

The GOVERNMENT AGENT, Southern Province, v. SILVA *te al.*

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D. C., Galle, 3,127.

Reference under the Land Acquisition Ordinance—How opinions of assessors are to be recorded—Market value—Tests for ascertaining it.

In a trial on a reference under the Land Acquisition Ordinance for the purpose of ascertaining the market value of the land acquired, each assessor must give his opinion orally, and such opinion must be recorded by the judge, so that the Appeal Court may have before it the independent opinion of each assessor.

BONSER, C.J.—The market value of a house does not depend on the money expended on it, nor on the difficulties which had to be overcome in building it.

WITHERS, J.—The market value of any given land depends on its extent, situation, relative position, and its adaptability for any particular use; also upon the rent and rate of interest obtaining in the district.

Among the tests of the market value of a piece of land are the price which anyone would give for it at a public auction and the price given at recent sales for lands similarly situated.

THIS was a case under the Land Acquisition Ordinance. The amount of compensation for the land acquired by Government and awarded by the Government Agent having been refused by the defendants, the Government Agent referred the matter to the District Court. The defendants duly appeared and nominated their assessor, as the plaintiff did his. On the 8th July, 1895, the

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case came on for trial. The line of inquiry adopted to determine the compensation payable to plaintiff proceeded on the value of (1) the bare soil of the land, (2) each of the buildings on it, allowing so much for material and so much for labour, and (3) each of the trees that stood on the soil, and also (4) on the expenses of the owner's removal to another residence. There was also some evidence as to recent sales in the vicinity.

The Government Agent for the Southern Province (Mr. Ievers) deposed as follows :—

In July, 1894, I was Acting Government Agent, Southern Province, and acquired this piece of land for the Matara railway. It is G 440 in preliminary plan 4,054, which I produce. The extent acquired is 18 perches. The building on it consisted of four buildings on four sides of a quadrangle. We assessed them separately. I ordered the Pattu Mudaliyar to make an appraisal, and he submitted it, and I went to the land twice. The Mudaliyar's valuation I approved of, and I added something for forcible acquisition: that is, for southern building Rs. 462·45, to which I added Rs. 37·52, making Rs. 500; for northern building Rs. 428·95, to which I added Rs. 51·05, making Rs. 480; for western building Rs. 215·52, to which I added Rs. 34·48, making Rs. 250; for the eastern building Rs. 253, to which I added Rs. 27, making Rs. 280. I valued the bare soil at Rs. 600 an acre, and accepted the Mudaliyar's valuation, Rs. 86·72, for plantation. In considering it reasonable I gave 10 per cent. on value of soil and plantation for severance. I also gave 60 cents for a piece of wall. I also allowed Rs. 168 for expenses of removal. The total of compensation, excluding Rs. 168, was Rs. 1,680·24, and I added 10 per cent. as compensation for removal, which would allow Rs. 20 rent for six months, leaving Rs. 48 for removal of furniture. Total tendered, Rs. 1,848·24. I awarded that on 30th July, 1894. I consider my award ample, considering what I paid for other property along the line.

Cross-examined.—Ahangama is fairly thickly populated. The plan does not show the extent of land left: on the south-west was a piece left between the railway and road. That is shown on the plan. The other side is a larger piece. I do not know whether the road is a minor road or a Gansabhawa road. I made no separate estimate of trees or materials (shown a plan). The measurements in this plan do not correspond with the measurements taken for me. I only checked one measurement, the front wall of the northern house. My notes do not show which measurements refer to which house. I do not remember a large jak tree.

Mr. Tillekeratne, the Mudaliyar of Talpe, deposed as follows :—

I am Mudaliyar of Talpe, and have been so for three years. This land is in it. On Government Agent's order I went to the land with five headmen and a mason and a carpenter. I and the headman estimated the land and the trees. The trees were :—

	Rs. c.		Rs. c.
2 cocoanut, 25 years ..	30 0	1 imbul ..	0 50
1 imbul ..	1 50	1 jak ..	10 0
1 anona ..	1 0	1 cocoanut ..	10 0
1 cocoanut, 35 years ..	12 0	1 plantain ..	0 72
1 cocoanut, 30 years ..	10 0		
1 mi ..	4 0		86 72
2 cocoanut, 10 years ..	7 0		

and we valued the bare soil at Rs. 600 per acre. That is similar to what others in Ahangama accepted. I think a garden planted like that without building is worth Rs. 1,000 an acre in Ahangama. Six or seven months before this lot was acquired for Government, Government acquired two lots in the high road at Ahangama. I do not remember the rate. I also appraised the buildings with the aid of the mason and the carpenter. Three of the buildings appeared very old and one new; that was valued by me at Rs. 253—the eastern building. I got the mason and carpenter to estimate what each of those buildings would cost to build. I adopted their valuation, which was :—

	Rs. c.		Rs. c.
Southern house	.. 462 48	Western house (a kitchen)	215 25
Northern house	.. 428 95	Eastern house	.. 253 0

Two houses were of wattle and daub and two of sun-dried brick. Coconut rafters and some jak rafters in the outer verandah. Of the southern building, the reepers of veraniya, the wallplates were in some place of jak. There is one small piece of land left. One side of the railway corresponded with the boundary of the land on the piece left, south of the line. There are seven cocoanut trees and a breadfruit tree. I consider my valuation is fair valuation. I think the market value of the northern building was Rs. 350, western Rs. 150, southern Rs. 400, eastern Rs. 200. There were two yards mud wall valued at 60 cents.

Cross-examined.—I never offered to buy a land or house at Ahangama. The piece of wall was where the railway passed, leaving wall on each side. To make a boundary wall you have to go the length of the railway. It was 3 ft. by 1 ft. The mason and carpenter are not paid by me. The headmen are paid—the vidane arachchi and pattu arachchi. The northern house is 27 ft. 6 in., at outside of verandah, long and 27 wide. It consisted of two rooms with a hall in front. There were jak and cocoanut wallplates, veraniya reepers, jakwood doorframes and doors, and two windows of jak. I cannot remember whether panelled or not. The front door I valued at Rs. 20, two minor doors Rs. 20, two windows Rs. 30. Common iron hinges. The southern house had five doors, two large and three small, and one large window, all of jakwood. All iron hinges. The wallplates were jak, the beams cocoanut and jak, del reepers. The western house or kitchen had two doors, jak frames and shutters of del. I valued each at Rs. 7.50. The eastern house has three doors and four windows. The eastern house was closed when I went there. It appeared to have been occupied. I was told that one family occupied the northern and southern house. There was a good deal of furniture. The doors and windows were painted. The imbul tree was not old enough to yield cotton—only the size of the ordinary bamboo. The mi tree must have been very small by my valuation. No cocoanut tree there was worth more than Rs. 15. I had given more at Ahangama. Trees come into bearing in five or six years there. The soil on that lot is not bad. The two cocoanut trees (ten years) had not come into bearing, they must have been in bad ground. The jak tree is down in my notes 2 cubits in growth and 4 yards long. I cannot explain that. I cannot remember whether it was bearing. You can buy a good size jakfruit for 6 cents. I think the tree was fit for timber.

Re-examined.—It is hilly ground. The foundation was cut out of the slope.

After hearing other witnesses the District Judge recorded as follows :—

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1898. Mr. Jayasekara is of opinion that the award of the Government Agent for bare soil is right, *i.e.* Rs. 600 an acre. He would, however, add the following to the value put upon the plantation :—

For jak tree add	Rs.
For mi tree add	60
For cocoanut trees add	26
For imbul trees add	19
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He approves of the Government Agent's award for severance and for removal to other residence and for the piece of wall, and finds no addition necessary. After consideration of the items in the two estimates of the value of the buildings Mr. Jayasekera is of opinion that Rs. 1,674·75 should be allowed, being an increase of Rs. 164·75 on Government Agent's award. Total to be added to award Rs. 273·75.

Mr. Erskine is of opinion that the award is sufficient, considering as regards the land and plantation the evidence of recent sales in the vicinity, and considering the ideal value which should be set on Mr. Senanayaka's quantities. Mr. Erskine estimates the cost of building the houses as described at Rs. 1,499·75.

And then the District Judge gave judgment as follows :—

Having fully considered the case, and having spent two hours with the assessors over the two estimates of the value of the houses, I find that the Government Agent's award is sufficient. The assessors agreed as to all the items in Mr. Senanayaka's estimate except one, *viz.*, the value of the roughly-shaped lumps of clay, earth, and sand, which are here called sun-dried bricks. Mr. Jayasekera values them at Rs. 40 per 1,000 and Mr. Erskine at Rs. 10, so that for Mr. Senanayaka's 25 cubes of what he calls dry brick walling Mr. Jayasekera would give Rs. 425, while Mr. Erskine would give only Rs. 250. Now, considering that dry bricks can be bought for Rs. 7·50 a thousand and half-round burnt tiles for Rs. 6 a thousand, I feel sure that these sun-dried bricks are not worth more than Rs. 10. It is true they are much larger, but the skill and labour expended on them are very much less. I therefore agree with Mr. Erskine as regards the value of soil and plantation. I am of opinion that the best way of ascertaining the value of a garden is to find out what other gardens in the vicinity have recently been sold for. Now the claimants give us two instances. Witness Sudatapala bought quarter of an acre for Rs. 350, which is equivalent to Rs. 1,400 an acre, and witness Mathes says, Tegriss six months ago bought two-thirds of an acre for Rs. 450, which is equivalent to Rs. 678 an acre. The mean is Rs. 1,037·50 an acre. The Government Agent has given Rs. 1,370 an acre.

It is true that Sudatapala says he had to buy out certain other people at a cost of Rs. 1,500, but what is in the deed is Rs. 350; and as he says he has been cheated by the people he bought out, and yet has not taken steps to eject them, I cannot credit this statement.

Mr. Senanayaka's estimate is clearly a Public Works Department estimate. I have no doubt his quantities are right, but his rates are necessarily not in any way adapted to work done by and for villagers in their village. As regards the very large item Rs. 612 for cutting and levelling, we have preferred to adopt the estimate of Mr. Church, the Railway Engineer, who must be presumed to know the ground and what it has cost him to make his cuttings. We therefore disallowed Rs. 612 and substituted Rs. 70.

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Mr. Senanayaka stated that he valued the buildings as they stood, but I am unable to give credit to the statement for two reasons: (1) He has, as in all Public Works Department estimates for new work, added 10 per cent. contingencies; and (2) he palpably in his evidence shuffled out of a difficulty into which the Court had put him about his rates for roofing, at first saying that he stated from Public Works Department rates for coconut rafters and jak reapers Rs. 36 and deducted Rs. 6 for veraniya reapers, and then making a quite different statement in order to bring in Rs. 4 for depreciation. He is evidently very ready at mental arithmetic.

On the other items we are all agreed. I find that the sum awarded by the Government Agent is sufficient and proper compensation for the property acquired in this case, and I award that sum accordingly.

The claimants (first and second) will pay all costs, including Rs. 50, to each assessor.

The defendants appealed.

Seneviratne and *Wendt*, for appellants.

Chitty, C.C., for the respondent.

19th August, 1898. BONSER, C.J.—

I see no reason to interfere with this assessment. At the same time I should like to say that it is a mistake to imagine that the market value of a house depends upon the expenditure on it. I see that one of the witnesses who valued the house added the sum of Rs. 40·75 for levelling the ground for the foundation, as though the market value was increased by reason of the difficulties which had to be overcome in the course of building. That principle seems to have been accepted on both sides without demur. I should also wish to call attention to the fact that the District Judge did not follow the provisions of the Ordinance as he ought to have done.

Section 24 is quite clear that each assessor is to give his opinion orally. That is to be recorded in writing by the District Judge. In the present case the District Judge appears to have written a long opinion, in which one of the assessors concurred and which he signed. The other assessor was allowed to put in a written statement. I do not see why the provisions of the Ordinance should not be complied with. The Appeal Court wishes to know the independent opinion of the assessors. At present we have before us only the opinion of one assessor and the opinion of the District Judge. There is not the independent opinion of the other assessor.

WITHERS, J.—

I have heard nothing to satisfy me that the amount awarded by way of compensation for the land acquired by Government is not fair and just. Indeed, I have heard so little of the kind of

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evidence which one expects to be given in an inquiry about the market value of a piece of land, that I venture to repeat some of the observations which I made in a judgment in a cause of the kind which came up in appeal from the District Court of Badulla in October, 1896.

The value of a piece of land cannot be determined so easily as that of a commodity like rice, for instance, which has a recognized market price. The value of any given land depends on its extent, situation, relative position, and its adaptability for any particular use. This value may again be affected by the use made of the property immediately adjoining it. Given all the surrounding circumstances, What is the best use to which the land can be put? is I think a fair question to be asked in a case of the kind.

Then, what are the tests of the market value of a piece of land? One that naturally suggests itself is the price which any one would give for it at a public auction. Another test is the price given at recent sales for pieces of land similarly situated, but the value of this test altogether depends on the circumstances attending such sales.

The rent and the rate of interest obtaining in the district are also material for computing the market value.

These rules are not of course exhaustive, but I think that they indicate the line of inquiry to be taken in similar cases.

