

formal into actual possession and the defendant remained in actual possession of the property. The latter had not had actual possession for twelve completed years when the suit was filed but seeks to add on to his own actual possession that of Gangadhar and call the whole adverse. The facts being as they are he cannot do this. When plaintiff's predecessor executed the decree by having his share of the property separated and formally given over to him he perfected his claim.

From that moment a new condition of things came into existence; new rights arose and amongst them, that of the decree-holder to take actual possession of his separated share. This was not a right continued or derived from any previous holder of the land but a new right unlike any which previously existed. No possession prior to its inception could be adverse to that right. Therefore, no case of title in the defendant based on adverse possession is established.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

*IN RE LAND ACQUISITION ACT (ACT I OF 1894), CAUSE IN THE MATTER OF 1 GOVERNMENT OF BOMBAY, 2 KARIM TAR MAHOMED.**

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June 18.

Land Acquisition Act (I of 1894), section 18—Compensation—Mode of valuation when no recent sales—Market value—Surveyors' opinions—Objections to Surveyors' reports—Determination of value of frontage land—Building frontage, how determined—Relative value of back land and frontage—Hypothetical building scheme, value of—Value of whole land, how derived from value of part—Collector's award.

In cases where the valuation of land cannot be based on what the property was producing at the time of the notice of acquisition, and where there have been no recent sales of the land to guide the Court, the market value must be determined by sales of similar land in the neighbourhood.

* Reference No. 32 of 1907.

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The owner in claiming compensation can seek to prove either what the property would fetch if sold in one block, or what is the present value if he plotted out the property and sold it in lots.

Where no evidence has been adduced of sales in the neighbourhood of such a large block of land as the one under reference the evidence before the Court of sales of small pieces of land in the neighbourhood enables the Court to give an opinion regarding the values of different portions of the block, and the value of the whole must be deduced from these. In addition to the evidence of sales the Court can be guided by the opinions of surveyors. It is necessary, however, to distinguish opinion from argument.

The practice which has grown up in References under the Land Acquisition Act, 1894, of surveyors making long reports and furnishing copies to the opposite side beforehand is open to grave objection. A surveyor's opinion by itself is good evidence.

When determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the buildings in the locality.

It cannot be too clearly laid down that under ordinary circumstances the value of an income producing property depends on its income irrespective of its cost; and that capital when once invested in land and buildings cannot be apportioned between them so as to give the market value of each.

It cannot be taken as a hard and fast rule that back land must be worth half the frontage land.

PER CURIAM:—"Evidence of hypothetical building schemes is irrelevant to the question of finding the market value of land. The belief that an hypothetical scheme can be a guide to market values ascertained by other means is equally fallacious."

The Court would be slow to differ from the Collector's offer on a matter of a few rupees except for very strong reasons such as an error on a question of principle.

THE facts appear in the judgment.

Kirkpatrick (with *Scott*, Advocate-General) for Government.

Robertson (with *Strangman* and *Weldon*) for the claimant.

MACLEOD, J.—This is a reference from the Collector of Bombay, under section 18 of the Land Acquisition Act, to determine the amount of compensation to be awarded to Karim Tar Mahomed for certain land on Mazagon Road, which has been notified for acquisition by Government on behalf of the Municipality of Bombay on the 17th November 1904. The land is shown in pink on the plan (Exhibit A). It measures 3,475 square yards with

a frontage of 165 feet on Mazagon Road and 148 feet on Valpakhadi Road and a mean depth of 170 feet on the Mazagon Road. At the date of the notice there was a bungalow and out-houses on the land, but it is admitted that the land should be valued as vacant building land. The Collector has offered Rs. 15 a square yard and the claimant considering his land to be worth Rs. 25, applied to the Collector for a reference to this Court.

The valuation cannot be based on what the property was producing at the time of the notice, nor have there been any recent sales of the land to guide the Court.

The market value must, therefore, be determined by sales of similar land in the neighbourhood. From Exhibit A and other evidence that has been given it is clear that small holdings are the rule in the locality. The owner in claiming compensation can seek to prove either what the property would fetch if sold in one block, or what is the present value if he plotted out the property and sold it in lots. He has not attempted the latter course. I have therefore to decide what was the market value of this plot of land as a whole on or about the 17th November 1904. No evidence has been adduced of sales in the neighbourhood of such a large block of land, but the evidence before the Court of sales of small pieces of land in the neighbourhood can enable the Court to give an opinion regarding the values of different portions of the block and the value of the whole must be deduced from these. In addition to the evidence of sales the Court can be guided by the opinions of surveyors. It is necessary however to distinguish opinion from argument. And the practice which has grown up in References under the Land Acquisition Act of surveyors making long reports and providing copies to the opposite side before the hearing appears to me open to grave objection. A surveyor's opinion by itself is good evidence. What value the Court will put on it depends entirely on the effect of the cross-examination, but there is no reason why the witness should himself provide the material for his cross-examination. It will save the time of the Court if a surveyor prepares a concise description of the property to be valued, but if he is a wise man he will add nothing

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more except his opinion of its value. If however he does give his reasons they must be based on facts and not on hypothesis.

Fortunately there is no difficulty in this case in arriving at the approximate values of frontage land on Mazagon and Valpakhadi Roads in November 1901. Plots 2 to 6 on Exhibit A all front on Mazagon Road with a depth of about 80 feet. In March 1903 Nos. 4 and 5 very similar plots measuring about 78 square yards realised at auction Rs. 15 and Rs. 23 a square yard respectively. The divergence in the price cannot be explained but only demonstrates public caprice. In November 1902 plot 6 measuring 390 square yards realised at auction Rs. 21 a square yard. Plot 2 realised in August 1903 Rs. 37; and plot 3 in November 1907 Rs. 47. There is nothing to show that land value had increased between 1902 and 1901 but undoubtedly from early in 1905 prices of land began to rise owing to the boom in the mill industry, until, as Mr. Stevens said, by the end of the year almost fabulous prices were being given. This will account for the prices realised by plots 2 and 3. But sales after the date of notification must be discarded when it is proved that values have been affected one way or the other by circumstances which have arisen after that date. I have also been asked to take into consideration the amount awarded by the High Court for the property marked I on Exhibit A, but obviously I could not do so without considering all the evidence on which that award was founded. The award by itself is not evidence of the market value. Plots 8 and 9 are situated on Jail Road and though the distance from the land in reference may not be great the character of the locality is so different that the sales of those plots can be no guide in this case. When determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the building in the locality but in an ordinary shop and chawl locality like the one I have to deal with it has been the custom for surveyors to calculate the depth at 100 feet. In the next place the value of a building frontage must depend on the higher rents that can be obtained for the shops or rooms facing the street, and as the proportion of these rents to the lower rents of the back rooms decreases so does the value of the whole frontage land decrease. As Mr. Stevens

said, the value of frontage land with a depth of 40 feet would be 50 per cent. more valuable than if the depth were 100 feet, but the value of the 60 feet behind would decrease in greater proportion. A depth of 100 feet therefore has been admitted to give the best average and I am satisfied on the evidence that frontage land on Mazagon Road with a depth of 100 feet was not worth more than Rs. 20 a square yard in November 1904. It follows that similar frontage land on Valpakhadi Road, a *cul-de-sac* with a nightsoil depôt at the end, would be worth less. In March 1903 plot No. 7 measuring 313 square yards was sold for Rs. 4,672 by Ahmadbhoy Habibhoy to Kassam Rahimtulla Joonas. At first the purchaser thought he was buying 242 square yards for Rs. 3,872 but on measurement the plot was found to measure 71 square yards more, and as the vendor disputed that this area had been sold, the matter was settled by an additional payment of Rs. 800. This may be regarded as an excellent instance of a bargain between a vendor who was not likely to give anything away, and a purchaser who was anxious to buy the land on account of his owning the adjoining plot.

Taking the price paid at Rs. 16 as argued by Mr. Robertson, it would be impossible to give a higher value for the Valpakhadi frontage of the land. But in spite of its triangular shape it will be seen that plot 7 with an average depth of less than 40 feet could be built on so that practically all the rooms front on the road, therefore a lower value must be given to frontage land having a depth of 100 feet. This may be partly balanced by the fact that the Valpakhadi frontage on the land in reference is more favourably situated and nearer Mazagon Road than plot 7. Its value would therefore be between Rs. 12 and Rs. 15 a square yard. With reference to the purchase of the property facing the claimant's land on the south side of Valpakhadi Road from Karnali Purbhoy, I agree with Mr. Robertson that it cannot be relied upon, as it is a purchase of land and buildings, and the purchase price must have been fixed by what the property was producing. This cannot be taken as an instance of sale of land, though it may turn out that the balance of the purchase-money after calculating the value of the building may approximate what a witness considers to be the value of the land. That would be a coinci-

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dence and not evidence. It cannot be too clearly laid down that under ordinary circumstances the value of an income producing property depends on its income irrespective of its cost and that capital when once invested in land and buildings cannot be apportioned between them so as to give the market value of each.

If I take into consideration these high values for the frontage land in valuing the whole plot I have over 1,000 square yards of land at the back as shown on Mr. Stevens' plan (Exhibit 7). If this land is to have any value, it must have access to the road and this will diminish the amount of frontage land, but I doubt very much whether the back land would have any value except as an amenity if a depth of 100 feet is allowed for frontage land. In any event if the frontage land were fully occupied a large proportion of the back land would have to be kept open. This is more probable when I consider Mr. Chambers' plan (Exhibit C) of laying out the ground, as he has taken a 40 feet frontage in order to utilise the back land to the best advantage. The purchases made by Kassum Rahimtulla Joonas of three plots of land with frontages on Chinchbunder and Valpakhadi Road in 1902 are a very fair guide to the value of ordinary chawl land in this vicinity. In 1902 Kassum bought three narrow plots adjoining each other at an average of Rs. 9-4-0 and built a chawl on them with shops on the frontages. I consider that the advantage of a double frontage was set off by the disadvantage due to the narrowness of the plots, and that it is fair to deduce from these sales that chawl land in this locality in 1902 was worth Rs. 9 or Rs. 10 a square yard provided it could be as fully built on as the land bought by Kassum Rahimtulla. Both Mr. Chambers and Mr. Stevens were of opinion that back land could be valued at one-half the value of frontage land but it is obvious that the application of this rule depends on the character of the back land.

There are two alternatives in this case, either to take a deep frontage which must have a piece of back land of very little value, or to take a lesser frontage, which while increasing the value of the back land would at the same time increase the proportion of back land to front land. But I must decline to accept as a hard and fast rule that back land must be worth

half the frontage land. That would only lead to absurdities. Mr. Robertson has argued that even accepting Mr. Stevens' division of the land as shown in Exhibit 7 the Collector's award should be increased as Mr. Stevens arrives at his all over figure of Rs. 15 by taking the plot C at Rs. 6 whereas he says in para 10 of his report (Exhibit 6) that the back land would be worth anything between Rs. 6 and Rs. 10 and the claimant should be entitled to the highest figure given by a witness on the opposite side. This is a perfectly fair argument which only illustrates the danger I have referred to above of a surveyor giving reasons in his report. However I understand Mr. Stevens to mean that the back land in this case might be worth Rs. 10 but his all over figure of Rs. 15 only allows it to be valued at Rs. 6 since if a frontage depth of 100 feet is taken, the back land becomes reduced to the lowest figure. If the frontage depth were reduced it would follow the back land might be worth up to Rs. 10. I think Rs. 6 a very full value for the back land. I regret I cannot accept Mr. Chambers' opinion that this land is worth all over Rs. 25. Mr. Chambers before the Collector valued the land at Rs. 24, solely on the basis of an hypothetical building scheme. I have already decided in an interlocutory judgment in this reference (which can be incorporated herewith) that evidence of hypothetical building schemes is irrelevant to the question of finding the market value of land. It is difficult to suppress the belief that seems to exist almost universally amongst surveyors in Bombay that market values can be ascertained in this way. Otherwise it should not be necessary to keep on giving reasons to the contrary. The belief that an hypothetical scheme can be a guide to market values ascertained by other means is equally fallacious. However much conclusions may differ, the road which leads to the determination of land values is short and straight. By the ingenuity of Counsel and surveyors attempts, often successful, are made to divert the road on the grounds that the diversions will lead to an infallible result. They only lead to waste of time.

Mr. Chambers in his report, put in before me (Exhibit B), values the land at Rs. 25. Apart from his scheme which seems to have been altered since it appeared before the Collector (another illustration of how complaisant these schemes are to the will of the

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moulder) he bases his opinion, like Mr. Stevens, on sales, but this opinion based on sales was evidently subordinate to his opinion based on his scheme. It is impossible to deduce from the evidence of sales that this large block of land could be worth anything like Rs. 25 a square yard.

Whether the depth of the frontage is taken at 40 feet and higher retail values allowed with a larger proportion of back land or the depth is taken at 100 feet and lower values allowed with a greater proportion of front land the totals come to much the same as the Collector's offer. But valuing the land as a whole it would not be correct to add up the retail values of the parts as derived from the instances of sales of small plots without making some deduction both on general principles and because the wastage must be greater than in those instances from which the retail values have been deduced. Apart from that I agree with Mr. Kirkpatrick that the Court would be slow to differ from the Collector's offer over a matter of a few rupees except for very strong reasons such as an error on a question of principle. In this reference I am satisfied that the Collector has offered the full market value of the land and I dismiss the reference with costs.

One set of costs between the Government and the Municipality to be allowed as against the claimant.

The interlocutory judgment was as follows:—

MACLEOD, J.—I have already decided this question in what I thought sufficiently plain language in the reference of *In re Dhanjibhoy Bomanji*⁽¹⁾ and everything I said in that judgment on this question may be taken as incorporated in this. Mr. Robertson argues that though that decision might be right in the case of a piece of land of 21,000 square yards, it would not follow that it would apply to the case of a piece of land measuring 3,500 square yards. I can see no distinction. In the first place there can be no relation between the capitalized rent of land and actual buildings and the market value of the land. It follows that there can be no relation between the capitalized imaginary rents of imaginary buildings and the market value of the land. Mr. Robertson has cited *In re Merwanji*

(1) (1937) 10 Bom. L. R. 701.

Cama⁽¹⁾. That case is not binding on me, though I would follow it if I could possibly agree with the decision. If it does decide that hypothetical building schemes are relevant, I have already expressed my view on that question in *Dhunjibhoy's case*. These hypothetical calculations are not founded on fact. There are a number of factors each of which can be varied to an indefinite extent and therefore the permutations and combinations of these factors are practically infinite. I happen to know exactly how those calculations are made and I am perfectly aware that if Mr. Chambers thought the land was worth Rs. 15 a square yard he could turn out an equally plausible scheme to support that figure. Mr. Robertson argues that if I disallow this scheme as irrelevant it follows I must hold any hypothetical building scheme is irrelevant. In my opinion it is. As long as opinions may differ as to the building to be put on a piece of ground, there can be no certain factor on which the valuation can be founded. That is the root of the matter. If the building is certain, *i. e.* one of which there cannot be two opinions, and there may possibly be cases in which it can be, then there is no longer an hypothetical building scheme. The failure to recognize this guiding principle can only result in enormous waste of time and money.

Attorney for Government :—*Mr. J. C. G. Bowen, Government Solicitor.*

Attorneys for claimant :—*Messrs. Ardeshir, Hormusji, Dinshaw & Co. ; Messrs. Crawford, Brown & Co.*

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(1) (1907) 9 Bom. L. R. 1232.

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