Privy Council Appeal No. 15 of 1984

Tatmar Pastoral Co. Pty. Limited and
Penrith Pastoral Co. Pty. Limited *Appellants*

v.

Housing Commission of New South Wales *Respondent*

FROM

THE SUPREME COURT OF NEW SOUTH WALES COURT OF APPEAL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, OF THE 22ND MAY 1984 DELIVERED THE 25TH JUNE 1984

Present at the Hearing:

LORD DIPLOCK
LORD BRIDGE OF HARWICH
LORD BRIGHTMAN
LORD TEMPLEMAN
SIR DENYS BUCKLEY

*[Delivered by **Lord Diplock**]*

At the conclusion of the hearing of this appeal their Lordships announced that they would humbly advise Her Majesty that the appeal should be dismissed with costs. They now give their reasons for tendering that advice.

The appellants are associated companies who between them were the owners of a block of pastoral land known as Tatmar some 884 acres in extent in the neighbourhood of Penrith, which was resumed by the Housing Commission in August 1973. The compensation for this compulsory acquisition was assessed by the Land and Environment Court of New South Wales, (Cripps J.) at $8,315,058.

In a judgment extending to 75 pages, Mr. Justice Cripps dealt in meticulous detail with the evidence adduced before him and the rival submissions made to him on behalf of the appellants and of the Housing Commission. Professional valuers gave evidence for both parties. The highest of these valuations was

that made by Mr. Alcorn who was called by the appellants. It used as the most appropriate "comparable" a property in the vicinity known as Kulnamock, which had been sold in the market in May 1973, at a price to which Mr. Alcorn made various substantial adjustments in favour of the Tatmar land. The learned judge accepted Mr. Alcorn's valuation lock, stock and barrel, and rejected the lower valuations of other valuers, including that of the second valuer called by the appellants themselves.

From the Land and Environment Court an appeal lies to the Court of Appeal, but upon questions of law only. Both parties appealed from Mr. Justice Cripps' judgment to the Court of Appeal (Hutley, Samuels and Mahoney JJ.A.). All three members of that Court held that neither party had succeeded in identifying any error of law in the judgment of the learned judge. Appeal and cross-appeal were dismissed and the valuation was upheld.

A feature of the present appeal to Her Majesty in Council that warrants the adjective "bizarre" is that the burden of the appellants' complaint is that Cripps J. made an error of law in accepting as correct the highest valuation that had been put upon the land by any professional valuer, he being a valuer called by the appellants themselves. In a nutshell, what was sought to be relied upon as constituting the error of law was that there was information unknown to the appellants and their professional advisers at the time when their original valuations were made and their evidence given, which did not emerge until the evidence on behalf of the Housing Commission was adduced; and that if arithmetical exercises were carried out upon various hypothetical assumptions a value for the land could be arrived at in excess of that of Mr. Alcorn which was accepted by the judge. It was contended that an alleged failure by the learned judge to give adequate reasons for not adopting one or other of the values arrived at by such arithmetical exercises amounted to an error of law.

There are two short answers to this. The first is that Cripps J. had found as a fact that the relevant information was known to the appellants as well as to the Housing Commission before Mr. Alcorn made his valuation which the learned judge accepted. The second is that the judge gave reasons which, though brief, were in their Lordships' view entirely adequate, for preferring Mr. Alcorn's valuation to the answers which it was suggested could be derived from carrying out arithmetical calculations based on unproved dubious assumptions.

Their Lordships share the inability of the Court of Appeal to discern any error of law in the long and careful judgment of the learned judge.