

## ORIGINAL CIVIL.

*Before Mr. Justice Mulla.*

1923.

GOVERNMENT OF BOMBAY *v.* MERWAN MONDIGAR AGA,  
CLAIMANT\*.

*Septem-  
ber 11.*

*Land Acquisition Act (I of 1894), section 23—Market value, meaning of—  
Value offered by speculator is relevant.*

The expression "market value", as used in section 23 of the Land Acquisition Act (I of 1894), means the value which a parcel of land would realise if sold in the market. The seller must be a willing seller; a forced sale affords no criterion of market value. The purchaser also must be a willing purchaser, and, further, he must be a prudent purchaser, that is, one who makes his offer after making necessary inquiries as to the value of the lands; 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. The market value is the value that can be realised on a sale in the open market. The market may be dull or brisk. But whether it be dull or brisk it cannot be excluded from consideration.

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.

THIS was a reference made under section 18 of the Land Acquisition Act, 1894, by G. G. Rowe, Land Acquisition Officer for the City of Bombay.

The Government of Bombay notified for compulsory acquisition certain land near Bombay "for the purpose of a park and two roads from old Parbhadevi Road to Dadar Kumbharwada".

One of the lands so notified and thereafter compulsorily acquired belonged to the claimant, Merwan. It was 5,957 square yards in area, with a long frontage of 380 feet, partly on the old Parbhadevi Road and partly on that road and Cadell Road combined. On the North and South respectively, were two passages, twelve feet wide, while on the East was a large tank. There were three buildings on the land and a number of sheds.

\* Land Acquisition Reference No. 12 of 1923.

The claimant purchased the property in two lots, one in 1912 and the other in 1913 for an aggregate sum of Rs. 25,300 which worked out at an average rate of Rs. 4-4-0 per square yard. He had two offers for the land, one on June 10, 1919, at the rate of Rs. 30 per square yard, and another at the rate of Rs. 42 per square yard on January 8, 1920.

For purposes of valuation, the acquisition officer divided the land into two plots: (1) one fronting the old Parbhadevi Road containing 4,061 square yards which he valued at Rs. 18 per square yard and (2) the other fronting the Cadell and Parbhadevi Roads combined, containing 1,893 square yards, which he valued at Rs. 25 per square yard. No compensation was awarded for the buildings as such, but a sum of Rs. 6,750 was awarded for materials.

At the claimant's instance, a reference was made to the High Court.

*Kanga*, Advocate General, with *Coltman*, for the Government.

*Campbell*, with *M. C. Setalvad*, for the claimant.

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.

The property is situated on Cadell Road, Mahim. The area is 5,957 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

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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 triangular piece of land shown in the plan, Exhibit 4, which belongs to the Municipality. The triangle consists of portions of Survey Nos. 1634 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.

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 over rate 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.

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.

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

(Exhibit 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.

Coming now to the sales, the claimant relies on the sale of a plot of land exactly opposite this land at the rate of Rs. 33 per square yard. [His Lordship, after considering the circumstances of the purchase of this plot in August 1919 by one Valimahomed and the sale thereof in February 1920 to one Jamnadas at a large profit, at Rs. 33 per square yard, proceeded:—]

There is 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 feet 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.

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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. 33 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 23 of the Land Acquisition Act meant intrinsic value.

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 his 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?

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 under section 6."

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 no criterion of market value. The purchaser also must be a willing purchaser, and, further, he must be a prudent purchaser, that

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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 may be 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 at 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.*<sup>(1)</sup> and *Government of Bombay v. Merwanji Muncherji*<sup>(2)</sup>. The sale, therefore, to Jamnadas cannot be excluded merely because it was a transaction during the boom.

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

<sup>(1)</sup> (1901) L. R. 28 I. A. 121 at p. 141.

<sup>(2)</sup> (1908) 10 Bom. L. R.

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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 affected 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 grand 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 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 strip of land for sale by public auction, and, just for the sake of a few thousand rupees, sold it to an outsider, and maintained intact the remnant of the old Parbhadevi Road. Rather they would have allowed a setforward 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.

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, Exhibit 4.



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Instance No. I is a sale of a plot of land abutting on 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 son 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,

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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.

Instance No. II is a sale of a plot of land admeasuring 3,000 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 280 feet, and the shape irregular.

The next sale relied upon by Government is Instance No. III. It is a sale of plot of land admeasuring 4,352 square yards, in July 1919, at the rate of Rs. 12 per square yard. It has a frontage of 105 feet, of which about 30 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.

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.

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 such an exorbitant price for the land as no prudent purchaser would have paid even during the boom. On comparing the same

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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.

Attorney for Government : *Government Solicitor.*

Attorneys for claimant : *Messrs. Payne & Co.*

R. R.

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*Before Mr. Justice Marten.*

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BAPUJI SORABJI PATEL, PLAINTIFF v. LAKHMIDAS ROWJI TERSEY  
AND OTHERS, DEFENDANTS<sup>c</sup>.

*Practice and Procedure—Estate under administration of Court—Receiver in charge of estate—Compromise—Sanction of Court to compromise—Judge administering the estate should grant the sanction.*

A receiver of an estate under the administration of the Court, desiring to compromise a suit brought against him as such should obtain the sanction of the Court or Judge administering the estate, and not of the Judge who is trying the suit in which the compromise is proposed.

SUIT on a promissory note.

The promissory note in suit was for Rs. 15,000; it was passed by Motilal (defendant No. 3), on November 21, 1919, in favour of the plaintiff. The plaintiff sued to recover the money due on the note from Motilal and his father Lallubhai.

On February 8, 1920, Lallubhai died leaving a will whereby he appointed Lakhmidas and Rattanchand executors.

Motilal filed another suit (No. 1015 of 1920) for administration of Lallubhai's estate. In that suit the Court appointed Lakhmidas and Rattanchand receivers of Lallubhai's estate.