

Their Lordships are, therefore, of opinion that the appeal ought to be allowed and the suit dismissed with costs both here and below, and their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.

Solicitors for the appellants: *Bramall & White.*

Solicitors for the respondents: *A. H. Arnould & Son.*

J. V. W.

PRIVY COUNCIL.

RANGOON BOTATOUNG COMPANY, LD.

v.

THE COLLECTOR, RANGOON.

1912

MOOSA
GOOLAM
ARIEFF

r.

EBRAHIM
GOOLAM
ARIEFF.

P.C.^s

1912

*June 26 ;
July 16.*

[ON APPEAL FROM THE CHIEF COURT OF LOWER BURMA, AT RANGOON.]

Appeal to Privy Council—Right of appeal—Proceedings on award by Collector under Land Acquisition Act (I of 1894)—Decision of Court of Lower Burma on reference by Collector of Rangoon—Question as to value of land a matter for local judicial tribunals.

No appeal lies to His Majesty in Council from a decision of the Chief Court of Lower Burma on a reference to that Court by the Collector of Rangoon, in proceedings under the Land Acquisition Act (I of 1894), on an award made by him as to the value of land acquired.

A right of appeal must be given by express enactment, and cannot be implied.

Sandback Charity Trustees v. North Staffordshire Railway Co.(1), per Lord Bramwell, followed.

The question in this case, moreover, being only a question of fact as to the value of land acquired under the Act, was, in the opinion of their Lordships, one for decision by local arbitrators or Courts, and not a matter for determination by a judicial tribunal in England.

^s*Present*: LORD MACNAGHTEN, LORD SHAW, SIR JOHN EDGE, AND MR. AMEER ALI.

(1) (1877) L. R. 3 Q. B. D. 1.

1912
 RANGOON
 BOTATOUNG
 COMPANY,
 LD.
 v.
 THE
 COLLECTOR,
 RANGOON.

APPEAL from a decision (11th May 1908) of the Chief Court of Lower Burma confirming an award of compensation made by the Collector under the Land Acquisition Act (I of 1894).

The claimants to compensation were the appellants to His Majesty in Council.

This appeal (stated in the appellant's case to be from an "award") arose of the compulsory acquisition of certain lands in the Botatoung quarter of Rangoon, belonging to the Appellant Company, by the Local Government under the Land Acquisition Act. After a very lengthy inquiry the Collector awarded compensation to the appellants amounting in all to Rs. 13,25,720. The area of the Botatoung property was 10.48 acres, and the value was assessed on the basis of Rs. 1,10,000 per acre, amounting to Rs. 11,52,800, together with the statutory allowance of 15 per cent. (Rs. 1,72,920), to which the appellants were entitled under section 23, sub-section 2 of the Act.

The Revenue Department notification preliminary to acquiring the land was published in the Burma Gazette of 3rd March 1906 pursuant to section 6 of the Act. The appellants did not accept the award, and applied for a reference under the Act to the Chief Court of Lower Burma, the only question for that Court to decide being, as the Court itself said, "the market value of the lands at the date of the publication of the notification."

The Chief Court (HARTNOLL and ROBINSON JJ.) on the reference confirmed the Collector's award; and the appellants thereupon obtained leave from the Chief Court to appeal, to His Majesty in Council.

On this appeal, the objection was taken in the respondent's printed case that no appeal lay.

Bailhache, K.C., Sankey, K.C., and Dr. Arnold Jolly, for the appellants, contended that the appeal

would lie as of right. The Land Acquisition Act (I of 1894), section 54, enacted that an appeal lies to the High Court "in any proceedings under this Act." That would be subject of course to the discretionary right of the Court to refuse appeals in certain cases. Reference was made to the Civil Procedure Code (Act XIV of 1882), section 595, and Civil Procedure Code (Act V of 1908), section 109, giving a right of appeal from the High Courts to the Privy Council. The Chief Court of Lower Burma is, in respect of appeals to England, in the same position as a High Court. Appeals have been entertained by this Board under the Land Acquisition Acts: see *Ezra v. Secretary of State for India* (1), *Secretary of State for India v. India General Steam Navigation Company* (2), and *Secretary of State for Foreign Affairs v. Charlesworth, Pilling and Company* (3), per Lord Hobhouse. There may be an appeal on a question of fact. Under these circumstances, it was for the respondent to show that the right of appeal had been taken away, and that the appeal did not lie.

Buckmaster, K.C., and *Charles H. Sargant*, for the respondent, contended that no appeal lay, unless it was expressly given by the Land Acquisition Act, and no right of appeal to His Majesty in Council, it was submitted, existed under Act I of 1894. The point had not been raised before in any of the cases. The Act did nothing but "award" compensation for land. Under the provisions of the Act the determination of the Court established by it was both in name and in fact and "award," and (apart from the special provisions of the Act) was not appealable to any greater extent than the award of any other tribunal of arbitration.

(1) (1905) I. L. R. 32 Calc. 605; (2) (1909) I. L. R. 36 Calc. 967, 974;
L. R. 32 I. A. 93; L. R. 36 I. A. 200, 202.

(3) [1901] A. C. 373, 391; L. R. 28 I. A. 121, 139.

1912
 RANGOON
 BOTATOUNG
 COMPANY,
 LD.
 THE
 COLLECTOR,
 RANGOON.

If the amount awarded in the Collector's Court was not satisfactory, the award came before another Court which made another award: section 3, sub-sections (b) and (d) were referred to. The procedure all shows that the proceedings were not the proceedings of a Court at all. No "order" or "decree" but merely an "award" was made: sections 18, 21, 23, 24 and 25 were referred to. A reference was allowed to another Court, but this was to be dealt with in a special way, and its result is an "award," not an "order" or "decree." Sections 31, 51 and 52 were referred to, it being pointed out that there was no fee or duty under section 51. Section 53 made the Civil Procedure Code applicable to all proceedings, "save in so far as they may be inconsistent with anything contained in the Act." Section 54 gives an appeal to the High Court from the "award" which is the only appeal given and that was a limited one, and did not in terms extend beyond the High Court, the express provision of this limited right negating by inference the existence of any general right of appeal. Section 54 would have been unnecessary, had it been intended that the ordinary procedure as to appeals under the Civil Procedure Code should apply. Under section 109 of the Civil Procedure Code of 1908, an appeal to this Board must be from a "decree" or "order"; that section is more extensive than section 595 of the Civil Procedure Code of 1882 in which the word "order" did not occur. The claimant here is not a "suitor," but a person whose land has been legally acquired by Government. The present appeal was against the "award," and no appeal lies from that to this Board. Reference was made to *In re Arbitration between Sandback Charity Trustees and North Staffordshire Railway Company* (1): *Ex parte County Council of Kent and Councils of Dover*

(1) (1877) L. R. 3 Q. B. D. 1, 3.

and Sandwich (1) a case under section 29 of the Local Government Act, 1888 (51 and 52 Vict. C. 41): *In re Arbitration between Knight and the Tabernacle Permanent Building Society* (2): *Burgess v. Morton* (3). Appellate jurisdiction which a person was entitled to invoke must, it was submitted, have reference to an appeal expressly given by the particular statute under which the procedure has been taken. In this particular case, moreover, the question is one of fact and not of law, and has been carefully and exhaustively dealt with by a Court which had, on the request of the parties, visited and inspected the land acquired, and the determination of the Court could not be advantageously reviewed by this Board.

Bailhache, K.C., in reply, agreed that the right of appeal, if there was one, must be found in the statute under which these proceedings had been taken. It was submitted, however, that, after the hearing by the Chief Court on the reference, that Court made a "decree" or "order" from which an appeal lay to this Board. [LORD MACNAGHTEN. How do you get the Civil Procedure Code to apply?] Section 53 of Act I of 1894 makes the Code of Civil Procedure applicable. Section 109 of the Code of 1908 gives an appeal to this Board from the "decree" or "order" of the Chief Court. The appellant had a right of appeal to the Chief Court under section 54 of Act I of 1894. In the Chief Court he got out of the region of "awards," and came to a stage of the case which ended in the "order" or "decree" of the Chief Court. That Court gave a "judgment" in the case, not an "award."

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. In this case a preliminary objection was taken to the appeal. Having heard the

(1) [1891] 1 Q. B. 725, 726, 727. (2) [1892] 2 Q. B. 613, 617.

(3) [1896] A. C. 136, 141.

1912
RANGOON
BOTATOUNG
COMPANY,
LD.
THE
COLLECTOR,
RANGOON.

July 16.

1912

RANGOON
BOTATOUNG
COMPANY,
LD.
".
THE
COLLECTOR,
RANGOON.

point fully argued, their Lordships came to the conclusion that the appeal was incompetent, and they intimated that on that ground they would humbly advise His Majesty that the appeal should be dismissed with costs.

The appeal purported to be an appeal as of right from an award of the Chief Court of Lower Burma. Some land belonging to the appellants had been taken for public purposes under the provisions of the Land Acquisition Act, 1894. In due course the Collector made his award. The appellants did not accept it. They were dissatisfied with the amount of the Collector's valuation. On that ground, and on that ground only, they demanded, as they were entitled to do, that the matter should be referred to the Court under the provisions of the Act. The expression "the Court" in the Act is defined as meaning "a principal Civil Court of Original Jurisdiction." The reference was taken by two Judges of the Chief Court. They sat as "the Court" and also as the High Court to which an appeal is given by the Act from the award of "the Court." The hearing of the reference occupied 45 days. More than 100 witnesses were examined. A vast mass of documents was put in, and the learned Judges at the request of the parties viewed the premises. Then they made an exhaustive award dealing minutely with the evidence, and they held that the award of the Collector had given the appellants "all and probably more than the full market-value of their property," and so they dismissed the reference with costs. They were precluded by the Act from awarding less than the amount awarded by the Collector.

It was admitted by the learned counsel for the appellants that it was incumbent upon him to show that there was a statutory right of appeal. As Lord

Bramwell, then Bramwell J.A., observed in the case of the *Sandback Charity Trustees v. The North Staffordshire Railway Company* (1): "An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment." A special and limited appeal is given by the Land Acquisition Act from the award of "the Court" to the High Court. No further right of appeal is given. Nor can any such right be implied. The learned Counsel for the appellants relied both on section 53 and section 54 of the Act. Section 53 enacts that, "save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act." That enactment applies to an earlier stage in the proceedings, and seems to have nothing to do with an appeal from the High Court. Section 54 is in the following terms:—

"54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act."

That section seems to carry the appellants no further. It only applies to proceedings in the course of an appeal to the High Court. Its force is exhausted when the appeal to the High Court is heard. Their Lordships cannot accept the argument or suggestion, that when once the claimant is admitted to the High Court, he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction.

(1) (1877) L. R. 3 Q. B. D. 1.

1912

RANGOON
BOTATOUNG
COMPANY,
LD.
v.
THE
COLLECTOR,
RANGOON.

It is impossible to conceive anything more inconvenient than that a Court in this country should be called upon to review the determination of arbitrators as to the value of a piece of land in India—a mere question of fact—without the advantage of any local knowledge or the privilege, if it be a privilege, of seeing the cloud of witnesses who engaged the attention of two Judges of the Chief Court of Lower Burma for 45 days, or even the opportunity and the interest of viewing a property the value of which seems so extraordinarily difficult to discover.

Appeal dismissed.

Solicitors for the appellants: *A. H. Arnould & Son.*

Solicitors for the respondent: *Coward & Hawksley, Sons & Chance.*

J. V. W.