

1957 Present : Weerasooriya, J., and Sansoni, J.

PONNAMBALAM *et al.*, Appellants, and THE MUNICIPAL COMMISSIONER, COLOMBO, Respondent

*S. C. I—Land Acquisition*

*Land Acquisition Act, No. 9 of 1950—Land subject to right of way—Method of assessing its market value—Assessment of compensation—Sections 16 (1) (c), 37 (a), 42 (1), 63.*

The market value of a land which is sought to be acquired under the Land Acquisition Act No. 9 of 1950 should be ascertained as though all the owners of the separate interests in the land have combined to sell it, for what is acquired is the aggregate of rights in that land and not merely the soil rights in it. Accordingly, where the land which is sought to be acquired is subject to a right of way in favour of adjoining lands, it should be valued on the assumption that all persons owning interests in it, including the owners of the adjoining lands who enjoyed a right of way over it, have joined together in selling it to the acquiring authority. In such a case, under section 42 (1) of the Act, persons having a limited interest in the land will be entitled to only a share of the market value proportionate to their interest.

APPEAL against a decision of the Board of Review constituted under section 17 of the Land Acquisition Act No. 9 of 1950.

*H. V. Perera, Q.C.*, with *Sunil K. Rodrigo*, for the appellants.

*E. F. N. Gratiaen, Q.C.*, with *N. Nadarasa*, for the respondent.

*Cur. adv. vult.*

September 26, 1957. WEERASOORIYA, J.—

I have seen the judgment of my brother Sansoni, with which I agree. But as an important question arises of the correct method of assessing

the market value of a land (as distinct from a limited interest in that land) which is sought to be acquired under the Land Acquisition Act, No. 9 of 1950, I wish to add a few words myself.

Although we are not referred to any previous decision of this Court which supports the submission of Mr. H. V. Perera who appeared for the appellants that the market value in such a case should be ascertained as though all the owners of the separate interests in the land had combined to sell it, ample authority for that view is to be found in the decisions of the Indian Courts on a like question under the Indian Land Acquisition Act (No. 1 of 1894). The earliest case is *Collector of Belgaum v. Bhimrao Patel*<sup>1</sup> where the rule laid down was that in ascertaining the market value of the land "the Court must proceed on the assumption that it is the particular piece of land that has to be valued including all interests in it". In *Bombay Improvement Trust v. Jalbhoy*<sup>2</sup> it was held that the market value of the land should be ascertained on the footing that all the separate interests combine to sell. These cases were followed in *Rajah of Pittapuram v. Revenue Divisional Officer, Coconada*<sup>3</sup> and *Collector of Dacca v. Ali*<sup>4</sup>.

Another matter that should not be overlooked in this connection is that section 37 (a) of the Land Acquisition Act, No. 9 of 1950, provides that when an order of the Minister in regard to the taking possession of a particular land is published under section 36 the land shall by virtue of the order vest absolutely in the Crown free from all encumbrances. It follows, therefore, that the market value should be ascertained as for a land that is free from all encumbrances. For otherwise the Crown would be acquiring a land free from all encumbrances without, in effect, paying the full compensation for that land.

As regards the assessment of Rs. 1,000 per perch, being the rate agreed upon by counsel at the hearing of the appeal in the event of the method of assessment contended for by the appellants being upheld, it does not follow that the full amount of the market value so assessed is payable to the appellants. Under section 42 (1) of the Act the appellants, as persons having a limited interest in the land, will be entitled to only a share of the market value proportionate to their interest. That interest has been valued at Rs. 850. The interests of the two adjoining land owners in Lot 2 have been valued at Rs. 100. As a basis of apportionment these figures were accepted by appellants' counsel. The appellants will, therefore, be entitled to be paid as compensation such proportion of the market value (assessed at Rs. 1,000 per perch) as the sum of Rs. 850 bears to the sum of Rs. 950.

SANSONI, J.—

This is an appeal against a decision of the Board of Review constituted under section 17 of the Land Acquisition Act No. 9 of 1950.

<sup>1</sup> (1908) 10 Bom. L. R. 657.

<sup>2</sup> I. L. R. 33 Bom. 433.

<sup>3</sup> A. I. R. 1919 Madras 222.

<sup>4</sup> A. I. R. 1933 Cal. 312.

The subject matter of the acquisition proceedings is Lot 2 in Preliminary Plan No. A 3,701 containing in extent 16·87 perches. This lot is bounded on the West by 37th Lane, and on the East by a cart road. On the North of it there is a lot 19·68 perches in extent and on the South there are two lots 17·5 perches and 27·43 perches in extent respectively. Lot 2 and the lot in extent 27·43 perches belong to the appellants, while the other two lots belong to third parties, but those two lots have a right of way over lot 2.

When the matter came up in appeal before the Board of Review, it seems to have been argued for the appellants that the market value of lot 2 had to be assessed without reference to the fact that it was subject to a right of way. The argument on behalf of the acquiring authority seems to have been that the right of way should not be disregarded, because what a willing purchaser would pay for lot 2 would be influenced by the right of way existing over it.

The Board of Review took the view that the market value of lot 2 could only be arrived at by giving the fullest regard to the fact that no portion of lot 2 could be built upon without violating the right of way of the adjoining owners. The Board accordingly held that the lot should not be valued as land which could be used for building purposes: this finding necessarily reduced considerably the market value of the lot, and the figure arrived at was Rs. 950 for the entire lot.

The question of law argued before us was whether the correct method of valuing lot 2 had been adopted by the Board of Review. Mr. H. V. Perera who appeared for the appellants submitted that the land acquired under the Act is the physical entity represented by lot 2 and not the limited interests in that physical entity which the appellants had. He further argued that the market value of the lot should therefore be ascertained as though all the separate interests in it were combined. Mr. Gratiaen for the respondent argued that while such a mode of valuation would apply where there were several co-proprietors of the land to be acquired, it would not be appropriate where some persons own the soil rights in it and other persons are entitled to servitudes over it.

It seems to me that the Board of Review in arriving at the market value of lot 2 regarded what was being acquired in this case as though it were the soil of lot 2 alone. They have ignored the benefits or rights which persons interested in lot 2, in this case the owners of the adjacent lots to the north and south, could have claimed. But such a mode of valuation ignores the definition of "land" in the Act. "Land" is there defined as *including* "any interest in, or any benefit to arise out of any land". I take this to mean that all interests in the land of all persons interested in it must be considered in arriving at the market value. The words "persons interested" are defined in the Act as meaning persons "having an interest in the land as owner, co-owner, mortgagee, lessee, or otherwise . . . or persons *having a servitude over the land*".

When the different sections of the Act are considered, it becomes apparent that the word "land" is used to denote a particular physical thing, whereas an "interest in the land" denotes a particular right or

benefit arising out of that thing. When the market value of the land,—the physical entity including all interests, rights and benefits arising out of it—has to be ascertained, the correct method is to regard all persons who owned separate interests in the land as having combined to sell it, for what is acquired is the aggregate of rights in that land and not merely a limited right in it. The figure thus arrived at represents the compensation payable for the land, which is thereafter apportioned among the various persons who have claimed interest in it proportionate to their respective interests, as required by section 16 (1) (e). This view is in accordance with the decisions of the Indian Courts to which my brother has referred, and which I follow with respect.

The Board of Review has erred in valuing lot 2 as though only the appellants' limited interest in the lot was being acquired. It should have valued lot 2 on the assumption that all persons who owned interests in that lot, including the owners of the adjoining lots who enjoyed a right of way over lot 2, joined together in selling lot 2 to the acquiring authority. This answers the question of law raised on this appeal.

I agree to the order proposed by my brother. The appellants having succeeded on this appeal are entitled to their costs.

*Appeal allowed.*

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