1970 *Present :* Sirimane, J., and Wijayatilake, J.

PETER FERNANDO, Appellant, *and* D. R. UMAGILIYA (Acquiring Officer), Respondent

S. C. 2/69—Land Acquisition Board of Review Appeal No. BR 2768/CL 690

Acquisition of land by Crown—Quantum of compensation payable—Relevancy of prices of adjoining lands—Land Acquisition Act (Cap. 460), ss. 7, 45, 46, 48 (e).

In determining under section 46 of the Land Acquisition Act the compensation to be paid to a person for the acquisition of a land, the provisions of section 48 (e) of the Act do not debar consideration being given to the prices fetched by sales of adjoining lands shortly before the notice under section 7 of the Act, unless there is satisfactory evidence that those prices themselves were high as a result of the proposed acquisition.

APPEAL under the Land Acquisition Act.

Walter Jayawardena, Q.C., with *Mark Fernando*, for the appellant.

G. P. S. Silva, Crown Counsel, for the respondent.

Cur. adv. vult.

September 2, 1970. SIRIMANE, J.—

The Appellant was the owner of an allotment of land 2 Roods 36·84 Perches in extent which was acquired by the Crown under the Land Acquisition Act (Cap. 460) hereinafter called the Act. He was awarded compensation at the rate of Rs. 445 per perch. On an appeal to the Board of Review this sum was increased to Rs. 550 per perch. At the hearing before the Board the Appellant relied on the prices realised by sales of certain lots immediately adjoining the land acquired. These lots are shown in Plan A1 and the particulars of the sales of those lots are set out in the Schedule A5.

In this Schedule there are five items, four of which relate to sales in January, April and August 1966. They show that the prices at that time varied from Rs. 1,755 to Rs. 1,000 per perch.

The Board refused to take into consideration these prices, in assessing the compensation payable to the Appellant for his land.

The submissions made before the Board show, that the Crown relied on Section 48 (e) of the Act to prevent any consideration of the prices fetched at these sales, and it is on that section that the Crown relied at the argument in appeal.

The Appellant contends that there is an error in law in construing the section. Section 48 (e) reads as follows :

> " In determining under Section 46 the compensation to be paid to any person for the acquisition of a land or scrivtude, none of the following matters shall be taken into consideration :—
>
> (e) Any increase which is likely to occur in the market value of the land by reason of the use to which it will be put after its acquisition under this Act."

There must be, in my view, a direct or obvious connection between the use to which the land will be put after acquisition, and the enhanced prices.

The quantum of compensation payable to a person for the acquisition of a land in which he is interested, must be based on the market value of the land. (See Section 46 of the Act.)

Section 45 provides that the market value of a land in respect of which a notice under Section 7 of the Act has been published is the amount which the land might be expected to have realised if sold by a willing seller in the open market as a separate entity on the date of the publication of that notice.

In this instance the notice under Section 7 was published on 27.10.66. Four of the sales in A5 were shortly before this date. The Board has refused to take into consideration the values reflected in these sales on the ground that " these sales were all after January 1966 ". They went on to state that the prices fetched at these sales were the result of this acquisition.

The land in question, though low-lying and marshy, is stuated in the city of Colombo in its seventh postal zone, where the demand for land is so great that prices keep on rising practically every month, and particularly so after 1965. The evidence of the Crown Valuer was that " from 1963 to 1966 October a great deal of change had taken place in the value of land ". This increase in the prices of land in that area had nothing to do that with an acquisition. The purpose of this acquisition was to hand over the land to a housing society, for an upper middle class housing scheme. It is not as if buyers of land in the vicinity might have expected some new amenities such as the supply of electricity or water service being made available to this tract of land as a result of the proposed acquisition. These amenities were always available in that area.

Though the Valuer called by the Appellant had at one stage of his evidence in cross-examination agreed that the acquisition has influenced the value of adjoining lands, yet he also stated in the course of that same evidence that the increase in prices as a result of the proposed acquisition would be " very negligible ".

The purchasers who had bought lots in 1966 before the date of the notice under Section 7 did not say that the acquisition had in any way influenced the price they paid, and it is difficult to think that it did.

In the circumstances of this case, we think that the Board was in error when they held that the terms of Section 48 (*e*) prevented them from giving any consideration at all to the prices fetched by sales immediately before the notice under Section 7 of the Act. These prices, in our view, should be taken into account by the Board in assessing the compensation payable to the Appellant, and we make order accordingly.

The Appellant is entitled to costs of appeal.

WIJAYATILAKE, J.—I agree.

Appeal allowed.