

1941

Present : Howard C.J. and Soertsz J.

STEVENS *v.* MUNASINGHE *et al.*

106—D. C. (Inty.) Colombo, 3,014.

Land acquisition—Market value—Best use of land—Proof of demand for the land when put to use—Land Acquisition Ordinance (Cap. 203).

Where it is claimed that the market value of a land acquired by the Crown should be determined by the best use to which it could be put, there must be evidence that there would be a demand for the land when put to such use having regard to its nature and situation.

A PPEAL from a judgment of the District Judge of Colombo.

H. V. Perera, K.C. (with him *D. M. Weerasinghe*), for the 2nd and 3rd defendants, appellants.

E. G. P. Jayetilleke, K.C., Attorney-General (with him *D. W. Fernando, C.C.*), for the plaintiff, respondent.

Cur. adv. vult.

June 10, 1941. HOWARD C.J.—

The question for decision in this case is whether the award by the Additional District Judge of Colombo of a sum of Rs. 216,000 as compensation for the compulsory acquisition by the Government of certain premises in Colombo is adequate. The acquisition was made under the provisions of the Land Acquisition Ordinance, Cap. 203. The matters to be considered in determining compensation are formulated in section 21 of the Ordinance. Moreover, the principles on which compensation shall be determined have been considered in numerous decisions. In the *Government Agent, Badulla v. Cornelis*¹, it was held that the chief thing to be considered in determining the amount of compensation to be paid is the market value of the land sought to be acquired at the time of the assessment, *i.e.*, when the amount was tendered. The market value will depend upon the extent, situation, relative position, and adaptability of the land for any particular use; the use made of the property immediately adjoining it, and the answer to the question, given all the surrounding circumstances, what is the best use to which the land can be put. The tests of the market value of a piece of land are, the price which would be given for it at a public auction; the price given at recent sales for land similarly situated, taking into consideration the circumstances attending such sales, the opinion of an experienced valuer; its rent; the current rate of interest in the district; and the amount of the official assessment. Again in *Bailey v. Ferdinandus*², the following passage from the judgment of Withers J. on pp. 360-361 is of considerable help:—

“Now the value of landed property mainly depends on three considerations: (1) the situation of the property, (2) the best use to which it can be put, and (3) the use to which property immediately adjoining it is put.”

¹ 3 *Browne's Report* 27.

² 3 *N. L. R.* 356.

After dealing with considerations (1) and (3) the learned Judge continued as follows:—

“The answer to the question: What is the best use to which the land can be put, is, according to history, no use at all except for grazing. No one has offered to buy it for tea or cacao, and no one has offered to lease it for tea or cacao, and no one has attempted to plant tea or cacao on it Then why should it be valued as a building site? It does not become a building site because you can put up a building or two on it. A building site is a site where you can put up buildings which are likely to attract tenants as other buildings in the vicinity But I think the history of the land affords the best evidence of its value and I regard it as proved that the best use to which the land can be put is a grazing ground. No one has offered or tried to make a fruit garden of it, or a coconut or tea garden of it, or to convert it into a residential property.”

The following passage from the judgment of Layard C.J. in *Government Agent v. Perera*¹ is also in point:—

“There are undoubtedly several tests by which the market value of any particular allotment of land may be arrived at, but one of the truest and fairest is the actual amount paid for a similar allotment of land situated in the same vicinity and used for similar purposes.”

In *Fraser v. British Steam Navigation Co. Ltd.*², it was argued that the Judge and assessors should have valued the land upon the basis of its suitability as a site for the erection of workshops and offices in connection with a marine engineering business. In rejecting this argument Schneider A.J. stated as follows:—

“Upon the evidence adduced it is neither practicable nor possible to ascertain the market value of the land as a site for marine engineering works. No scheme was put before the Court showing how the land might be developed upon that footing and what it would fetch or what profit it would produce when so developed. As a site for such engineering works, it is no doubt advantageously situated from its proximity to the harbour and the docks for repairing ships. But the effect of the evidence is obvious that there is no demand for land to be used for such a purpose either at the present time or within a reasonable time in the future.”

Before applying the principles laid down in the decided cases to the present case one Indian decision should be mentioned. In *Premchand Bural v. Collector of Calcutta*³, it was held that when Government takes property from private persons under statutory powers it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. In accordance with this

¹ 7 N. L. R. 313.

³ (1876) 2 Cal. 102.

² 22 N. L. R. 243.

principle the question for inquiry is, what is the market value of the property, not according to its present disposition, but laid out in the most lucrative way in which the owners could dispose of it.

In awarding compensation amounting to Rs. 216,000 the District Judge has accepted the valuation of Captain Eastman, the Government Valuer, who, so he states, has valued it in the most lucrative way. Captain Eastman has made his valuation by cutting the land up into building blocks and valuing them by taking into consideration the prices realized at the sale of similar building sites. The learned District Judge has rejected a valuation propounded by the appellants by what he describes as a complicated and doubtful method of valuing the land by imagining that the land has been fully built upon and valuing the property on a rental basis and deducing the value of the land by deducting the cost of putting up the building and of bringing the property into the stage of producing an income. The District Judge has also rejected a similar scheme propounded by the appellants' assessor. Whereas the appellants' witness Mr. Marikar proposes to divide the land into seventy-four blocks on which he contemplated building houses at a cost of Rs. 4,000 each to bring in a rental of Rs. 60 to Rs. 70 per month, his assessor proposed to divide it into ninety-two blocks each with a building costing Rs. 4,000 to bring in a rental of Rs. 55 a month. It has been contended by Mr. Perera that the District Judge was wrong in accepting the valuation of Captain Eastman which he asserts was not based on the best use to which the land can be put. Captain Eastman's valuation is made by comparison with blocks of land on which bungalows commanding rentals of Rs. 200 a month and upwards are built, whereas the most advantageous use to which the land acquired could be put is for the purpose of building small cottages commanding a rental of about Rs. 50 to Rs. 60 per month.

The only question for our consideration was whether the District Judge was right in accepting Captain Eastman's valuation. I agree that the question must be decided on the principle formulated in the various cases I have cited that the valuation must be calculated on the best use to which the land, having regard to all the surrounding circumstances, can be put. In this connection *Bailey v. Ferdinandus*¹ and *Fraser v. British Steam Navigation Co., Ltd.* (*supra*) are helpful. Previous to the acquisition of this land by the Government no one had offered to buy the land with the idea of dividing it up into small blocks on which cottages were to be built. There is no evidence that such a scheme had ever been suggested. The land does not become a site suited for such a purpose merely because it can be divided up into small blocks on which such cottages could be erected. There is no evidence that land in the vicinity which is a residential area has been put to such a purpose. Mr. Marikar gave evidence that his houses were built in a congested area where there is a great demand for houses. There was no evidence of a single house of this type being built in the area in question. There is thus no real evidence that there is a demand for land in this vicinity for such a purpose either at the present time or in the near future. In *Fraser v. British Steam*

¹ 3 N. L. R. 356.

*Navigation Co., Ltd.*¹ it was conceded that the site was advantageously situated for the erection of marine engineering works. So in this case it is possible that the site by reason of proximity to commercial buildings, boutiques, buses and trams is suitable for the erection of small cottages. But this is not sufficient in itself to prove that it is the best use to which the site can be put. Moreover the scheme as put forward on behalf of the appellants was vague and indefinite. Full details of costs and rentals had not been worked out with care and precision. No allowance was made for vacant periods, defaulting tenants and costs of collecting rents. There was no comparison with the profits after deduction of working costs made by other persons who had expended capital in similar enterprises. The scheme was put forward by a witness without professional qualifications who was not an experienced valuer. In all the circumstances, I am of opinion that the District Judge quite properly rejected it. Having rejected the appellants' basis for the assessment of the market value of the property the District Judge was correct in accepting the valuation of Captain Eastman which was based on actual amounts paid for similar allotments of land situated in the same vicinity and used for similar purposes.

The appeal for the reasons I have given in this judgment is therefore dismissed with costs.

SOERTSZ J.—I agree.

Appeal dismissed.
