
(1919) 09 MAD CK 0003
In the Madras High Court

Raghunatha Row

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 09-09-1919

Acts Referred:

Citation : (1921) ILR (Mad) 264

Hon'ble Judges : Oldfield, J; Bakewell, J

Bench : Division Bench

Judgement

1. The main question in this Appeal is whether the Lower Court was right in awarding compensation for the land acquired as cultivable land and

not as a gravel quarry. The Lower Court refused to award compensation as for a gravel quarry on the ground that the only demand for the

produce of the land as a quarry, came from the District Board, a public body, on account of which the acquisition was made, and it referred to

proviso 1 of Section 24 of the Land Acquisition Act and the Judgment of Lord Moulton in *In re Lucas and Chesterfield Gas and Water Board*

[1909] 1 K.B. 16. We need not say much regarding this part of the case, because the learned Government Pleader has not disputed that the

Lower Court erred in refusing to consider the character of the land as a gravel quarry. It is sufficient to refer to a quotation from the judgment of

Mr. Justice Grove in *In re Countess Ossalinsky and Manchester Corporation* (Brown and Allan's Law of Compensation, 2nd Edition, page 659)

extracted in the judgment of Vaughan-Williams, L.J., at page 26, in the case referred to by the District Judge:

The only one of those that can apply to this case is the latter one, that the arbitrator has acted ultra vires; in other words, that he has made an

element of his calculation of the value of this land that which legally cannot or ought not to be an element of his calculation, namely, the enhanced value of the land on account of its capability of being used for diverting and impounding water for being converted into a reservoir, or for any useful purpose for which persons would pay a substantial price. It appears to us that that in itself is not an objection to the award, and that the arbitrator ought to take that into consideration. If the land has what we may call an adventitious value, that is, something beyond its mere agricultural or normal value (and that is a marketable value in this sense, that, persons wishing, for a purpose for which the land is peculiarly applicable, to purchase that land would give a higher price for that land), then the arbitrator has a fair right to take that into consideration; it is a matter no doubt contingent, but still it is a matter which is not to be ignored or put out of consideration by an arbitrator.

2. The portion of Lord MOULTON'S judgment to which the learned District Judge refers must be with reference to the circumstances of the

acquisition, which was then under contemplation. That acquisition was of a piece of land which was of no value for agricultural or other purposes

to any one except to the public authority which was proposing to use it for the construction of a reservoir. The circumstances in the present case

are different, because the compensation is really being given for the gravel, the commodity which the land proposed to be acquired contains and

which has had in the past and must be considered as having in the future a market value independently of the fact that its permanent acquisition is

now under consideration. In *re Lucas and Chesterfield Gas and Water Board* [1909] 1 K.B. 16 was referred to in *Daya Khushal v. Assistant*

Collector, Surat ILR (1914) Bom.37, and we respectfully agree with the conclusion reached in that case, that when a piece of land is compulsorily

acquired for quarrying purposes, its special adaptability for quarrying is an element for consideration in fixing the amount of compensation. This

conclusion entails dissent from the decision of the Lower Court.

3. We have then to decide what is the proper amount to be awarded on the basis that the land is to be compensated for as a quarry. Firstly, there

is before us no finding regarding the amount of gravel on the land. But as it is not suggested that the land will be of value for any other purposes if it

is used as a quarry, we can found our award on the amount of gravel which can be realized. The witnesses estimate the amount of gravel at 2,000 to 3,000 cart-loads of gravel per acre. This evidence is of course indefinite. The witnesses in fact say that they are merely guessing; but we think that they probably mean that they are making the best estimate they can. It is suggested that we can reach no conclusion on this evidence, because it includes nothing to show that any accurate method of estimating was adopted by any witness. It is true that there is nothing regarding the depth of the gravel at any particular place. We find, however, that the question was fully in issue before the lower Court, and if the witnesses were not cross-examined with regard to the manner in which they made their estimates, or with regard to their failure to ascertain the depth of the gravel, that is the fault of the Government. Moreover, on the side of Government there is no counter-evidence. We therefore act on such evidence as is available and, taking the lowest figure spoken to by any of the witnesses, we find that there are 2,000 cart-loads of gravel per acre.

4. The next question is as to the valuation of this quantity of gravel. There is some very vague evidence as to the value of a cart-load of gravel from the claimant's witnesses and there is some evidence from the Government witnesses as to the price paid by Government for gravel at a quarry four miles distant and as to the cost of transporting that gravel. It is clear, however, that better evidence must be available, because we know that the Government has recently been buying gravel from the quarry now under acquisition and it should be possible to prove the price which the Government actually paid for gravel from it. That evidence would clearly be the best; and we must express our surprise that it was not laid before the Lower Court. As the record stands, we do not feel able to come to any satisfactory conclusion on this part of the case. There is moreover another point, which does not seem to have been considered on the evidence but which should have a material bearing on the conclusion. The price, which ought to be allowed for a cart-load of gravel must be influenced by the extent of the District Board's demand for it in the near future.

For the value of the available gravel at the rate actually paid in the past could not be adopted without disregard of the District Board's loss of the use of the purchase money, which they will have to pay in a lump sum at once, or to put it from the point of view of the owner of the land, the value

to him is the price of the cart-loads of gravel to be extracted from time to time for a certain number of years, not the total value of the whole

amount available paid at once. That is, it is the present value of what might be expected to be realized in the future. We must therefore call for a

finding from the Lower Court as to the rate per cart-load at which compensation should be paid for the gravel on the land in the light of the

foregoing. Fresh evidence may be taken. The finding is due in six weeks and seven days will be allowed for filing objections.