

HIGH COURT. Apia. 1952. 9, 23, 31, July. MARSACK C.J.

Taking of land by Government - application for compensation - valuation - what is fair and reasonable.

When land is taken by Government under statutory authority, against the wishes of the owner, the amount of compensation payable should be calculated on a liberal basis within the limits of what is fair and reasonable; and having regard to any special value to the Government because of the situation of the land.

I.R.C. v. Clay /1914/ 3 K.B. 466 referred to.

Assessment of compensation must also take into account other land held by the claimant which is injuriously affected by the taking of land by Government.

Cowper Essex v. Acton Local Board (1889) 14 App. Cases 153 and Rockingham v. The King /1922/ 2 A.C. 315 applied.

Wilson, Attorney-General, for Government.
Metcalf, for claimant.

Cur. adv. vult.

MARSACK C.J.:

1. This is an application to assess compensation in respect of certain lands taken by the Government of Western Samoa under statutory powers which are set out in detail in the application filed.
2. There are four pieces of land involved in the proceedings shown as A, B, C, and D respectively on the survey plan furnished to the Court. B represents a small area lying between the road and the sea-front, and as to this there is no contest. The applicant is content to accept the amount offered by the Government. C and D comprise a strip, of a total area of 3.4 perches, lying to the north of A and of other lands the property of the claimant, and required for purposes of a public road. Since the passing of the Building Alignment Ordinance 1932 no building has been permitted on the strip in question, and when the whole property was acquired by the claimant this restriction had been in force for some years.
3. Practically the whole of the evidence was directed to the piece marked A on the plan. This is an irregularly shaped section of 21.69 perches, with a 44 feet frontage to Beach road, and a depth of 92 feet on the eastern boundary and 177 feet on the western boundary. When the lands involved in the application were purchased by Mr von Reiche in 1946 they included also a strip ten feet wide running along the eastern boundary of section A, containing 3.49 perches. At the request of the claimant the Government excepted this strip from the lands taken over, and it has been added to the section purchased by the claimant from Peter Fabricius in 1949.
4. The valuation of sections B, C, and D involves little difficulty, and I now proceed to consider the real question in dispute, namely the valuation of section A.
5. A considerable body of evidence was put before the Court, including that of five valuers, one for the Government and four for the claimant. Their valuations are as follows:

J.B.J. Radford	£1,350 (for Government)
R.G. Bruce	£3,800)
K. Meyer	£3,300)
A. Schaafhausen	£3,300) (for Claimant)
E.F. Paul	£3,543)

There is so great a discrepancy between Mr Radford's valuation and that of the valuers for the claimant that it becomes necessary to examine in some

detail the grounds upon which the opinions of these gentlemen are based. The normal procedure is to consider other sales of similar properties in the open market, and all the witnesses professed to have adopted this standard in forming their own opinion.

6. I was referred to a number of transactions in land with a frontage to Beach Road, and these I list below:-

(1) Sale from Mrs Sasse to the Government of a corner block, with a two-storied building thereon; area 1 road approximately, frontage to Beach Road 75 feet, price paid £12,500. (1951).

(2) Sale to Emil Fabricius of a property with buildings, frontage to Beach Road 115 feet, price paid £5,000.

(3) Sale to Bartley Ltd., of a property with buildings, frontage Beach Road 40 feet, depth 198 feet, price paid £3,000.

(4) Sale Peter Fabricius to claimant of a business, land and buildings; frontage to Beach Road 60.9 feet, area of land 1 road 14 perches, price for land and buildings £5,500. (1949).

(5) Lease from Government to Gold Star Transport Company, valuation of land by arbitrators £20 per foot frontage to Beach Road, depth 210 feet. (1950).

(6) Sale by Gillon Estate to von Reiche of section A plus a ten-foot strip, with a building, for £1,125 (1946).

It is necessary to consider each of these transactions carefully to ascertain if they support the reasoning of the witnesses.

7. (1) Sale Sasse to Government

All the valuers for the claimant relied strongly on this sale as establishing a standard of value for Beach Road property very much higher than had previously obtained. Mr Bruce's report consists largely of a comparison of Sasse's property with the claimant's, and he bases his valuation on the price paid for Sasse's. Mr Meyer says "the fact is that the Government itself established the market value for freehold land in purchasing Mrs Sasse's property for £12,500. I presume that this purchase was based on a sound and reasonable valuation by the Government's valuer and his figure can be accepted as a norm for present values under similar circumstances." Mr Schaafhausen says "my valuation is based on the former property of Mrs Sasse which has been sold for £12,500 to the Government". Mr Paul says "To arrive at today's market value for land in this area, I have taken into account the price of £12,500 paid by the Samoan Government for Mrs L. Sasse's property." It is interesting to note, however, that Mr Paul in evidence said that in his opinion the price paid by the Government for Sasse's property was unreasonable and excessive; none the less, he bases his valuation of claimant's land upon it.

8. I formed the impression from the witnesses that they considered the Government had, in fact, paid an excessively high price for Mrs Sasse's property; and, having set its own standard, should also pay on the same high scale for the property taken from the claimant.

9. At the time of the negotiations with the Government Mrs Sasse was operating the business of a general store on her property, and was using the upper storey for residential purposes. The assets of which she was disposing thus consisted of a freehold section with a frontage to two streets, a large building, and the goodwill of her business. Unfortunately I was not informed of how the purchase price was divided among these various assets. According to the evidence she was entitled to some payment by way of goodwill; the sum of £2,000 was suggested by Mr Wilson, but not proved.

It is pertinent to note that the claimant paid £4,000 for the goodwill of a similar, though no doubt considerably more extensive, business to Peter Fabricius. In their valuations the claimant's valuers made no allowance for goodwill; they fixed a figure of £4,000 - £4,500 for the building, and attributed the whole of the balance to the land alone.

10. It seems to me clear that Mrs Sasse, who certainly could have obtained a considerable payment for goodwill if she had sold to another trader - and there is evidence that other traders were prepared to negotiate with her - would not have agreed to sell to the Government at a price which eliminated her goodwill altogether. If, in fact, part of the purchase price was attributable to the goodwill of the business, then the value of the land must be correspondingly reduced below the figure which the four valuers have settled upon. The amount of such reduction cannot be assessed with certainty on the evidence produced.

11. No accurate valuation of the buildings was attempted. Most of the witnesses based their figures on the amount paid for a different building altogether, that in which the Union Steamship Company formerly had its offices. Again Mr Wilson suggested but did not prove, a figure of £6,000. If in fact the buildings were worth more than £4,500, the valuation of the land alone must be reduced still further.

12. One additional factor must be taken into consideration. The Government was rather more than the "willing buyer" referred to in the cases quoted to me. Sasse's property represented an island in the middle of Government lands, and the purchase of the section in question would give the Government a consolidated block of more value than the same area divided among several localities. This has always been recognised as a reason for paying more than the current market price for a particular piece of land.

13. In the result I conclude that the Sasse transaction, standing by itself, does not establish a market value for lands in the vicinity at a figure approximating that relied on by the valuers for the claimant.

14. (2) Sale to Emil Fabricius:

This property is much nearer the centre of the town than that of the claimant, and the price for the land and buildings works out at £49 per foot. No evidence was given as to the value of the buildings; but whatever allowance is made under that head, it is clear that the price paid for the land itself must be less than half that fixed by the four valuers for section A per foot of frontage.

15. (3) Sale to Bartley Limited:

This section has a frontage of 40 feet to Beach Road a depth of nearly 200 feet, and a frontage of 40 feet to Convent Street; and the whole of the western boundary lies along a public road. It is situated in the heart of the business area, and there is on it the building of a store and that of a copra shed. It was recently purchased for £3,000. Adopting Mr Schaafhausen's allocation of value as between front and rear halves of the land, we have £2,000 as the price paid for a section with a 40 feet frontage to Beach Road and a depth of 100 feet, with a substantial building thereon. That would give the figure of £50 a foot frontage; if as low an amount as £1,000 were allowed as the value of the building attributable to that section, the price of the land alone is reduced to £25 per foot frontage. This figure cannot be fixed definitely, because I was not informed what the building was considered to be worth and because the fact that this was a sale from lessor to lessee no doubt reduced the price the vendor was willing to accept. At the same time it makes the figures quoted for the claimant's section extravagantly high in comparison.

16. (4) Sale Fabricius to claimant:

This transaction should be helpful to the Court, in that it was a sale in the open market and the claimant was the purchaser; moreover, the land adjoins that in dispute. Claimant bought the business of Fabricius as a going concern for £10,000, and the agreement between them allocates £5,500 of this to the land and buildings. The only evidence given as to the value

of the buildings was that they are insured for £6,000. If they are worth £6,000, then the land was bought for less than nothing. If the land is worth the £75 per foot which claimant's valuers claim for the adjoining section, then the buildings which are insured for £6,000 are in reality worth only £1,425. Even allowing for appreciation in values since 1949, the result is a reduction ad absurdum.

17. (5) Gold Star Lease:

This is the only transaction which is not complicated by the addition of buildings to the land, and is sufficiently recent - the valuation was made in October 1950 - to be of great assistance in assessing present values. The land involved is in a locality of certainly no less value than that of the claimant, is rectangular in shape, and has a depth of 210 feet. When this lease was due for renewal from April 1950, Mr E.F. Paul - one of the valuers called for the claimant - stated that the Government valuation of £22 per foot was too high, and he required the new rental fixed by arbitration. The Company's arbitrator was Mr K. Meyer, also one of the valuers called by the claimant. The value of the land was fixed by the arbitrators, Mr Meyer concurring, at £20 per foot frontage. The date of the award was the 16th October 1950. In all the circumstances it would be difficult to assert that this valuation was substantially inaccurate. In fact, both Mr Paul and Mr Meyer confirmed, in evidence before me, that the valuation was sound, and correctly determined the value of the land at the date of the arbitrators' award.

18. They contend, however, that the value today of the same land is £100 per foot frontage, just five times what it was less than two years ago. The only reason they put forward for this extraordinary appreciation in value is that the Government has established a totally new standard of market prices by the purchase from Mrs Sasse. I have already given my reasons for rejecting that contention. In any event I should require very cogent evidence before holding that without any economic upheaval values of land had become multiplied by five in less than two years. That there has been some increase is admitted; and that is due, at least in part, to the fall in the value of money expressed in terms of goods.

19. (6) Sale by Gillon Estate to von Reiche:

In 1946 Mr von Reiche purchased the land in question, plus the ten-foot strip to which I have already referred, for the sum of £1,125. There is no suggestion that this was an inordinately good bargain; and it is in fact consistent with the price, £1,000, paid by Gillon three years, previously. There was at that time a wooden building on the land. A demolition order had been issued in respect of the building, which thus cannot be taken as having any great value; but the timber of which it was composed had some value which Mr Radford estimated at £350, and Mr W.F. Meredith offered £500 for it in 1950. If the Court is entitled to assume that the building was in fact worth not less than £300, then the consideration paid for the land alone would be £825; and this would represent a sum in the region of £675 for that portion of the land which has been taken over by the Government.

20. Later the land was transferred from Mr von Reiche to the claimant Company at the figure of £2,500, but this was not a sale in the open market and was in fact little more than a book entry.

21. In June 1950 Mr W.F. Meredith wrote to Mr von Reiche that he was prepared to purchase the land for £2,500, but no transfer resulted. This offer is a matter for consideration by the Court, but does not of itself prove a great deal.

22. Reviewing to the best of my ability all the transactions quoted above, I conclude that I cannot accept the valuations put forward on behalf of the claimant. They are admittedly based on one isolated sale and purchase, that of the Sasse property, and are quite inconsistent with the others of which evidence was given and which I have summarised in this judgment. Moreover, in my view the valuers have incorrectly analysed the Sasse transaction itself.

23. The claimant is entitled to a substantially greater amount than that Mr von Reiche paid for the property in 1946, as it is common ground that prices of freehold land in that locality have appreciated considerably over the last few years. Moreover, when land is taken by the Government under statutory authority, against the wishes of the owner, the amount of compensation payable should not be calculated on the lowest justifiable basis. He should receive liberal treatment, within the limits of what is fair and reasonable.

24. This land may also be said to have a special value to the Government because of its situation, adjoining as it does the large central block of Government offices. This factor should be given weight in assessing compensation: Inland Revenue Commissioners v. Clay /1914/ 3 K.B. 466. The Government has admittedly accepted this principle in the Sasse transaction. I think the claimant would be treated fairly if I allowed an additional 10% on this ground.

25. Mr Metcalfe contended that the claimant was entitled to a sum over and above the real value of the land taken, by way of compensation for what is termed "severance". That term is used normally in cases where land has been cut in two pieces, as for example, by running a railway line through it. I think the principle to be applied here is that laid down in Cowper Essex v. Acton Local Board (1889) 14 App. Cases 153, and Rockingham v. The King /1922/ 2 A.C. 315, which may be shortly stated thus; if other land held by the claimant is injuriously affected by the taking of land by the Crown, then this factor must be taken into account in the assessment of compensation. When the present claimant bought the adjoining land from Fabricius he consolidated his holding into an area roughly rectangular in shape. Now that the Government has taken section A he is left with an awkwardly shaped area, the saleable value of which may well be lessened on this account. I think the claimant is entitled to extra compensation on this ground, and I fix the amount at £150.

26. Upon full consideration of all the evidence and the submissions of counsel I conclude that the figure given by Mr Radford, £1,350, represents with substantial accuracy the basic valuation of section A. Applying the principles which I have stated however, I think that this sum should be increased by 10% and by an amount of £150.

27. I now assess the compensation payable to claimant at the sum of £1,705 made up as under:

For section A.....	£1,350
add 10% (para. 24).....	135
add £150 (para. 25).....	150
For section B.....	30
For sections C and D.....	40
	£1,705
	£1,705

28. This sum will carry interest at the rate of 5% from 31st March 1952 to the date of payment.

29. As the amount awarded is in excess of the sum offered by the Government, the claimant is entitled to some costs. I allow the sum of £35 in respect of counsel's fees and expenses.