APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Chaubal.

1908. *July* 1.

THE TRUSTEES FOR THE IMPROVEMENT OF THE CITY OF BOMBAY, APPELLANTS, *v.* KARSANDAS NATHU AND OTHERS, RESPONDENTS.*

Compulsory acquisition of land—Compensation—Method of hypothetical development for fixing value of land to be acquired—Charges as to the costs of the speculator—Compensation based on sales of lands into suitable building sites—The two methods employed in conjunction and producing the same result.

The method of hypothetical development is open to the objection that it involves or presupposes the intermediation of a third person, called the speculator or exploiter, that is to say, a person who purchases the land wholesale from the claimant in order afterwards to sell it retail for building purposes.

The value of the land to the owner is what must be regarded, and that is the price which it will fetch if disposed of on most profitable terms. The owner is not to be deprived of the most advantageous way of selling his land by reason of the fact that it is subject to immediate acquisition. If the sale of the land in building sites is impossible except through the speculator, then, no doubt, allowance will have to be made for the profits, costs and other charges of the speculator. But the claimant is not to be debited with these expenses unless the introduction of the speculator is a commercial necessity. And there is no necessary reason why the claimant should be driven to have recourse to the speculator for a business which he can do for himself.

When compensation is fixed on the general principle of a sale of the land split up into parcels suitable for building, it is not only necessary but inappropriate to make a special deduction on account of the small area marked off for the roadway.

Where the method of hypothetical development is employed for assessing compensation in conjunction with the method of ascertaining the present value of the land by reference to the prices realised by the sale of neighbouring lands, and the consequence is that the two methods lead to very much the same result, it follows not only that that result is entitled to so much the greater degree of confidence but also that the method of hypothetical development is itself corroborated.

In the method of arriving at a valuation of land by reference to prices realised by sales of neighbouring lands, it is plain that no evidence of former sales can be obtained which shall be precisely parallel in all its circumstances to the sale of the particular land in question. Differences small or great exist in

* First appeal No. 157 of 1906.

various conditions, and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast rule.

APPEAL from the decision of the Tribunal of Appeal, constituted by the City of Bombay Improvement Act (Bombay Act IV of 1898).

The facts are set forth in the judgment.

Robertson and *Jardine* (with *Crawford, Brown & Co.*) for the appellants.

Inverarity, Setalvad and *Jinnah* (with *Nanu & Co.*) for the respondents.

BATCHELOR, J.:—This is an appeal by the Trustees for the Improvement of the City of Bombay against an award of the Tribunal of Appeal appointed under section 48 (3) of Bombay Act IV of 1898.

The area of the land taken up is 5,576 square yards and the Special Collector awarded a total sum of Rs. 65,511-2-0. On reference to the Tribunal, the Tribunal has increased that award to a total sum of Rs. 87,798. This works out to an average of Rs. 15-11-0 per square yard according to the present appellants, and to a few annas less according to the respondents. With this small difference we are not further concerned, and the real question before us—when all is said and done—amounts to this: Is the allowance of Rs. 15-11-0 per square yard shown to be excessive?

Apart from the general principle which restrains a Court of civil appeal from interfering with any decree unless it is satisfied that that decree is wrong, we have here two special considerations which should deter us from lightly disturbing the award under appeal. One of these considerations is that the matter in dispute is one where absolute precision or mathematical accuracy is not attainable; and the other consideration is that the Tribunal of Appeal has acquired long and valuable experience in these matters of valuation, with which alone the present controversy is concerned. Upon this point we follow the principle enunciated by Sir Lawrence Jenkins in *Anandrav Vinayak* v. *Secretary of*

1908.

THE TRUSTEES FOR THE IMPROVEMENT OF THE CITY OF BOMBAY v. KARSANDAS.

State.[1] And the result is that before interfering with the award, we must be clearly satisfied that it is substantially erroneous.

Now the Tribunal has grounded its decision largely upon the footing that the land under acquisition is conceived to have been laid out in small plots for building purposes, inasmuch as that admittedly is here and now the most profitable method for the disposal of such property as this. It was admitted before the Tribunal that the land should be valued as laid out for building purposes in these small plots, and should not be valued merely as one integral parcel of land.

The method adopted by the Tribunal has been described as the method of hypothetical development. And for the purposes of this case, we will adopt that description without pausing to investigate its accuracy. Now the objection offered to this method is—as we understand it—that it involves or presupposes the intermediation of a third person whom you may call the speculator or exploiter, that is to say, a person who purchases this land wholesale from the claimant in order afterwards to sell it retail for building purposes.

The whole case of the appellants, as it seems to us, depends upon this presupposition being made good; and in our opinion it is not made good. The value of the land to the owner is what must be regarded, and that is the price which it will fetch if disposed of on the most profitable terms. There is no doubt that here, as we have said, the most profitable method of disposing of it is to lay it out in small parcels for building sites. And the owner, it seems to us, is not to be deprived of the most advantageous way of selling his land by reason of the fact that it is subject to immediate acquisition. If the sale of the land in building sites is impossible except through the speculator, then no doubt allowance will have to be made for the profits, costs and other charges of the speculator. But the claimant is not to be debited with these expenses unless the introduction of the speculator is a commercial necessity. And for our own part we can see no necessary reason why the claimant should be

(1) (1905) 29 Bom. 565.

driven to have recourse to the speculator for a business which he could do for himself.

It is true of course that, on the case we are now putting, we are assuming a sale which could not be completed in a day. But the Tribunal of Appeal has made ample allowance for this consideration and has reckoned a period of two years as the period which would be required for the completion of the sale. Upon this footing it has written back the total sum for one year at 6 per cent. which seems to us to give an adequate provision for the period over which the realisation of income will be spread.

When this deduction is made, we are of opinion that the resulting figure does give us the present market value of the land of the claimant, subject of course to such minor expenses as would be incurred by advertising, planmaking, etc., for which Rs. 500 have been allowed by the Tribunal.

Complaint was made that no separate allowance or deduction had been made on account of the passage or roadway shown in the plan. But if we are right in the foregoing observations upon the general principle adopted by the Tribunal, we do not think that this particular argument of the appellants has any weight, for when once you have adopted the general principle of a sale of the land split up into parcels suitable for building, it appears not only unnecessary but inappropriate to make a special deduction on account of the small area marked off for the roadway. For the Tribunal has found that the whole site is worth to the claimant Rs. 15-11-0 per square yard over all, and in that whole site is included the area set aside for the roadway. The evidence shows not only that this point was not overlooked by the Tribunal, but also that it is not unusual for the purchaser of a plot adjoining the roadway to pay for half the roadway, as well as for the site actually available for building.

So much then as to this special method of valuation which the Tribunal in this instance has invoked for its assistance. But it is important to observe that the Tribunal has not relied exclusively upon this method. It has employed this method in conjunction with the method of ascertaining the present value of the land by reference to the prices realised by the sale of neigh-

1908.

THE TRUSTEES FOR THE IMPROVEMENT OF THE CITY OF BOMBAY v. KARSANDAS.

bouring lands. And since the consequence is that these two methods lead to very much the same result, it follows not only that that result is entitled to so much the greater degree of confidence, but also that the method of hypothetical development is itself corroborated.

We have looked into the evidence as to sales of neighbouring lands, and we have considered the arguments addressed to us on this point by Counsel, but it is not, we think, necessary to examine that evidence again in detail. It is plain that no evidence of former sales can be obtained which shall be precisely parallel in all its circumstances to the sale of this land in reference. Differences small or great exist in various conditions, and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast law. It will suffice, therefore, for us to say that upon a general consideration of all the circumstances which have been adduced, we are of opinion that the neighbouring sales afford ample support for the view which the Tribunal ultimately took.

Only one point remains to be noticed and that is as to the allowance of Rs. 1,330 for damages under—as the judgment goes—sub-section 3 of section 23 of the Land Acquisition Act. After reference to the President of the Tribunal and upon consideration of the general language of the judgment, we are satisfied that sub-section 3 was misquoted for sub-section 4, and that the damages given were given not on account of severance as such, but by reason of the acquisition having injuriously affected the claimant's other property. Of this injury there is, we think, sufficient evidence in the deposition of witness Raghunath and in the map itself, Exhibit Q. And nothing has been said which would justify us in reducing the sum which the Tribunal has awarded upon this head.

The result therefore is that this appeal must be dismissed with costs.

Appeal dismissed.

R. R.