
(1933) 02 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 287 of 1927

The Assistant Development Officer

APPELLANT

Vs

Tayaballi Allibhoy Bohori

RESPONDENT

Date of Decision : 15-02-1933

Acts Referred:

Land Acquisition Act, 1894 — Section 24

Citation : AIR 1933 Bom 361 : (1933) 35 BOMLR 763

Hon'ble Judges : Rangnekar, J;Broomfield, J

Bench : Division Bench

Judgement

Broomfield, J.—These are connected appeals from the judgment of the Assistant Judge of Thana in nineteen references under the Land Acquisition Act arising out of the compulsory acquisition of lands in Kurla. The lands were notified for acquisition under various notifications between January 17, 1922, and January 12, 1923. But the bulk of them, more than 18 acres, were included in the notifications of January 17 and 19, 1922, those subsequently notified being only about 1 1/2 acres. The acquisition was carried out by Government as part of a scheme for the development of the Bombay suburban area, the special object in this case being the construction of a light railway linking up Kurla with Andheri. There has been some discussion as to whether Kurla should properly be described as an industrial suburb or a slum area, but nothing much seems to turn on this. It appears that it is not or was not at the material time a very attractive or sanitary place of residence, but it was undoubtedly a residential and not an agricultural area, and it is conceded that the particular lands with which we are concerned must be valued as possible building sites, not by the acre but at so much per square yard. As regards communications, the main artery of traffic in Kurla is the Old Agra Road, and one main group of lands adjoins this road. Another main group lies between this road and the New Agra Road on the north-west. On the opposite side of the Old Agra Road, that is on the south-east, there is a road called the Pipe Road leading up to the Vihar pipe line. The rest of the lands lie between these limits, that is between the Old Agra Road and the

Pipe Road and pipe line, and at the southern-most point they approach the Station Road which leads from the Station and the Pipe Road to the Old Agra Road.

2. There were altogether twenty-three references to the Court, but in four there has been no appeal. Out of the nineteen appeals eighteen are by Government for reduction of the amount awarded by the Assistant Judge as compensation. The remaining appeal is by the owner of the lands for enhanced compensation. Before dealing with the appeals individually, there are some general questions which it will be convenient to consider first. The method of valuation which has been adopted is in the main the market price as deducible from actual sales of the acquired lands and neighbouring lands. The original awards, the arguments of the claimants in the references, the judgment of the Assistant Judge and the arguments in these appeals in this Court, are all founded on these statistics which should be applied of course with reference to the physical characteristics of the particular lands, and it is conceded that this method of valuation is the correct one in this particular case. Stated generally then, the question in all these appeals is whether the Assistant Judge has drawn proper deductions from the facts and figures before him and applied them fairly to the circumstances of each case. It is, therefore, necessary to consider in the first place to what extent the evidence on which the valuation is to be based is affected by the boom in land values in Bombay and the suburbs which, according to the generally accepted view (see *The Government of Bombay Vs. Merwan Moondigar Aga*, and other cases cited by the learned Advocate General), reached its height in 1920 and was followed by a more or less rapid slump at the end of that year or the beginning of 1921. It has been contended by the claimants, and the Assistant Judge has accepted their contention, that Kurla was an exception and that prices there did not show any downward trend until long after the notifications in this case were published at the beginning of 1922. Prima facie the statistics appear to support this view. We have been supplied with a statement in which all the instances of sales relied on by Government and the claimants are collected together. There are sixty-five instances in all between the years 1918 and 1923 and it will be useful to take a general survey of them. In 1918 and 1919 there were twenty-four instances at rates between 8 annas and Rs. 7, but the latter rate was for 197 square yards only. There were no sales at Rs. 6, only one at Rs. 5 (a small area), one at Rs. 4-11-0, and the rest were under Rs. 4 with the average well under Rs. 3. In 1920 we have fifteen instances ranging from Rs. 2 to Rs. 10, but there was only one at Rs. 10 and only five altogether above Rs. 4. In 1921 we have eleven instances ranging from Rs. 3 to Rs. 17-8-0, but both the extremes were cases of small areas and obviously abnormal. The normal range was clearly from Rs. 5 to Rs. 8. There were two at Rs. 8, one of these a small area, and there was nothing higher except the Rs. 17-8-0 instance. In 1922 there were eleven instances ranging from Rs. 4-8-0 to Rs. 9. The latter was a small area. The average rate, Rs. 7, was due to the sale in small portions of a large plot of 10,000 square yards purchased at Rs. 5 in 1920. In 1923 we have only four

instances ranging from Rs. 6-8-0 to Rs. 13-11-8. On the face of it this analysis of the sale figures shows a decided but not very remarkable rise in prices in 1920, a substantial further rise in 1921, and prices maintained at much the same level in 1922, mostly, however, owing to a single transaction. For 1923 we have no sufficient data, but so far as the figures go, there seems to be no indication of a slump.

3. But in connection with the figures for 1922 and 1923 there is the obvious difficulty that these transactions are subsequent to the notifications in January 1922. The public notification of a scheme for the development of Kurla and the increase of its amenities by the construction of a railway connecting it with Andheri might very probably counteract any tendency to a slump in land values. The learned Advocate General, therefore, has argued that all post-notification sales should be disregarded altogether. He has relied on certain decisions of this Court, e. g., First Appeal No. 162 of 1925 and First Appeal No. 365 of 1925. We were also referred to *Government of Bombay Vs. Karim Tar Mahomed*, where Mr. Justice Macleod observed, in the course of his judgment, that sales after the date of notification must be discarded when it is proved that values have been affected one way or the other by circumstances which have arisen after that date. My learned brother has also drawn my attention to the observations of Fletcher Moulton L.J. in *In re Lucas and Chesterfield Gas and Water Board* [1909] 1 K.B. 16 :-

The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the lands he gives up their equivalent, i. e., that which they were worth to him in money. His property is therefore not diminished in amount, but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him, and not on the value to the purchaser, and hence it has from the first been recognized as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market value of his lands as they stood before the scheme was authorised by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands, and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him.

4. I may mention also Section 24 of the Land Acquisition Act, in which it is provided that the Court shall not take into consideration inter alia any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ; or any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. Nevertheless I doubt if anything can be found in these authorities which would justify the conclusion that post-notification transactions must necessarily be ignored altogether. All transactions must be relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. If any considerable interval has elapsed the Court will naturally

attach little or no value to subsequent sales, just as transactions long prior to the notification will usually be discarded. The learned counsel who appeared for the respondents in most of these appeals has conceded that the transactions in 1923 are not valuable as evidence. But transactions only a month or two after the notification may sometimes perhaps have some value as evidence. It must largely depend on the purpose of the acquisition. If lands have been acquired, as in the present case, for the development of a locality and the improvement of its communications and amenities, it is a reasonable inference that the value of property will increase, and the Court, I think, must consider that factor, even though it is not directly proved that the transactions in question have been affected by the notification. Direct proof would hardly ever be available. I would, therefore, not exclude sales in 1922 entirely from consideration, but I would treat them as evidence of rather doubtful value.

5. Then, in view of certain arguments which have been addressed to us, I shall make a few observations as to the burden of proof and the functions of the Court in land acquisition references. The acquiring Officer's award is, of course, strictly speaking not an award at all but an offer. It is based on inquiry and inspection and the officer responsible for it is usually a man of experience and local knowledge. He may take evidence, but he is not bound to do so, and his proceedings are administrative rather than judicial. But if his award is not accepted and the matter is taken into Court, the proceedings are thenceforward judicial in character. The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing *prima facie* that the award is inadequate, then Government must support the award by producing evidence. It is no doubt true that the valuation of immovable property is not an exact science. As Macleod C.J. said in his judgment in *K.P. Frenchman Vs. The Assistant Collector*, :-

...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.

6. But I can call in aid the general tenor of the judgments of that learned Judge in land acquisition cases to support me when I say that the Court is bound to treat the matter judicially as far as possible and it should only guess when science or common sense will not point to a definite conclusion. The Judge ought to be liberal in the sense that he should not be too meticulous or pedantic in dealing with the evidence. The value of property should not be unduly depreciated in order that Government may acquire as cheaply as possible, and seeing that an exact calculation to annas and pies is usually impossible, the Court is justified in taking a broad view as favourable to the owner as the evidence permits. But, as in the case of any other judicial proceedings, the findings must be based upon evidence and legitimate deductions from it, and if

there is an appeal, both the evidence and the deductions are subject to reconsideration by the appeal Court. No doubt the party appealing must satisfy this Court that the judgment appealed from is wrong, and for the reasons which I have indicated, it may be more difficult to do that in land acquisition appeals than in other cases. But the same principles must apply as in ordinary appeals. It is not necessary to show, as Mr. Coyajee for the respondents suggested, that the judgment is perverse. It is enough to show that it is inconsistent with the evidence or based upon unsound deductions. We have been referred to a decision of the Privy Council in *Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co.* (1901) L.R. 28 IndAp 121 but I have not found anything in the judgment in that case which is in conflict with the views I have expressed. Their Lordships of the Judicial Committee themselves considered the evidence and weighed the deductions made in that case. [The judgment then proceeded to deal with each appeal on its merits.]