# Special Land Acquisition Officer, Bombay Vs Lakhamsi Ghelabhai

**Court:** Bombay High Court

**Date of Decision:** April 27, 1959

**Acts Referred:** Evidence Act, 1872 â€" Section 11, 13, 40, 41, 42
Land Acquisition Act, 1894 â€" Section 23

**Citation:** AIR 1960 Bom 78 : (1959) 61 BOMLR 1033

**Hon'ble Judges:** Shelat, J

**Bench:** Single Bench

**Advocate:** H.M. Seervai and J.M. Thakore, M.P. Laud, for the Appellant;

## Judgement

(1) The question raised by Mr. Laud is oneof importance under the Evidence Act. Mr. Laud urged that the judgment in L. A. Reference Nos. 2, 3

and 4 of 1949 decided by Mr. Justice Tendolkar on 6th July 1953 relating to plots Nos. 66 and 69 situate near the land concerned in this

Reference is admissible as evidence to establish (I) the value of those plots (ii) to regard those plots as Instances and to deduce from the value

thereof as determined by Mr. Justice Tendolkar the market value of the plot in question. The learned Advocate General has objected to the

judgment being admitted as evidence on the ground that it is not relevant under any of the provisions of the Evidence Act. The question has been

argued at considerable length and it being one on which there is hardly any reported precedent, both sides have requested me to give reasons for

my decision.

(2) Now the parties concerned in those References were different except that one side in all these References is always the Land Acquisition

Officer representing Government. The acquisition of those lands took place in January 1946 which was the date as of which the value of those

lands had to be ascertained whereas the notification under s. 4 of the Land Acquisition Act in this case is of 19th January 1951. Tendolkar J.

valued those plots on several Instances of sale and other evidence led before him. Neither those Instances nor that evidence on which that learned

Judge came to his conclusion are before me. The point for consideration therefore is whether a judgment in another Land Acquisition Reference

not inter partes and with reference to another property, even if situate in the vicinity of the land in question, is admissible as an Instance from which

the market value of the land in question can be deduced.

(3) The Advocate General contended that the only provisions under which a judgment in another case is admissible are those contained in sections

40 to 43 of the Evidence Act and that the judgment of Tendolkar J. does not come within anyone of those sections and therefore cannot be

admitted. S. 40 enacts that the existence of a judgment which by law i.e. by the provisions of the CPC or Code of Criminal Procedure constitutes

res judicata or autrefois acquit or autrefois convict is a relevant fact. In such cases however, the judgment is inter partes, S. 41 deals with

judgments which are called judgments in rem, that is judgments which are conclusive not only against parties thereto but against all persons. S. 42

makes those judgments relevant which relate to matters of public nature, though they are not inter partes. Mr. Laud conceded that none of these

three sections would be applicable but he relied on S. 43 which provides that a judgment is a fact in issue or is relevant under some other sections,

e.g. sections 8, 11, 13, 54 (Expl. 2) etc. Sections 8 and 54 (Expl. 2) have obviously no application to the question before me and therefore need

not be considered. The question then is whether either S. 11 or S. 13 applies.

(4) Section 13 enacts that where the question is as to the existence of any right or custom, any transaction by which that right or custom was

created, claimed, modified, recognised, asserted or denied or which was inconsistent with its existence or any particular instance in which such

right or custom was claimed, recognised or exercised or in which its exercise was disputed, asserted or departed from its relevant. Now, the right

or custom referred to in this section is not confined to public right or custom but includes all sorts of right and customs though they must relate to

property in respect of which a subsequent litigation has arisen. But even where in such subsequent litigation the question of right or custom arises,

the view as expressed in Gujja Lall v. Fatteh Lall ILR 6 Cal 171, at one time was a judgment if it did not fall within Ss. 40 to 42, would not be

relevant. But the Privy Council in Dinomoni v. Brojomohini 29 Ind App 24 , disagreed with that view and held that certain orders passed under s.

145 of the Criminal Procedure Code were admissible bothunder general principles and under S. 13 to show the fact that they were in fact made

and that such orders would be evidence also on the question as to who the parties to the dispute were, what the land in dispute was and who were

declared entitled to retain possession. Relying on this decision it has been held since then in a number of decisions that a judgment, even if not inter

partes is admissible to prove the fact of a claim to a right having been previously made and the legal effect of such a judgment.

(5) But in order to determine whether a particular judgment, not inter partes of course, is admissible, the tests laid down in clauses (a) and (b) of s.

13 have to be borne in mind. The judgmnt must be in a litigation in which a right or custom is created, claimed, asserted, denied etc. If it is relied on

as an instance it must be one in which again a right or custom was claimed, recognised, exercised etc. Thus a judgment in a previous litigation to

which one party in the subsequent litigation was not a party can be admissible for corroboration of a fact asserted by the other party in oral

evidence, viz. that that party had asserted a claim, for instance, over the disputed land at some period. Thus in Lakshman v. Amrit, 2 Bom LR 386

the question was whether a partition deed relied on by one of the parties was a genuine document. Ranade J. held that though the decision in the

former suit where the same documdent was dealt with, would not amount to res judicata, still the record and the judgment in that suit would be

relevant to show the conduct of the parties therein and their admissions. At p. 398 of the report he observes:

Except where they are judgments in rem or where they relate to public matters, judgments not inter partes have been always held to be not res

judicata, but they cannot be wholly excluded for other purposes in so far as they explain the nature of possession or throw light on the motives or

conduct of parties or identify property.

Similarly in Govindji Jhaver v. Chhotalal 2 Bom LR 651, Jenkins C. J. and Candy J. held that where a judgment not inter partes is in a suit brought

by certain creditors against the same defendants in which the existence of partnership denied in the subsequent suit, was asserted with success, the

judgment in the previous suit is admissible, though it is not conclusive on that question. Likewise in Dharnidhar Dev. v. Dhundiraj 5 Bom LR 230,

Jenkins C. J. and Batty J. held that for a judgment to be admissible it is not necessary that it should be one inter partes or a judgment in rem. See

also Mahomed Amin v. Husan Mahamad 9 Bom LR 65, where a previous judgment, though not inter partes, was held admissible to prove that a

sale deed relied on by the plaintiff was disputed as non-genuine in the previous litigation. A judgment not inter partes may not be proof of facts

therein stated yet it is admissible for the purpose of explaining the character in which possession of property has been enjoyed and matters of that

class.

It is thus a settled rule that judgments not inter partes and though not falling under Ss. 40 to 42 are relevant for certain purposes under s. 13 where

they are relied on as establishing the fact of a right or custom having been previously created, claimed, modified, recognised, asserted or denied.

(6) The next section on which reliance is placed in S. 11, which enacts that facts not otherwise relevant are relevant if they are inconsistent with any

fact in issue or relevant fact or if by themselves of in connection with other facts they make the existence or non-existence of any fact in issue or

relevant fact highly probable or improbable. The contention is that a decision which has determined the value of a property in the vicinity of the

property in question is relevant for showing that a certain value claimed for the property in question is a highly probable fact. The question is

whether such determination of the value of such a property is a fact.

(7) Though S. 11 is expressed in wide terms a series of decisions have expressed the view that it is not to be widely costrued. The sort of facts the

section is intended to include are those which either exclude or imply more or less distinctly the existence of facts sought to be proved. But there is

a distinction between the existence of a fact and a statement as to its existence. It is the former only that is relevant under s. 11. The words ""highly

probable"" in s. 11 point out that the connection between the fact in issue and the collateral fact sought to be proved must be so mediate as to

render the co-existence of the two highly probable. The admissibility of a particular piece of evidence that is offered must therefore be so closely

connected with and in fact must depend on the weight to be attached to that piece of evidence if it is taken into consideration.

(8) Is a judgment then a fact which would be relevant under S. 11? S. 2(9) defines ""judgment"" as a statement given by a Judge of the grounds of a

decree or order. In ILR 6 Cal 171, Garth C. J. Said that a judgment is no more than an opinion. The same view has also been expressed by a Full

Bench of the Allahabad High Court in Collector of Gorakhpur v. Palakhdhari Singh ILR 12 All 1. Since s. 11 talks about collateral facts only as

being relevant, a judgment, not being a fact, could not have been intended to be relevant under that section. S. 11 therefore has no reference to

judgments which are opinions in regard to the existence or non-existence of certain facts in dispute between parties. So far as Section 13 is

concerned a judgment, not inter partes, can be relevant only if it falls under clauses (a) and (b) thereof and not otherwise. It is neither a transaction

nor an instance; it is not relevant also under S. 11 as it is not a fact but a mere opinion as to the existence or otherwise of a fact.

(9) But it is argued that although a judgment determining the value of another property may not fall either under s. 11 or s. 13 of the Evidence Act,

it would still be admissible, on general principles for it would be illogical to admit evidence of a sale of another property and not to admit a

judgment which has decided the value of another such property. Such a judgment, it is argued, may not be conclusive even with regard to the value

of the property with which it is concerned; nonetheless it is relevant as a piece of evidence showing the value of that property. There are, however,

difficulties in acceding to these arguments. The first difficulty is, as argued by the learned Advocate General, that whereas evidence as to a sale is

subject to the test of cross-examination, a judgment is not. The second difficulty is that since such a judgment is not conclusive as it is conceded

even by Mr. Laud, all the evidence on which that judgment depends must become evidence in a subsequent case and has to be subjected to the

scrutiny of cross-examination. If a claimant relies on a previous judgment all that he would have to do would be to produce it and although the

burdenof proof of showing a certain value of the property in question is on him, that burden in every case where such a judgment is produced

would shift on the other side to establish that the determination of the value of the property involved in that case was not correct or valid. The third

difficulty is that since such a judgment is admittedly not conclusive it would have to become subject to a review by another Court of an equally co-

ordinate jurisdiction. Such a result could not have been intended by the draftsman of s. 11 or s. 13 of the Evidence Act.

(10) But Mr. Laud urged that a judgment in a Land Acquisition Reference must be admitted in evidence as an instance as it is a solemn

determination of the value of the property involved in it by a competent Court and has consequently a better sanctity than evidence of a sale

effected by private parties. He argued that such a judgment would be both a transaction and an instance within themeaning of S. 13 of the

Evidence Act and has been so held in a number of decisions.

(11) In support of this argument Mr. Laud first relied on Madan Mohan and Another Vs. Secretary of State, , were a Division Bench of the

Calcutta High Court held that previous decisions in land acquisition cases are relevant in a subsequent land acquisition case where the market value

of land in the same neighbourhood is in issue. There the question as to admissibility of a previous judgment arose in an appeal against an award

passed by the Calcutta Improvement Tribunal whose President with regard to compensation paid to him in respect of other properties belonging to

him under previous judgments. It was contended that such judgments were admissible and that the ruling given by the President of the Tribunal was

erroneous. Dealing with this contention, the learned Judges observed that in assessing the market value of a certain land price paid in transactions

relating to other lands in the neighbourhood must be of some value and though what their value is, it is for the Court todecide, a previous judgment

for that reason cannot be rejected. For the view taken by them they relied on thedecisionof the Privy Council in Secretary of State v. India General

Steam Navigation and Rly. Co., Ltd. 36 Ind App 200, stating that that was a clear authority for the proposition that previous decisions in land

acquisition cases are relevant in a subsequent case, where the market value of land in the same neighbourhood is in issue. Another decision relied

on is that in Secretary of State Vs. Amulya Charan Banerjee and Others, , where it was again held relying on the same decision of the Privy

Council, that prices, which are given by the Collector to persons whose lands are acquired and who accept them without protest, constitute

valuable evidence in assessing th market value of the property in suit. Similarly in Pribhu Diyal v. Secretary of State, AIR 1931 Lah 364 decided

by Tekchand and Walker JJ. certain awards made by the Collector in other acquisitions by Government were allowed to go in as evidence.

Relying on these cases Mr. Laud urged that awards made by the Collector and accepted by parties and previous judgments in respect of other

properties in the neighbourhood of the property in question are admissible.

(12) Now, the question as to admissibility of awards stands on a different footing than the one relating to judgments and therefore I will first deal

with the question of awards. Now it is well settled that an award made by a Land Acquisition Officer is not an admission binding on Government

for the purpose of a Reference under S. 18 of the Land Acquisition Act. The Land Acquisition Officer occupies no better position than that of an

agent of Government of the purpose of making an offer. That offer may be accepted or rejected by a claimant, who, if dissatisfied with it, ask for a

Reference. When the matter comes before the Court on such a Reference, it is the Court who has to determine the question of valuation on

evidence and evidence alone. The award thus being a mere offer, it is difficult to see how it can become evidence in another case in which different

parties and different properties are concerned. Besides, an offer is at best opinion evidence, which cannot become admissible unless the person

making the offer gives evidence about it. The decision reported in AIR 1931 Lah 364, gives no reasons why such an award amounts to evidence

binding on a person who is not a party to that award, nor does it mention any of the provisions of the Evidence Act under which it becomes

relevant evidence. Allowing an award as evidence, besides, is inconsistent with its very nature for it is nothing which is final. It is at best an offer

which is not binding either on the claimant or Government and is subject to its being set aside by a Court. The fact that it was acepted by a

claimant without asking for a Reference is also immaterial for a claimant might not seek a Reference for fear that it would involve him into litigation

involving costs and time. With great respect to the learned Judges who decided that case it is not possible for me therefore to agree with the

principle they are said to have laid down that an award is admissible evidence.

(13) With regard to the question as to judgments not inter partes and dealing with other properties, it is necessary to observe that the two Calcutta

decisions relied on by Mr. Laud also do not mention any of the provisions of the Evidence Act under which they are relevant. It is clear from the

reports of these two decisions that the learned Judges who decided them relied solely on the decision in 36 Ind App 200 (PC), as an authority. It

becomes therefore necessary to see if that decision really lays down the principle which the two Calcutta decisions lay down. Though the Privy

Council judgment is reported in 36 Ind App 200, a full report of it is to be had in ILR 36 Cal 967 (PC).

(14) The case arose out of acquisition of 53 bighas of land situate on Garden Reach Road bearing numbers 6, 7 and 8. The land was acquired for

improvement of the Kidderpore Docks at the instance of Port Comissioners of Calcutta. The Special Land Acquisition Judge of the 24 Paraganas

in a Reference made to him under S. 18 of the Land Acquisition Act estimated the value of the land at Rs. 500/- per cottah against which an

appeal was filed in the High Court caliming Rs. 1,000/- per cottah and challenging the method of valuation adopted by the Special Judge. The High

Court rejected the valuation place by the Special Judge and awarded higher rates against which the Secretary of State appealed to the Privy

Council. From the judgment of the High Court which is included in the report it appears that among other evidence two previous judgments of the

High Court dealing with other lands in the vicinity were relied on by the claimant. At p. 971 of the report the High Court observed as follows:

But basing our valuation ont he evidence given in this case on both sides and taking into consideration such evidence as to rates of arent, sales and

awards, we are inclined to value the land at very much the same rates given by the learned Chief Justice and Mr. Justice Geidt for the land taken

up at the corner of Watgani and Garden Reach Roads. This land is very near, if it is not the nearest land to the subject of this Referenc,e of the

value of which we have evidence.

It is thus manifest that the High Court did take into account at least on of the two previous judgments admitted in evidence, viz., the one of the

learned Chief Justice and Geidt J., and relying on it together with the other evidence raised the compensation. Before the Privy Council, Cohen K.

C. who appeared for the Secretary of State argued tat ""the judgment related had, by reason of its position of two traffic thorughfares, a special and

extraordinary valoue and it had nothing in common with the land now in question which could from the basis of comparison betweeen the two in

estimating their respective values

He argued further that the High Court had disregarded evidence relating to other lands which wer more similar to the land in question and that the

High Court had erred in setting aside the method of valuation adopted by the Special Judge and in ignoring th e fact of his special knowledge in

connection with such valuation. Mr Land contended that from the summary of arguments it apeared that conusel for the Secretary of State did raise

the question as to acquistion case and that the Privy Council assumed that such a judgment was relevant and did not therefore expressly answer

that argument. That is not correct. If such a contention was in fact raised, counsel of the eminence of Sir R. Finlay who appeared for the claimant

could not have remained silent over it. Lord Collins who delivered the judgment of the Board was also bound to deal with such an important

contention. It appears, on the contrary, from the arguments of the conusel that the contentions raised were mainly: (1) that the High Court erred in

relying on valuation made in the previous judgment in respect of a property which was not comparatble and which had special advanctages and (2)

that it also erred in discarding the method of valuation adopted by the Special Judge in view of his special knowledge of such cases.

(15) As I read this judgment it is clear to me that the question whether such a previous judgment or award was admissible under the Evidence Act

or not was not argued kbefore the Privy Council and therefore the Board was not invited to decidxe that question. This is clear still fromt he

judgment itself. At p. 974 of the report, Lord Collins deals with the contentions of Cohen K. C., as follows:

It seems of thier Lordships that there is no principle involved in this appeal. In fact the main argument of the appellant is a practical denial of the

right of the High Court to review the findings of the Special Judge, whose great experience in such cases, they suggested, ourght to outweigh all

other considerations. Indeed, when one comes to close quarters with their objkection tot he decision, ""it seems to resolve itself to no more thatn

this, that the Court gave ;undue weight to the prices paid on the sale of a particular peice of land in the vicinity as afforidng a guide to the

compesation to be clear to their Lordships that there is any good ground for this suggestion.

I do not see either in this passage which deals witht he contentions raised on behalf of the Secretary of State or anywhere else in the judgment

Lord Collins either assuming or laying down the principle that a perevious judgment in another acquistion case is admissible. Taht question was not

raised before the Board and the Board did not answere it as it was not called upon to do so. With great respect to the learned Judges who

decided the cases reported in In Re: Jatindra Mohan Sen Gupta, and Secretary of State Vs. Amulya Charan Banerjee and Others, , it is difficult to

see how the decisions in 66 Ind App 200: ILR 36 Cal 967 , can be regarded as an authority for the proposition they laid down.

(16) Another decisions of the Privy Council to which my attention was driven was drawn is tobe found in Atmaran Ghadgay v. Collector of

Nagpur AIR 1929 PC 92, where some 258 acres of land belonging to 25 owners including the appellant wer acquried. The collector treated the

entire land as purely agricultural and awarded Rs. 60/- per acre. The other owners accepted the award but the apelant asked for a Reference

asserting that the lands should be valued on the basis of their being ""problematerical building sites in an undeveloped form"" and valued them at Rs.

300/- per acre. Against this decision Government filed an appeal before the Judicial Commissioner''s Court of Nagpur in which the Collector

emphasised as his main contention the inferenct to be deduced from the accpetance of the awards made by him by the owners of land other than

the land of the claimant. The claimant objected to this plea and claimed the right to cross-exaimne those owners and thereupon the Judicial

Commissioners remanded the case to the District Judge to take evidence. Evidence was taken accordingly but stangely those other owners,

vouched by the Collector. Even so, the evideance was that they accpeted the awards not because they wer satisfied witht hem but becuase they

did not wish to involve themselves in ligtighation or because they did not have the necessary funds to launch litigation. ignoring this fact and the rest

of the evidence, the Judicial Commissioners relied only on the fact of the acceptance of the awards by thso other owners, and reversed on the

strength of that fact the decision given by the District Judge and restored the award of the Collector. The Privy Council held that the Judicial

Commissioners erred in ignoring allt he considerations pertintent to the claimant''s own lands and in founding themselves exclusively on the evidence

of the price accepted for other plots by those other owners, the conditions of which were not fully before them.

(17) Now it is true that the awards made in respect of lands other than that of the claimant and the fact of their having been accepted were

admitted in evidence. Mr. Laud relied therefore on this decision and argued that in this case also the Privy Council did not observe that the awards

were not admissible or that they had been wrongly allowed to go in evidence. But that is wrong way of viewing this decision. The mere fact that the

Privy Council did not say that the awards were wrongly inserted in evidence does not mean that their Lordships therefore laid down the

proposition that such awards are admissible as canvassed by Mr. Laud. It is clear from the judgment of the Privy Council that that question was

again not raised before their Lordships nor was it dealt with by them. That question was not raised on behalf of the claimant probably because on

merties there was clear evidence that those other owners had accepted the awards made in respect of their lands not because they considered

them to be satisfactory but because of want of funds to proceed further and because of their willingness to involve themselves in litigation. Since

acceptance in such circumstances could not make those awards conclusive on the question as to the market value of the claimant''s lands, the Privy

Council interfered and set aside the judgment of the Judicial Commissioners. The point whether awards in respect of other lands are relevant has

thus not been dealt with in this decision. Therefore this decision again cannot be taken as an authority on that point.

(18) The last case referred tome was Ram Ranjan Chauckerbutty v. Ram Narain Sing, 22 Ind App 60 (PC). The principle deducible from this

decisions is that certain decrees previously passed, to which the plaintiff''s predecessors-in-title were not parties but which sustained the

defendants'' claim to hold thelands in dispute at certain fixed rents relating to which the plaintiffs had filed the present suits for ejectment, were

admissible in evidence as showing ancient possession and assertion of title many years ago and those decree taken along with other evidence

showed defendants'' possession at a uniform rate for solong a period as to raise a presumption that the tenure was of a permanent nature. It is thus

clear that the decrees though not inter partes were admitted in evidence as showing the fact of the defendants having claimed as tenants the right to

possession in the past and that right having been recognised. The ground of admission of these decrees in evidence is therefore quite different than

the one submitted by Mr. Laud for admission of Mr. Justice Tendolkar''s judgment. It was a ground which clearly fell under S. 13 of the Evidence

Act.

(19) In my view the Privy Council decisions relied on by Mr. Laud do not lay down the principle that a judgment not inter partes and relating to

other hand is admissible as either an instance or one from which the market value of the property in question can be deduced or inferred. Such a

judgment cannot obviously fall under Ss. 40 to 43 or under S. 11 or S. 13 of the Evidence Act. The decisions of the High Court of Calcutta cited

by Mr. Laud cannot with great respect, be accepted as authorities for the proposition that a previous judgment not inter partes and with reference

to other land is admissible, for those decisions are based solely on the Privy Council decision are based solely on the Privy Council decision in 36

Ind App 200: ILR 36 Cal 967, which lays down no such principle. So far as the decision in AIR 1931 Lah 364, is concerned it is one which is

contrary to the well-recognised concept of an award of a Land Acquisition Officer and therefore again with respect I cannot follow it. On the other

hand I find myself supported in the view I take by the observations of Mr. Justice Macleod, as he then was in Government of Bombay v. Tar

Muhamad ILR 33 Bom 325, where the learned Judge declied to take into consideration the amount declined to take into consideration the amount

awarded by a previous judgment of this Court for another property remarking that he could not obviously do not without considering all the

evidence on which that judgment was founded as the judgment by itself was no evidence for the market value of the property in question.

(20) For the reasons aforesaid I have come to the conclusion that the judgmet Tendolkar J., sought to be included in evidence is not admissible

and the contention of Mr. Laud must therefore be rejected.

(21) Answered accordingly.