

(1925) 06 BOM CK 0010
In the Bombay High Court

Nowroji Rustomji Wadia

APPELLANT

Vs

Government of Bombay

RESPONDENT

Date of Decision : 12-06-1925

Acts Referred:

Citation : (1925) 27 BOMLR 1140

Hon'ble Judges : Sumner, J;Loud Salvesen, J;John Edge, J;Bladensburg, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sumner, J.—In 1917 the Municipality of Bombay acquired a plot of land for purposes connected with an existing hospital, and the usual statutory proceedings took place before the Collector of Bombay to fix the amount of compensation to be paid for the land. The owner, being dissatisfied with the amount awarded, viz., Rs. 98,724, claimed a reference to the High Court, and in 1920 Kajiji J. varied the Collector's award by increasing the rate to be allowed per square yard superficial from Rs. 8 to Rs. 10. This raised the total compensation to Rs. 1,39,970. Upon an appeal by the Municipality the High Court set aside the learned Judge's decree and dismissed the reference. They thus in effect confirmed the Collector's award. From this decision the claimant now appeals.

2. The value to be placed at a given moment on a plot of land, which is not in the market or the subject of bargain and sale, but owes a large part of any value it possesses to the prospective results of development work, to be undertaken thereafter at an uncertain time and at an estimated cost, is not only in its essence a question of fact but is one upon which, almost above any other, opinions will differ, without its being possible to give irrefragable reasons for any particular conclusion.

3. It has been declared in decisions of the Board, by which their lordships are

now bound, that appeals in valuation cases will only be entertained on questions of principle: See *Secretary of State for India v. India General Steam Navigation and Railway Company Ltd.* I. L. R(1909) Cal. 967, P. C.; *Rangoon Botatoung Company v. The Collector, Rangoon* (1912) L. R. 391. A. 197 S.C. 14 Bom. L. Section 838 per Lord Macnaghten; *Charan, Das v. Amir Khan* (1920) L. R. 47 I. A. 255 22 Bom. L. R. 1370 per Lord Buckmaster-"this Board will not interfere with any question of valuation"-and *Rai Bahadur Lala Narsinga Das v. Secretary of State for India* (December 5, 1924, No. 40 of 1924). Errors in law, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, are matters that can and will be dealt with on appeal by this Board, but when, as in the present case, a difference of opinion has occurred between two Indian Courts upon the number of rupees per yard to be allowed for a plot of land, as to which their lordships can form no opinion of their own, it would be alike unprofitable and impracticable to embark on a comparison of the decisions of these Courts, In oases relating to the acquisition of land the whole matter, both of fact and law, is a proper subject of appeal in India, for there local knowledge and experience enable the learned Judges to form useful judgments upon the whole case. The amending Act of 1921 declares awards under the Land Acquisition Act, 1894, to be decreed, so as to bring them within the general rules as to appeals to this Board, but it does not prescribe any special mode, in which they are to be treated. This Board has found it necessary to limit the extent of the inquiry, in order to spare the parties costly and fruitless litigation. Just as in oases where there are concurrent findings of fact in the Indian Courts, it has long been the general rule of the Board not to allow such findings to be re-opened here (*Naragunty Lutchmeedavamah v. Vengama Naidoo* (1881) 9 M. I. A. 68; *Umrao Begam v. Irshad Husain* (1894) L. R. 21 I. A. 163 so it has now been settled that this Board will not review the decree of an Indian appellate Court merely upon questions of value. Where their lordships have neither the materials nor the experience on which to found an opinion of their own, in a matter where the opinions of competent Courts in India differ (and a fortiori where they concur). It is not their practice to interfere, as an appellate tribunal, unless there appears to be error in law or miscarriage of justice.

4. In view of this practice the present case may be shortly dealt with. The plot to be acquired was irregular in shape and contour. Except at one point, and there only by a narrow passage, it had no access to any road. Part of it was hollow and low-lying, so that in the rains water accumulated there to the depth of several feet. No transactions were proved in respect of land closely adjacent to or precisely similar to this plot and such transactions as had occurred were cases of development and sale at dates not at or about the material time, viz., 1917. The question whether or not there had afterwards been an upward trend in market values generally, was not only highly disputable as a matter of opinion, but was not affirmatively supported by any satisfactory proof.

5. Both parties admitted that the most satisfactory use, to which the land could be put, was the erection of workmen's dwellings, and the value of the land for

this purpose accordingly became the question to which both directed their attention. Development of this kind required the dedication of a considerable part of the surface, in order to provide an access road, and also the raising of the whole surface to one level, free from risk of flooding, by permanently filling in the cavities with suitable loose material. Estimates of the area of land required for the road and of the costs of filling in per cubic yard were accordingly prepared, and were agreed on both sides. It does not appear, however, that any allowance was made for the time required to enable the made ground to settle, or for the risk that unexpected settlements might take place, and probably these factors were beyond any exact estimation. Of course the circumstances that might exist, when the work was done and the realisable value of the developed site could be ascertained, were alike beyond human foresight.

6. Kajiji J. appears to have addressed himself to the question of the fair compensation for land taken in 1917, to be allowed as at that date, as if it were an algebraic problem, which could be solved by an abstract formula. He sought to ascertain what value per yard the land might be supposed to have, if improved at some uncertain date, by treating the cost of filling in the cavities as a determined sum, to which there could not be any addition, and by deducting this sum alone from the supposed realisable value after future development. From these somewhat abstract factors he arrived at a concrete rate per superficial yard to be paid presently by way of compensation. In doing so he took no account of the factor of interest on the cost of the filling in and the other development work during the uncertain interval before the time of realisation might arrive.

7. From his conclusions thus arrived at the High Court dissented. Their reasons are not very clearly given, but this may be due to the fact that the evidence, which they discussed, is not very clearly recorded. At any rate, as it appears to their lordships, they fell into no error of principle in their criticisms of the judgment of Kajiji J. or in the process by which they arrived at their own conclusions. In dissenting from the method, which the learned Judge seems to have followed, they were certainly right. Factors such as he omitted to notice may be of great importance or of little, or even may be truly negligible, according to the circumstances of the particular case, but it cannot be right to ignore them altogether, as having no place at all in a rigid system of calculation. They were guided by their own view, as they were entitled to be, of the weight of the various pieces of evidence, nearly all of indirect bearing on the problem in hand—and in many cases only imperfectly developed. They thought, as they were entitled to think, that the grounds, on which the supposed rise in general market value was rested, were so unsubstantial in themselves and so distantly related to the circumstances of the site in question, as not to amount to any evidence on which to rest the judicial conclusion that something should be allowed for a rising market.

8. After carefully examining the evidence and the way in which the High Court appear to have dealt with it in arriving at the conclusion now under appeal, their

lordships are unable to find that there has been any error in principle or in law in the method of arriving at it. They will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.