Privy Council Appeal No. 47 *of* 1927.

Atmaram Bhagwant Ghadgay - - - - - *Appellant*

v.

The Collector of Nagpur - - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND JANUARY, 1929.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD SHAW.
LORD BLANESBURGH.
SIR JOHN WALLIS.

[*Delivered by* LORD BLANESBURGH.]

In 1919 the Government of India acquired, under the provisions of the Land Acquisition Act I of 1894, for the purposes of the extension of the Hump Yard of the Great Indian Peninsular Railway at Nagpur, an area of 258 acres, then under cultivation and within the holdings of 25 different owners. The appellant was one of these owners, claiming in respect of 34 acres of the land so acquired. His holding consisted of a main plot, with two separate patches adjacent thereto, so small, however, that, as has throughout been agreed, these patches can have no effect upon the considerations in accordance with which the value of the appellant's whole area must be determined. The Collector acting under section 11 of the Act, and treating the land as agricultural land only, awarded compensation to the appellant at a flat rate of Rs. 60 per acre. Indeed, he awarded the same flat rate, in respect of their holdings, to all the 25 owners of the 258 acres. And, although no serious case has been made against it if properly based upon agricultural value, the award of the

Collector must have been in the nature of an agreeable surprise to the undertakers. The estimated cost of acquisition had been, as appears from the Land Acquisition Officer's Report, Rs. 62,000. The aggregate sum actually awarded amounted to Rs. 35,470 only.

The appellant did not accept the award, and he duly required the valuation of his land to be referred for the determination of the Court under section 18 of the Act. He claimed compensation at the rate of Rs. 2,000 an acre—a valuation based upon his assertion, not in the event established, that his land was an actual building site, and that it should be valued accordingly.

The case was in due course referred by the Land Acquisition Officer to the Additional District Judge of Nagpur, and before him voluminous evidence, both documentary and oral, was produced from both sides.

The Collector, in his reply to the appellant's written statement, referred to a fact, since more definitely ascertained, that the owners of the 258 acres, other than the appellant, had accepted the Collector's award so far as they individually were concerned. It does not, however, appear that before the learned District Judge there was attached to this circumstance, by either side, the decisive significance which by the Court of the Judicial Commissioner was ultimately attributed to it. Before the learned District Judge the evidence was directed rather to the question whether the appellant's land, although hitherto used only for agricultural purposes, was or was not adapted for building. The value of building land in its neighbourhood, and the probable direction of the prospective development of Nagpur, with the remoteness or otherwise of that event, were canvassed, with much elaboration, by witnesses on each side. In the result, the learned District Judge, greatly impressed by one of the appellant's witnesses, Mr. Kashinath Bhide, a municipal engineer, came to the conclusion that the appellant's lands should be valued on the basis of their being " problematical building sites in an undeveloped form." On the same basis, Mr. Kashinath Bhide had valued the lands at Rs. 500 an acre: but the learned Judge, being of opinion that the engineer had attached undue importance to some of the favourable features in the situation of the appellant's lands, and that the period of development might be more distant, and would be more prolonged than the engineer had anticipated, reached the conclusion that upon that basis the proper compensation to be allowed the appellant was Rs. 300 an acre. By his award of the 29th August, 1921, whereby he declared that the appellant was entitled to Rs. 10,137 compensation, with Rs. 1,520-8 in respect of compulsory acquisition, he gave effect to that conclusion. The learned Judge's decision was that the appellant should receive Rs. 11,657, with interest thereon at 6 per cent. per annum from the 5th November, 1921, till payment. Each party was directed to pay his own costs, each having partially failed.

Now, the proper principles applicable to the case were not in controversy before the Board. An owner of lands in the position of the appellant is entitled, it was agreed, to the value to himself of the property in its actual condition at the time of expropriation with all its then existing advantages and with all its future possibilities, excluding only any advantage due to the carrying out of the scheme for the purposes for which the property was being acquired.

And the position of the Board in such matters is equally clearly settled. In appeals involving questions of valuation, the decree complained of will not be interfered with by their Lordships unless some erroneous principle has been invoked or some important piece of evidence has been overlooked or misapplied.

And, so far as the order of the District Judge is concerned, it appears to their Lordships, and it is convenient at once to say so, that in reaching his conclusion the learned Judge upon the materials before him governed himself by sound principle. Nor has anything been shown to their Lordships which would lead them to the conclusion that he had not before him evidence on which he might fairly reach the conclusion at which he arrived.

From his decision, however, the Collector appealed to the Judicial Commissioner for the Central Provinces, asking that the award of the District Judge might be reversed and that of the Land Acquisition Officer restored. On that appeal the Collector sought to emphasise as his main contention the inference to be deduced from the action of the other owners already alluded to. and before the case was opened his Counsel asked that the records of the Land Acquisition Officer's proceedings in relation to the acquisition of the whole 258 acres might be received in evidence so as to show the circumstances of the owners who, other than the appellant, had accepted the rate offered without claiming any reference to the Civil Court. The appellant's Counsel objected and claimed the right to cross-examine these owners ; he also asked for leave himself to tender evidence of recent sales of land in the immediate vicinity. In the result the Court, admitting all the evidence, directed it to be taken in the lower Court, and to be returned for consideration at the adjourned hearing of the appeal.

The evidence was accordingly so taken, although, strangely enough, the owners, vouched by the Collector, were left to be called by the appellant and were cross-examined not on his behalf but by Counsel for the Collector. Even so, however, the general result of their evidence was, as their Lordships think, to show how unreliable as a basis of the true value, even of their own land, was the fact that they had each accepted the officer's award. It was with the utmost reluctance that most of them had done so : some were fearful of fighting the Government : others were without funds for such a contest. To their Lordships

it seems that if their evidence as a whole pointed to any conclusion at all, it was that the lands of the different owners were not of a uniform value, possibly not even for agricultural purposes, certainly for no other, while in few of the cases could the acceptance of the Collector's award be of itself regarded as a true indication even of the value as between a willing seller and a willing buyer of the land actually in question.

Yet this was the only evidence to which the learned Judges of the Court of the Judicial Commissioner finally had regard in fixing the value of the appellant's land.

The gist of their decision is to be found in the following three paras. of their judgment :—

> "4. Many rulings have been cited in this Court in regard to the principles on which the compensation in such cases as this ought to be fixed, and long arguments have been addressed to us to show that the land ought to be regarded as building sites and not as agricultural land and that the town of Nagpur is spreading in that direction. But there is in practice one way only of applying those principles and of ascertaining the facts on which their application depends, and that is by taking evidence of the prices paid for similar land in similar circumstances. This evidence is often difficult to get, but it happens that we have in this case the most satisfactory possible evidence, at which nobody in the Civil Court took the trouble to look.
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> "5. The area of 223·97 surrounding what is practically the whole of the plot under consideration was acquired from twenty-four different owners. Every one of them has accepted the award of the Collector, in which the rates were exactly the same as those given by him to the claimant, roughly Rs. 30 an acre, and not one of them even demanded a reference to the Civil Court. Ten of them accepted the Collector's rates without any demur at all. One asked for Rs. 60 an acre, one for Rs. 100, five for Rs. 200, two for Rs. 250, one each for Rs. 300, Rs. 400, Rs. 500 and Rs. 1,000, and one, like the present claimant, for Rs. 2,000, but not one of them went beyond making a formal sort of demand. It is hard to imagine better evidence of the sufficiency of the rates on which the Collector's calculation of the compensation is based.
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> "6. A good deal of evidence has been given of the high prices paid for land close to that in question though a little nearer the town. That the land in question is outside the area for which these high prices can be obtained is proved by the fact that a portion of the land for which the lower price has been accepted without demur lies between it and that area. An attempt has also been made to show by cross-examination of a few of the twenty-four owners who accepted the award of the Collector, that they refrained from contesting it for reasons other than that they were of opinion that they would not get any more by doing so. This has naturally failed entirely."

It will be noted that the learned Judicial Commissioners were apparently of opinion that the cross-examination of the owners had been conducted by the appellant, and not, as it was, by the Collector. But, apart from that consideration, their Lordships cannot, as they have already indicated, agree with the learned Judicial Commissioners' view of the evidence. Its true result, as they have already stated, only serves, as they think, to emphasise the error of principle into which the learned Judicial

Commissioners fell, when they ignored all the considerations pertinent to the appellant's own lands to which the learned District Judge addressed himself so carefully, and founded themselves exclusively on the evidence as to the price accepted for other plots, the conditions of which were certainly not fully before them. Indeed, a mere inspection of the plan of all the plots put in and agreed shows even to casual observation that the situation of the appellant's land with regard to such matters as access and building convenience, may well be superior to those of nearly all, if not indeed to all, the other plots acquired. It is in short hardly too much to say that the Appellate Court, in its exclusive reliance upon the attitude of the owners other than the appellant, were within an ace of ignoring the prohibition imposed upon them by Section 21 of the Act and of extending the range of the inquiry beyond the statutory limit thereby set.

In these circumstances their Lordships cannot doubt that the Court of the Judicial Commissioner, which, by its judgment of the 13th October, 1923, set aside for the reasons just set forth the award of the learned District Judge, and restored that of the Collector, acted on a wrong principle, which the appellant is entitled to ask the Board to correct.

In their Lordships' judgment the order of the Court of the Judicial Commissioner, based upon that mistaken principle, should be set aside, and, as it has not been shown that the attitude of the other owners did not receive at his hand all the consideration it deserved, and as no other objection to which their Lordships can have regard has been taken to it, they think that the order of the learned District Judge must be restored. And their Lordships will humbly advise His Majesty accordingly. The respondent will pay the appellant's costs in the Judicial Commissioner's Court and of this appeal.

In the Privy Council.

ATMARAM BHAGWANT GHADGAY

v.

THE COLLECTOR OF NAGPUR.

DELIVERED BY LORD BLANESBURGH.

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