LCA/102/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – Land Compensation Act 1973 Part I – house affected by road alterations – acquisition by agreement of right to enter land to build wall for purpose of works – compensation paid pursuant to this – held claim under Part I precluded – 1973 Act s 8

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN GURNEET SINGH LALL and KIRPAL KAUR LALL Claimants

and

TRANSPORT FOR LONDON Respondent

Re: 19 Corbett Road
Wanstead
London E11 2LD

Before: The President

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 28 January 2008

Mr A Burgess with permission of the Tribunal for the Appellant
Timothy Buley instructed by TfL Legal for the Respondent.

DECISION ON A PRELIMINARY ISSUE

1. The claimants in this case are among a number of owners of houses who have referred to the Tribunal claims under Part I of the Land Compensation Act 1973 relating to the A12 Hackney Road to M11 Link Road scheme. The claimants' property is on the corner of the A12 Eastern Avenue and Corbett Road, which is closed to vehicular traffic where it adjoins Eastern Avenue. The compensating authority say that, by reason of the provisions of section 8(1) and (2) of the Act, the claimants are not entitled to make the claim. This is the preliminary issue. Section 8(1) and (2) provide as follows:

> "8(1) Where a claim has been made in respect of depreciation of the value of an interest in land caused by the use of any public works and compensation has been paid or is payable on that claim, compensation shall not be payable on any subsequent claim in relation to the same works and the same land or any part thereof (whether in respect of the same or a different interest) except that, in the case of land which is a dwelling, this subsection shall not preclude the payment of compensation both on a claim in respect of the fee simple and on a claim in respect of a tenancy.
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> (2) Where a person is entitled to compensation in respect of the acquisition of an interest in land by an authority possessing compulsory purchase powers, or would be so entitled if the acquisition were compulsory, and –
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> (a) the land is acquired for the purposes of any public works; and
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> (b) that person retains land which, in relation to the land acquired, constitutes other land or lands within the meaning of section 63 of the Lands Clauses Consolidation Act 1845 or section 7 of the Compulsory Purchase Act 1965 (compensation for acquisition to include compensation for injurious affection of other land retained),
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> then, whether or not any sum is paid or payable in respect of injurious affection of the land retained, compensation shall not be payable under this Part of this Act on any claim in relation to those works made after the date of service of the notice to treat (or, if the acquisition is by agreement, the date of the agreement) in respect of any interest in the land retained."

2. I heard evidence from Aidan Edward Stuart Eastman BSc, FRICS of the compensating authority's Group Property and Facilities Directorate, and from Mr Lall. Mr Eastman, who has been employed by TfL since 2002 and is responsible for the settlement of claims under Part I of the 1973 Act, said that he first became aware of Mr and Mrs Lall's claim in January 2006. He produced the documentary material on which reliance is placed for the compensating authority's case on the preliminary issue. Mr Lall gave oral evidence.

3. Mr Eastman produced a Valuation Office report of 23 November 1998 to the Highways Agency in relation to "terms provisionally agreed for acquisition of land required for Special and Trunk Road." It identified as the scheme "Hackney to M11 Link Road CPO 1992" and as the relevant plots numbers 905 and 905A. The claimant's name was given as "Mr G S Lall" and the nature of his interest was said to be: "s 250 Right over Plot 905 and exchange of

freehold interest in Plot 905A". The explanation of the plots appears from a plan prepared by or for the Highways Agency on 12 July 1994, by which time, it appears from the evidence of Mr Lall, the works had started. Neither plot had in fact been included in the CPO. Plot 905, was a narrow crescent of land forming the corner of the claimants' land, 45m^2 in area, and plot 905A, 17.5m^2 in area, was a sliver of land abutting it and was owned by the London Borough of Redbridge. Section 250 of the Highways Act 1980 empowers a highway authority to acquire rights over land by creating them, and the Highways Agency wanted a right over plot 905 for the purpose of constructing a wall. The land would remain in Mr and Mrs Lall's ownership and plot 905A would be added to it. The purchase money was stated to be £12,000 and advance payment was said to have been requested on 18 December 1997. The accommodation works were stated to be: "Provide brick, remove trees, reinstate with garden soil inner facing to concrete wall and construction of a pier at the end of the wall." Under "Remarks" this was said: "The purchase of this plot is by agreement with Mr Lall, the plot apparently having been omitted from the CPO."

4. Mr Lall said that he had lived at 19 Corbett Road since May 1978. Work started in December 1993, when workmen just walked in and used his outside tap without permission. It surprised him because he could not recall having been given any notification. Shortly after this one of the contractor's dump trucks crashed through the site boundary, knocked down three trees and damaged the garage. The damage was paid for by the contractors' insurers. Mr Lall produced photographs showing the 32 trees, which appeared to be cupressus leylandii, that were on the boundary of his land where it fronted Eastern Avenue. He said that they protected him from noise and the fumes of traffic. Excavations for the wall damaged the roots of the trees, and they started dying.

5. Mr Lall said that he instructed a surveyor, Mr R L Nash FRICS of Petty, Son and Prestwich to deal with his claim, and he produced letters that he had received from Mr Nash about his claim. They were dated between 15 September 1997 and 21 April 1998. He also instructed a solicitor, Mr Geoffrey Williams of D H Browne.

6. In his letter of 15 September 1997 to Mr Lall, Mr Nash reported on discussions that he had had with the District Valuer. Among the things he said were these:

> "... In the first instance, the District Valuer makes the point that we cannot enlarge our claim by 'double counting'. In other words if we claim for replacement of the trees we can then hardly claim for diminuition in value to the house without them ...
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> As far as replacement of trees is concerned they have ascertained from the Highways Authority that the replacement of the trees which would be 2 metres in height would cost £60.00 per tree to which would be added the cost of planting an maintenance and for this total sum the Valuer has a figure of £4,050.
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> He suggests that they will grow at the rate of some 1 metre per annum replacing those which you will have lost.
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> The remainder of the claim is based upon disturbance to you over a four year period and this together with a nominal payment of £500.00 for the easement of access which they will require totals just over £5,000. ...

> We had a long discussion over the question of the value of the house and whether or not it was diminished and ultimately claims for this, if it is done separately, will not be made until the road is finally opened, probably in 1999/2000. Noise meter readings would then be taken and compared with those originally taken some years ago. ..."

7. Mr Williams wrote to Mr Lall on 4 February 1998 following a conversation that he had had with Mr Nash. He said this:

> "... The Highways Agency are offering to make an immediate payment of £9,760.50 (in effect £9,000 plus part of your surveyor's costs). You can accept this payment without prejudicing your right to claim larger sums in future. To make the claim you will have to complete an sign the Advance Payment Agreement that you handed to me at our meeting. ...
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> It appears from the correspondence that all the Department of Transport are asking for are future rights of access to maintain the new wall. The Advance Payment Agreement refers to the acquisition of land, but I assume that this is a mistake."

8. On the same day Mr Williams wrote to the Highways Agency about the nature of the interest that was being acquired. He said:

> "I have examined the Advance Payment Agreement sent with that letter. I was somewhat concerned that on page two that reference is made to an acquisition of land. My understanding is that the Secretary of State will be acquiring access rights over part of Mr Lall's property but will not be acquiring any of the property itself. I also understand that a small strip of land will be conveyed to Mr Lall.
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> Would you please confirm that my understanding is correct and that the wording of the agreement can be amended to reflect this. I suggest that references be to 'the acquisition of rights of access over the land by the Secretary of State'. Do you agree to this?"

9. On 6 March 1998 Mr and Mrs Lall signed an Advance Payment Agreement under sections 52 and 52A of the 1973 Act. Their signatures were witnessed by Mr Williams. It contained the amendment that Mr Williams had been seeking, in that it referred to "the acquisition of rights over the land by the Secretary of State." The estimated compensation was stated to be £10,845 inclusive of surveyor's fees, and the advance payment was £9,750.50, inclusive of surveyor's fees. The advance payment was made on 27 May 1998. Later, on 30 July 1998, an interest payment totalling £1,869.90 was made.

10. On 8 October 1998 Mr Nash wrote as follows to the District Valuer:

> "Thank you for your recent correspondence and further to my telephone message I now confirm that after a further meeting on site with my client and with the Highways Agency I am instructed to agree settlement of my clients claim in this matter as set out in your letter to me dated 27 May 1998.

> Subsequently the payment of interest has been agreed and Mr Lall has now agreed to the work proposed by the Highways Agency to remove the trees and clad the inner face of the wall together with further works to finish the wall and adjoining ground. I am writing to the Highways Agency separately on this matter and unfortunately forgot to arrange for Mr Lall to sign the plans. I am arranging for this to be done and will return one copy to you as soon as possible."

11. It was following this letter that the Valuation Office report to the Highways Agency, to which I have already referred, was produced. The report stated the "Purchase money or compensation" to be £12,000. A further advance payment was made to D H Browne, the solicitors, on behalf of Mr and Mrs Lall on 14 February 2000. It was for a further £1,593 by way of compensation and £584.62 by way of interest. Under section 52(8), before an acquiring authority make an advance payment they are required to provide particulars of it to the local land charges registry, and on 9 February 2000 the Highways Agency made the appropriate application to the London Borough of Redbridge. In it they stated: "The amount of the advance payment is £1,593.00 which together with the earlier advance of £9,760.50 is 90% of the agreed compensation of £12,615.00." There is no evidence before me as to when the remaining 10% was paid or, indeed, as to whether it has been paid.

12. Mr and Mrs Lall gave notice of reference to this Tribunal on 16 June 2006. It was one of about 20 similar references made on or about that time by owners of houses near Eastern Avenue. The compensation sought was £35,000. Also sent to the Tribunal was a letter to Mr and Mrs Lall dated 24 April 2006 from Mr A B Walker FRICS of Lloyd Williams, chartered surveyors. This said:

> "This is simply to confirm that we cannot pursue your claim further as you have already had an offer of compensation under what is known as the Section 7 Procedure. You cannot pursue a claim as the Section 7 Procedure takes precedence."

13. For the compensating authority Mr Timothy Buley submitted that the claim was precluded under both subsection (1) and subsection (2) of section 8. On the evidence, he said, there was an agreement on the part of the Highways Agency to acquire from Mr and Mrs Lall the right to enter their land in order to carry out the work of constructing the wall as part of the road improvement scheme. That was an interest that could have been acquired compulsorily under section 250(1) of the 1980 Act; and under section 250(6) –

> "(6) References in any enactment or instrument to the acquisition of land, in a context relating to compulsory acquisition under highway land acquisition powers, are to be construed (except in so far as the context otherwise requires) as including references to the compulsory acquisition of a right or rights by virtue of this section."

Thus, Mr Buley said, Mr and Mrs Lall would have been entitled to compensation if the acquisition had been compulsory, and they would have been able to claim compensation for injurious affection under section 7 of the Compulsory Purchase Act 1965. The requirements of section 8(2) were thus fulfilled.

14. Mr Burgess, who as a borough councillor has been looking after the interests of a number of claimants in these references, said that there was insufficient evidence of any agreement on compensation. Mr Eastman had relied entirely on the documents. The compensating authority had failed to follow the proper procedure and had invaded Mr and Mrs Lall's land without any power to do so. The amount of their loss far exceeded the amount of compensation that had been paid so far.

15. It was not suggested by Mr Burgess that there was no agreement to acquire the right to enter the land for the purpose of erecting the wall. Such an agreement is, in my judgment established by the documentary evidence. In particular, the Advance Payment Agreement the letter from the claimants' surveyor of 8 October 1998, the Valuation Office report of 23 November 1998 and the payment of compensation and interest in accordance with the report are consistent only with agreement on the acquisition of the right. I accept Mr Buley's contention that the requirements of section 8(2) are made out, and that the claimants therefore have no claim under Part I.

16. Mr Buley also submitted that the claim was precluded by section 8(1) since a claim for compensation for the compulsory acquisition of land would necessarily embrace any entitlement to compensation under section 7 of the 1965 Act for depreciation caused by the use of the work. The contention adds nothing to that on section 8(2), and it seems to me to be dependent on section 8(2) being satisfied. It is therefore unnecessary for me to decide the point, although it appears to me to be correct.

17. I raised the question whether, even though Mr and Mrs Lall had no claim under Part I, they might still be able to pursue a claim for injurious affection from the use of the road under section 7. This would depend on whether the compensation in respect of which the advance payments were made was the totality of the compensation or whether the possibility of further compensation being payable for injurious affection was kept open. It is to be noted that Mr Nash's letter of 15 September 1997, written after his discussion with the DV, said that any claim for diminution in the value of the house, "if it is done separately," would not be made "until the road is finally opened, probably in 1999/2000." Mr Nash's later letter of 8 October 1998, agreeing "settlement of my clients claim", did not suggest, however, that compensation for the effect on the house of the use of the road was being "done separately", to use the words of his earlier letter. The Highways Agency's local land charges application of 9 February 2000 referred to the "agreed compensation of £12,615", which would suggest that they for their part did not think that there was any further amount that required to be agreed. There is nothing, therefore, to suggest that injurious affection from use of the road was reserved as a possible further element of compensation.

18. On the evidence before me, therefore, I conclude that the claimants are not entitled to make a claim under Part I of the 1973 Act or to pursue further the claim for compensation arising from the agreed acquisition by the Highways Agency of the interest in their land. The reference is accordingly dismissed.

Dated 31 January 2008

George Bartlett QC , President