(1928) 08 BOM CK 0013

Bombay High Court

Case No: First Appeal No. 38 of 1927

Assistant Collector Salsette		APPELLANT
	Vs	
Damodardas Tribhuvandas Bhanji		RESPONDENT

Date of Decision: Aug. 15, 1928

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 35
- Land Acquisition Act, 1894 - Section 27(1), 27(2), 53

Citation: (1929) ILR (Bom) 178

Hon'ble Judges: Murphy, J; Amberson Marten, J

Bench: Division Bench

Advocate: P.B. Shingne, Government Pleader, for the Appellant; K.V. Joshi, for the Respondent

Final Decision: Allowed

Judgement

Amberson Marten Kt., C.J.

LANDS within the villages of Chendi, Naupada and Kopri in the Thana District were notified for acquisition on September 24, 1923. The landowner in Appeal No. 38 of 1927 claimed Rs. 2 per square yard, i.e., Rs. 9,680 per acre. The Land Acquisition Officer allowed compensation at the uniform rate of Rs. 1,250 per acre. On a reference the Joint Judge at Thana upheld the award of the Land Acquisition Officer and dismissed the claim of the claimant but without costs. The sole reason he gave for not awarding costs to the Government was that " the uncertainty of market created by the boom and its aftermath was greatly responsible for the exaggerated demands of the claimant."

2. The Government appealed to the High Court on the question of costs only. P.B. Shingne, Government Pleader, for the Appellant. K.V. Joshi, for the Respondent.

3. I now turn to the four other appeals, namely, Nos. 38, 39, 195 and 233 which are all by Government on the question of costs. Now here there has been no appeal by any of the claimant-landowners Therefore, we must take it that the decision of the learned Judge upholding the award of the Land Acquisition Officer in respect of these particular pieces of land was correct. The award so made was at the uniform rate, as far as these lands are concerned, of Rs. 1,250 per acre. But as regards costs the learned Judge stated as follows in paragraph 28 of his judgment:

I, therefore, dismiss all the claims, but without costs. The uncertainty of market created by the boom and its aftermath has been greatly responsible for the exaggerated demands. And having regard to that fact, I think this is not a fit case where I should saddle the owners with Government costs underSection 27.

4. Now, what jurisdiction are we exercising in the matter of costs in these land acquisition proceedings? Section 27(2) does not apply in the events which have happened, because the award of the Collector has been upheld. One relevantSection is Section 27(1) which directs:

Every such award shall also state the amount of costs incurred in the proceedings under this Part and by what persons and in what proportions they are to be paid.

5. FurtherSection 53 says:

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under this Act.

6. It seems to us, therefore, that in a case like the present where there is nothing inconsistent in the special provisions of the Land Acquisition Act, we have to refer to Section 35 of the CPC which deals with costs. ThatSection, shortly stated, leaves the costs in the discretion of the Court, but provides in Sub-section (2) that " where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing."

7. Now, the general rule is clear both in England and under the Code, in India, namely, that speaking generally, costs ought to follow the event. But there may be certain circumstances to justify the Court in departing from that general rule and in depriving the successful party of his costs. Illustrations will be found in some of the authorities which have been cited to us. For instance, in Cooper v. Whitting ham, (1880) 15 Ch. D. 501. Sir George Jessel says (p. 504):

As I understand the law as to costs it is this, that where a Plaintiff comes to enforce a legal right and there has been no misconduct on his part-no omission or neglect which would induce the Court to deprive him of his costs-the Court has no discretion and cannot take away the Plaintiff''s right to costs. There may be misconduct of many sorts: for instance, there may be misconduct in commencing the proceedings, or some miscarriage in the procedure, or an oppressive or vexatious mode of conducting the proceedings, or other misconduct which will induce the Court to

refuse costs; but where there is nothing of the kind the rule is plain and well settled and is as I have stated it. It is, for instance, no answer where a Plaintiff asserts a legal right for a Defendant to allege his ignorance of such right and to say, '' if I had known of your right I should not have infringed it.

8. That decision was followed in India in Kuppuswami Chetty v. Zamindar of Kalahasti. (1903) 27 Mad. 841. Another English authority is Upmann v. Forester, (1883) 24 Ch.D. 231. which is a decision by Chitty, J. In our own Court in Ranchordas Vithaldas v. Bai Kasi, (1892) 16 Bom. 676. Mr. Justice Bayley and Mr. Justice Farran state the circumstances under which an appeal lies from the exercise of discretion by the lower Court, as to costs. They say (p. 682):

The principle to be deduced from these decisions is that appeal Courts should interfere with the exercise of discretion by the lower Courts as to costs when there has been any misapprehension of facts, or violation of any established principle, or where there has been no real exercise of discretion at all.

9. In that case they held that there had been a clear misapprehension of fact and law and accordingly varied the judgment of the Court below. I may also refer to Civil Service Co-operative Society v. General Steam Navigation Company, [1903] 2 K. B. 756. where Lord Halsbury, sitting in the Court of Appeal, came to the conclusion that there was no material upon which the learned Judge in that particular case could properly deprive the successful party of his right to costs.

10. Therefore, it comes to this, that although the successful party is prima facie entitled to his costs, the Courts have a discretion which is to be exercised on well recognized principles and that if they fail to exercise their discretion on those principles then an Appellate Court may vary it. Can we say then here, that there was any violation of well established principles as to costs? In the first place, the learned Judge makes no reference to the general rule that the successful party''s costs should follow the event. The only reason he gives is that the boom and its aftermath had created uncertainty in the land market and that that was responsible for the exaggerated demands put forward. Therefore, the learned Judge seems to consider that some, at any rate, of the claims were exaggerated. I think that was so as regards appeal No. 38 of 1927 where Rs. 2 a square yard were claimed and as regards appeal No. 195 of 1927 where Rs. 1-4-0 a square yard was claimed and also as regards appeal No. 233 of 1927 where Rs. 1-8-0 a square yard was claimed. On the other hand, I am not prepared to say with regard to appeal No. 39 of 1927 that the claim of approximately annas 10 a square yard was extravagant. I will, however, deal with the matter generally on the ground that some, at any rate, of the claims were extravagant, although in one claim there was not perhaps an exaggerated demand.

11. Let us next consider the general result of the learned Judge''s decision. We know that under the Act claimants can appeal to the Judge from the decision of the Land

Acquisition Officer without any fear that the Land Acquisition Officer''s award can be reduced. Therefore at the worst they will get what the Acquisition Officer awarded. Further, if they can succeed in increasing the award of the Acquisition Officer, then u/s 27(2) of the Act, they must get their costs, subject to special circumstances such as an extravagant demand. But, if the learned Judge is right, then in his view extravagant claims can be safely made, if there are any grounds for putting them forward, because even if the claimants fail to reduce the award they have not to pay costs and if only they can increase it they get their costs u/s 27(2). In other words the claimants are to be in the happy position of being able to say, " Heads I win, tails you lose."

12. I can conceive no greater inducement to litigants to appeal in land acquisition proceedings than the adoption of a principle of this sort. One can indeed test the matter by what has happened in this large group of cases, namely, that substantially everyone of these 1(30 or more claimants has in fact appealed to the Judge from the decision of the Land Acquisition Officer, for the Government appeals for the moment before us represent only a few of the cases and are in the nature of test appeals. And as a matter of mere common sense one can well understand that, for if the learned Judge is correct, then the most each claimant stood to lose was his own pleader''s fees whereas, if he won, there might be a substantial addition to the purchase price and he would also get his costs. The temptation to appeal is further increased by the knowledge that land valuation is not an exact science and that different minds may well reach different conclusions as to value. Therefore, if we were to admit in principle the accuracy of the learned Judge''s views as to costs, then it would mean that substantially in all land acquisition proceedings claimants could make extravagant demands without any real risk, except that they might have to bear their own costs. After all who are Government? They, in effect, represent the interests of the public. The land here has been taken for the public benefit and speaking for myself I fail to see on what principle of justice or equity Government as representing the public should be deprived of their costs when they have successfully resisted the attempts of these numerous claimants to increase the awards which the Land Acquisition Officer made.

13. We have before us a statement of the aggregate amount of costs Government are involved in. The total amounts to something over fourteen thousand rupees. This is by no means then a trifling matter which we have to deal with.

14. The result, in my opinion, is that the learned Judge exercised his discretion in violation of well recognized principles of law and that he was not justified in law in exercising his discretion in the way he did, whether or no the claimants'' demands were extravagant. In my judgment no adequate reason is shown for departing from the ordinary rule that costs should follow the event.

15. Accordingly, I would hold that these appeals should all be allowed and that the Respondents should be directed to pay the costs of Government in the Court below

and also before us. But the same qualification will be imposed as in Assistant Development Officer, Kurla Area v. Zuje, (1928) F. A. No. 126 of 1926, decided by Fawcett, Ag. C. J.and Mirza, J. on June 25, 1928 (Unrep.). namely, that in regard to the amount of the pleader''s fees awarded, the Respondents should not have to pay anything in the lower Court in excess of what is certified by the Government Pleader concerned to have been really received by him from Government. That proviso does not apply to the costs in the appeal Court.