

(1925) 09 BOM CK 0007
In the Bombay High Court
Case No : First Appeal No. 238 of 1923

The Collector

APPELLANT

Vs

The Manager, Kurla Estate

RESPONDENT

Date of Decision : 22-09-1925

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1926) 28 BOMLR 67

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, C.J.—In reference No. 118 of 1921, u/s 18 of the Land Acquisition Act I of 1894, the Assistant Judge of Than a had before him the question whether the award of the Collector with regard to the land to be acquired was sufficient. The land is situated on the west side of the new Agra Road, and was notified for acquisition partly in July 1920 and partly in December 1920.

2. The Collector awarded various rates for various portions of the land from Rs. 2-8 a square yard to Rs. 1-8 a square yard, but the total award for the claimant's land under reference amounted to over Rs. 10,000 an acre for the whole of land which measured three acres three gunthas.

3. A reference to the plan shows that the land we are now dealing with was of an exceptionally irregular shape, and one of the fallacies in the claimant's argument which, we may add contained more than the usual number of fallacies which we have to deal with in cases under the Land Acquisition Act, was that all the land, whatever its shape and whatever its situation, should be given the same value. We have to consider what a willing purchaser would have given for this land on or about the date of the notification for acquisition. The first thing to be noticed is that a considerable part of the land was useless for building. Even assuming

that a purchaser would have in his mind some scheme for developing the land and plotting it out, he would inevitably see that a large amount of the land would be required for accommodation purposes, otherwise a considerable portion of the land would be left on his hands without any prospect of realising anything for it, unless a very large proportion of the area was used in opening out the rest.

4. Now the land is situated on the west side of the new Agra Road which runs north from the Kurla creek, having Kurla village on the right hand side, with the result that the houses and properties which were at the back of the Kurla village without an access to a main road, gained the advantage of the new Agra Road; and many of the sales which were relied upon by the claimant were sales of small plots of land to the owners of what were back properties before the road was built in order that they might secure access to the new road. These sales from Rs. 3 to Rs. 6 a square yard, as we pointed out in the argument, would be of very little value in assessing the compensation to be awarded for the land in this reference.

5. Before the new road was built, this land was practically of no value at all, and it is a fair argument that after the new road was built, there would be a considerable increase in the demand for land, and that the land even on the west side might attract purchasers. But having gone so far, there is no necessity whatever to imagine that every square yard on the west side of the new road would acquire a similar value to the land on the east side.

6. Now there are a very large number of instances of sales put in, and they are all summarised in the judgment. These are dealt with by the Judge at page 8. In paragraph 8 he deals with certain of those instances, most which were alongside the railway line and were old ones and they were only useful in the determination of the value of lands on the new Agra Road as indicating the gradual rise in prices. The instance Exhibit 38 of reference No. 4 of 1921, in which the Acquiring Officer awarded Rs. 1-13-0 per yard, and the Court awarded nearly Rs. 4 per yard, related to land much nearer the station than the land under acquisition, and near that part of the town in which houses have been springing up-though apparently, as the Judge remarks, from a sanitary point of view that part of the town is dirty and stinking every where.

7. Then in paragraph 9 he says:-

The instances relied upon by the claimants of sales in Survey Nos. 22, 218 and 239 in 1920 at prices ranging from Rs. 3 to Rs. 6-most of the lands abutting on the new Agra Road-are nearer the station. The lands acquired are at a distance of about 1 1/4 miles by pakka road and at about half that distance by a katcha cart road, Of the instances relied upon by Government, Exhibits 100, 108, 109, 124, 53 and 112 give on the whole nearer indication of the prices ruling on that side, though not quite an accurate one.

8. Though the prices of these instances range from Rs. 2-8 to Rs. 3 a square yard, what the Judge says in paragraph 10 is this:-

The lands acquired are arranged in groups according to their situation on the road with or without frontage, high or flub as below : -

At rates varying from Rs. 1-8-0 to Rs. 2-8-0, I think that the grouping has been carefully done.

9. Then taking the instances as a whole he thought that the market value had been undervalued by 75 per cent, by the Acquiring Officer, and he therefore awarded 75 per cent. more than what was awarded by the Acquiring Officer, that is to say, he was awarding for the best land nearly Rs. 4 a square yard apart from the 15 per cent. for compulsory acquisition. He also awarded Rs. 4,631-4-0 as the value of a certain amount of earth which could be extracted from the land at 12 annas per brass. The result was that the total award, without the 15 per cent. compensation, amounted to Rs. 60,676.

10. Now if Judges would only consider when they have worked out the figures according to their calculations from the evidence, how that result will compare with the opinion which they are entitled to form from (sic) own inspection of the land, then we should not have such an award before us, because the Judge has not exercised any thought whatever, having visited the land, whether any purchaser would have given over Rs. 60,000 for this particular land. Even if he had considered the Collector's award amounting to Rs. 32,000, in the same light, he must have wondered if any purchaser would have been found to give Rs. 32,000 for the land in reference, and we think he would have come to the conclusion that the Collector's award was an extremely liberal one, especially considering that for the privilege of taking up this land Government had to pay another 15 per cent.

11. It seems to us taking all the evidence together and attaching all the importance that we have been asked to attach to the evidence with regard to sales of lands on the new Agra Road, it would be impossible to say that a purchaser would have thought of paying more than what the Collector has awarded, and in that amount he would have included any profit that he might have derived from the fact that some of the land was of higher elevation, so that while it was being levelled for building purposes, he might have been able to sell the earth so removed. But we still adhere to the opinion we have expressed in other references that this method of first valuing the land, and then giving an additional amount as compensation, because some of the land happens to be of higher elevation and the purchaser may sell the stone or earth, removed for the purpose of levelling the land, is not a proper method of valuation. In our opinion, therefore, the Collector's award was an extremely generous one in favour of the claimant, He should have noticed that once the land fronting the road was sold, the remainder would be of very little value.

12. The appeal succeeds and the award of the Collector is restored with costs throughout and the cross-objections are dismissed with costs.