

(1921) 04 BOM CK 0008
In the Bombay High Court

Padamsi Narayan and Another

APPELLANT

Vs

The Collector of Thana

RESPONDENT

Date of Decision : 05-04-1921

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : 64 Ind. Cas. 103

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

Bench : Division Bench

Judgement

Norman Macleod, C.J.—In 1915 certain lands in the village of Kerol, Taluka Salsette, in the Thana District were notified for acquisition under Act I of 1894, as being required by the Municipality of Bombay for the purpose of a terminal reservoir. One Jacob Bapuji, Deputy Collector in charge of the Salsette Taluka, was directed to take order for the acquisition of the land. He proceeded with his inquiry and on the 22nd March 1916, the following entry appears in the roznama: "Proceedings returned, award passed and sent for approval to the Consulting Surveyor through the Collector of Thana." The same day the Deputy Collector wrote to the Consulting Surveyor to Government through the Collector of Thana as follows (Exhibit 28): "Under Rule 11(3) of instructions for the guidance of Acquiring Officers I have the honour to submit herewith my proposed award for the land to be acquired for the above purpose for your approval and favour of return." On the 3rd July the Consulting Surveyor wrote (Exhibit 29) objecting to the proposed award as excessive, and this was forwarded to Jacob Bapuji by the Collector for explanation before the 10th July. On the 8th July, Jacob Bapuji replied supporting his valuation, but he said : "I have made my proposal to the best of my ability. A copy of my proposals has not been field in the Collector's office, nor have they been declared to the parties interested. They can be amended by the Assistant Collector who has now taken my place, if Mr. Mirams' estimates are considered correct and the award may be made final by filing a copy in the Collector's office and declaring it to the parties concerned." Mr. Cowan proceeded with the inquiry. The roznama showe that on

the 11th August an award was made and filed, on the 23rd August it was sent to the Collector for approval, on the 7th September it was made final and declared.

2. The various Survey Numbers were valued at Rs. 450, 400 and 350 per acre according to their situation. On references to the District Court the claimants contended that Jacob Bapuji had made final awards, that Mr. Cowan was not properly appointed, that he made his awards without an inquiry, based on the opinions of others and, therefore, they were void.

3. The Assistant Judge decided that the real and legal award was passed by Mr. Cowan.

4. The claimants wanted to appeal to the High Court and the Judge was of opinion that the case was not ripe for a preliminary decree. He directed that an order in the form of a declaration on the findings on the points raised should be passed. The claimants then appealed to the High Court on the ground that the Judge had passed a preliminary decree and the appeal was admitted on the 19th December 1918. Clearly there had been no preliminary decree from which an appeal lay. However, the Judge proceeded with the hearing of the references with regard to the issue, what extra compensation, if any, should be awarded in addition to that awarded by Mr. Cowan? He came to the conclusion that Rs. 50 per acre should be added to the amounts awarded by Mr. Cowan, that five per cent. should be added for the potentiality of the lands as building lands and five per cent. for the possibility of demands being made for moorum. There have been three appeals by various claimants from the decision of the Judge, and the question whether Jacob Bapuji had not made a final award arises properly in these appeals. Obviously if the Judge had awarded as much as or more than Jacob Bapuji, this issue would be superfluous.

5. Section 11 of Act I of 1894 directs that the Collector should proceed to inquire into objections by the persons interested in the land to be acquired and after ascertaining the value of the land make an award under his hand. Section 12 says such award shall be filed in the Collector's Office and shall, except as hereinafter provided, be final and conclusive evidence as between the Collector and the persons interested whether they have respectively appeared before the Collector or not, of the true area and of the value of the land.

6. It is difficult to see how it could possibly be said that Jacob Bapuji had made an award which was final as between the parties interested and himself, or that he could ever have thought that he had made such an award in the face of his letters of the 22nd March and the 8th July, though it does appear that he gave instructions in April to the Mamlatdar to hand over possession of the land to the Municipality. That, of course, could have nothing to do with the question whether as a matter of fact the award had been made. It may be as well to point out that the Courts are not concerned with the instructions given by Government to its officers with regard to their proceedings under Sections 11 and 12 of the Act. If Jacob Bapuji in spite of the general instructions had made his award without

consulting the Surveyor to Government through his superior officer, the Collector, the question might have arisen whether it was binding on Government before it was filed. But the mere signing of a document by the Acquiring Officer expressing his opinion as to the amount of compensation to be offered cannot have any binding effect when the officer himself writes that it is not intended to be final. I do not think, therefore, that Jacob Bapuji made his award within the meaning of Section 11. I do not attach any importance to the note added afterwards by Jacob Bapuji to the document he had signed on the 22nd March, it only bears out what he had written to the Consulting Surveyor on the same day.

7. But the appellants' argument must go so far as this, that if the Acquiring Officer once signs a document in the nature of an award, it is conclusive. He cannot change his mind, nor if he died and the document was found amongst his papers could Government dispute it. But, in my opinion, some further formality is required on general principles before it becomes binding on Government, and this formality is prescribed by Section 12. It must be filed and so become a part of the office records, and then it shall be final and conclusive evidence between Government and the parties interested. No doubt the wording of Section 12 is not very satisfactory and from the roenama in the case it does not appear that, even as it stands, it was properly understood by Mr. Cowan. For, although the award is stated to have been filed on the 11th August, it was thereafter sent to the Collector for approval and only made final and declared on the 7th September 1916. If an alteration decreasing the amount of compensation had been made after the 11th August, I do not think it would have been valid. At the same time considering that an award made u/s 11 is an offer by Government to the person interested in the land to be acquired of the compensation to be paid, it should be made clear exactly what formality should be observed to make it a binding offer. In ordinary transactions an offer is not binding on the party making it, until it is published or communicated to the party for whom it is intended and as the amendment of the Act is now under consideration, it is desirable that this question which is constantly arising in one form or another in references to the Court u/s 18, should be settled by the Legislature. The appellants did not rely upon *Dossabhai Bezanji v. The Special Officer, Salsette Building Sites* 16 Ind. Cas. 549 : 14 Bom. L.R. 592 where the only question was whether the award which had been filed and promulgated was a valid award under the Act. If Jacob Bapuji had continued as Acquiring Officer and on receiving the opinion of the Consulting Surveyor had made his award in this form: "I think the proper amount of compensation to be awarded is X rupees but as the Consulting Surveyor thinks it should be X minus Y rupees, I award X minus Y rupees," then no doubt that decision would have been in point,

8. *Kooverbai v. The Assistant Collector, Surat* 59 Ind. Cas. 429 : 22 Bom. L.R. 1136 seems to me directly in point and I have no wish to alter anything I said in my judgment in that case.

9. It is really a question of fact whether Jacob Bapuji made this award and when

he wrote on the 22nd March that the document was the award, he proposed to make I cannot see how it can be said that he had made it.

10. The next question is whether the compensation awarded by the Assistant Judge should be increased. The land is described as follows in his judgment: "The land under reference is triangular in shape with a short base at the south running to an acute angle which is the top of a hill, with hill sides falling from the ranges of hill rapidly to a valley which is equidistant from either side. At the same time there is a general fall from north to south. At the apex of the hill the height of the hill is about 850 feet above the sea level. The Agra Road is about 135 feet above the sea level. The southernmost portion of the land is 180 feet above sea level. The nearest of the plots is about 1,000 yards from the Agra Road and 2,500 yards from Ghatkopar Railway Station." It is difficult to imagine how any one could consider that such land had any potentiality for building land: round about the station a considerable number of houses had been erected after plague broke out in Bombay in 1896-97, but there was no evidence that many houses had been erected in recent years while there was a very large quantity of land available on or near the Agra Road. It was suggested that a plot numbered 27 measuring one acre on the map, close to the southern portion of the land in reference, had been sold at seven annas per square yard, but that estimate is absolutely fallacious, as plot No. 27 was sold with plots Nos. 33 and 42 totalling altogether 11,858 square yards and plots Nos. 33 and 42 were far better situated than plot No. 27. No contour map has been produced but from the above description of the land in reference it is clear that apart from the difficulty of getting access to the Agra Road the costs of levelling a building site would be prohibitive for that locality. In my opinion therefore, the land could only be valued on the basis of what would be realised for the grass growing on it. On the evidence with regard to this it is impossible to say that the decision of the Assistant Judge does not award sufficient compensation, while he has added ten per cent. for potentialities which can only be considered as of a very remote character.

11. In my opinion all the appeals should be dismissed with costs.

Shah, J.

12. These appeals arise out of proceedings under the Land Acquisition Act in respect of lands acquired for the terminal service reservoir at Kerol in the Thana District for the Bombay Municipality under a declaration of the 17th May 1915.

13. The Assistant or Deputy Collector in charge of the Bassein Taluka was appointed under the Land Acquisition Act to take order for the acquisition of the land under the Government Resolution of that date. Mr. Jacob Bapuji was then in charge of the Bassein Taluka as Deputy Collector, who started proceedings under the Act with a view to make his award. After making the inquiry contemplated by the Act he prepared his award on the 22nd March 1916, and in accordance with certain departmental instructions contained in the Government Resolution No.

6355 of 1909 as amended by Government Resolution No. 7487 of 1910, submitted his award to the Consulting Surveyor to Government through the Collector of Thana. Thereafter the District Deputy Collector wrote to the Municipal authorities to take possession of the lands, and possession was in fact taken about the middle of April 1916. The Deputy Collector was then transferred and he delivered over charge of the Salsette Taluka on the 29th April 1916.

14. The Consulting surveyor did not agree with the conclusions recorded by the District Deputy Collector, as would appear from his letter of the 3rd July 1916 to the District Deputy Collector, and suggested a much lower valuation. The District Deputy Collector, who had submitted his award, gave an explanation as required by the Collector, in which he stated that he had made his proposals to the best of his ability and suggested what appeared to him to be the proper procedure according to law as he understood it. He wrote then that his proposals had not been filed in the Collector's office, nor had they been declared to the parties concerned, He thought that they could be corrected by the Assistant Collector in charge of the Bessein Prant, if the Consulting Surveyor's valuation was considered correct. He referred to a note which, he states in his evidence, was added by him to his award then (i.e., 8th July 1916) and which was to the following effect: "These proposals of award are provisional and subject to approval. They are not declared and are not final," This postscript bears no date, but I accept it on his evidence as having been made in July 1916.

15. The Assistant Collector resumed the proceedings in August 1916. He made an award in accordance with the valuation of the Consulting Surveyor and sent it to the Collector in accordance with the departmental instructions already referred to. The Collector pointed out a small mistake; and he amended his award accordingly, and ultimately made it final and declared it on the 7th September 1916.

16. The appellants before us and others asked for references to the District Court u/s 18 of the Land Acquisition Act. The Assistant Judge of Thana ultimately nude his award on the 23rd December 1918 after hearing the parties and considering the evidence.

17. A preliminary objection was taken before him that the award which was final and conclusive was the award made by the Deputy Collector on the 22nd March 1916, and not the one made by the Assistant Collector, Mr. Cowan, on the 7th September 1916. Several issues were raised in connection with the preliminary objection, but be held on the 26th August 1918 that the final award in the case was that made by the Assistant Collector. The Assistant Judge practically upheld the valuation of the Consulting Surveyor subject to a small variation. In the appeals before us it is urged that the award made by the District Deputy Collector on the 22nd Marsh 1916 was final and conclusive and that the claimants ought to be allowed compensation for the lands on that basis. It is also urged that on the evidence the true market value is that determined by the District Deputy Collector.

18. On the evidence I see no reason to hold, that the conclusion reached by the Assistant Judge as to the market value of the lands in question is wrong; and on the merits no case is made out for disturbing the award of the lower Court. The only point that requires consideration is whether the award prepared by the District Deputy Collector was made by him within the meaning of Section 11, and whether it was final and conclusive as provided in Section 12. If it was, the appellants are entitled to compensation according to that award, and if it was not, these appeals must be dismissed.

19. The questions that arise with reference to the award of the 22nd March 1916 by the Deputy Collector present some difficulty to my mind, in view of the decisions in *Dossabhai Bezanji v. The Special Officer, Salsette Building Sites* 16 Ind. Cas. 549 14 Bom. L.R. 592 and *Kooverbai v. The Assistant Collector, Surat* 22 Bom. L.R. 1136.

20. I propose to deal with the question as to the interpretation of Section 12 first. After providing for an inquiry and an award by the Collector in Sections 9, 10 and 11, it is provided in Section 12 that the award shall be filed in the Collector's office and shall be final and conclusive as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among persons interested, except as provided in the Act. In the present case we are not concerned with, the saving clause "except as hereinafter provided," If the award made on 22nd March 1916 had been filed, it is conceded that it would have been final and conclusive as to the value of the land, whatever the departmental instructions to the contrary might be. But it is contended that the filing is a condition precedent to its being final and conclusive, I am unable to accept this contention. The award when made u/s 11, would be final and conclusive. When it is filed (in the Acquiring Officer's office), there can be no doubt that the award is made. But it is difficult to hold that an award made u/s 11 cannot be final and conclusive unless and until it is filed. The section provides that such award shall be filed and shall be final and conclusive as to certain matters. I do not see any sufficient ground in the wording of the section for holding that the filing of the award is absolutely essential to its being final and conclusive. I agree that the filing is obligatory under the Act, and also that the step, when taken, puts it beyond doubt that the award is made and that it is final and conclusive as provided in the section. But I am unable to agree that it can never be final and conclusive unless it is filed. The section would have been worded in a different way if that had been the intention of the Legislature. The important thing is the making of the award, as provided in Section 11, and the filing is a ministerial act. I am unable to attach such significance to the filing of the award as is suggested on behalf of the respondent.

21. The marginal note of Section 12 is apt to suggest that the award would be final and conclusive when filed. I do not think that the marginal note could be properly used as an aid for interpreting the section. Even if it were so used, I do not think that it can justify the construction that the "filing" of the award is an

essential step to be taken to make the award final and conclusive as to the matters mentioned in Section 12. I am of opinion that when the award is made u/s 11, the consequence mentioned in Section 12 as to its being final and conclusive necessarily follows.

22. The important question, therefore, to my mind is whether the award was made by the Deputy Collector on the 22nd March. Ordinarily there should be no difficulty in determining whether the award is made or not. But the difficulty arises in consequence of the departmental instructions and the procedure that the Awarding Officer finds it necessary to follow. With regard to these instructions which have been published at pages 273--279 of Campbell's Law of Land Acquisition, I may add that they have not the force of law which rules made u/s 55 of the Act would have. They are not rules made under that section; and it is not suggested that there are any rules under that section.

23. I accept the propositions laid down in *Ezra v. Secretary of State for India* 7 Bom. L.R. 422 : 9 C.W. N. 454 : 1 C.L.J. 227 : 2 A.L.J. 771 : 8 Sar. P.C.J. 779 that the proceedings before the Collector are administrative and not judicial, that the Awarding Officer's duty is not to conclude the owner by his so-called award, but to fix the sum which in his best judgment is the value and should be offered, that the Collector is not limited to the evidence before him, and that it is open to him to take into consideration the information in the hands of the department. The Collector's discretion in the matter is unfettered in law as regards availing himself of such information in the hands of the department. At the same time it seems to me that under the Act as well as the decisions, it is his duty to fix a sum which in his judgment represents the market value of the land. Section 15 makes it clear that he shall be guided by the provisions of Sections 23 and 24 of the Act in determining the amount of compensation.

24. It will be convenient to state briefly the facts which have been referred to in the argument as bearing on the question as to whether the award of the Deputy Collector is final and conclusive. The Deputy Collector prepared an award on the 22nd March and sent it on to the Consulting Surveyor through the Collector. He made the following entry in the notes of proceedings relating to the acquisition:--"Award passed and sent for approval to the Consulting Surveyor through the Collector of Thana." The award in form is a complete document in accordance with the requirements of the Act, and on its face it is an award made u/s 11 after making the inquiry contemplated by the Act (See Exhibit 27). On the same day he wrote a letter to the Consulting Surveyor, with which he sent his proposed award and other papers, in these terms:--"Under Rule 11 of instructions for the guidance of Acquiring Officers I have the honour to submit herewith my proposed award for the land to be acquired for your approval and favour of return." No intimation was given to the claimants as required by Section 12, Sub-section (2). A few days later the Deputy Collector wrote on the 31st March to the Hydraulic Engineer informing him that the award had already been made and sent for approval to the Consulting Surveyor of Government, and

reminded him of the request which he had already made to fix a date to take possession of the land (see Exhibit 19).

25. Two days before this the same officer, writing on behalf of the Collector of Thana, had informed him that the District Deputy Collector had completed the acquisition proceedings, and proposed an award and had sent it to the Consulting Surveyor, and that the Mamlatdar had been instructed to hand over possession to the Bombay Municipality (see Exhibit 32). I have already referred to the fact that the possession of the land was taken in April.

26. In July the Consulting Surveyor disapproved of the award of the Deputy Collector, who, when called upon to submit an explanation, said that he had made his proposals to the best of his ability and pointed out a way which he thought was open to the Collector according to law. He also added a footnote to the award, to which I have already referred. Thereafter the Assistant Collector resumed the proceedings and made his award on the 11th August 1916 in which he accepted the valuation of the lands by the Consulting Surveyor to Government, and made the following note in the diary of the proceedings: "award made and filed." He then sent it to the Collector for approval, who approved of it subject to a slight alteration (see Exhibit 43). The alteration was accepted by the Assistant Collector on the 7th September 1916, and the award was then made final and declared.

27. These facts clearly show that the departmental instructions practically leave nothing to the judgment of the Awarding Officer, who has to make his award u/s 11 of the Act. These instructions ignore the individuality and the statutory obligations of the Acquiring Officer. It is provided in the instructions that "in all cases where a reference to the Collector is made the Acquiring Officer should make his final award according to the instructions from the Collector." These instructions, I think, go far beyond what is laid down in Ezra's case 32 I.A. 93 : 7 Bom. L.R. 422 : 9 C.W. N. 454 : 1 C.L.J. 227. That is the view taken in Dossabhai's case 16 Ind. Cas. 549 : 14 Bom. L.R. 592. Batchelor, J.'s judgment is clear on the point, and Heaton, J.'s observations at the end of his judgment point to the same conclusion. Referring to Ezra's case 32 C. 605 : 32 I.A. 93 : 7 Bom. L.R. 422 : 9 C.W. N. 454 : 1 C.L.J. 227 : 2 A.L.J. 771 : 8 Sar. P.C.J. 779 he says as follows (page 606):--"But if, and this seems to me very doubtful indeed, that judgment goes the length of saying that the Special Collector should set aside his own opinion and his own conscience and substitute for it an estimate made by somebody else, then I should find the very greatest difficulty in following that conclusion." My own reading of the provisions of the Act and the judgment of their Lordships of the Privy Council in Ezra's case 32 I.A. 93 : 7 Bom. L.R. 422 : 9 C.W. N. 454 : 1 C.L.J. 227 : 2 A.L.J. 771 : 8 Sar. P.C.J. 779 lead me to the conclusion that while the Act gives the Acquiring Officer very wide discretion as to the scope of the inquiry and as to the materials which he may take into consideration, it requires him to make an award as to the matters mentioned in Section 11, and to have regard to the provisions of Sections 23 and

24 in determining the amount of compensation as laid down in Section 15.

28. I have carefully considered the ratio decidendi in Kooverbai's case 59 Ind. Cas. 429 : 22 Bom. L.R. 1136. While I recognise that the special facts of the case afford a basis for distinguishing it from Dossabhai's case 16 Ind. Cas. 549 : 14 Bom. L.R. 592 I think that there is a certain degree of conflict in the reasoning underlying these decisions. I have, therefore, stated my own view as to the meaning of the sections of the Act and as to the effect of the departmental instructions.

29. Though I have stated the various circumstances which have been referred to in the argument. I do not think that they necessarily help us in determining whether the award was made by the Deputy Collector in March 1916. What the Deputy Collector himself said or did in July does not seem to me to affect the question. The omission to file the award as required by Section 12 (1) and to give notice to the parties u/s 12 (2) suggests one inference, while the taking of possession soon after the "proposed" award suggests the contrary inference. On the one hand it seems that so far as the Deputy Collector was concerned the award contained the valuation, which in his judgment was correct: on the other hand it appears that at the time he merely proposed it as required by the instructions, and that he did not "make" it. It is not necessary for the purpose of these appeals to determine whether the second award made by the Assistant Collector really represents his opinion as to the market value of the property. But that award refers to the award of the 22nd March as a "provisional award." In a sense this circumstance brings the present case nearer the facts in Dossabhai's case 16 Ind. Cas. 549 : 14 Bom. L.R. 592 than Kooverbai's case 59 Ind. Cas. 429 : 22 Bom. L.R. 1136 Lastly, there is the entry in the diary of proceedings that the award was "passed" and sent for approval to the Consulting Surveyor, and there is the Awarding Officer's letter of the same date to that Officer, We have also the fact that the award purports to be a complete document such as is contemplated by Section 11. These facts also suggest conflicting inferences. I must say that I have felt great difficulty in this case in deciding whether the Deputy Collector made his award on the 22nd March or not. On the whole, I have come to the conclusion, though not without hesitation, that it is not established on the special facts of this case that the Awarding Officer made his award on the 22nd March. Therefore, the only award in the case, such as it is, is the award which purports to have been made by the Assistant Collector. At the same time I desire to make it clear that to my mind it does not necessarily follow that an Acquiring Officer does not make his award, simply because he sends it to the Collector or to any other officer for approval. For instance in the present case the award was made by the Assistant Collector on the 11th August even though it was sent afterwards to the Collector for approval.

30. I, therefore, agree that the appeals may be dismissed.

31. I may add that the difficulty arising from the departmental instructions is real. In my opinion the whole position requires to be considered, with a view to

make it clear beyond controversy as far as possible, either by adequate rules u/s 55 of the Act or by a suitable amendment of the Act, as to what should constitute the making of the award, and what definite step, if any, should make the award final and conclusive of the matters mentioned in Section 12 of the Act.