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IN THE PRIVY COUNCIL No. 14 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER of KUALA LUMPUR HIGH COURT CIVIL APPLICATION No. 1 of 1959

- and -

IN THE MATTER of LAND ACQUISITION ENACTMENT CAP. 140 SECTION 23

- and -

IN THE MATTER of LAND ACQUISITION OF LOT Nos. 57 and 58, SECTION 58, TOWN OF KUALA LUMPUR

BETWEEN

LIM FOO YONG LIMITED (Applicant) Appellant

- and -

THE COLLECTOR OF LAND REVENUE (Respondent) Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal by leave of the Court of Appeal Federation of Malaya at Kuala Lumpur from an Order dated the 12th December 1960 of the said Court of Appeal (Thomson C.J. Hill J.A. and Neal J.) allowing an appeal by the Respondent and dismissing a cross-appeal by the Appellant from an Award dated the 26th February 1960 of the High Court Federation of Malaya at Kuala Lumpur (Ong J.). The said Award awarded to the Appellant as compensation sums of $202,280 and $276,240 and by the said Order of the Court of Appeal the total amount of the award of compensation was reduced to $202,280. p.100 p.72

2. The point at issue is whether having regard

to all the circumstances the Appellant is in respect of the compulsory acquisition of part of its lands in Kuala Lumpur entitled to compensation in respect of the severance of such land from its other lands, and if so the amount thereof.

3. The Appellant was on the 11th October 1957 the registered proprietor of seven pieces of land, namely, lots 134, 135, 136, 156 and 157 (Section 57) and lots 57 and 58 (Section 58) in the Township of Kuala Lumpur, shown on plan, Exhibit "A.1". Lots 57 and 58, having a total area of 101, 140 square feet, were acquired by the Selangor Government for the construction thereon of the Tunku Abdul Rahman Hall and its ancillary buildings. The procedure for the acquisition of the said land prescribed by the Land Acquisition Enactment, Cap. 140 was duly followed, the date of publication of the notification regarding the acquisition being the 11th October 1957.

4. The compensation payable to the Appellant in respect of the acquisition of the said land is to be ascertained in accordance with the provisions of Sections 29 and 30 of the said Enactment which are set out in the Annexe hereto. Under paragraph (a) of Section 29 (1) the Appellant became entitled to the market value of the land at the date of publication of the notification, namely the 11th October 1957, and under paragraph (c) thereof to the damage, if any, sustained by the Appellant at the time of the taking possession of the land by reason of severing such land from the Appellant's other land.

p.14 5. The Appellant claimed as compensation the sum of $1,503,420, being $303,420 the value of the land at $3 per square foot and $1,200,000 damage by reason of severance and injurious affection.
p.20 Subsequently this claim was amended, the total claim being reduced to $910,492 made up of $325,357 the value of the land and $585,135 for injurious affection. The Collector of Land
p.3 Revenue offered the Appellant the sum of $60,000 as full compensation for the land and awarded
pp.32,33 and 34 accordingly. He held that there was no increase in value of the Appellant's other land likely to accrue from the use to which the acquired land would be put, and that there was no severance and no injurious affection. The Appellant thereupon
p.4 pursuant to the Enactment did not accept the Award and required that the matter be referred by the Collector for the determination of the Court.
p.1 The Collector accordingly referred it.

6. Before the Court of first instance (Ong J. sitting with two Assessors) both parties called evidence. The first question before the Court was as to the market value of the land ascertained in accordance with the provisions of Section 29(i)(a) of the Enactment. The learned Judge and the Assessors were in complete agreement that the Collector's Award of $60,000 was wrong and that Award was set aside. One of the Assessors (Mr. A.K. Jones) placed a value of $1.50 per square foot on the land, the other (Mr. M.W. Navaratnam) a value of $2.51. Ong J. under this head awarded the sum of $202,280 being $2 per square foot. The Court of Appeal did not disturb this figure. p.61 p.72 p.76 p.62

7. The second question before the Court of first instance related to the Appellant's claim for compensation for severance under Section 29(i)(c) of the Enactment. The material facts found by the learned Judge are shortly as follows :-

(a) Early in 1956 the managing director of the Appellant purchased in two parts lots 134, 135, 136, 156 and 157 (which can conveniently be referred to as "the hotel land") for the purpose of building thereon a very high class hotel of world standard pp.62-66

(b) A plan was submitted to the Municipality for planning permission for a multi-storeyed hotel with swimming pool, car park and petrol kiosk (Exhibit "A.2"). Later an amended plan was submitted showing the hotel resited with the petrol kiosk at the rear, a large car park and no swimming pool (Exhibit "A.3"). The amended plan was approved in June 1956.

(c) With a view to obtaining additional land in the vicinity for the swimming pool and recreation ground, considered an essential amenity for the hotel, lots 57 and 58 the subject of the future compulsory acquisition (which can conveniently be referred to as "the swimming pool land") were purchased with other land. Negotiations were concluded about September 1956.

(d) Upon completion of the negotiations there was an agreement between the vendor and the purchaser as to the continuing user by the purchaser of an existing footpath from the hotel land to the swimming pool land. p.103

(e) A decision to build on the swimming pool

land a swimming pool, two tennis courts, a badminton court and a car park was taken, and a plan thereof (Exhibit "A.1") was prepared but was not submitted to the Municipal Council prior to the compulsory acquisition because the architect was busy with the plans of the hotel, then under construction.

(f) About August 1957 agreement was reached with Mrs. Pereira, owner of lot 158, for an alternative or additional means of access between the hotal land and the swimming pool land in consideration of a sum of $150 per month.

(g) In July 1957 an agreement was concluded between the Appellant and one Lim Joo Tan (who can conveniently be referred to as "the Tenant") for the grant to the Tenant of a lease of the new hotel, to have 200 rooms all air-conditioned and its own grounds with adequate car parking facilities, a swimming pool, tennis and badminton facilities and recreational facilities, the Appellant to provide all furniture and fittings, for a term of five years with option of renewal at a rent of $50,000 per month.

(h) In December 1957 in consequence of the acquisition of the swimming pool land a new agreement was concluded between the Appellant and the Tenant for the grant to the Tenant of a lease of the new hotel with no swimming pool, tennis or badminton courts or recreational facilities at a rental of $35,000 per month.

8. Ong J. expressed his findings of fact as follows :-

pp. 66 & 67

"I accordingly find as a fact that the agreed rent payable by the lessee to the owners of the hotel, had Lots 57 and 58 not been taken, would have been $50,000 per month, which rent I consider fair and reasonable. I find, also, that the lease at such rental would have been for 5 years, with an option to the lessee to renew.

Secondly, I find as a fact that the purchase of Lots 57 and 58 was made as a direct consequence of the resiting of the hotel, and was for the express purpose of providing a swimming pool together with other recreational amenities as part and parcel of the attractions of the hotel and to be comprised in the lease of the hotel for the monthly rent for $50,000 inclusive.

Thirdly I find that, by reason of the

acquisition, the owners are permanently disabled from providing for the hotel the swimming pool and recreational facilities which they could have done on Lots 57 and 58. The swimming pool and recreation ground cannot in my opinion be carved out of the existing car park area, because among other things an adequate parking space for cars is essential to a hotel of this size in that locality.

Fourthly I find as a fact that by reason of the acquisition the owners of the remaining lots have suffered substantial financial loss from the reduction of the rental value of their hotel".

9. Ong J. then in the light of these findings considered whether or not there was a severance for the purposes of paragraph (c) of Section 29 (1) of the Enactment, and said that paragraphs (c) and (d) of that Section are identical in wording with the third and fourth clauses of Section 23(1) of the Indian Land Acquisition Act, which their Lordships of The Privy Council had in Vallabhdas Naranji -v- The Collector A.I.R. (1929) P.C. 112 held to be what was laid down as the law of England. He then referred to Cowper Essex -v- Acton Local Board (1889) 14 A.C. 153, decided upon Sections 49 and 63 of the Lands Clauses Consolidation Act 1845, and added :- p.67

"In the course of argument in this Court over the question of severance, Counsel for the State Government rightly conceded that this question is one of fact for determination by the Court. In view of the findings of fact which have already been set out, it follows as a necessary corollary thereto that the owners have been damnified or injuriously affected by reason of the acquisition causing a severance of Lots 57 and 58 from the rest of the land with which those two lots were intended to and did in fact form a composite unit. The owners are therefore in my opinion entitled under paragraph (c) of Section 29(i) to compensation for the damage sustained by them. Such damage was the direct consequence of the severance, and such severance has had the effect of permanently disabling the owners from putting the land retained by them to the most advantageous and profitable use. The nature and extent of such damage has been fully proved. pp.69 & 70

At the hearing the owners have confined themselves only to proving damage by reason of severance. They did not seek to prove that they

had sustained damage 'by reason of the acquisition injuriously affecting their other property whether movable or immovable in any other manner or their actual earnings', under the provisions of paragraph (d). It is not necessary therefore to discuss that paragraph with reference to the facts of this case".

10. The learned Judge then considered the quantum of damages to be awarded under paragraph (c). The
p.73 Assessor Mr. Jones assessed this damage at $233,040,
p.77 the other Assessor, Mr. Navaratnam, at $514,288.92. Ong J. assessed the true amount of the annual loss to the owners at $53,280 in the following words :-

pp.70 & 71 "It is not disputed that the hotel property would have been leased for $50,000 per month, had it included Lots 57 and 58. It is also not challenged that the severance of those Lots has caused the rental value to drop by $15,000. Both Assessors, however, were of opinion that the decreased monthly rent should be of the order of $40,000. I agree that such rent would be fair and reasonable, and that in assessment of compensation the appropriate yardstick to apply should be a monthly loss of $10,000.

On that basis the owners' annual loss of income amounts to $120,000. Municipality assessment at the rate of 26% would reduce it by $31,200, leaving a taxable income of $88,800. The principal in British Transport Commission -v- Gourley [1956] A.C. 185 was applied in West Suffolk County Council -v- W. Rought Ltd. [1957] A.C. 403 and is equally applicable, in my opinion, to this case. The tax on limited companies is 40%, equivalent to $35,520 on a taxable income of $88,800. In the final result the true amount of the annual loss to the owners is thus $53,280." He then capitalised this loss on the basis of 8 years' purchase, giving a total of $426,240, from which he deducted a sum of $150,000 which he and the Assessors were unanimously of opinion should be allowed for capital outlay and interest charges, reducing the loss to $276,240.

p.72 11. Ong J. accordingly awarded as follows :-

(i) Under paragraph (a) of Section 29(i) the sum of $202,280 for 101,140 square feet at $2 per square foot.

(ii) Under paragraph (c) the sum of $276,240.

(iii) No deduction under paragraph (b) and no award under paragraphs (d) and (e).

He made no order as to costs and ordered that the difference between the sum paid and the sum awarded under paragraph (a) should carry interest at the rate of 6% per annum from the 12th October 1957 until payment and that interest on the sum awarded under paragraph (c) should run from the 1st May 1960.

12. From the said Award the Respondent appealed to the Court of Appeal on the grounds that the learned Judge was wrong in his findings and should have held that the market value of the land was nearer the Award made by the Collector and clearly negatived a value of $2 per square foot which the learned Judge awarded, and that he misdirected himself on the law as to severance or injurious affection. The Appellant cross-appealed on the ground that the learned Judge was wrong in the method of valuation adopted by him and that he should have followed the "Before and After" method of valuation, and should have found that the monthly loss was $15,000 and should not have made an allowance for income tax. pp.78-80 p.81

13. On the 12th December 1960 Thomson C.J. gave judgment allowing the appeal and dismissing the cross-appeal with which Hill J.A. concurred. After setting out the facts found by Ong J. he stated that the part of the learned Judge's Award awarding the Appellant the sum of $202,280 as the market value of the land had not been seriously attacked and he could see no reason to disagree with that figure. p.87 p.96 p.90

14. As regards the claim in respect of severance the learned Chief Justice agreed that to support a claim for severance it is not necessary that the two pieces of land should have been in actual physical contiguity, and stated that before there could be said to be any diminution in the value of the hotel land by reason of the swimming pool land being severed from that land it would first have to be shown that the possession of both pieces of land by the Appellant gave an enhanced value to the hotel land. p.91

15. The learned Chief Justice then dealt with the computation of the sum of $276,240 awarded by Ong J. in respect of severance as follows :-

"One of the ways in which the value of land may be determined is to ascertain its annual yield pp.92 & 93

and then capitalise that amount and this was the method adopted here by Ong J. He started from the arrangement with Mr. Lim Joo Tan which has already been described and which was the only material before him. On a consideration of that arrangement he concluded that the probable combined annual yield of the hotel land when developed by the erection of the hotel and the swimming pool land when developed by the construction of the swimming pool and the tennis courts would be $600,000 and that the probable annual yield of the hotel land when developed by the erection of the hotel only would be $480,000. (he thought $40,000 a month was a fairer estimate of probable yield than the $35,000 actually offered by Mr. Lim). The difference in gross yield would thus be $120,000. From this he made deductions for income tax and local rates and arrived at a net figure of $53,280 which he capitalised at 8 years' purchased and so arrived at a figure of $426,240. From this he deducted $150,000 which he estimated to be the capital cost of constructing the swimming pool and tennis courts and thus arrived at the final figure of $276,240.

But when the way in which this figure of $276,240 was obtained is thus examined it is clear that what it represents, assuming the assumptions on which it is based to be correct, is the total loss the Company would probably sustain as a result of the acquisition of the swimming pool land. Basing capital values on the yield principle, it is what would be the total value of the two pieces of land when developed less the developed value of the land which had not been acquired. The value of the whole less the value of what had been taken was the total value of the loss. But the Company has already been given $202,280 which is considered to be the market value of the land and if the total loss by reason of the acquisition is to be accepted as a measure of the compensation to be given then in order to determine the value of the loss by severance to the remaining land that sum of $202,280 already awarded must be deducted from the amount of the total loss. What we are concerned with at this stage is the extent to which the value of the hotel land had been lessened by reason of the swimming pool land having been separated from it and on the Judge's reasoning and calculations the amount in question is clearly $74,000, that is the difference between the total loss and the market value of the acquired land. That would, of course, by reason of Section 29(i)(c) of the Enactment fall to be added to the compensation based on the market value of the land making a total amount of compensation of $276,240."

16. Next the learned Chief Justice dealt with the main ground of the cross-appeal, namely, whether a deduction should have been made for income tax, as follows :-

"For the Company it has been said that no allowance should have been made for the effect of Income Tax in arriving at the net amount of loss of yield, and indeed this is the main ground of the cross-appeal. Here it is important to observe what had to be done. It was to determine the compensation payable not for loss of earnings, or yield, but for the loss of the capital asset which produced that yield; a consideration of the amount of the yield which that capital asset would produce was merely a step towards the ascertaining the value of the capital asset itself. The case was therefore entirely different from the case where a Court is assessing the compensation to be paid for loss of profits or loss of earnings and in the circumstances in my opinion the law as laid down in such cases as British Transport Commission -v- Gourley and West Suffolk County Council -v- W. Rought Ltd. has no application. With respect I would re-echo the doubt of Earl Jowitt in Gourley (Supra at p.202) as to whether a reduction of the amount to be paid as compensation for a capital asset based on the prospective tax liability of the owner "was in accordance with the true principle of valuation". pp. 93 & 94

If the probable effect of Income Tax be disregarded here, the Judge's figure of $276,240 would fall to be increased to about $560,000, making the diminution of value of the total land by reason of the severance alone about $358,400 or about $2 a square foot, which is the same as the total market value of the acquired swimming pool land."

17. Finally the learned Chief Justice held that the Appellant was not entitled to any sum by way of compensation for severance, and gave his reasons as follows :-

"What was under examination was the state of affairs as at 11th October 1957, and what had to be determined was capital values at that date. At that date actual development of the land had not commenced. Everything was in the planning stage. No doubt at that stage the Company had worked out a scheme for the development of the hotel land and the swimming pool land as a single unit. They had spent money on plans and they had entered into a contract for letting out the pp. 94 & 95

resultant establishment. No doubt had they been deprived of the swimming pool by some wrongful act, for example the failure of a Vendor to fulfil a contract for sale, they would have obtained compensation for the loss in accordance with the principles of the law relating to the assessment of damages. But that is not what we are concerned with here. What we are concerned with is whether there has been any actual lessening in the capital value of the hotel land. Was it worth any less on 11th October 1957 than it was the previous day ? No construction had been commenced on any of the land, either the hotel land or the swimming pool land. If the hotel had been completed and the swimming pool had been completed and the whole undertaking been in actual profit-making operation the position might well have been different. But that was not the case.

The whole case for the Company was based on potential development and it seems to me there was no evidence that the actual potential development which the Company had in mind, that is the development of the hotel land in conjunction with the swimming pool land was the only possible, or even the most profitable, development of the hotel land. Indeed such evidence as there was was on the whole against this. It was said, and this seems obvious, that a hotel in Kuala Lumpur which can provide its inmates with the amenity of a swimming pool is more likely to attract custom than one which does not offer such an amenity. It is clear, however, that a swimming pool of some sort could have been provided on the hotel land, and indeed plans had been prepared and accepted by the local authority for such provision being made. Had the Company reverted to the original plans, what rent would their tenant have been prepared to pay ? To that there is no answer. Again according to the plans before us there is an area of undeveloped land between the hotel land and the swimming pool land which the owner was at some time prepared to sell, no doubt when he got what he thought to be the right price. But there was not a scrap of evidence as to whether this land could or could not have been acquired as to whether or not it would have been suitable for the construction of a swimming pool, or as to the price at which it could have been obtained.

The truth clearly is that the Company had a chance to buy the swimming pool land cheaply and they saw a perfectly legitimate opportunity to turn their bargain to profit by developing that land in

connection with their scheme for a hotel on the hotel land. Of that possibility they have been deprived but it does not follow that by reason of their deprivation the hotel land has suffered any diminution of value at all."

Hill, J.A. agreed with the judgment of Thomson C.J. p.96

18. Neal J. gave a dissenting judgment, although agreeing with the learned Chief Justice in his assessment of the facts of the case and his statement of the law. He would have allowed an additional sum of $25,000 either by way of damages for severance or as an addition to the market value of the land arising from the loss in respect of prospective improvement. p.96

19. Accordingly, by Order dated the 12th December 1960 the Court of Appeal allowed the appeal and dismissed the cross-appeal, and ordered that the total amount of the Award of compensation made by Ong J. be reduced to $202,280, and that the costs of the appeal as taxed be paid by the present Appellant to the present Respondent. p.100

20. The Appellant does not now seek to question so much of the Award of Ong J. and the Order of the Court of Appeal as awards to the Appellant the sum of $202,280 as the market value of the swimming pool land assessed under paragraph (a) of Section 29(i) of the Enactment, but respectfully submits as follows :-

(a) That the Court of Appeal was wrong in holding that the Appellant had suffered no damage by severance, and was therefore entitled to no award under paragraph (c) of Section 29(i) ;

(b) That Ong J. was right in holding that the Appellant had suffered such damage, and was therefore entitled to an award, but was wrong :-

(i) in holding that in computing such damage tax should be deducted in arriving at the annual sum to be capitalised, and

(ii) in not deducting from the capitalised amount the sum of $202,280 awarded under paragraph (a); and

(c) That in consequence the sum to which the Appellant is entitled under paragraph (c) in respect of severance is $358,120, being 8 years'

purchase of $88,800, or $710,400, less a total sum of $352,280, made up of $150,000 plus $202,280.

21. Upon the facts found by Ong J. it is submitted that the Appellant has suffered damage by severance. The amount of that damage must be quantified by a process of valuation. Only one method of valuation has been adopted throughout these proceedings. The Respondent has not at any stage proposed any other method of valuation. The method adopted is an acceptable method, especially in the absence of any evidence required to found any other method. Ong J. found that as a result of the loss of the swimming pool land the hotel was built without a swimming pool and other facilities, and that thereby the Appellant suffered an annual loss of income of $120,000, or after the deduction of the Municipality assessment $88,800, which capitalised at 8 years' purchase would amount to $710,400. To secure this income the Appellant would have had to expend $150,000, leaving a balance of $560,400 as the total loss suffered.

22. As regards income tax, there has been no evidence or suggestion that the Appellant is a company trading in land and taxable as such. The claim under paragraph (c) of Section 29(i) is accordingly for the diminution in value of a capital asset, namely, the hotel land. The Assessor Mr. Navaratnam
pp.74 & 75 capitalised the monthly rentals on the basis of a purchaser requiring a return of 9% per annum, and did this on the basis of net rentals before the
p.73 payment of tax. The Assessor Mr. Jones adopted a rate of about 15% per annum, or 7 years' purchase, and in arriving at the figure of $384,750 does not appear to have made any allowance for tax. Ong J. on the other hand considered that the principle laid down in British Transport Commission -v- Gourley
p.71 [1956] A.C. 185 was applicable to the present case, and accordingly deducted a sum of $35,520 representing tax at 40% on $88,800, so reducing the annual loss to the Appellant to $53,280.

p.93 Thomson C.J., with whose judgment Hill J.A. agreed, considered that if any sum had been payable as damage for severance no allowance should have
p.96 been made for income tax, and Neal J. was of the same opinion.

23. The Appellants therefore respectfully submit
p.100 that the Order appealed from ought to be varied by increasing the total amount of the Award of compensation to $202,280 under paragraph (a) of section 29(i) of the Land Acquisition Enactment Cap.

140 and $358,120 under paragraph (c) of section 29(i) of the said Enactment or to such other sum as Her Majesty's Privy Council may determine, and by making such order as to costs both in Her Majesty's Privy Council and in the Courts below as may be proper for the following (amongst other)

R E A S O N S

(1) BECAUSE the majority of the Court of Appeal were wrong in deciding that the Appellant sustained no damage by reason of severance of the swimming pool land from the hotel land.

(2) BECAUSE the Court of Appeal were right in deciding that the principle laid down in British Transport Commission -v- Gourley /1956/ A.C. 185 has no application in the present case.

(3) BECAUSE the correct method of capitalising the annual loss to the Appellant on the basis of 8 years' purchase adopted by Ong J. and approved by the Court of Appeal represented a reasonable compromise of the bases adopted on the one hand by Mr. A.K. Jones and on the other hand by Mr. Navaratnam.

(4) BECAUSE having adopted 8 years' purchase as a basis for capitalising such annual loss, being a figure greater than that adopted by Mr. A.K. Jones and less than that adopted by Mr. Navaratnam (both of whom had made no allowance for tax) Ong J. was wrong in himself making an allowance for tax.

(5) BECAUSE in cases where the capital value of land falls to be computed by reference to the annual value multiplied by some multiplying factor the normal practice is to base such computation on the gross annual value before deduction of tax.

(6) BECAUSE Thomson C.J. was wrong when he said that there was no evidence (and that such evidence as there was was on the whole against it) that the actual potential development which the Appellant had in mind, that was the development of the hotel land in conjunction with the swimming pool land, was the only possible, or even

the most profitable, development of the hotel land.

(7) BECAUSE Thomson C.J. was wrong when he said that it did not follow that by reason of the Appellant's deprivation of the swimming pool land the hotel land had suffered any diminution in value.

(8) BECAUSE the Order appealed from is wrong in that no damage was awarded by reason of the severance of the swimming pool land from the hotel land.

BLEDISLOE

GEORGE A. GROVE

A N N E X E

CHAPTER 140. LAND ACQUISITION

Matters to be considered in determining compensation. 9 of 1934

29. (i) In determining the amount of compensation to be awarded for land acquired under this Enactment the Court shall take into consideration the following matters and no others, namely :

(a) the market value at the date of the publication of the notification under Section 4 (i), if such notification shall within six months from the date thereof be followed by a declaration under Section 6 in respect of the same land or part thereof, or in other cases the market value at the date of the publication of the declaration made under Section 6;

(b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land;

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property whether movable or immovable in any other manner or his actual earnings; and

(e) if, in consequence of the acquisition, he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

(ii) For the purposes of paragraph (a) of sub-section (i) of this section -

(a) if the market value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the declaration under Section 6 was published, such increase shall be disregarded unless it be proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land being taken under this Enactment;

(b) when the value of the land is increased by reason of the use thereof or of any premises

thereon in a manner which could be restrained by any Court or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health the amount of that increase shall not be taken into account;

(c) the effect of any expressed or implied condition of title restricting the use to which the land may be put shall be taken into account.

Matters to be neglected in determining compensation

30. In determining the amount of compensation to be awarded for land acquired under this Enactment the Court shall not take into consideration :

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the person interested to part with the land acquired;

(c) any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;

(d) any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under Section 6 by or in consequence of the use to which it will be put;

(e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

(f) any outlay on additions or improvements to the land acquired, which was incurred after the date of the publication of the declaration under Section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair.