[1954] N.Z.L.R. 166

LOWER HUTT CITY CORPORATION *v.* DYKE.

LAND VALUATION COURT. Wellington. 1953. November 4, 5, 6, 30. ARCHER, J.

Land Valuation—Land Suitable for Industrial Purposes—Land taken compulsorily—Proper Method of Valuation—Compensation for Disturbance or Reinstatement allowable—Allowance for Value of Buildings and Improvements to be removed from Subdivision of Land for Industrial Purposes—Topsoil—Demand therefor a Factor for Consideration—Amount allowable for Value of Topsoil in addition to Amount allowed for Land—Land Valuation Act, 1948, s. 28—Finance Act (No. 3), 1944, s. 29.

The soundest method of valuing an area of land, which appears to be capable of realization to the best advantage by subdivision and sale in separate sections, is that which arrives at the present value of the land by assessing the value of the sections in a hypothetical subdivision and deducting from the gross total the estimated cost of roading and subdivision, including an allowance for risk and for profit. When this method is applied to the valuation of land taken compulsorily, the allowance for profit should be strictly limited.

Section 29 of the Finance Act (No. 3), 1944, is not intended to debar a claim for compensation, in appropriate circumstances, for disturbance or reinstatement; but a person dispossessed of land by compulsorily taking is bound to minimize his loss by virtue of disturbance and his cost of reinstatement, so far as may be reasonable and possible in the circumstances.

An area of about 6 acres of land in Lower Hutt City, without road access, was taken by the appellant Corporation under the Public Works Act, 1928, to provide the access road to a new river bridge. The land was available as immediate subdivision for industrial use; and the principal matters in issue concerned its value for that purpose. The land had been used by the respondent for many years for the training, stabling, and breeding of trotting horses; an old house and stable were erected on it; and it was fenced. The respondent's claim for compensation was heard by the Land Valuation Committee, which awarded him the sum of £29,282 10s. On appeal from that determination,

Held, 1. That the Corporation was not entitled to take the respondent's land at a price which would enable it to make a substantial profit in its undertaking.

2. That, in assessing the value of land, regarded as available for immediate subdivision for industrial purposes, the old house, stables, and fencing upon it would have to be removed and demolished; and £1,500 would be a proper amount to be allowed as a reasonable additional sum to be paid by a purchaser on account of the buildings and other improvements.

3. That a proper assessment of the value of the land must be assumed to cover the land as it stands and to include the soil thereon; but, in view of the demand for topsoil, which may be a factor making the land more attractive to certain purchasers, a further £1,500 should be added to the amount allowed for the land.

4. That the sum to be awarded as compensation should be £23,400.

APPEAL against an award of compensation made by the Wellington Land Valuation Committee in favour of the respondent John Vincent Dyke in respect of an area of some 6 acres of land taken by the appellant Corporation under the Public Works Act, 1928, for the purpose of a roading scheme and to provide the access road to a proposed new bridge over the Hutt River. The land was situated in Lower Hutt, between High Street and the river, and was back land without road access. Mr. Dyke, however, had access to this land through a section he owned in High Street, which was not included in the land taken but through which he would have been able, had he so desired, to construct an access road

Source: McVeagh, J.P. (Ed.). (1967). Land valuation case book. Butterworths, Wellington.

into the area taken. By this means, it would have been possible for Mr. Dyke to sell his back land in one or more sites for industrial use, for which it was zoned and eminently suitable. The back land had been utilized by the respondent for many years for the training, stabling, and breeding of trotting horses, and contained a banked trotting track and and old house and stable.

This area was taken by the appellant by Proclamation dated October 29, 1951, and a claim for £46,450 compensation was lodged in due course. The Corporation did not admit the claim and the Court was advised that no offer was at any time made in settlement. The claim was heard by the Land Valuation Committee in August, 1953, when the following award was made :

		£	s.	d.
(1)	Land taken (at £4,000 per acre)	23,307	10	0
(2)	House	1,000	0	0
(3)	Stables	1,000	0	0
(4)	Fencing	200	0	0
(5)	Soil	2,175	0	0
(6)	Reinstatement and temporary loss of earnings	1,500	0	0
(7)	Expenses of moving	100	0	0
	Total	£29,282	10	0

In addition, the respondent was allowed £155 costs.

From this award, the Corporation brought this appeal. It was agreed at the hearing that the land was eminently suitable for industrial use, and the principal matters in issue concerned its value for that purpose. The sums awarded in respect of the house, stables, and fencing were not disputed as to amount, but it was submitted by the appellant that, if the land were devoted to industrial purposes, the buildings and fencing would have to be sacrificed and that compensation should be allowed only on a reduced or a demolition value. There was a contest as to the award of £2,175 for soil, on the basis that the respondent could have sold soil for removal from the land without reducing its sale value for industrial purposes. There was also a contest as to the allowance of £1,500 for "reinstatement and temporary loss of earnings." As to this item, the relevant claim was for £2,300 and was therein described as for "goodwill of horse training business." For the purposes of the appeal it was agreed that the item be regarded as a claim for "dis- "turbance and reinstatement." No claim was pursued on account of loss of goodwill.

Gillespie and *Relling*, for the appellant.

Cleary and *Beere*, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by

ARCHER, J. [After stating the facts, as above :] The major portion of the evidence related to the value of the land itself. The assessment of its value presented considerable difficulty, because of the great demand for industrial sites in the Hutt Valley and the phenomenal increase in the prices paid for such sites following the removal of Land Sales control, and because of the characteristics of the land and its lack of road access. A number of experienced valuers gave evidence, and

gave to the Court their reasons for ascribing to the land a value ranging from £5,000 per acre in the case of the highest valuer for the respondent down to a little over half that amount in the case of the lowest valuer for the Corporation. A great number of sales were cited, and alleged to be comparable and relevant, and the Committee fixed the value of the land as £4,000 per acre and made its award accordingly.

We have given careful consideration to the evidence of the respective valuers, but it is not our intention to traverse the evidence in detail or to comment on the individual sales in the Hutt Valley which were referred to. As the opinion of a valuer is properly dependent upon the according of proper weight to a great number of considerations, so the opinion of the Court as to the reliability of a valuer's evidence is dependent on a great many factors which it would be difficult to enumerate or define. Valuation is particularly difficult when, as in this case, the principal sales which were cited by way of comparison were of land situated some distance from the area in question, or of sections differing substantially in area, access, convenience in relation to transport and to labour, and in other respects. We feel it necessary to remark, however, that the principal valuer for the respondent placed too great reliance upon a comparison of the prices per acre paid for small areas of industrial land in widely differing situations and circumstances. We are of opinion that the conversion to a per-acre rate of the prices paid for small sections affords no useful basis for assessing the value of areas several acres in extent, particularly when such areas are deficient in road access.

Our experience as a Valuation Court leads us to suppose that the soundest method of valuing an area of land which appears to be capable of realization to the best advantage by subdivision and sale in separate sections is that which arrives at the present value of the land by assessing the value of the sections in a hypothetical subdivision and deducting from the gross total the estimated cost of roading and subdivision, including an allowance for risk and for profit. When this method is applied to the valuation of land taken compulsorily, the allowance for profit should, of course, be strictly limited. The valuers called by the Corporation made a more convincing and logical assessment of the value of the land in question by reference to its subdivisional possibilities than did the valuers for the respondent, and to that extent we are disposed to give greater weight to their opinions.

Although the Committee does not state precisely its grounds for valuing the land at £4,000 per acre, it would appear that it was considerably influenced by the view that the Corporation could make a substantial profit on its proposed subdivision, after payment of that amount. In this regard the following appears in the Chairman's Report :—

> At the hearing, however, a subdivision plan was produced by the Council showing that it contemplated the sale of some 27 or 28 light industrial sites fronting the new road, which is to occupy only 1¾ acres out of the total of nearly 6 acres.
>
> The Engineer's evidence and the evidence of all the Valuers for both sides convinced the Court (*sic*) that the Council would still be some thousands of pounds in pocket after paying the figure awarded by the Committee and all the cost of roading, which, in this case, is 10 chains at £600 per chain, or £6,000.

Being so convinced, it would seem to follow that the Committee's award of £4,000 per acre, or £23,307 10s. was not only justified but conservative, and this Court would not countenance any reduction of the award if it were satisfied that the Committee was justified in finding that the Corporation could pay that sum and still make a substantial

profit on its undertaking. Unfortunately, however—and in fairness to the Corporation we are bound to make this very clear,—there was no evidence in the case as presented to us to justify such a conclusion. The evidence showed that the plan which provided for a subdivision of some twenty-seven sites was that of a hypothetical subdivision, which Mr. Dyke could have carried out had he so desired by using his adjoining section in High Street as a means of access to his back land. This plan had no relation to the Council's actual proposals, which contemplated an entirely different subdivision with no access to High Street, but providing access to the new Melling Bridge. No subdivisional plan was produced in connection with the Corporation's scheme and no valuer on either side attempted to value the sections which the Corporation would have to sell. The only evidence on this point was given by the City Engineer who gave no precise figures, but said he hoped that, if the Council could acquire the land at a figure in the vicinity of that quoted by its own valuers, it might "break even" or come out of the transaction with a small profit.

There was, accordingly, no agreement by the valuers, nor was there, indeed, any attempt by the respondent to prove that the Corporation could pay £4,000 per acre for the land and still make a substantial profit on the transaction. The evidence of Mr. Renner, who produced the plan referred to in the Committee's Report, was that, upon the basis of his hypothetical subdivision into twenty-seven sections, the present value of the land was £15,623, or less than £2,700 per acre. We have traversed this aspect of the matter in some detail as we desire it to be quite clear that we do not subscribe to the view that the Corporation is entitled to take the respondent's land at a price which will enable it to make a substantial profit upon its undertaking.

In the absence of evidence as to what the Corporation may expect to realize from the resale of its surplus land, we think the evidence of Mr. Renner as to the subdivisional scheme which Mr. Dyke could have undertaken if the land had been left in his hands is the most convincing method of assessing its value. Mr. Renner's calculations, as already stated, gave a value of £15,623 for the land as a block. It emerged from a consideration of his figures, however, that he had over-estimated certain items of outlay, and that his estimate of the selling value of sections might be a little low, having regard to the great demand for industrial sites in Lower Hutt and the scarcity of such sites. We are in duty bound, moreover, to give due weight to the opinions of the other valuers, who had in some cases placed much higher values upon the land, although, in our opinion, unable to justify such values in their entirety. Having regard to all relevant factors, we are of opinion that the valuation of £4,000 per acre accepted by the Committee was too high, and that the value of the land per acre should be reduced to £3,250.

In so assessing the value of the land, we have regarded it as available for immediate subdivision for industrial purposes. It is obvious that the old house, stables, and fencing are of little value for such purposes, and would almost certainly have to be removed or demolished. We do not think a purchaser would pay the amount which we have allowed for the land and, at the same time, pay full value for the buildings and fencing as fixed by the Committee at £2,200. We conceive, however, that a purchaser would pay a reasonable additional sum on account of buildings and other improvements, and we think that £1,500 would be a proper amount to allow on this account.

Next in dispute is the award of £2,175 for soil. In the claim, as

originally presented, it was alleged that 17,400 cubic yards of topsoil could be removed and sold at 10s. per yard, without diminishing the value of the land. At the hearing, there was considerable evidence as to the demand for topsoil, and as to a practice carried on by contractors of purchasing sections with a view to selling the soil therefrom and then disposing of the land at substantially the price originally paid for it. No case was instanced, however, of a vendor first selling the topsoil and then being able to dispose of the denuded land at the same price as if sold with the soil. Nor was any instance cited of so large a quantity of soil being removed in a short time from a single area, or proof given that any person would be prepared to buy and remove so great a quantity of soil within a reasonable time. We are by no means satisfied that the respondent could have disposed of any great quantity of topsoil from his land, while, at the same time, disposing of the land itself for the amount which we are prepared to award. It is possible that some of those interested in the purchase of industrial sites might have regard to the availability of soil for sale, and might, on this account, pay something more for the land than they would otherwise offer. This is much in the realms of speculation, and we feel that in principle a proper assessment of the value of the land must be assumed to cover the land as it stands and to include the soil thereon. In view, however, of the demand for topsoil which may be a factor making the land more attractive to certain purchasers, we propose to add a further £1,500 to the amount allowed for the land.

The remaining subject of serious contest was the award of £1,500 for reinstatement and loss of earnings. We are satisfied that the respondent has operated in a fairly substantial way and for a long period as a trainer and breeder of trotting horses on this land. He says that these operations have been seriously disorganized as a result of the taking of the land. He has now acquired premises at Levin to which he is moving his establishment, but he claims that his training and breeding activities have been practically at a standstill for twelve months with consequent loss of earnings and heavy costs of removal. It was contended by the appellant that, since the amending provisions of s. 29 of the Finance Act (No. 3), 1944, it was no longer competent for us to award compensation for disturbance or reinstatement. These were recognized heads of compensation before the Amendment mentioned, and we do not think that the amendment was intended to debar a claim in appropriate circumstances upon these grounds. We are of opinion, however, that a person dispossessed of land by compulsory taking is in duty bound to minimize his loss by virtue of disturbance, and his cost of reinstatement, so far as may be reasonable and possible in the circumstances. We think it would have been possible for the respondent in the present case to arrange with the Corporation to retain possession and to carry on his trotting operations until he was in a position to transfer his establishment elsewhere. The respondent has, in fact, remained in occupation and control of the property until the present time, and we see no reason why he should not have carried on his business in the meantime. It is nevertheless true, however, that the respondent will be put to considerable expense by reason of the enforced removal of his establishment and the disturbance of his operations, and, while we must be fair to both parties, we should not be niggardly in the assessment of compensation to an owner who is dispossessed of his land. For these reasons and although the respondent's evidence as to the losses in respect of which the Committee awarded him £1,500 was deficient in detail, we do not propose to reduce

the amount awarded. We think, however, that the sum of £1,500 allowed should be deemed to cover the claim for removal expenses.

In the result, the appeal is allowed and the sum awarded reduced to the following :—

		£
1.	For land taken—	
	(*a*) 5 ac. 3 r. 12.3 p. at £3,250 per acre, say	18,950
	(*b*) Allowance for buildings and fencing ..	1,500
	(*c*) Allowance for topsoil	1,500
2.	For Disturbance and Reinstatement ..	1,500
		£23,450

The Committee's award to the respondent of costs amounting to £155 in respect of the original proceedings will be reduced, having regard to the result of this appeal, to £100. No further costs will be allowed to either party on the appeal.

Appeal allowed.

Solicitors for the appellant : *Hogg, Gillespie, Carter, and Oakley* (Lower Hutt).

Solicitors for the respondent : *Beere and Riddiford* (Wellington).