Privy Council Appeal No. 75 of 1944
Allahabad Appeals Nos. 36 and 37 of 1940

M. Samiullah - - - - - - - - - *Appellant*

v.

The Collector of Aligarh - - - - - - *Respondent*

Same - - - - - - - - - - -

v.

Same - - - - - - - - - - -

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JANUARY, 1946

Present at the Hearing:

VISCOUNT SIMON
LORD THANKERTON
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

These are two consolidated appeals from the judgment and decree of the High Court of Judicature at Allahabad, dated the 3rd September, 1940, modifying the judgment and decree of the District Judge of Aligarh dated the 18th August, 1936, which in turn modified the award of the Land Acquisition Officer, Aligarh, dated the 7th November, 1933.

The land to which the first appeal relates consists of twelve bighas and nine biswas, which were held by the appellant as the mutwalli of waqf property. The land to which the second appeal relates consists of one bigha which was the appellant's personal property. These lands were acquired, together with other adjacent lands belonging to other owners, for the Co-operative Housing Society Ltd., Aligarh, under Government Notification dated 29th May, 1930, and issued under the provisions of the Land Acquisition Act. At that time the whole area held by the appellant was occupied by two tenants, Abdul Karim and Karu.

During the proceedings before the Land Acquisition Officer it was agreed between all the parties before him first, that in order to ascertain the market value of the land concerned all the sale deeds relating to the sales in respect of an area less than 75 yards should be struck off, and secondly, that the exemplars for evolving sales, that is sale deeds relating to other sales, should be taken into consideration as far back as the year 1923, i.e. 7 years preceding the year 1930, excluding the transactions which had some special grounds for being too high or too low or which might be inadmissible on any other ground to be decided by the Land Acquisition Officer.

The Land Acquisition Officer decided to apply a flat rate in respect of the lands under acquisition and to fix that flat rate at 5 annas, 1 pie per square yard and he fixed the compensation payable to the appellant on that basis. It is not shown in the award made by the Land Acquisition Officer how the figure of 5 annas, 1 pie per square yard was arrived at,

but from the judgment of the High Court now under appeal it appears that the Land Acquisition Officer took 28 exemplars, selected from a mucl larger number, which had taken place within the previous 7 years, tha he added up the number of square yards sold in such transactions and the prices paid thereon and, by striking an average reached the figure of 5 annas, 1 pie per square yard, and awarded to the appellant in respect of both his personal and waqf property a sum of Rs.14,127, 13 annas 6 pies.

On the 27th August, 1934, the appellant lodged an application to the Collector as Land Acquisition Officer under Section 18 of the Land Acquisition Act, 1894, for reference to the Civil Court regarding the acquisition of the properties on the ground that the compensation awarded was inadequate. In his written statement the Collector pleaded that the award of the Collector was made on the basis of the statement of parties " that the value be fixed on the basis of certain sale deeds on the file " and therefore the applicant had no right to question the award. The learned District Judge raised two issues which are material:—

(1) Whether the compensation awarded is adequate? If not what is the proper compensation?

(2) Whether the rate of compensation was fixed with the consent of the applicants and the acquiring body? If so, how does it affect the case?

The learned judge dealt with the second issue first. He noted that the agreement of the parties excluding sale deeds relating to areas less than 75 yards and sales more than 7 years before the notification were relied on on behalf of the Collector to preclude the applicants from questioning the award. The learned judge rejected this contention, holding that the agreement only related to the evidence to be relied on for the purpose of determining the value, and that the parties had not consented to be bound by the conclusion drawn by the Land Acquisition Officer on the basis of such evidence. The learned judge then considered the 28 exemplars which had been relied on by the Land Acquisition Officer and came to the conclusion that the conditions of the sale deed, Exhibit 84, one of the 28 exemplars, bore a very close resemblance to the conditions relating to the acquisition of the appellant's land, and that the rate at which the land in that exhibit was sold, namely, 10 annas, 10½ pies per square yard, afforded the best basis for valuation of the appellant's land. Accordingly he allowed that rate, and, adding 15 per cent. for compulsory acquisition, increased the amount awarded to the appellant to Rs.29,202, 6 annas, 10 pies.

From the decision of the learned District Judge the appellant appealed to the High Court. There was also an appeal by the Collector and by one of the tenants of the appellant's property, but as those parties have not appealed to His Majesty in Council their cases need not be considered. The learned judges of the High Court disagreed with the learned District Judge in his answer to issue 2, and stated their opinion in these words:— " We are also of the opinion that there was a binding agreement between the parties that certain exemplars afforded the basis for determining the market value of the various properties. The agreement was not only that transactions involving less than 75 square yards and of a period anterior to 1923 should be excluded, but the Land Acquisition Officer was further given the power to reject some transactions on the ground of ' being too high or too low ', or by reason of being ' inadmissible on any other ground ', and therefore the parties agreed that the exemplars that might then remain after the exercise of discretion by the Land Acquisition Officer would constitute the basis for determining the market price, and we have to determine the market value of the land at the date of the publication of the notification under section 4 of the Act." Their Lordships are not in agreement with this opinion of the High Court, which seems to show some misconception of the functions of the Land Acquisition Officer and the Court under the Land Acquisition Act. Even if the agreement arrived at between the parties did cover the basis on which compensation was to be allowed, which their Lordships think it

did not, such agreement could not bind the Land Acquisition Officer or the District Judge in the performance of their statutory duties under the Land Acquisition Act, as is clear from an examination of the relevant provisions of the Act.

Under Section 4 of the Act it is provided that where it appears to the Provincial Government that land is needed for any public purpose a notification to that effect is to be published as directed. Under S. 5 (*a*) persons interested in the land which has been notified may object to its acquisition, and the Collector has to hear the objection and make a report thereon to Government. Under S. 6, if the Government is satisfied, after considering the Collector's report, that the land is needed for a public purpose or for a company (a subject dealt with in later Sections of the Act) a declaration to that effect has to be made and published. Under S. 9 notice has to be published by the Collector stating that the Government intend to take the land and that claims to compensation for all interest in such land may be made to him. Under S. 11 the Collector has to inquire into the value of the land at the date of the publication of the notification under S. 4 and into the respective interests of persons claiming compensation and to make an award of (*inter alia*) the compensation which in his opinion should be allowed for the land. Under S. 12 notice of the award has to be given. Under S. 18 any person interested who has not accepted the award may by written application to the Collector require him to refer the matter (which may include the amount of compensation) to the Court. Under S. 19 (1) (*d*) the Collector in making the reference is required to state for the information of the Court, if the objection be to the amount of compensation, the grounds on which the amount of compensation was determined. Under S. 23 the Court is required to take into consideration (*inter alia*) the market value of the land at the date of the publication of the notification under S. 4 and to add 15 per cent. to the market value for compulsory acquisition. Under S. 26 the award is to be deemed a decree. "Collector" is defined in the Act as including a deputy Collector and any officer specially appointed by the Provincial Government to perform the functions of a Collector under the Act.

It is clear, therefore, that the Land Acquisition Officer in awarding the amount of compensation under S. 11 is performing a statutory duty, a duty the exercise of which, in cases where land is to be acquired for a public purpose, concerns the public, since it affects the expenditure of public money. In assessing compensation he is bound to exercise his own judgment as to the correct basis of valuation, and his judgment cannot be controlled by an agreement between the parties interested. On a reference under S. 18 the District Judge must also exercise his own judgment and consider, amongst other things, whether the award of the Land Acquisition Officer was based on a correct principle. If in this case the District Judge considered that the market value of the land to be acquired could be better ascertained by basing it upon a sale of neighbouring land in which the conditions closely resembled those affecting the land to be acquired, rather than by taking an average of prices obtained on a large number of sales in which the conditions were less similar, he was entitled and bound to act upon his own view. In appeal the Judges of the High Court were free to disagree with the District Judge if they thought him wrong, but this they do not appear to have done. They held that the District Judge was not free to act upon his own view because it conflicted with the agreement between the parties. Their Lordships have thought it right to make these observations lest they should be supposed to countenance a construction of the Act which in their view unjustifiably restricts the duties and obligations of the Land Acquisition Officer and the Court thereunder. There is, however, no cross-appeal by the Collector, and the appellant does not seek the restoration of the order of the District Judge, and the actual question which arises for decision is confined within a narrow compass.

Having decided that the Order of the District Judge was wrong, the learned Judges of the High Court said that the 28 transactions remained

for consideration, and the method of striking the average was the only method by which the market price could be fixed, but they thought that the Land Acquisition Officer had adopted a wrong method of striking the average. They considered that the rate in connection with each of these transactions ought to be first determined, that the rates so evolved should be added up, and the total divided by 28, the number of the transactions. On this basis the average rate worked out at R.1, 4 annas per square yard. The learned Judges then proceeded in these terms:—" It is also agreed before us that in the case of the 28 exemplars the land was not burdened with occupancy tenants, whereas in the cases before us the land is so burdened. There is nothing in the order of the Land Acquisition Officer to show that he paid any regard to this aspect. It is not always easy to induce occupancy tenants to surrender their rights and an attempt in that direction always involves some trouble and some expense. We think that 8 annas per square yard should be deducted for this trouble and expense and the zamindars ought to be awarded compensation at the rate of 12 annas per square yard." Accordingly the amount awarded to the appellant was increased by Rs.2775-12-3.

In this appeal the appellant accepted the rate of R.1 annas 4 per square yard, but objected to the deduction of 8 annas per square yard in respect of occupancy tenancies, an expression defined in the Agra Tenancy Act, 1926. The appellant contended that the learned judges of the High Court were under a misapprehension in saying that it had been agreed before them that in the case of the 28 exemplars the land was not burdened with occupancy tenants. The appellant does not seem to have challenged the reference to this alleged agreement in the judgment of the High Court before the decree based thereon became binding, nor are there upon the record any notes of the learned judges made at the hearing upon this point. The appellant admits that as to most of the 28 exemplars there is no evidence as to whether the land was subject to occupancy tenancies or not, and he says that the matter was never gone into. It has been argued, however, before their Lordships that there are 4 cases comprised in the 28 exemplars in which the record shows that there were occupancy tenants. But when examined it appears that in 3 of those cases the tenants who were upon the land were not occupancy tenants. The only case in which it is shown that there was an occupancy tenant is that comprised in exhibit 84, the exemplar relied on by the learned District Judge, and no doubt in that case there must have been an occupancy tenant or the exemplar could not have been relied on as affording an accurate comparison with the case of the appellant. The appellant has failed to satisfy their Lordships that the statement in the High Court judgment that it had been agreed that in the case of the 28 exemplars land was not burdened with occupancy tenants was wrong, or that there is any ground on which it would be right to allow further evidence on the point to be taken. This really disposes of the appeal. It was objected by the appellant that the High Court was wrong in treating all the 28 exemplars on precisely the same footing in relation to occupancy tenants without making any inquiry into the circumstances of particular cases, and further, that 8 annas per square yard is too heavy a deduction to make merely on account of trouble and expense in getting rid of occupancy tenants. These, however, are mere questions relating to value on which it is not the practice of their Lordships' Board to interfere, recognising, as they do, that the local knowledge of Courts in India on such matters is of the greatest value.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed. The appellant must pay the costs of the respondent.

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In the Privy Council

M. SAMIULLAH

v.

THE COLLECTOR OF ALIGARH

SAME

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CONSOLIDATED APPEALS

DELIVERED BY SIR JOHN BEAUMONT

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