

1933

Present : Drieberg J. and de Silva A.J.

NEWNHAM v. GOMIS.

174—D. C. (Inty.) Colombo, 2,839.

*Land acquisition—Land acquired by Municipality—With street lines laid down—Measure of compensation—Depreciation in value caused by street lines—Housing and Town Improvement Ordinance, No. 19 of 1915, ss. 18 (4) and 80.*

Where a Municipality acquires land in respect of which street lines have been laid down by it,—

*Held*, that in awarding compensation for the land the depreciation in value caused by the laying down of street lines may be taken into consideration.

**A** PPEAL from an order of the District Judge of Colombo.

A land belonging to the defendant was acquired by the Chairman of the Municipal Council by a mandate issued under the Land Acquisition Ordinance. The Municipal Council by resolutions dated December, 1910, and November, 1918, had laid down certain street lines in respect of the land. The question for decision was whether in assessing compensation payable for the land, the depreciation in value caused by the laying of the street lines should be taken into consideration.

*H. V. Perera* (with him *E. B. Wikramanayake*), for defendant, appellant. The laying down of street lines is not to deprive a person of the use of his land, but is the first step in acquisition. The land is then required to be acquired. The postponement of the acquisition will not give the Municipality an advantage. Under the Land Acquisition Ordinance we are told that compensation is awarded on the market value at that date but we are not told that the market value depends on the user at that date. The general principle is that where statutory power is given to a public

authority to derogate from the right of a private individual it is also subject to the payment of compensation irrespective of such derogation. An act of the public authority in the process of acquisition cannot give it any advantage to the detriment of the owner in respect of the amount of compensation. This is not a matter purely under the Land Acquisition Ordinance. It is a proceeding under the Housing Ordinance into which the Land Acquisition Ordinance is brought for a particular purpose, i.e., the purpose of convenience where there is a failure to effect a settlement. On general principles one must have regard to the conditions that existed when the Municipality took up the laying down of street lines. (1909 1 K. B. 16.) The Crown, for example, is not entitled to claim the benefit of compulsory dedication under section 49 of the Improvement Ordinance. (28 N. L. R. 65.) Statutes which encroach on the rights of property of the subject must be construed by implication to carry with them the duty to pay compensation. (*Maxwell on Statutes*, 7th ed., at p. 245; (1922) 24 *Bombay* at 785.) It would be inequitable for the Municipality to seek to assess the value of the property on the depreciated basis. If the laying down of street lines implies even an intention to acquire, then when it comes to the actual acquisition the private individual can seek to be compensated at the market value at the date of laying down the street lines.

*Hayley, K.C.* (with him *J.L.M. Fernando*), for the plaintiff, respondent.—A street is a road with buildings alongside it. Under our Ordinance at least two houses are required to make a road a "street". English law speaks of building lines, not street lines. (51 & 52 *Vict. c. 52*.) See also (1914) *A. C. 1056*; (1905) *A. C. 1*; 85 *L. J. P. C. 95*. This is a purely statutory matter. In the 1915 Ordinance we are told that the date of assessment should be when the scheme is made. If the body on whose behalf the land was acquired itself took steps which depreciated the value of the land, there is no provision of law which says that compensation must be assessed irrespective of the depreciation. (*Mitter v. Secretary of State for India*.)

*H. V. Perera*, in reply.—A street line is not a building line. The ultimate object of laying down street lines is the widening of the street. But the immediate purpose is the restriction of user. The rules for assessing compensation are laid down in *Gordon on Compulsory Acquisition of Land* at pp. 79-80. The relation between the parties must be regarded as similar to those between vendor and purchaser.

May 22, 1933. DE SILVA A.J.—

The Chairman of the Municipal Council of Colombo acquired a block of land belonging to the defendant on June 27, 1930, under a mandate issued under the Land Acquisition Ordinance, No. 3 of 1876. In December, 1910, and again in November, 1918, the Municipal Council had by resolution laid down certain street lines, and the question that arises for decision is whether in assessing the compensation payable the depreciation to the defendant's land caused by these street lines should be taken into account or not.

The first point that was raised by the defendant in the lower Court was that street lines had not been laid down according to law. The learned Judge has held that the street lines were duly laid in November, 1918, in conformity with the provisions of section 18 (4) of the Housing and Town Improvement Ordinance, No. 19 of 1915. Mr. Perera for the appellant stated, quite correctly I think, that he could not challenge this finding and I shall proceed to deal with the case on this basis.

Mr. Perera argued that the acquisition of the land must be taken to be one under section 80 of the Ordinance No. 19 of 1915 and that the laying down of the street lines under section 18 (4) was the first step in the acquisition. He contended that the depreciation which was the result of this step should not be taken into account in awarding compensation. According to him the proper measure of compensation is the market value at the date of acquisition of a hypothetical land exactly similar to the land acquired except for one difference, namely, the hypothetical land was one unaffected by the laying down of street lines. He argued that an interpretation of the law as favourable as possible to the person whose land has been acquired should be adopted.

I have attempted to look at the question from a point of view as favourable as possible to the defendant, consistently with the law, but I find it impossible to accept Mr. Perera's argument.

Ordinance No. 19 of 1915, which is applicable to a number of local authorities including Municipal Councils, consists of four parts. Part I. is headed "Preliminary" and consists for the greater part of definitions. Part II. is headed "Preventive Measures". Part III. is headed "Remedial Measures". Part IV. is headed "General". Street lines were laid under section 18 (4) which occurs in Part II. of the Ordinance headed Preventive Measures. Once they were laid down certain consequences set out in the Ordinance followed, restricting very materially the right to build of owners of land affected by the lines. Mr. Perera has been unable to point out, and I have been unable to find, a provision of law in the Ordinance or elsewhere which requires a local authority to acquire the land lying between the street lines laid down by it. No such provision exists and no duty of acquisition is cast by law on the local authority. It is entirely free to acquire or not as it pleases. Hardship experienced by the owners affected and loss, if any, which they suffer are matters on which a local authority may be persuaded to acquire, but, in the state of the law as I find it, are not matters upon which they can be legally compelled to do so. The laying down of street lines is therefore not a legal step in the acquisition and is in law unconnected with acquisition, though acquisition may in fact frequently follow the laying down.

Section 80 of the Housing and Town Improvement Ordinance is the first section in Chapter I. of Part IV. headed "Acquisition and Compensation". It reads:—

"Where under this Ordinance any land or building or part of any land or building is authorized or required to be acquired for the purposes of the Ordinance, and the amount of the compensation payable in respect hereof is not settled by agreement, the Governor, upon the application of the authority seeking to make the acquisition, may

declare that the land or building or the part of the land or building is needed for a public purpose, and may order proceedings to obtain possession of the same for the Government and to determine the compensation to be paid to the party interested under 'The Land Acquisition Ordinance, 1876'."

It is clear that acquisition proceedings can be initiated under this section only in respect of land "authorized or required to be acquired under the Ordinance". The Ordinance does not require or authorize the acquisition of land merely because it lies between street lines. If such land was "necessary for or affected by" a statutory improvement scheme framed and sanctioned under Chapter II. of Part III. of the Ordinance, then the scheme, and consequently the Ordinance (section 38), may authorize or require the acquisition of the land. In the case under consideration there was no statutory scheme and the Ordinance did not require or authorize acquisition. The acquisition proceedings therefore could not have been initiated under section 80 and there is in fact no indication that section 80 was invoked at any time.

Section 45 (e) of Ordinance No. 6 of 1910, an Ordinance relating purely to Municipal Councils, provides that a Council may expend its funds for the purposes of "construction, maintenance, extension, and alteration of streets, bridges, causeways, and the like" and for the "acquisition of land necessary for any of these purposes". Section 149 provides that a Council may "widen, open, enlarge, or otherwise improve any such street, making due compensation to the owners and occupiers of any land, houses or buildings which may be required for any such purposes". Section 152 provides that "when there is any hindrance to the acquisition by purchase of any land or building required for the purpose of this Ordinance, the Governor, upon the application of the Council, and after such inquiry as may be thought proper, may declare that the land or building is needed for a public purpose, and may order proceedings for obtaining possession of the same for Government, and for determining the compensation to be paid to the parties interested, according to any laws which now are or which may hereafter be in force for the acquisition of land for public purposes". It appears to me that the authority for the acquisition was derived from the last named section. The "laws in force for the acquisition of land for public purposes" are to be found in the Land Acquisition Ordinance, No. 3 of 1873, and a mandate was accordingly issued under this Ordinance. Section 21 of the Acquisition Ordinance provides that the market value at the time of awarding compensation shall be taken into account. Apart from this provision, in the absence of a special direction of law as to the time at which the value of the land should be considered in awarding compensation, the proper time would be the time of acquisition. It is not possible under the law as I find it to go back to considerations of value which existed at some previous point of time and it is therefore not possible to take into account a state of the land before the street lines were laid.

It was argued on general grounds that an owner of land which had depreciated in value by the laying down of street lines was entitled to compensation payable at the time of acquisition although the depreciation

had occurred earlier. Whenever an Ordinance authorizes the doing of an act, then the act is lawful and no compensation is payable in the absence of provision that it shall be paid. The first proviso to section 18 (4) of Ordinance No. 19 of 1915 itself provides for the payment of compensation in circumstances which have not arisen in the case under consideration. Mr. Perera felt, I think quite rightly, that he could not argue that compensation was payable immediately on the laying down of street lines. He argued however that it became payable when the land affected was acquired. I have already expressed the view that acquisition is not in law a necessary consequence of the laying down of street lines. In fact it appears that the acquisition was authorized and made under an Ordinance different from the one under which the street lines were laid. I find it impossible to accept the argument that for the purposes of acquisition the laying down of street lines should be regarded differently from any other factor which has caused depreciation previous to acquisition.

In the acquisition case of *Corrie v. MacDermott*<sup>1</sup> the Privy Council, interpreting the word "value" in a deed of grant, held that it would not bear the amplified meaning of "unrestricted value", i.e., value of the land free from certain restrictive conditions which had been lawfully imposed and which existed at the time of acquisition. The principles laid down in that case seem to apply with even greater force in the interpretation of a statute, and I am of opinion that the word "value" in sections 8 and 21 of the Land Acquisition Ordinance, No. 3 of 1876, cannot mean "unrestricted value". It is proper no doubt in assessing compensation to consider the possibility of the removal of the restriction. It has been held in the case of *Chairman, Municipal Council, Colombo v. Soertsz*,<sup>2</sup> that a Municipal Council has no power to cancel street lines once they are laid down. There is nothing to show that the Municipal Council would have cancelled the lines even if it had the power. The possibility of their removal by some other authority is too remote to merit consideration.

I am of opinion that the respondent must succeed on this appeal. Mr. Orr, the Municipal Assessor, in the course of his evidence expressed the opinion that "it was grossly unfair" to assess the value of land as the respondent has done. He gave many reasons in support of his view. Mr. Hayley on the other hand pointed out that it was sometimes the policy of the legislature not to compensate an individual for loss caused to him by an act of a local authority done for the public good. He contended that there was nothing extraordinary in the existing law. These are matters for consideration by the legislature, which will no doubt alter the law if it finds reason for doing so. It is outside my province to go into them. I have to administer the law as I find it.

For the reasons which I have given I dismiss the appeal with costs.

DRIEBERG J.—I agree.

*Appeal dismissed.*

<sup>1</sup> (1914) A. C. 1056.

<sup>2</sup> 31 N. L. R. 501.