(1923) 09 BOM CK 0017

In the Bombay High Court

Case No : Land Acquisition Reference No. 12 of 1923

The Government of Bombay APPELLANT

Vs

Merwan Moondigar Aga RESPONDENT

Date of Decision : 11-09-1923

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1924 Bom 161 : (1923) 25 BOMLR 1182

Hon'ble Judges : Mulla, J

Bench : Single Bench

Judgement

Mulla, J.—This is a reference from the award of the Land Acquisition Officer under the Land Acquisition Act, The property was notified for acquisition for a park scheme on February 9, 1920, and the market value of the property is to be determined as of that date.

2. The property is situated on Cadell Road, Mahim. The area is 5957 square yards. It has a frontage of 380 feet and an average depth of 138 feet. On the north of the property there is a passage about twelve feet wide. Beyond the passage there is a large tank which is Survey No. 1770 On the east there is another huge tank covered by Survey No. 1752. On the south there is a passage also about twelve feet wide. As regards frontage it is to be observed that a portion of it admeasuring about 150 feet abuts on Cadell Road, while the rest being about 230 feet abuts on a remnant of old Parbhadevi Road. Beyond that road there is a triangular piece of land shown in the plan Exh. No. 4, which belongs to the Municipality. This triangle consists of portions of Survey Numbers 1684 and 1635 which were acquired by the Municipality for Cadell Road under a previous Notification. The distance between the southern frontage of the land in reference and Cadell Road is about seventy-five feet.

3. At the date of the Notification there were three structures on the land in reference. These were valued by the Land Acquisition Officer as materials, and the whole property was valued by him as vacant land. The Land Acquisition

Officer awarded compensation for the northern frontage of 150 feet at the rate of Rs. 25 per square yard, and for the southern frontage of 230 feet at the rate of Rs. 18 per square yard. This gives an all overrate of Rs. 21.25 for the whole land. The claimant says that the compensation awarded is inadequate, and he claims Rs. 35 per square yard. On the other hand, the Government expert has sworn that the market value of the land in reference is not more than Rs. 16 per square yard.

4. As regards the method of valuation adopted by the Land Acquisition Officer, I may say at once that it does not always lead to correct results. I do not propose to follow that method but to determine the market value of the land as a whole having regard to the sales in the locality.

5. Before dealing with the sales I may say that the claimant relied in support of his claim on an offer of Rs. 2,50,000 made to him for his land by one Mr. Baria, a wine merchant, by his letter of January 8,1920 (Exh. K), which gives a rate of about Rs. 40 per square yard. It appeared, however, from Mr. Baria''s evidence that he made the offer under a misapprehension that the frontage was about 600 feet and that the distance between the southern frontage of the land in reference and Cadell Road was about ten feet. The offer having been made under a mistake of facts, it cannot avail the claimant, and no reference was made to it by counsel for the claimant in his final address.

6. Coming now to the sales, the claimant relies en the sale of a plot of land exactly opposite this land at the rate of Rs. 33 per square yard. This plot consists partly of Survey No. 1634 and partly of Survey No. 1635. The history of this plot as disclosed in the evidence is as follows:

7. In or about August 1919 three persons named Valimahomed, Jugjivan and Chhotalal entered into a partnership for the purpose of buying Survey No. 1635 for Rs. 41,000. Chhotalal resides and carries on business at Pardi. The whole of the purchase money was to be paid by Chhotalal. The share of Valimahomed was eight annas in the rupee, Jugjivan''s share was two annas, and that of Chhotalal was six annas Valimahomed was the first who formed the idea of buying this land. He approached Jugjivan and the latter introduced him to Chhotalal. The agreement for sale was made on August 22, 1919, and the sale was eventually completed, the whole of the purchase money having been paid by Chhotalal. It would be seen from the plan, Exh. No. 4, that what was bought by these three persona was a two legged plot, the legs resting on old Parbhadevi Road. The area was 5669 square yards and the rate worked out to Rs. 7.23 per square yard.

8. Valimahomed said in his evidence that he knew when he agreed to buy the land that part of it was required by the Municipality for Cadell Road. In fact the Notification in respect of this part of Cadell Road was published on June 26, 1919, and the original owner of Survey No. 1635 had opened negotiations with the Municipality. These negotiations were continued by Valimahomed after he and his partners purchased the land, and an agreement was eventually made

between Valimahomed and the Municipality whereby he transferred to the Municipality a portion of Survey No. 1635, got a transfer from the Municipality of a portion of Survey No. 1634 and another strip of land to the north of this land, and paid Rs. 10, 110 to the Municipality which included his contribution towards the cost of making Cadell Road and a proposed forty feet road on the north of the land. The latter road is shown on the plan annexed to the conveyance (Exh. No. 6) dated March 11, 1921. between the Municipal Corporation and Valimahomed.

9. The arrangement between Valimahomed and the Municipality was completed in November 1919. By this time the scheme for a park towards the east of Cadell Road was out and notices were issued in August 1919 by the Municipality under a. 90 of the Bombay Municipal Act to the claimant and others whose land was acquired for the park (Exhs. Nos. 1, 2 and 3).

10. As a result of the arrangement with the Municipality, Valimahomed and his partners got a newly constituted plot having a frontage of 275 feet on Cadell Road-which is a 60 feet road-and another frontage of about 150 feet on the proposed road to the north with a prospect of a park towards the east on the other side of Cadell Road. The area of the new plot was 3839 square yards, It cost Valimahomed and his partners Rs. 41,000 plus Rs. 10,110 equal to Rs. 51,110, which gives a rate of Rs. 13.25 per square yard.

11. On February 10, 1920, Valimahomed and his partners agreed to sell the newly constituted plot to Jamnadas Vithaldas and Chhaganlal Kakalbhai at the rate of Ra 36 per square yard, that is, for Rs. 1,38,204. The agreement for sale is not forthcoming, but it appears from an entry in a book produced by Jugjivan, which he says was copied from a book kept by Chhotalal, that Rs. 5000 was paid as earnest on February 10, 1920.Chhotalal had gone on a pilgrimage, and he was not called.

12. Jamnadas admitted in his evidence that he purchased the laud in the hope of reselling it at a profit. The profit, however, never came, The land remained in the hands of Jamnadas, and his partner Chhaganlal Kakalbhai dropped out. He then took another partner named Chhaganlal Valji. This new partnership made part-payments towards the purchase money. They paid Rs. 6,000 in July 1920, Rs. 5,000 in August 1920, and Rs. 5,000 in September 1920, making in all including the earnest RS. 21,000. It seems that the partnership then came to the end of its resources. No further payments were made until August 1, 1921,when a payment of Rs. 5,000 was made. On that day, Valimahomed executed a conveyance of the land to Jamnadas and his partner. The purchase money was calculated at Rs. 33 per square yard, instead of the agreed rate Rs. 36 The prices having gone down, Valimahomed gave a concession of Rs. 3 per square yard to the partnership. Calculating at Rs. 83 per square yard., the purchase money came to Rs. 1,26,687. The balance after deducting Rs, 26,000 was rupees one lac. Jamnadas and his partner were unable to pay that sum, and they executed a mortgage on the same day of the land bought by them from Valimahomed and of

another property situated at Pitha Street to Valimahomed to secure rupees one lac with interest at the rate of nine per cent, per annum. The due date of the mortgage expired in February 1923, and interest has been in arrears for the last six months. The Pitha Street property fetches a nett rent of Rs. 250 per month, Jamnadas said that it was worth Rs. 57,000. But whether it was worth Rs. 57,000 or less, the fact remains that the land which Jamnadas bought at Rs. 33 per square yard was not regarded by Valimahomed as a sufficient security at the date of the conveyance, and Jamnadas and his partner had to mortgage another property belonging to them. There i9 no doubt that the purchase was made by Jamnadas without proper enquiries. He had not the faintest idea when he bought the land of the great advantages attaching to it, namely, the proposed forty foot road on the north, and the park on the west. He said that he consulted two or three brokers, but he could not give the name of any one of them. I am inclined to think that he did not consult any broker or any other person. On behalf of Government it was contended that the sale by Valimahomed to Jamnadas was a sham, or, in any event, it was a transaction of such a speculative character that it could not be taken as a basis for determining the market value of the land in reference. I do not think that the transaction was a sham. On the other hand, I am inclined to think that Jamnadas and his partner were the victims partly of ignorance and partly of the tremendous wave of speculation in land which was then passing over Bombay.

13. This brings me to the next contention on behalf of Government, namely, that the transaction was of a speculative nature and it should, therefore, be ignored. I am inclined to think that the mere fact that a parcel of land is bought by a speculator in land with the object of re-selling it at a profit is no ground for disregarding the sale in compensation cases under the Land Acquisition Act. In the present case, Valimahomed and his partners bought the land with the avowed object of re-selling it at a profit. They succeeded in selling it to Jamnadas and his partner who again bought the land with the sole object of re-selling it at a profit. If a person who buys land not as an investment, but to re-sell it at a profit, is a speculator, both the vendors and purchasers of Jamnadas'' land were speculators. But this certainly is no ground for ignoring the transaction altogether. The real question is whether the rate of Rs. 83 represented the fair price of the land in February 1920, It is urged on behalf of Government that it is not, and the reason given is that there was tremendous speculation in land in Bombay in 1919 and in 1920, which resulted in an enormous rise in the price of land; and that the rise being due to speculation, it should be disregarded in its entirety. It was also argued that the expression "market value" in Section 28 of the Land Acquisition Act meant intrinsic value.

14. Now it is a notorious fact, and the fact was deposed to by Mr. Kanga, surveyor for Government, that a huge wave of speculation in land passed over Bombay in 1919 and in 1920, that it started in the beginning of 1919, that the high water mark was reached in February 1920, that it maintained itself at that level until about August 1920,and that it then began to subside. It was not

disputed on behalf of the claimant that the sale to Jamnadas was a sale at the top of the market, but it was urged that the claimant was entitled to the benefit of the rise on the ground that he could have obtained that benefit had he then sold his property in the market. It was also urged that the term "market value" in Section 23 did not mean intrinsic value. Such being the contentions on both sides, it becomes necessary to determine whether, in ascertaining the market value of land under the Land Acquisition Act, the element of rise in the price of land occasioned by speculation is to be taken into consideration. It seems to me, on principle, that if an owner of land could sell is land in the market at a given time for Rs. X per square yard, it would be inequitable and unjust that because the land is compulsorily acquired under the provisions of the Land Acquisition Act, he should get less than Rs. X per square yard. But if the statute under which the acquisition is made lays down in clear and unambiguous language that an acquiring body is to pay less than a purchaser in the market, it is the duty of the Court to give effect to it regardless of considerations of what the Court may think to be the equities of the case. Does then the Land Acquisition Act contemplate such a result?

15. Section 23 of the Land Acquisition Act opens with the following words:

In determining the amount; of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-first, the market value of the land at the date of the publication of the declaration relating thereto u/s 6.

16. This means that the owner is to be compensated for his land, the measure of compensation being the market value of the land. The expression "market value" means the value which a parcel of land would realise if sold in the market. The test then is the test of a sale in the market. The seller must be a willing seller; a forced sale affords DO criterion of market value. The purchaser must be a prudent purchaser, that is, one who makes his offer after making necessary inquiries as to the value of the land; an offer made by one who knows nothing of the value of the land in the locality and who makes no inquiries about it, affords no test of market value. But what I am presently concerned with is the essential feature of market value. It is, as the term imports, the value that could be realised on a sale in the open market. The market may be dull or brisk. It may be as dull as it is to-day. It maybe as brisk as it was in 1919 and 1920. But whether it be dull or brisk, it cannot be excluded from consideration : there is nothing in the Land Acquisition Act which requires the Court to do so. On the contrary, the state of the market at the material date is an important factor in determining the market value at that date. You cannot possibly ascertain the market value of a piece of land at a given time if you exclude from consideration the state of the market ac that time. It follows then that the high rates prevailing in 1919 and the first half of 1920 cannot be ignored : Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co. (1901) L.R. 28 IndAp 121 and Government of Bombay Vs. Merwanji Muncherji Cama, . The sale, therefore, to Jamnadas cannot be excluded merely because it was a transaction during the

boom.

17. But the question still remains whether the price paid by Jamnadas was such as a prudent person would have paid even during the subsistence of the boom. In determining this question there are two factors to be taken into consideration, namely (1) the circumstances attending the sale, and (2) other sales in the locality during the boom. I have already dealt with the first of these two factors. As regards the second, there are three plots adjoining the claimant''s land which were sold during the boom. These are the sales relied upon on behalf of Government. Before examining these sales, it is necessary to dispose of one matter which, it was urged on behalf of Government, materially affects the value of the claimant''s land. It relates to the triangular strip of land belonging to the Municipality in front of the claimant''s land. On behalf of Government it was contended that the existence of that strip was a great drawback to the claimant''s land and that it detracted considerably from its value. The Advocate-General suggested in the course of the hearing that it could be used for urinals. The Government expert, however, came forward with a pompous scheme of a lofty building which was to contain petty shops and residential quarters He admitted, however, that the locality was not yet ripe for a building of that kind and that it was not likely to be so for another five years to come. If so, it is difficult to understand why such a scheme was put forward at all. This triangle, it may be observed, is to be thrown into a park, but even if it were not so, I do not think that the Municipality would have put up the a trip of land for sale by public auction, and, just for the sake of a few thousand rupees, sold it to an outsider, and maintained in tact the remnant of the old Parbhadevi Road. Rather they would have allowed a set-forward to the claimant and to the owner of the land on the south, though on payment of a fair price. However that may be, one cannot, in valuing the claimant''s land, ignore the fact that the southern frontage of his land is separated from Cadell Road by a remnant of the old Parbhadevi Road and by the Municipal triangle.

18. I now turn to the sales relied upon on behalf of Government. They are four in number, and the plots are marked I, II, III and IV respectively on the plan Exh. No. 4.

19. Instance No. I is a sale of a plot of land abutting cm Cadell Road and admeasuring 800 square yards. It has a frontage of 60 feet on Cadell Road and a depth of 129 feet. The date of the agreement for sale is November 21, 1919. The rate works out to Rs 14.75 per square yard. This plot along with another to its north belonged to a Hindu. He mortgaged the whole of it, and subsequently sold a portion, being Instance No. I, to the mortgagee. At the date of sale he had a minor son, and the conveyance was signed by him on behalf of himself and his eon as his guardian. The purchaser stated in his evidence before the Land Acquisition Officer that the vendor had obtained an order of the Court sanctioning the sale, but no such order is forthcoming, nor is any order recited in the conveyance. The conveyance, however, seems to have been prepared by a

"bond-writer". Upon these facts it was contended for the claimant, first, that the sale having been made by a mortgagor to the mortgagee, it must be treated as a forced sale; and, secondly that as no order of the Court was obtained, the minor could on attaining majority impeach the sale on the ground that the mortgage debt was contracted for unlawful purposes. I do not think that there is any substance in the first contention. As to the second, there is a possibility, though remote, if no order was obtained, of the minor impeaching the sale on attaining majority to the extent of his interest. But the question is not, in these cases, whether the title is good or defective, The real question is whether the vendor sold or the purchaser bought with knowledge of the infirmity of the title, and whether the price was fixed on that footing. There is no evidence of this in the present case. This sale, I think, is a good guide in determining the market value of the land in '' reference. No doubt, the depth is about twice as much as the frontage, but it is 129 feet only, and almost the whole of it may be treated as front land, The plot having been sold at Rs. 14.75 per square yard, the rate awarded by the Land Acquisition Officer for the claimant''s land is, I think, quite fair.

20. Instance No. II is a sale of a plot of land admeasuring 3000 square yards abutting on Cadell Road, in August 1918; at the rate of Rs. 5.25 per square yard. The plot was re-sold, in February 1920 at a price which works out to Rs. 14.40 per square yard, that is, about thrice the original price. The frontage of this plot is 55 feet only, the depth is 2bO feet, and the shape irregular.

21. The next sale relied upon by Government is Instance No. III. It is a sale of a plot of hind admeasuring 4352 square yards, in July 1919, at the rate of Rs. 12 per square yard. It has a frontage of 105 feet, of which about 80 feet is on the Cadell Road and the rest on the remnant of old Parbhadevi Road. The depth of the plot is 260 feet. So far as the frontage is concerned, it resembles to a certain extent the southern frontage of the claimant''s land. This instance also supports the Land Acquisition Officer''s valuation.

22. The last sale relied upon by Government is Instance No. IV, being the two-legged plot purchased by Valimahomed in August 1919 at the rate of Rs 7.23 per square yard. It is impossible to treat this sale as a guide in determining the market value of the claimant''s land.

23. I have inspected the locality, the land in reference, and the plots which are the subject-matter of the sales relied upon by the parties to this reference. On comparing Instances Nos. I, II and III with Jamnadas'' land, I think that Jamnadas paid suoh an exorbitant price for the land an no prudent pruchaser would have paid even during the boom, On comparing the same. Instances with the land in reference, I think that the rate awarded by the Collector is quite fair. I, therefore, dismiss the reference with costs.

