

Privy Council Appeal No. 70 of 1927.

Gulam Hussein Ahmed Somaji - - - - - *Appellant*

v.

The Land Acquisition Officer, South Salsette, Bandra - - - *Respondent*

F. E. Dinshaw and another - - - - - *Appellants*

v.

Same - - - - - *Respondent*
(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH OCTOBER, 1928.

Present at the Hearing :

LORD SHAW.

LORD CARSON.

LORD BLANESBURGH.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD CARSON.]

This appeal relates to two references under the Land Acquisition Act as to the compensation which the Bombay Government should pay to the appellants for certain lands situated in the Island of Salsette near Bombay which they had acquired under the said Act. The appeal relates to two plots only. One was of about 15 acres and 6 gunthas in the village of Vadhwani, and the other of about 36 acres and 8 gunthas in the neighbouring village of Malad. Both the plots were in hills and were chiefly valuable for the building stone of good quality which underlies

the surface. The third appellant who, is substantially the only appellant, had then started quarrying in some of the hills and had purchased the Vadhwani land in question on the 30th November, 1919, for $7\frac{1}{2}$ annas a square yard.

The Government's declaration under which both plots were acquired was published on the 10th February, 1921, and it is the market value of the land at that date to which the appellant is entitled. The Salsette Development Officer awarded compensation on the footing that the market value of the land was Rs. 500. But the Assistant Judge and the High Court before whom the question was subsequently considered on appeal have both disregarded this valuation.

The Assistant Judge of Thana, on the 24th September, 1923, decreed compensation to the appellants for all the land in question at $7\frac{1}{2}$ annas a square yard, or Rs. 2262-8 an acre, being at the same rate as the third appellant had acquired the Vadhwani land in question on the 30th November, 1919, as already stated.

He examined the facts as to the sale and purchase by the appellant of the said land and came to the conclusion that nothing was shown to have happened which materially affected the value of the land between that purchase and the date of the Government's declaration for acquisition, and therefore held that that sale was evidence of weight as to the market value of the two hills in question. On appeal, the High Court of Judicature at Bombay, by its judgment dated the 17th December, 1925, reduced the award to Rs. 1000 *per* acre. The learned Chief Justice who delivered the judgment of the Court, referring to the sale and purchase by the appellant in November, 1919, said :—

“ If that sale had taken place about February, 1921, it would be good evidence that there was competition for such land so that it was worth in the market $7\frac{1}{2}$ annas a square yard. ‘ But,’ he added, ‘ by February, 1921, it is certain that such circumstances as had existed from the middle of 1919 until the end of 1920 had begun to lose their force, and it is doubtful whether any purchaser would have come forward to pay a high price for these lands on the chance of reaping a profit by opening quarries.’ ”

Sir George Lowndes, who appeared for the respondent, very fairly said he did not contest the proposition of the Chief Justice as to evidence of value, and the only question therefore that remains is to see whether there was proper evidence to support the statement of the Chief Justice that the circumstances existing from November, 1919, until the end of 1920 had begun to lose their force by February, 1921.

The learned Chief Justice does not himself refer to any evidence supporting his conclusion nor have their Lordships been referred to any such evidence. In fact such evidence as was given did not support the suggestion of any such change until the later part of 1921. It is only necessary to refer to the respondent's own witness on the subject, Mr. E. M. G. Lodge (Land Manager, Development Director, etc.), who stated :—

“ There was some activity in the building trade in Bombay and elsewhere in 1920 and the earlier part of 1921. In the latter part of 1921 slump took place.”

In the absence of evidence their Lordships are unable to find any reason for differing from the conclusion arrived at by Assistant Judge, and they are accordingly of opinion that this appeal should be allowed, that the two decrees of the High Court of Judicature at Bombay, dated the 17th December, 1925, should be set aside, and that the two decrees of the Court of the Assistant Judge at Thana, dated the 24th September, 1923, should be restored. The respondent must pay the costs of this appeal and of the appeals in the High Court of Bombay.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

GULAM HUSSEIN AHMED SOMAJI

v.

THE LAND ACQUISITION OFFICER, SOUTH
SALSETTE, BANDRA.

F. E. DINSHAW AND ANOTHER

v.

SAME.

(*Consolidated Appeals.*)

DELIVERED BY LORD CARSON.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1928.