IN THE HIGH COURT OF AUSTRALIA

PLACE ON HIGH COURT No. 192/1965 PLEASE

ROBINSON AND ANOTHER

*V.*

MINISTER FOR WORKS

# REASONS FOR JUDGMENT

$2.00

*Judgment delivered at* SYDNEY

*on* TUESDAY, 15th NOVEMBER 1966

A. C. Brooks, Government Printer, Melbourne

C.5072/66

ROBINSON AND ANOTHER

v.

MINISTER OF WORKS

ORDER

Appeal allowed. Order of the Supreme Court of South Australia set aside. Order that a new trial of the originating summons be had. Respondent to pay the costs of this appeal. Costs of first trial to follow the order for costs of the new trial.

ROBINSON AND ANOTHER

v.

MINISTER OF WORKS

JUDGMENT

McTIERNAN J.

ROBINSON AND ANOTHER

v.

MINISTER OF WORKS

This is an appeal from a judgment of the Supreme Court of South Australia (Napier C.J.) assessing compensation payable in respect of land taken by the Minister of Works from the appellants under the Compulsory Acquisition of Land Act, 1925-1959.

The land, the subject-matter in this action, is situated about a mile to the west of the Port Wakefield Road approximately fifteen miles from Adelaide. The relevant land, part of a larger holding owned by the appellants, comprised 144.7/8ths acres, and was described as being the whole of Sections 5020 and 5016 and portion of Section 5021 in the Hundred of Port Adelaide, more particularly described in certificate of title, Register Book Volume 2443 Folio 151.

The acts giving rise to these proceedings commenced on 30th November 1959 when a notice to treat was served upon the appellants, as owners of the said land. This notice stated, inter alia, that the Minister of Works (respondent) was willing to treat with the appellants for the purchase of the said land and as to the compensation to be made to the appellants and claims, if any, in respect of damage. Pursuant to s. 12 of the Compulsory Acquisition of Land Act, 1925-1959 the value of the land is to be " ... taken to be its value ... at the beginning of the period of twelve months prior to the giving by the promoters of the notice to treat ... together ... with the actual value of any improvements bona fide made during the said period of twelve months". On 14th May 1960 the appellants gave notice of their claim for the sum of £125,478. On

8th July 1960 the respondent offered £31,590 in full settlement of all claims to compensation. After refusal of this offer by the appellants the Minister of Works on 12th December 1961 issued an originating summons under s. 31 of the Act which gives the promoters power to apply to the Court if the claim has not been determined or action commenced within six months after the claim becomes disputed. In these proceedings the respondent Minister sought an order pursuant to the Act determining the amount of compensation payable by him to the appellants in respect of the matters referred to in the notice to treat for the sale and purchase of the relevant land. Prior to proceedings being commenced the Minister had taken possession of the subject land and the title had been transferred to him pursuant to an agreement under which he has paid the sum of £30,000 on account of the purchase money, and has agreed to pay any balance that may be awarded in excess of that sum together with interest on the excess. Upon the hearing of this matter the respondent Minister's evidence included that of an agricultural expert, Beare, who gave evidence relating to the suitability of various areas of the subject land for market gardening, grazing and other purposes. The effect of this evidence, as relevant to these proceedings, is that the acquired land comprised at least ninety-three acres of market gardening land. Both parties to the proceedings called valuers whose estimates of value varied considerably. The respondent's evidence included that of two expert valuers, Bullock and Taeuber, who approached their valuations upon the basis approved by the learned Chief Justice, namely, purchase for the purpose of sub-division. The valuations arrived at for the relevant land were £23,500 and £26,070 by the witnesses Bullock and Taeuber respectively. The appellants' evidence included the estimates of £43,500 by the witness Solomon and £45,393 by the witness Leader.

After reviewing the evidence Napier C.J. concluded: "As between the valuers, who have given their opinions on either side, I have no hesitation in preferring the evidence given by the plaintiff's (respondent's) experts". The learned judge then decided: "Taking these things into account, I think that Mr. Taeuber's (one of the plaintiff's experts) figure of £175 per acre, or a total of £26,070, for the value of the subject land is, by no means, unfair to the defendants (appellants)". His Honour seems to have tended towards the conclusion that there was evidence to support a finding of special value, because in his opinion, "something more" should be added to the market price valuation. The judgment then continues: "It is, of course, a matter of opinion what that 'something more' should be, but, by way of a check upon the valuations, I have been disposed to analyse the subject land, according to my view of the evidence". It is contended on behalf of the appellants that the learned Chief Justice was in error in certain of the calculations he made and the valuations he adopted in the course of the analysis he undertook, and that as it formed a necessary basis for the amount awarded in compensation, this Court should correct such errors and re-assess the amount payable to the appellants pursuant to the Compulsory Acquisition of Land Act, 1925-1959.

For my part, I do not consider that the remedy sought by the appellants should be granted. The learned Chief Justice, in his judgment, preferred the evidence of the respondent's valuers and expressly accepted the market price valuation to be £175 per acre. By then proceeding to assess the amount of compensation on the basis of the owners (appellants) being entitled to "something more" in addition to the market value and the value of the bore and the improvements, assessed at £1,500 and £720 respectively,

the learned Chief Justice is assuming the appellants have a right to maintain a claim to special value. It is considered that unless a special value is proved the assessment is to be based on the market value, being the most advantageous sale that the owners could have obtained from an ordinary prudent purchaser. (See Cripps "Compulsory Acquisition of Land", 11th edition, p. 699.) I accept the contention advanced on behalf of the respondent that there is no evidence of sufficient weight to support a finding of special value in this case, and consequently, the decision as to market value must form the basis of the assessment. Having no cross-appeal, the respondent does not dispute the award merely because it is in excess of the sum proved by the testimony to be market value.

In order to calculate the compensation on the basis that the land had a special value to the appellants, Napier C.J. adopted the evidence of the witness Beare and proceeded to dissect the subject land into areas of market gardening, grazing and salty land. The appellants content that the effect of this evidence is that there were 99 acres of market gardening land, 16.3/4 acres of grazing land and 29 acres of salty land. It is conceded by the respondent that this evidence supports a finding that there were at least 93 acres of market gardening land. But Napier C.J. calculated it at 70 acres of market gardening land. If the appellants' submission be accepted, the amount of compensation would be increased to £35,335. This figure is very substantially in excess of the amounts to which the valuers, preferred by the learned Chief Justice, deposed to. These amounts were £23,500 and £26,070 respectively. The amount of £35,335 seems too high having regard to the evidence, even if the basis of valuation should be that the land had a special value to the appellants. If the acreage of the market gardening land adopted by the Chief Justice

is adjusted to the figure for which the appellants contend there would still remain the problem of how to support a value of £300 per acre for such land. There is but slender evidence to support that value and it was given by a witness to whose evidence in other respects the learned Chief Justice did not attach much weight.

In these proceedings the respondent has not filed a cross-appeal. He is content to leave the award standing rather than seek a new trial on grounds depending upon miscalculations in the court of first instance to which reference has been made. For these reasons I would dismiss the appeal.

ROBINSON AND ANOTHER

v.

MINISTER OF WORKS

JUDGMENT

TAYLOR J.

ROBINSON AND ANOTHER

v.

MINISTER OF WORKS

This is an appeal from an order of the Supreme Court of South Australia made upon an originating summons taken out by the respondent for the determination of the amount of compensation payable to the appellants upon the acquisition of a substantial parcel of their land pursuant to the Compulsory Acquisition of Land Act 1925.

The land in question consisted of approximately 145 acres of the appellants' land in the vicinity of the Port Wakefield Road about fifteen miles from Adelaide. Upon consideration of the evidence the learned trial judge assessed the amount of compensation at £29,720 and since, according to his reasons, £30,000 had already been paid to the appellants on account of their claim, they were ordered to pay the respondent's costs of the proceedings.

Upon analysis the actual amount determined by the learned trial judge seems to have been arrived at by considering the potential use to which different portions of the land could be put and by attributing a value to each of those portions. In particular, his relevant calculations and assessments of value were as follows:

| | | | |
|---|---|---|---|
| "Market gardening land: | 70 acres | at £300 = | £21,000 |
| Grazing land: | 50 acres | at £100 = | £ 5,000 |
| Salty land: | 25 acres | at £60 = | £ 1,500 |
| Total: | 145 | | £27,500 " |

Then, after considering other matters such as compensation for a bore on the retained land, which by reason of the acquisition had, his Honour thought, become useless to the appellants, he added £1,500 on that account. Finally he added "For these reasons, I think that a fair assessment of the compensation, payable in respect of the acquisition,

is £29,720, and, if I am so required, I am prepared to order and adjudge accordingly, but, in view of the payment that has already been made, it may be that I should assess the compensation at the round figure of £30,000". However the order of the Court purported to determine the amount of compensation payable at £29,720.

For the appellants it was contended quite briefly that there was a significant error in his Honour's calculations and we were referred to evidence - given by Mr. J. A. Beare who was called on behalf of the respondent and who was accepted by his Honour - the effect of which was to show that the area of the subject land suitable for market gardening was not seventy acres but approximately ninety-nine acres, that the land suitable for grazing purposes consisted of approximately seventeen acres and that the salty land was some twenty-nine acres in area. If, therefore, his Honour's calculations were adjusted on this basis the resultant figures would be:

| | | | |
|---|---|---|---|
| Market gardening: | 99 acres | at £300 | = £29,700 |
| Grazing land: | 17 acres | at £100 | = £ 1,700 |
| Salty land: | 29 acres | at £60 | = £ 1,740 |
| Total: | 145 | | £31,140 |

The answer made by the respondent to these contentions did not seriously dispute the accuracy of this analysis of the evidence. Indeed on the respondent's analysis of the evidence it showed that it established that there were 93 acres of first class market gardening land, 18 acres of second class market gardening land and 34 acres of indifferent grazing land and, attributing a value of £300, £100, and £60 per acre respectively to these three acreages, the resultant figure was £31,740. Essentially, however, the respondent's answer was, as counsel for that party said, an answer by way of a confession and avoidance. It asserted, as was the fact, that at an earlier stage in his reasons the learned trial judge had

made an express finding that the value of the land acquired was £175 per acre "or a total of £26,070". But after making this finding his Honour proceeded:

> " On the other hand, it seems to me, as I have already said, that, in the circumstances of this case, it may be unfair to hold the defendants strictly to the price that they could have obtained from a purchaser, intending to subdivide and resell the land, i.e. taking the risk or profit of sub-division. I think that the subject land should be valued as an appurtenance to the defendants' home and garden on Section 5021. It follows, in my opinion, that the defendants when called upon to relinquish this property, might well have been unwilling to let it go at the price that they would have expected to get from a sub-divider. I think that ordinary prudent people in their situation might well have been prepared to give something - not a great deal but a little - more than the market price rather than lose the area in question.
>
> It is, of course, a matter of opinion what that 'something more' should be, but, by way of a check upon the valuations, I have been disposed to analyse the subject land, according to my view of the evidence. Accepting Mr. Beare's evidence, it seems to me that something like a half of the subject land - say seventy acres - might be land which either had been used, or could be used, for market gardening. It would presumably be difficult or impossible to sub-divide the whole of it in suitable lots, and quite a lot might have to be taken on trust but, in these circumstances, £300 per acre would seem to be a fair value to put on the seventy acres. There would then be, say, fifty acres of land, unsuitable for market gardening, but suitable for grazing".

Thereafter his Honour made the calculations to which we have already made reference. There was not a great disparity between the figure of £26,070 which his Honour had earlier adopted and the figure of £27,500 which those calculations produced. But when it is seen that upon a correct analysis of the evidence those calculations would have produced an amount so much in excess of the figure of £26,070 the disparity becomes considerable.

For the respondent, however, it was said that it was quite unnecessary for the learned trial judge to proceed to make the final calculations to which he resorted in order to check his initial finding as to the overall

value of the land. This was, in effect, a work of supererogation and it was said that his determination should be allowed to stand on the strength of his initial expression of opinion. But we find difficulty in accepting this contention for if the final calculations had been made on a basis more in keeping with the evidence the result which they would have produced might well have caused him to revise his initial assessment. However, be this as it may, the ultimate determination of the amount of compensation payable rested fairly and squarely on these calculations - as will be seen from the fact that the amount which his Honour awarded was the sum of the amount of £27,500 and the amounts of £1,500 and £720 in respect of a bare which had become of less value to the appellants and, presumably, in respect of improvements - and in these there was, it seems to us, a significant error.

The question then is whether there should be a new trial. This, of course, is a course to be avoided if possible but unfortunately it seems to us that it cannot be avoided. It was pointed out by the respondent that there was no satisfactory evidence upon which his Honour could have arrived at a valuation of £300 per acre for land suitable for market gardening and, when pressed by us, counsel for the appellants was not able to point to any. In the result there must be a new trial of the issue between the parties unless, of course, they see fit to resolve the matter in some other way.