

APPELLATE CIVIL.

Before Tek Chand and Currie JJ.

SECRETARY OF STATE (DEFENDANT) Appellant,

versus

CHUNI LAL AND OTHERS (OBJECTORS) Respondents.

1930

June 19.

Civil Appeal No. 193 of 1926.

*Land Acquisition Act, I of 1924, sections 15, 23, 24—
Assessment of compensation—Land under cultivation at date
of acquisition—but situation adoptable for building purposes
—principles to be taken into consideration.*

The respondent claimed that their land, which had been acquired by Government for the construction of offices and bungalows, was fit for building purposes; and objected to the Collector's classification of the same as agricultural land. The land in question was towards the extreme end of the civil station of Multan and abutted on the road leading from the city to Cantonments and, though under cultivation at the time of acquisition, on either side of the road and also removed from the road in the vicinity were important buildings, including Railway offices and *Kothis* occupied from time to time by high Government officials.

Held, that this being the situation of the plot acquired, it had a special adaptability for being used for building purposes and had been wrongly treated by the Collector as purely agricultural land.

Held also, that in computing the amount of compensation to be awarded to the person interested therein, the Courts should be guided by the principle that the owner is entitled to have the price of his land fixed in reference to the probable use which will give him the best return, and not merely in accordance with its present use or disposition, and any and every element of value which it possesses must be taken into consideration in so far as it increases the value to the owner; though it is the present value alone of such advantages that has to be determined, any advantage due to the carrying out of the scheme, for which the property is being compulsorily acquired, being excluded.

1930
 SECRETARY
 OF STATE
 v.
 CHUNI LAL.

Hira Nand v. Secretary of State, per Chatterji J. (1),
Lucas and Chesterfield Gas and Water Board, In re, per
 Fletcher Moulton, L. J. (2), *Cedars Rapids Manufacturing
 and Power Company v. Lacoste* (3), *Fraser v. Fraserville* (4),
Narsingh Das v. Secretary of State (5), and *Atma Ram-
 Bhagwant Ghadgay v. Collector of Nagpur* (6), followed.

*First appeal from the decree of E. R. Anderson,
 Esquire, District Judge, Multan, dated the 13th
 October 1925, enhancing the amount specified in the
 award.*

ABDUL RASHID, Additional Government Advocate,
 and MEHR CHAND MAHAJAN, for Government Advocate,
 for Appellant.

JAGAN NATH AGGARWAL and H. C. KUMAR, for
 Respondents.

TEK CHAND J.

TEK CHAND J.—By notification No. 1104-C. 1,
 dated the 30th of January 1923, 19.52 acres of land
 situate in *Taraf Ismail*, within the municipal limits of
 Multan, were acquired under the Land Acquisition
 Act for the construction of offices and bungalows for
 the III British circle, Sutlej Valley Project. In this
 and the connected appeals we are concerned with the
 following plots out of the land so acquired:—

(a) 50 *kanals* and 3 *marlas* owned by Sawan Mal
 and others, respondents in Civil Appeal No. 193 of
 1926;

(b) 51 *kanals* and 15 *marlas* owned by Jassu Ram
 and others, respondents in Civil Appeal No. 194 of
 1926;

(c) 30 *kanals* and 10 *marlas* owned by Karim
 Bakhsh and others, respondents in Civil Appeal No.
 195 of 1926.

(1) 21 P. R. 1905.

(2) (1909) 1 K. B. 16, 29.

(3) 1914 A. C. 569, 576.

(4) 1917 A. C. 187, 194.

(5) (1925) I. L. R. 6 Lah. 69 (P.C.).

(6) (1929) 114 I. C. 587 (P.C.).

Before the Collector the respondents claimed that the entire land was fit for building purposes and should be assessed as such. This contention did not prevail with the Collector who classed all the plots as agricultural. He held, however, that the land belonging to Karim Bakhsh, etc., was more valuable than the other plots, as it abutted on the road leading from the City to the Cantonments, and awarded Rs. 1,200 per acre as compensation for it. He described the plots belonging to Sawan Mal and others, and Jassu Ram and others as "back portion" and valued them at Rs. 800 per acre.

The respondents, being dissatisfied with this award, filed applications under section 18 of the Land Acquisition Act, which were duly referred to the District Judge. In their objections, they re-iterated that the entire land acquired from them was "building site." Sawan Mal and others claimed that out of 50 *kanals* and 3 *marlas* acquired from them 29 *kanals* and 18½ *marlas* should have been treated as land of "first quality" or "front land," and that its proper market price was Rs. 2,400 per acre, and that of the remaining 20 *kanals* and 4½ *marlas* was Rs. 1,600 per acre. Jassu Ram and others claimed Rs. 1,600 per acre for the entire area acquired from them; while Karim Bakhsh and others valued their plot at Rs. 2,400 per acre.

The learned District Judge has accepted the objection of Karim Bakhsh, etc., holding that their land was a "building site," for which he allowed Rs. 2,400 per acre. In Sawan Mal's case he held that out of the acquired land a plot, 29 *kanals* and 18½ *marlas* in area, was fit for building purposes, but being away from the road was less valuable than Karim Bakhsh's plot, and he allowed Rs. 2,000 per acre for it. The

1930
 SECRETARY
 OF STATE
 v.
 CHUNI LAL.
 TEK CHAND J.

1930

SECRETARY
OF STATE

v.

CHUNI LAL.

TEK CHAND J.

remainder of the land belonging to these objectors he classed as 'agricultural' for which he awarded Rs. 1,185 per acre. The whole of Jassu Ram's land was held to be agricultural, and for it compensation at Rs. 1,185 per acre was granted. Before the learned District Judge some other points relating to the price of wells, land under the *kassi* etc. were also debated, but as neither party has taken objection to his findings on them, it is not necessary to set them out in detail here.

The Secretary of State has preferred separate appeals against the three set of objectors and in each case prays for reduction of the price of land allowed by the District Judge to the amount awarded by the Collector.

It will be convenient to take first Civil Appeal 195 of 1926, in which Karim Bakhsh etc. are the respondents. The plot acquired from these persons is towards the extreme end of the Civil Station and abuts on the road leading from the City to the Cantonments. At the time of the acquisition it was under cultivation but exactly opposite to it, on the other side of the road, is the Bahawalpur House, adjoining which are a number of Government and Railway Offices. On this side of the road also, there are Government buildings and the *kothi* of one Abdul Wahid, which is at a distance of a few *karams* from the land in question, the only open space abutting on the road, which is still unbuilt, being a small plot known as *Takiya Lal Shah Wala*. Immediately behind this open space and removed from the road are three bungalows belonging to *Chaudhri* Narain Singh, one of which has been rented occasionally by officers of the status of District and Sessions Judge. This being the situation of this plot, there can be no doubt that it had a special adaptability

1930

SECRETARY
OF STATE
v.

CHUNI LAL.

TEK CHAND J.

for being used for building purposes and in my opinion the learned District Judge has rightly treated it as a "building site." It is no doubt true, that at the time of the acquisition, it had not been built upon and was actually under cultivation. But as observed by Chatterji J. in *Hira Nand vs. Secretary of State* (1) "where Government takes property from private persons under statutory powers, the Courts in computing the amount of compensation to be awarded to the person interested therein should be guided by the principle that the owner is entitled to have the price of his land fixed in reference to the *probable use which will give him the best return and not merely in accordance with its present use or disposition.*" The principle on which the value is to be fixed is well-settled and was thus stated by Fletcher Moulton L. J. in the well-known case of *Lucas and Chesterfield Gas and Water Board* (2):—"The owner receives for the lands he gives up their equivalent, *i.e.*, that which they were worth to him in money. His property is, therefore, not diminished in amount, but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him, and not on the value to the purchaser, and hence it has from the first been recognized as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market value of his lands as they stood before the scheme was authorized by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands, and *any and every element of value which they possess must be taken into consideration in so far as they increase the value to him.*"

(1) 21 P. R. 1905.

(2) (1909) 1 K. B. 16, 29.

1930

SECRETARY
OF STATEv.
CHUNI LAL.

TEK CHAND J.

These observations have received the imprimatur of the Privy Council in *Cedars Rapids Manufacturing and Power Company v. Lacoste* (1) where the same principle was enunciated in the form of the following propositions :—

“ (1) The value to be paid for, is the value to the owner as it existed at the date of the taking, not the value to the taker.

“ (2) The value to the owner consists in all advantages which the land possesses, present or future, but it is the *present value alone of such advantages* that falls to be determined.”

Three years later their Lordships considered the question again in *Fraser v. Fraserville* (2) and after a review of the authorities summarised the law as follows :—

“ The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with *all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired.*”

See also to the same effect *Narsingh Das v. Secretary of State* (3) and the recent case of *Atma Ram Bhagwant Ghadgay v. Collector of Nagpur* (4). Applying these principles to the case before us, I have no hesitation in holding that the contention of the learned Additional Government Advocate, that the plot in question should have been treated as purely agricultural land and valued as such, cannot be sustained, and I would overrule it.

(1) 1914 A. C. 569, 576.

(3) (1925) I. L. R. 6 Lah. 69 (P.C.).

(2) 1917 A. C. 187, 194.

(4) (1929) 114 I. C. 587 (P.C.).

In support of their claim that the market value was Rs. 2,400 per acre, the respondents produced a mass of oral and documentary evidence which has been discussed at length by the learned District Judge. The evidence led by the Secretary of State consisted of the oral testimony of the *Patwari*, the Naib-Tahsildar and *Khan Bahadur Chaudhri* Nabi Ahmed, Land Acquisition Officer, and a statement showing the average price of sales of land in *Taraf* Ismail and the neighbouring *Taraf* Mubarik. Most of the instances cited for the respondents relate to plots situate at a distance from that in dispute and are not of much assistance, except as showing that the part of the Civil Station along the road from the City to the Cantonments has been in the course of development for some years and that a number of educational institutions, Government and Railway Offices, and residential bungalows have been built during the ten or twelve years preceding the issue of the notification, and that prices in that locality have gradually and steadily risen. Neither party has been able to produce any instance of a recent date in which land in close proximity to that acquired by this notification had changed hands. We have, however, valuable evidence in Exhibit P/9, which is a sale-deed of 10 *kanals* of land executed by Karim Bakhsh in favour of *Chaudhri* Narain Singh for Rs. 3,000 on the 8th of April 1915. The price realized in this transaction works out at Rs. 2,400 per acre. This land is a part of the same *Khata* as the land acquired from Karim Bakhsh but is distinctly inferior to it, being more than 200 feet away from the road, from which it had no direct access at the time of the sale. About three months later, on the 9th of July 1915, *Chaudhri* Narain Singh purchased by a sale-deed (Exhibit P/8) one *kanal* of land out of the area attached to the *Takiya Lal Shah Wala* well for Rs. 375 (or at

1930

SECRETARY
OF STATE

v.

CHUNI LAL.

TEK CHAND J.

1930

SECRETARY
OF STATEv.
CHUNI LAL.

TEK CHAND J.

Rs. 3,000 per acre) in order to make an approach road to the land which he had already purchased by Exhibit P/9. The learned Additional Government Advocate has argued that these transactions took place eight years before the notification and should be excluded from consideration, as during this period there was a fall in price of land in Multan City and Civil Station. There is, however, no evidence of any kind on the record to support this suggestion. On the other hand, the evidence produced by the respondents shows unmistakably that there has been a general rise in value in *Taraf Ismail* and *Taraf Mubarak*, more particularly along the road leading from the City to the Civil Station. We have also the testimony of a number of respectable witnesses who have deposed that on account of the communal riots of 1922 and the outbreak of plague in the City, there was a substantial increase in the demand for sites in the Civil Station. In this connection it is also necessary to bear in mind that in the Punjab generally, there was a phenomenal rise in the price of land from 1915 to 1922, and though there was a fall in 1923, the average value for that year was nearly double that of 1915. The Punjab Land Revenue Administration Reports, issued under the authority of the Punjab Government, contain the following expressive figures :—

1915	average	price	Rs.	180	per	acre.
1916	"	"	"	216	"	"
1918	"	"	"	252	"	"
1920	"	"	"	275	"	"
1921	"	"	"	345	"	"
1922	"	"	"	385	"	"
1923	"	"	"	314	"	"

In the face of these facts it lay upon the appellant to prove by unimpeachable evidence that the land in

question was an exception to the general rule, and that the value in its neighbourhood had gone down, but, as stated already, there is not a scintilla of evidence on this point. It is also significant that in the numerous instances proved to have taken place along this road during the ten years preceding the acquisition, the price realized has in no case been below Rs. 2,400 per acre, which is the rate allowed by the learned District Judge. After giving the case my best consideration I am of opinion that Civil Appeal No. 195 of 1926 preferred by the Secretary of State against Karim Bakhsh etc. is without force, and I would dismiss it with costs.

I shall next take Civil Appeal No. 194 of 1926 in which Jassu Ram etc. are the respondents and the area acquired is 51 *kanals* and 15 *marlas*. The learned District Judge has treated the whole of this area as agricultural land and has valued it at Rs. 1,185 per acre. On appeal the Secretary of State asks for a reduction of the price to Rs. 800 per acre. The learned District Judge has based his finding upon the average of sales described as Nos. 12, 23, 24, 34, 38, 55, 57, 59, 70 and 73 in the statement (Exhibit D. 2) filed on behalf of the Secretary of State. All these sales were of purely agricultural land, as distinguished from building sites to which the rest of the evidence on the record relates. The learned Additional Government Advocate has not been able to bring to our notice any other data from which a different conclusion could be drawn, but has merely relied on the opinion of the Naib-Tahsildar and the Land Acquisition Collector that the proper value is Rs. 800. This opinion does not appear to have been based on any materials and is not of much value.

1930

SECRETARY
OF STATE
v.
CHUNI LAL.
TEK CHAND J.

1930

SECRETARY
OF STATE
v.
CHUNI LAL.

TEEK CHAND J.

Of the sales referred to above the most important is No. 34 which relates to the sale of a garden known as *Saidulla Khan Wala*, by Khushi Ram to Sada Nand on the 20th of December 1917 at Rs. 1,806 per acre. This garden is situate at a short distance from the land acquired from Jassu Ram etc. and both appear to be equi-distant from the main road. The property which was the subject of this sale consisted of land together with the trees in the garden and was naturally more valuable, but in his evidence the Land Acquisition Collector, *Khan Bahadur Chaudhri* Nabi Ahmed (P. W. 2) has calculated the price of the land, excluding the trees, at Rs. 1,066 per acre. Accepting his estimate as correct and making allowance for the general rise in prices from 1917 to 1923 the valuation by the learned District Judge of the land in dispute at Rs. 1,185 per acre cannot by any means be said to be excessive. In my opinion Civil Appeal No. 194 of 1926 also fails and I would dismiss it with costs.

It remains now to deal with the land acquired from Sawan Mal etc. to which Civil Appeal No. 193 of 1926 relates. As stated already, the total area acquired from these respondents was 50 *kanals* and 3 *marlas*, out of which 29 *kanals* and 18½ *marlas* has been classed by the learned District Judge as "building site" valued at Rs. 2,000 an acre, and the remainder as agricultural land, which he has assessed at Rs. 1,185 per acre. The learned Additional Government Advocate has argued that the whole of this land should have been classed as agricultural for which the proper compensation was Rs. 800 per acre as fixed by the Collector. After giving due weight to the arguments of both counsel and examining the plan and the other materials on the record, I am of opinion, that the contention of the learned Additional Government Ad-

Advocate must partially succeed. Out of the land classed as "building site" by the learned District Judge the following Khasra numbers do not possess any special adaptability for building purposes and in my opinion should have been treated as agricultural land:—

1930
 SECRETARY
 OF STATE
 v.
 CHUNI LAL.
 TEK CHAND J.

	<i>Khasra No.</i>	<i>Area.</i>
		K. M.
1	645	1 12
2	646	0 16
3	647 (share)	0 5½
4	659	1 8
5	660	0 18
6	661	2 0
	Total	6 19½

These numbers appear to be of the same quality as the remaining land of these respondents which has been assessed at Rs. 1,185 per acre. The learned District Judge has valued these numbers at Rs. 2,400 per acre. The difference is Rs. 815 per acre. On the area of 6 *kanals* and 19½ *marlas*, this together with the statutory 15 per cent. thereon amounts to Rs. 815 approximately, and to this extent this appeal must be allowed.

There is no force in the contention of the learned Additional Government Advocate that *khasra* Nos. 649, 650, 651, 652, 653, 654, 655, 656, 657 and 658 are not fit for building purposes. In my opinion this area, aggregating 22 *kanals* and 19 *marlas*, is obviously a "building site" and has been rightly assessed at Rs. 2,000 by the learned District Judge.

I would, therefore, accept Civil Appeal No. 193 of 1926 to this extent that the award of the learned District Judge shall be modified by reducing the

1930

SECRETARY
OF STATE
v.

CHUNI LAL.

TEK CHAND J.

amount held payable to Sawan Mal etc. respondents by Rs. 815 only.

The Secretary of State will get his costs of this appeal from the respondents on the sum of Rs. 815 but must pay to the respondents costs on Rs. 5,361-3-0 for which his appeal has been dismissed.

CURRIE J.

CURRIE J.—I agree.

N. F. E.

*Appeal No. 193 of 1926 accepted
in part; other appeals dismissed.*