not be accepted.

9. The only question which presents some difficulty to my mind is whether the claimant is entitled to anything more than the amount which he paid in July 1918 on the ground that there was some increase in the value of the property from July 1918 to April 1919, when it was notified for acquisition. It may be that there was some rise generally speaking in the value of properties at Poona during that interval; but it was for the claimant to prove that during that period, i.e., from July 1918 to April 1919, there had been such appreciable rise that he was entitled to some extra compensation on that account. Though I am rather inclined on general grounds to favour the view that probably there was some rise in the values of properties in this locality during that period, in the absence of any evidence on that point it is not possible to give effect to that consideration. I think, therefore, that the highest amount that the claimant could be awarded as the market value of the property is the amount which he paid in July 1918.