1970 *Present :* Alles, J., and Weeramantry, J.

C. E. A. PERERA, Appellant, *and* THE ASSISTANT GOVERNMENT AGENT, KALUTARA, Respondent

S. C. 3/69—BR 2753/KT 212

Land Acquisition Act (Cap. 460)—Sections 45 (1), 45 (3), 46—Acquisition of a long and narrow strip of land—Basis of assessment of compensation—" Market value "—" Separate entity ".

A long and narrow strip of land consisting of five lots in extent 9·60 perches out of certain property belonging to the appellant was acquired by the Crown for the purpose of constructing a masonry drain to convey rain water. The strip was at the extremity of the appellant's property and ran along an irregular track. In awarding Rs. 1,665 as the amount of compensation payable to the appellant, the Board of Review held that the strip could not be used for any commercial purpose or for the building of stores and therefore, considering the entire strip as a separate entity, the market value would be the amount the appellant, as a willing seller, would realise for this strip in the open market.

Held, that the award of Rs. 1,665 as compensation should be confirmed.

Per ALLES, J.—The award was in conformity with section 45 (1) of the Land Acquisition Act.

Per WEERAMANTRY, J.—Section 45 (1) of the Land Acquisition Act is inapplicable to a case such as the present, where there would be no buyers in the open market. However, the award of Rs. 1,665 was not unreasonable having regard to the figures of comparative sales in the neighbourhood. Observations on the necessity to redraft section 45 (1) of the Land Acquisition Act in view of the possibility that the land sought to be acquired may sometimes be totally devoid of value when it is considered as a " separate entity " apart from the land of which it forms a portion.

APPEAL under Section 28 of the Land Acquisition Act.

M. T. M. Sivardeen, for the appellant.

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

Cur. adv. vult.

October 26, 1970. ALLES, J.—

The appellant, who was the owner of Lots 2, 3, 4, 5 and 6 in PP K 115 in extent 9·60 perches, appeals from the decision of the Board of Review which affirmed the award of the Acquiring Officer under the Land Acquisition Act fixing the quantum of compensation for the said Lots at Rs. 1,665 which included a 20% allowance for injurious affection. The land acquired was a strip 410 feet long by 6 to 8 feet wide and was to be used for the purpose of constructing a masonry drain to convey rain water from 6th Cross Street to 5th Cross Street, Panadura. The proposed drain skirted the southern edge of the appellant's land 'A' and proceeded along the northern edge of his Lots 'C' and 'D' in the Plan A1 produced by the appellant.

The main contention of the appellant at the argument before us was that the basis on which compensation was awarded was erroneous in law and not in conformity with the provisions of the Land Acquisition Act. Although several matters, purporting to be questions of law, were certified by Counsel in the petition of appeal as being fit questions for adjudication by the Supreme Court, the basis on which compensation should be awarded was not specifically raised as a question of law in the petition or certified as required under Section 28 (2) of the Act. Since, however, we permitted this matter to be argued before us and as it was submitted that the method of computing the compensation in this case had been consistently adopted by Acquiring Officers since the passing of the Act in 1950, we considered it desirable to express our views on the question of law that has presently been argued.

Under Section 21 of the Land Acquisition Ordinance (now repealed) in determining the amount of compensation to be awarded the matters which had to be taken into consideration by the Court may be briefly stated as—

(*a*) The market value at the time of awarding compensation ;

(*b*) The damage caused as a severance of the acquired land from the owner's other property ;

(*c*) Injurious affection ; and

(*d*) Reasonable expenses, if any, incidental to a change of residence.

"Market value" was not defined under the Ordinance and the view accepted by the Supreme Court prior to the decision of the Privy Council in *Municipal Council of Colombo v. Letchiman Chettiar* [1] (which for the sake of convenience may be called the Vajira Road Acquisition case) was, that in order to arrive at the market value, the value of the entire estate had first to be ascertained and thereafter a proper proportion of that value should be assigned to the land acquired. This was the view adopted in the earlier decisions of the Supreme Court (*Govt. Agent, Kandy v. Marikar Saibo* [2] and *Govt. Agent, W. P. v. The Archbishop of Colombo* [3]) and the view submitted for our consideration by Counsel for the appellant in the present appeal, in spite of the provisions of Section 45 (1) of the new Act. That view contemplated the payment of compensation for the acquired strip on the basis that it was a portion of buildable land, a view which found favour with Soertsz J. and the Chief Justice in the Vajira Road case. In the latter case what was sought to be acquired was a strip of land for the purpose of widening Vajira Road, the acquisition being within sanctioned street lines under the Housing and Town Improvement Ordinance. Only a token value of Rs. 5 was granted for the acquired strip, the rest of the compensation being granted for the demolition of certain tenements, an old boundary wall and for the cutting down of some trees. Justice Keuneman who was associated with the other two Judges took a different view from that of the other Judges in regard to the basis of compensation, and thought that enclosing the acquired strip within building lines had the effect of preventing it from being built upon and that it could not therefore be valued as building land. He however stated that compensation might be granted on the basis of the possible development of the owner's estate by building houses on it, the gardens or yards of which might include the acquired strip. When the case was argued before the Privy Council the Board held that the method of computing the market value suggested by Soertsz J. and the Chief Justice was erroneous and, in the absence of evidence, was unable to agree with the view put forward by Justice Keuneman. The Privy Council held that "market value was the price which a willing vendor might be expected to obtain in the open market from a willing purchaser." Sir John Beaumont who delivered the advice of the Privy Council stated further that—

> "the owner of the land, who is notionally the vendor, cannot also be the purchaser, and the fact that he owns other land in the neighbourhood is irrelevant for the purpose of ascertaining the market value of the land to be acquired, though such fact is the foundation of a claim under heads (*b*) and (*c*) of Section 21, for damage for severance and other injurious affection to his other property by reason of the acquisition."

[1] *(1947) 48 N. L. R. 97.*
[2] *(1911) 6 S. C. D. 36.*
[3] *(1913) 16 N. L. R. 395.*

It was the view of the Privy Council that the Supreme Court in valuing the acquired strip did not ascertain the market value, but decided the basis of compensation as the loss which the claimant suffered by reason of the acquisition of the acquired strip—a method which found no warrant in the Ordinance. It is possible, in view of Sir John Beaumont's observations referred to earlier, that the claimant might have succeeded under heads (*b*) and (*c*) had a claim been made under these heads and evidence placed before the Acquiring Officer to support such a claim.

Subsequent to the decision of the Privy Council, the present Land Acquisition Act in 1950 in Section 45 (1) defined "market value" to be "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..." It is significant that the words "willing buyer" are not mentioned in this definition because presumably in the case of acquired property which has no intrinsic value there may be no buyer and still less a willing buyer. In the case of acquired land falling within street lines or a building limit, special provision has been made in Section 45 (3) to assess the market value of such land as if it did not fall within such street lines or building limit. Section 45 (1) however makes it clear that the market value was to be assessed by considering the acquired land as a "separate entity". Justice Keuneman in dealing with the acquired strip in the Vajira Road case stated that it would not be correct to value the strip as a separate entity, since on account of its shape and size, it might be of no value to a prospective purchaser. Section 45 (1) however omits all reference to a prospective purchaser. This omission would really be advantageous to the owner for, as a willing seller, one may be able to ascertain an amount which might be realised in the open market but a prospective purchaser may not be willing to pay anything for a land which has no value to the buyer. It does not necessarily follow, however, that in all cases where the market value is fixed for a separate entity that the claimant is always at a disadvantage. If the "separate entity" comprises a land which cannot be put to any use as commercial or residential land the only basis of compensation would be to treat it as agricultural land, in which case the compensation payable would be negligible. On the other hand if the "separate entity" consists of buildable land which can be put to commercial or residential use, the compensation payable would be much more than the owner would receive if the market value is fixed in relation to his other property and a proportionate sum paid thereof. In either case the market value is fixed in relation to the separate entity sought to be acquired.

Since writing my judgment, I have had the advantage of reading the judgment prepared by my brother Weeramantry J. While I appreciate the criticisms he has made in regard to the basis of compensation under the Act, I take the view that the law has adequately provided for compensation in those cases envisaged by him. Although there may not be a willing purchaser for small allotments of land from a citizen's

property in those cases where such allotments are required by the Crown for the erection, for instance, of a telegraph or electric post, the relevant enactments under which such allotments are appropriated provides for adequate compensation—Vide Proviso IV to Section 15 of the Telecommunications Ordinance (Ch. 192) and Section 17 of the Electricity Act (Ch. 205). With all respect therefore to my brother I cannot agree that no compensation is payable in such a case even though the separate entity is worth nothing to the prospective purchaser. In regard to the second case mentioned by him it may be possible for additional compensation to be paid to the citizen under the provisions of Section 46 of the Act. Sir John Beaumont in delivering the advice of the Privy Council contemplated such a possibility when he made the observation referred to earlier in this judgment.

The Board of Review held that the strip in question could not be used for any commercial purpose or for the building of stores and therefore considering the entire strip as a separate entity, the market value would be the amount the appellant, as a willing seller, would realise for this strip in the open market. On that basis the compensation awarded in this case was in conformity with Section 45 (1) of the Act. I would dismiss the appeal but without costs.

WEERAMANTRY, J.—

The simple question involved in this appeal is the basis of assessment of compensation in respect of a long and narrow strip of land acquired by the Crown. This strip is 4 to 5 feet broad, about 100 yards long, runs along an irregular track and lies at the extremity of the applicant's property.

Section 45 (1) of the Land Acquisition Ordinance (Cap. 460) provides that the market value of a land for the purposes of that Ordinance shall be 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 publication of notice under Section 7.

This Section would appear to embody a revision of the law based upon the decision of the Privy Council in *The Municipal Council, Colombo v. Letchiman Chettiar* [1] where Their Lordships took the view that Section 21 of the former Ordinance [2] required the Government Agent and the Court to take into consideration the market value of the land to be acquired, such market value being the price which a willing vendor might be expected to obtain in the open market from a willing purchaser. Their Lordships further held that the Supreme Court was wrong in valuing the acquired strip as a part of the rest of the land of the respondent.

[1] *(1947) 48 N. L. R. 97.* [2] *Cap 203 of the 1938 Edition of the Legislative Enactments.*

In that case a strip of land along the length of Vajira Road had been acquired by the Municipality. This strip was of a width between 28 and 32 feet and was 1,140 feet long. In terms of their Lordships' judgment this strip of land had therefore to be valued as an independent entity apart from the question of the value of the land of which it formed a part.

It seems to me that although in the Vajira Road case this method of assessment might have been entirely reasonable, such a principle cannot be formulated in the abstract form that in all cases the land must be valued as an independent entity without leading to absurd results. In the Vajira Road case the width of the strip was such as to render it capable of use, as, for example, by accommodating boutiques, and one could therefore speak in terms of assessing the value of the strip of land as an independent entity. On the other hand the portion of land sought to be acquired may in many a case be such that it is totally devoid of value, considered as an entity by itself. For example, the acquiring authority may desire to acquire a little island of land on a citizen's property in order to erect a telegraph post thereon. Now, this bit of land is not one in respect of which there would be any willing purchaser, for, except to the authorities concerned, such an unusual shape and size of land would be completely valueless, and all the more if it is landlocked. Does this mean then that in such an event no compensation should be paid to the owner, however valuable be the land from which that piece is taken ? Or, shall we say, twenty such bits of land, each separate from the other, are wanted for twenty telegraph posts. Does a person who is required to yield up so many pieces of land from his property have to be satisfied with no compensation at all merely because each piece as a separate entity is worth nothing to prospective purchasers ?

Let us take again the very case of acquisition for widening of a road, such as occurred in the Vajira Road case. If the strip acquired had been not 28 to 32 feet in width, but 2 feet in width, it would have been a strip which would have had no willing buyer, for nothing worthwhile could be done upon such a strip. Unlike in the case of a strip 28 to 32 feet wide, no boutiques or other structures could be put up on it, and its practical value to any purchaser would be nil. Suppose such a strip be 1,140 feet long as in the Vajira Road case, the total extent of land acquired would be approximately 1/15th of the land acquired in the Vajira Road case which according to the computation in that case embraced an area of 2R 37·2P, that is 117·2 perches. One-fifteenth of this would be an extent of nearly 7 perches. Could an owner of an extent of 7 perches of valuable land in the City be deprived of it without any compensation at all ? The result seems absurd, but if a literal meaning be given to section 45 (1) of the Land Acquisition Ordinance this is the situation that results.

The Land Acquisition Ordinance is a Statute which, as the Supreme Court observed in *Letchiman Chettiar v. The Municipal Council, Colombo* [1], imposes restraints and restrictions upon the citizen and must therefore be interpreted as favourably to the citizen as can reasonably be done. I do not think that it would be correct to give an enactment of the legislature, if we can avoid it, an interpretation which results in an absurdity, not to speak of a total denial to the citizen of that very right to compensation on which the entire Ordinance rests.

In the present case the strip of land is so irregular in shape and so narrow in width that it quite clearly cannot be used for the purpose of constructing a building. This is undoubtedly so if the strip is taken by itself. If however the strip is considered as a portion of the land comprising it, it makes so much the more land available to the owner for building purposes. It might, for example, enable the owner to use this land for the rear space of his building, when Municipal Regulations prescribe such a rear space, and thus increase to that extent the buildable land available to him. Again if no Municipal or other regulations require the leaving of a rear space, this strip of land would be entirely buildable if the owner so desires to use it and could constitute the rear portion of a building. One would of course always bear in mind as a factor depressing the proportionate value of such a portion of land, the fact that value declines as the distance from the road frontage increases. It would be wrong therefore to say that the strip of land is a strip of which no use could be made by the owner, for it is only the very act of acquisition that renders it useless.

It is significant also that the draftsman of Section 45 (1) has omitted reference to a willing buyer which their Lordships of the Privy Council made in their judgment in the Vajira Road case, where they took care also to specify in their definition of market value that it constitutes the price which a willing vendor might be expected to obtain in the open market from *a willing purchaser.* The italicized words have been omitted from Section 45 (1), thereby helping to bring about a result which can in circumstances such as those I have pointed out, result in an absurdity.

There are of course cases where it may be to the advantage of a seller that his land should be considered as a separate entity. Some such situation may arise for example where a buildable extent of land bordering a road is taken out of a large tract of land lying to the hinterland. In such a case it would certainly enure to the benefit of the owner if that separate block of land is valued as a separate entity, for it would have a greater value per perch than if the entirety of the land were considered as a whole. It was presumably to provide for such a situation that the legislature in Section 45 (1) stipulated that the price should be the price

[1] *(1942) 44 N. L. R. 170, at 177.*

that would be realised if the land were sold in the open market as a separate entity, and in such a context the section can well be given a reasonable meaning.

Where, however, the land is such that there would be no buyer for it at all, the section becomes unworkable and the case becomes one unprovided for by Statute. In such a case the normal principles of valuation should apply and one would have to estimate the value by unit of area of the land of which the acquired portion forms a part, making due allowance for any lessening in value caused by such circumstances as distance from the road frontage and other factors which may affect the value of that particular portion. This is the principle of compensation which, for example, is utilised amongst co-owners in a partition case and is one commended by commonsense and equity.

In the present case, therefore, I would hold that this is the principle of valuation upon which the assessment of compensation must be made, and that section 45 (1) is inapplicable to a case such as this where there would be no buyers in the open market.

However, it seems to me that the award of Rs. 1,665 for the extent of 9·60 perches acquired is not unreasonable having regard to the figures of comparative sales in the neighbourhood. I therefore consider that even upon the basis which I have adumbrated the compensation is reasonable and that there is no ground for interference with the quantum which could not have been awarded upon a literal reading of section 45 (1). I would therefore dismiss this appeal but without costs.

Since the matter decided by their Lordships of the Privy Council in the *Municipal Council, Colombo v. Letchiman Chettiar*, is now the subject of Statute Law, namely Section 45 (1) of the Ordinance, and is therefore now not the ruling law on the matter, I would also wish to state that had the matter been *res integra* I would certainly have inclined to the view taken by the Supreme Court in that case. However should any matter arise regarding the interpretation of the former Ordinance the Privy Council ruling would of course be binding.

I would also like to draw attention to the dangers inherent in a view of the law other than that which I have expressed, for it may theoretically be possible for an acquiring authority to launch upon a series of separate acquisitions and acquire in little bits and portions, irregular and unusable extents of land, each of which is unsaleable as an entity but all of which taken together would be of great value. In such a way the subject may well be deprived of a valuable asset without any compensation.

I do not think the legislature ever intended to achieve so unjust a result; and in any event I would commend to the attention of the Legislature the necessity to re-draft section 45 (1).

Appeal dismissed.