(1925) 12 BOM CK 0014

In the Bombay High Court

Case No : First Appeal No. 78 of 1924

The Land Acquisition Officer APPELLANT

Vs

Gulam Hussein Ahmad Gomajee RESPONDENT

Date of Decision : 17-12-1925

Acts Referred:

Citation : (1926) 28 BOMLR 714

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—References Nos. 134 and 139 under the Land Acquisition Act were tried together by the Assistant Judge of Thana.

2. In Reference No, 134 the land measured fourteen acres twenty-five gunthas. The Judge increased the Collector''s award by Rs. 34,879-2-6. In Reference No. 139 the land consisted of thirty-six acres eight gunthas of hill land and thirty-three gunthas of flat land. The Judge increased the Collector''s " award by Rs. 79,524-12-6.

3. Government have appealed.

4. The lands under acquition consisted of two hills which are called the Vadvan and Malad hills respectively.

5. It is admitted that beneath the surface of the hills there was good quarrying stone, but, at the time of the notification on February 10, 1921, no quarries had ever been worked therein,

6. The land itself would have only a nominal value of something like Rs. 100 an acre. The issue then was, what incraased value would a purchaser give for the land with a view to opening out and working quarries therein at some future time ?

7. The Acquiring Officer valued the land on this basis at Rs. 500 an acre.

8. It was proved that the claimant had purchased the Vadvan hill in November 1919 at a price which worked out at seven and a half annas a square yard.

9. The Assistant Judge thought that this purchase was good evidence of the market value of the land in February 1921. He further calculated that the income of the land, if quarries were opened, would be 135 to 140 rupees an acre which at six per cent. would show a value of about the same amount.

10. He valued both hills accordingly at seven and a half annas a square yard,

11. The Judge was correct in saying that in valuing the potentialities of the land for quarrying purpose he should avoid, as far as possible, hypothetical speculations and rely on admitted and proved facts. He discussed at considerable length the means by which the Acquiring Officer arrived at his valuation of Rs. 500 an acre and rightly discarded that valuation. The method was altogether too fanciful and the Acquiring Officer might with better justification have said that, in his opinion, the potentialities of the land increased its value to Rs. 500 an acre.

12. We have more than once endeavoured to show how useless all these hypothetical calculations are. The value of a potantiality must of a necessity be a matter of guess-work but these calculations, which are sat out by so-called experts for the purpose of increasing or decreasing the valuation, according as they appear on one side or the other, are of no assistance whatever to the Court, and merely cause an useless expenditure of time and money. It has never been shown, as far as I know, that an intending purchaser makes these calculations, He forms a rough idea of what he is prepared to give for the land beyond its present value according to its existing user with a view to a profitable investment of his capital, and one thing is certain that where the profit is a matter of speculation, he will expect a very high return on the extra capital he invests. In most of these valuations based on hypothesis, it is generally found that the profit is estimated as certain and that the purchaser is expected to invest his money as if the security was almost guiltedged. If I could rely on a witness giving a fair and honest opinion, I would prefer to accept that opinion against any opinion based on hypothetical calculations.

13. Now the Judge has relied entirely on the claimant''s purchase of the Vadvan Hill as evidence of what a willing purchaser would have given to a willing seller for the land in Reference in February 1921 But he had first to admit that the claimant bought the Vadvan Hill to prevent it falling into the hands of a purchaser who might open quarries therein and so compete with the claimant''s quarries in land belonging to him in the neighbourhood The Judge says :-

The question we have to answer is what was the value of these two bills to the Knot himself and what he stood to lose by their being in the hands of a possible rival at the time Their value to him did not lie in the income they actually brought or were expected to bring in future so much as in preserving his monopoly of the quarrying ground in Malad, in enabling him to enjoy the income he then did from his opened quarries with tolerable security against unfair or been competition and in further enabling him to capture his fair share and more of the new custom that was anticipated at the time... So the value of these hills to the Khot is exactly the price he would pay to buy them over from his rival and preserve his monopoly.

14. If that sale had taken place about February 1921, it would be good evidence that there was competition for such land, so that it was worth in the market seven and a half annas a square yard. But an interval of fourteen or fifteen months between the date of the purchase and the date of the notification would be a very important factor in deciding when her that sale was evidence of the market value in February 1921. The person, who endeavours to create a corner in any commodity, as a rule, finds a difficulty in disposing of what he has bought at high prices, unless Circumstances continue to be entirely favourable to the holder of the commodity. The purchase by the claimant of Vadvan Hill was really an insurance against a decrease in the value of hisother property which might occur if competition increased. It might have been different if immediately after the purchase quarries had been opened, but, as a matter of fact, in spite of the great demand and the high prces which prevailed in 1920, contractors did not come forward to offer to quarry in these hills. The evidence of claimant''s manager at p. 25 showed that the supply was equal to the demand. It must follow then that any purchaser of these hills would recognise that a good many years would elapse before quarrying would be profitable unless he was prepared to throw away a lot of money on destroying competition. The fallacy, in suggesting that because land A, in which quarries are being worked, has a certain value, therefore all land which contains stone must be of the same value in the market, is too obvious to need further exposition. I admit that circumstances may exist which bring about a spurious demand so that purchasers come forward to buy land more with a view to sell again at a profit than to realise what can be gained by working the land. And if land is notified at a time when such a demand has arisen and is being met by vendors, current transactions would be evidence of the market value. But by February 1921 it is certain that such circumstances as had existed from the middle of 1919 until the end of 1920 had begun to lose their force, and it is doubtful whether any purchaser would have come forward to pay a high price for these lands on the chance of reaping a profit by opening quarries. Once again I would suggest that a Judge, before issuing his award, should pause and reflect whether the price he is preparing to fix would have been likely to be given by a purchaser at the date of the notification. Experience has invariably shown that once the height of a boom has been passed, the fall is far more rapid than the rise has been. In a few days purchasers dis-appear from the market. Can it then be reasonably suggested that a purchaser in February 1921 would have been found to pay at the rate of over Rs. 2,200 an acre for these bills ? Before a cartload of stone could have been conveyed to the station, or the Ghodbunder Road, very

considerable diflculties would have had to be surmounted, and no one would have ventured his capital without expecting a very high return.

15. The argument that the purchaser might experience trouble owing to rights of common and free grazing claimed by the villagers was rightly assessed at its true value by the Judge, and it would have been better if it had never been brought forward.

16. Giving full consideration to all the arguments, which have been urged before us by the respondent''s counsel, we think, that in no circumstances can it be said that a purchaser for these hills could have been found to give a higher price in February 1921 than Rs. 1,000 an acre.

17. For the reasons given, the award with regard to land valued at seven and a half annas a square yard is reduced to Rs. 1,000 an acre.

18. The appellants will get their costs to the extent of their success.

Coyajee, J.

19. I concur.

