EMINENT DOMAIN: JUST COMPENSATION FOR MINERAL DEPOSITS

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Just compensation is generally defined as the market value of the property taken, (1) and in cases of land with mineral deposits determination of market value is made complex because certain factors affecting this value are not as easy to ascertain as in the case of land not favored in this way. Also, the market value of land may be enhanced by mineral deposits only if the existence of a market for the mineral is proved.(2) On the other hand, no compensation is payable for value created by the taker.(3) Thus if the market for minerals is created by the taker no compensation should arguably be payable for the mineral deposit. Under somewhat unusual facts, a Federal Circuit Court in J. A. Tobin Constr. Co. v. United States (4) found that no market for rock existed apart from that created by the taker, and so refused to award compensation for the taking of a rock quarry.

In this case there was testimony that over the years rock from the property in question had been sold sporadically to individual buyers. Rock from the quarry had also been used in 1939 for public purposes and, in 1943, to reinforce a river embankment. In 1961, Tobin received a government contract for the sale of rock, and entered into a two year lease of the quarry in order to fulfill the contract. When he entered into the lease, Tobin either knew or should have known that the quarry was in the path of the proposed highway, for which the rock was needed. Nonetheless, Tobin chose to open and operate the quarry until the government finally took it in condemnation proceedings. In spite of the evidence of past sales, a commission which heard the condemnation proceedings found that no market for the rock existed apart from that created by the taker. This opinion was affirmed by the United States Court of Appeal. While the facts do not clearly establish that no commercial market for the rock existed, the rule adopted by the court can be defended.

Value has been created by the taker when land prices rise following the announcement or discovery of a government program involving the purchase of land. In such instance, no compensation is allowed for the increase in the price of the land, for enhanced value created by the taker is not compensable. Similarly, if the taker creates a market for a mineral deposit, the deposit should not be compensable.

It is unjust to require the government to pay an enhanced price which its own demand has created,(5), and the owner of real estate has the burden of proving the existence of a commercial market for minerals on his land in order to be compensated for them.

Methods for Valuing Mineral Deposits

The market value of land is the value of the whole property with the improvements on it and the minerals in it.(6) To consider the value of the real estate alone is to ignore the increased value created by the presence of minerals, whether they be rare or otherwise. In United States v. 158 Acres of Land (7) the court stated:

> "...if the condemned land contains a mineral deposit, such as gravel, it is proper to consider this fact in determining the market value of the land as a whole, but it is not permissible to determine separately the value of the land as a unit."(8)

In valuing the land, the jury may neither separate the value of the mineral deposit from the value of the real estate, nor arrive at a value by multiplying the estimated number of cubic feet or yards of material by a given price per unit (9) The jury must consider the existence of minerals only if, and in so far as, the minerals influence the market value of the land as a whole.(10)

If a mineral deposit consisting of gravel and sand has never been used or sold, the court will not consider evidence to the effect that the land might be put to its highest and best use as a commercial quarry.(11) Such evidence is generally inadmissible as being speculative, remote, and conjectural. If, however, minerals are given away by their owner, this constitutes a use for the minerals and may be sufficient to establish a market for the mineral deposit.

In United States v. Rayno (12) a mineral known as hardpan had been used in the two preceding decades to surface tennis courts in the neighborhood, and to construct a few miles of a rural road. No charge was made for the hardpan. It is certainly more difficult to find that a commercial market existed in Rayno than it is in Tobin, as sales of the rock had been made in the second case. Nevertheless, a Federal Circuit Court found that a market for the hardpan existed in Rayno. This decision is strong support for Tobin's contention that a commercial market had been established.

However, the market for the land and its minerals is not restricted to a present or existing market. The most profitable use to which land can reasonably be put in the near future may be shown and considered as bearing upon the market value.(13) For example, it has been held that the special value of land due to its adaptability for use in a particular business is an element which the owner of land is entitled to have considered in determining the compensation to be paid.(14) Once it has been shown that a market for the mineral deposit exists, the owner is entitled to the value of the property when put to its highest and best use.(15)

In Tobin it was unnecessary to look for a future market, because evidence was introduced to support the contention that a market apart from that created by the taker already existed. This evidence was primarily in the form of testimony to the effect that sporadic sales of rock had been made to individuals although no machinery had been installed in the quarry prior to Tobin's lease.

Possible Applications of Tobin Decision

Experience indicates that normally it is not difficult to show the existence of a market for valuable minerals which have been held for future development, even though no sales of the mineral have been made. However, when land contains a useful but not necessarily precious or valuable mineral, it becomes more difficult to establish that a market for the mineral exists apart from that created by the taker. Consider, for example, land held in reserve by a company which operates several quarries. Since the land is being held for future expansion, the mineral will not have been sold or used. If the land is condemned, and the precedent established in Tobin is followed, the court then must find that no market for the mineral exists. Such a decision would penalize a company organized to mine or quarry non-precious minerals simply because it held valuable deposits in reserve.

Although the market rule may appear artificial, courts would face difficulties if they tried to apply a substitute test. When land containing mineral deposits is covered by buildings, the cost of extracting the minerals, especially the non-precious ones, may be prohibitive. In such a case, no enhanced value is created by the presence of the mineral deposit. When land is vacant, no extraction problems arise, and the value of the land depends upon the market for the land and its contents. If market value is the measure of just compensation,

then how is the existence of a market determined? According to Tobin there must be a record of recent sales or at least proof of potential sales in the reasonably near future. Rayno, on the other hand, finds that a market exists for a mineral if it has been given away and used in the past two decades. Both of these decisions suggest somewhat artificial methods for proving the existence of a market. Just because one who owns land containing a mineral deposit does not exploit the market for his mineral, the courts cannot assume that no market for the mineral exists. Perhaps the real answer is that while an established market ordinarily proves value, there are instances when compensation must be based on the intrinsic or actual value to the owner.(16)

Conclusion

The court in Tobin denied compensation for a mineral deposit by seizing upon the rule that enhanced value created by the taker is not compensable. Evidence, however limited, which established the existence of a market independent of the taker was ignored. The court took a dubious view of Tobin's decision to open a quarry on land which it either knew or should have known was included in the government's plan for condemnation. The rule, that no damages will be awarded for losses sustained due to the frustration or destruction of a business,(17) also influenced the opinion. Unless the equities of the case should be allowed to influence the decision, neither Tobin nor the lessor (18) should be deprived of just compensation for the quarry.

Footnotes

(1) Cameron Dev. Co. v. United States, 145 F. 2d 209, 210 (5th Cir. 1944).

(2) Georgia Kaolin Co. v. United States, 214 F 2d 284 (5th Cir.1954); United States v. 342.81 Acres of Land, 134 F. Supp. 430 (N.D. Ga. 1955). See also 3 Nichols, Eminent Domain § 13.22 (3d ed. 1964).

(3) United States v. Cors, 337 U.S. 325 (1949); United States v. 158 Acres of Land, 298 F.2d 559 (2d Cir. 1962); United States v. Land in Dry Bed of Rosamond Lake, 143 F. Supp. 314 (S.D.Cal.1956); United States v. 620 Acres of Land, 101 F. Supp. 686 (W.D.Ark.1952); Hoy v. Kansas Turnpike Auth., 184 Kan. 70, 334 P. 2d 315 (1959).

(4) 343 F. 2d 422 (10th Cir. 1965).

(5) See note 3, supra.

(6) United States v 342.81 Acres of Land, 134 F. Supp. 430, 433 (N.D. Ga. 1955).

(7) 298 F. 2d 559 (2d Cir. 1962).

(8) Id. at 561. See United States v. Glanat Realty Corp., 276 F. 2d 264 (2d Cir. 1960); Hollister v. Cox, 131 Conn. 523, 41 A.2d 93 (1945); Ross v. Palisades Interstate Park, 90 N.J.L.461, 101 A. 60 (1917). See also 3 Nichols, Eminent Domain 413 (3d ed. 1964).

(9) United States v. 13.40 Acres of Land, 56 F. Supp. 535, 538 (D.C. Cal. 1944); United States v. Land in Dry Bed of Rosamond Lake, 143 F. Supp. 314 (S.D. Cal. 1956). See also 34 Wash. L. Rev. 233, 234 (1959).

(10) Georgia Kaolin v. United States, 214 F. 2d 284 (5th Cir. 1954).

(11) State Highway Comm'n v. Mott, 384 P. 2d 922 (Mont. 1963).

(12) 136 F. 2d 376 (1st Cir. 1943).

(13) McCandless v United States, 298 U.S. 342 (1936); Cade v. United States, 213 F. 2d 138 (4th Cir. 1954).

(14) United States v. Miller, 317 U.S. 369 (1942); Mitchell v. United States, 267 U.S. 341 (1925); Nat'l Brick co. v. United States, 131 F. 2d 30 (D.C. Cir. 1942).

(15) Olson v. United States, 292 U.S. 246 (1934); United States v. Jaramillo, 190 F. 2d 300 (10th Cir. 1951); St. Joe Paper Co. v. United States, 155 F. 2d 93 (5th Cir. 1946); United States v. Village of Highland Falls, 154 F. 2d 224 (2d Cir. 1946).

(16) United States v. 12.75 Acres of Land, 95 F. Supp. 998 (D.C. Tenn. 1951); Comstock v. Iowa State Highway Comm'n, 121 N.W. 2d 205, 215 (Iowa 1963). See also 4 Nichols, Eminent Domain §12.32 (3d ed. 1964).

(17) Stipe v. United States, 337 F. 2d 818 (10th Cir. 1964).

(18) "The principle that the owner of an estate or interest in property condemned is entitled to compensation is not open to dispute. Nor is it doubted that a lessee for a term of years has an interest which must be recognized upon the taking of the property covered by his lease." Silberman v. United States, 131 F. 2d 715, 717 (1st Cir. 1942). There is a problem as to the division of the amount paid in compensation where a lessee is actively mining according to the terms of his lease. The lessee may claim that he would have exhausted the mineral deposit within the period of the lease and claim the greater share of the condemnation award.