PRIVY COUNCIL.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (APPELLANT),

and

SHANMUGARAYA MUDALIAR AND OTHERS (RESPONDENTS, AND A CROSS-APPEAL).

* P. C. 1893. January 26. February 18.

[On appeal from the High Court at Madras.]

The Land Acquisition Act, 1870—*Act X of* 1870, *ss.* 15 *and* 18—*Compensation—Mode of assessment—Antiquities not proved to have any market-value—Persons interested in the land acquired.*

The Government having, under the Land Acquisition Act X of 1870, commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the District Judge (sections 15 and 18) as to the amount of the compensation to persons interested in the land:

Held, (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of the antiquities could not; for, under the circumstances, no market-value could be assigned to the antiquities;

(2) the right if not the only course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zamindar;

(3) to calculate the purchase-money, as the first Court had done, at twenty-five years of such rent was proper, and no reason appeared for reducing this number of years to fifteen;

(4) though quarry men had been employed, and had earned money, on the plot, they were not interested therein, in the sense intended by the Act; and their earnings, in which the zamindar was not interested, could not enter into the question of compensation and increase the award;

(5) under section 42, fifteen per cent. was to be paid on the sum awarded.

CROSS-APPEALS from an order (3rd May 1889) of the High Court, varying an award (12th March 1888) of the District Judge of Chingleput on a question of compensation referred to him in accordance with the provisions of Act X of 1870.

The claimants were the representatives of Nalathur Ramasami Mudaliar, who, till his death in April 1886, was the registered zamindar of the village Mahabalipuram, in the Chingleput district.

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* *Present*:—Lords WATSON, HOBHOUSE, MACNAGHTEN, and MORRIS, and Sir RICHARD COUCH.

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Within the ambit of that village is the tract of land of the same name, having on its surface, besides stone quarries, the temples and rock-cuttings, called 'the Seven Pagodas.' The Government having, in 1886, taken proceedings to acquire the plot for public purposes under the Land Acquisition Act, 1870, the present appeals resulted, raising the questions whether any market-value was assignable to the antiquities, and whether the assessment of the compensation to be paid had proceeded on a right principle.

The Collector having, under section 9 of the Act, required all persons interested to appear and to state their respective interests, with the amount of their claims to compensation, the zamindar, now represented by his son and two nephews, claimed Rs. 9, Rs. 51 and Rs. 730 as compensation. Forty-two mirasidars asserted a right to payment in respect of the quarries, claiming Rs. 31 and Rs. 640. The dharmakarta of a temple claimed Rs. 14,000 as compensation in respect of two mandapams. The Collector, under sections 15 and 18, referred the question of compensation to the District Judge, who, with two assessors, took the evidence. It was agreed before him that the inquiry should be confined to determining the value of the acquisition. He found that the zamindar "Ramasami had in 1881 leased out the right to quarry "stone in a certain portion of the said rocks at Rs. 140 per "annum. He thought that for the right to quarry anywhere on "the said hills the rental might fairly be raised to Rs. 200, and "he was of opinion that twenty-five years' purchase would be a "proper price to pay, so he assessed the compensation payable in "respect of the said acquisition at Rs. 5,000, to which he added "Rs. 124 as. 15 as the value of the land not containing stone fit for "quarrying; and he accordingly awarded Rs. 5,124 as. 15 as the "compensation to be paid, the tribute or revenue being reduced, "as allowed by the Collector, by Rs. 12 as. 8 ps. 10 a year; and "he further directed that each party should bear his or their "own costs."

Both parties appealed from this, and the High Court increased this sum to Rs. 55,458. A Division Bench (WILKINSON and SHEPHARD, JJ.) supported the District Judge's opinion that the antiquities had no market-value, and that their acquisition by the Government would in no way injuriously affect either the property, or the earnings, of the claimants, and that, therefore, no

compensation could be awarded under this head of claim. The judgment of the senior Judge proceeded as follows :—

"It remains to consider whether the principle adopted by the "Judge in awarding compensation for the stone quarries is the "proper one. He capitalized the rent which, in his opinion, "would have been paid to the landlord by the stone-cutters, if "they had been allowed to quarry wherever they pleased, at "twenty-five years' purchase, and awarded Rs. 5,000. On ap- "peal, it is argued that the Judge should have ascertained the "annual net profit and have capitalized that at twenty-five years' "purchase.

"We are not here concerned only with the market-value of "land, but must also ascertain the damage, if any, sustained by "the persons interested in these stone quarries at the time of "awarding compensation, by reason of the acquisition injuriously "affecting their property or earnings (see section 24, Act X of "1870).

"In 1879 the zamindar granted a lease of the hills to certain "stone-cutters for five years at an annual rent of Rs. 140. There "is nothing on record to show that the zamindar ever obtained a "higher rent than this, or that he ever collected any dues or fees "from the stone-cutters. This is one of the items which has to "be taken into consideration in determining the amount of com- "pensation. I think it would be equitable to allow fifteen years' "purchase or Rs. 2,100 under this head.

"That the acquisition will injuriously affect the profits "derived from working the quarries cannot be denied. It is "argued that the Judge has sufficiently taken this into account. "The Judge has altogether omitted to notice the evidence on the "record as to the actual profits earned by the persons who work "the quarries. That there is a market for the stone at Mahabali- "puram is established by the evidence of the first, second, third "and seventh witnesses who have purchased stone there for the "erection of buildings in Madras. None of these witnesses pro- "duced any accounts, so that their evidence does not enable us to "arrive at any conclusion as to the amount they spent annually. "The agreements filed by the first witness show that in 1874 he "contracted for the supply of Rs. 537 worth of stone. If, as he "asserts, he has since then spent Rs. 10,000 in all, his annual

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"expenditure would be about Rs. 800. The evidence of seven-
"teenth and nineteenth witnesses as to the value of the stone,
"which a stone-cutter quarries annually, is of too vague and
"general a character to be of any use. The eighteenth witness
"is himself a quarryman. He puts down his monthly profit at
"Rs. 8 or 10. His annual profit would, therefore, amount to say
"Rs. 100. Accepting the evidence of the thirteenth, fourteenth
"and fifteenth witnesses that the profit is one-third of the cost
"of quarrying, the value of the stone quarried annually by the
"eighteenth witness, who may be taken as an average stone-cutter
"and a representative of the class, would amount to Rs. 300.
"The seventeenth and twentieth witnesses state that there are
"about forty-six persons in Mahabalipuram who earn their live-
"lihood by stone quarrying. The amount of profits of which the
"claimant would annually be deprived may, therefore, be set
"down at Rs. 4,600. There is nothing on the record to show
"that the supply of stone which commands a market-value is
"unlimited, and the market must always be a fluctuating one.
"Mahabalipuram is a long way from Madras, and, though there
"is a market, it does not appear to be a very lively one. Under
"these circumstances, I would allow ten times the annual loss or
"Rs. 46,000 for the damage sustained by the persons interested
"by reason of the acquisition injuriously affecting their property
"or earnings."

"In addition to this, there is the market-value of the land,
"*plus* the fifteen per cent. which has to be added under section 42.
"The total amount of compensation to be awarded will, there-
"fore, be Rs. 55,458-11-3. Appellants are entitled to their costs
"in the District Court and to proportionate costs of this appeal."

His colleague agreed in the above as to the antiquities, and also as to the amount to be awarded; but, in his opinion, no question arose as to loss of earnings for which compensation could be awarded, in regard to clause 3 of section 24. It was the market-value of the property taken, which alone the Court had to ascertain. With such materials as there were, the only way of ascertaining the value of the property acquired was to take the aggregate of the profits derived, and to capitalize it, at so many years' purchase.

The Secretary of State preferred the present appeal from the High Court's order on the ground that the compensation given

was excessive. The deceased zamindar's son and nephews were respondents, but Shanmugaraya Mudaliar alone appeared at the hearing. They preferred their cross-appeal, alleging the compensation to be insufficient. Neither the mirasidars, nor the dharmakarta, were respondents.

On this appeal Mr. *J. H. A. Branson* and Mr. *J. R. Paget*, for the appellant, argued that the compensation awarded by the High Court had not been calculated on the right basis. The order, so far as it increased the amount of compensation awarded by the Judge of Chingleput, should be set aside. The only question rightly raised was the market-value of the plot of land taken. Not adhering to this, the District Judge and the High Court, as their judgments stood, had awarded payment in respect of the earnings of persons not interested in the land, for the reason that the latter had made profits through work done upon it. Thus, as things now stood, the appellant would have to compensate two sets of parties, only one of whom was really interested in the land, in the sense that the Act contemplated, in respect of the same acquisition of land. The High Court should not have accepted as a ground for compensation the fact that persons had made profits by working the stone quarries. As to the principle on which the High Court ought to have acted in calculating the amount of compensation to be awarded, he referred to *Penny* v. *Penny*(1) and to Cripps on Compensation, 139. The Courts below had been right as to the non-valuation of the antiquities.

Mr. *J. D. Mayne*, for the respondent and cross-appellant, argued that the character, and extent, of the antiquities, the existence of which had led to the acquisition of the land by the Government, should have been regarded. He referred to the Imperial Gazetteer, Vol. VI, pp. 190–196, and to Fergusson's History of Architecture, mentioning the general classification of the temples, carvings, and excavations. He submitted that the Courts were wrong in holding that no money-value could be assigned to them as antiquities. They had some commercial value in that character. The Collector had not taken the ground that they had no such value. He had contended that they were the property of the general Hindu community; but that propo-

(1) L.R., 5 Eq., 227.

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sition could not be maintained. They were the property of the zamindar. They were the very objects of which the special value rendered the acquisition by the Government, for their preservation, a necessary undertaking. The valuation put upon them by one of the assessors, viz., Rs. 25,800 was a fair one, and should be affirmed. In regard to the amount allowed for the stone quarrying it was contended that it was inadequate, and that the valuation was based on an erroneous mode of calculation. The true mode was to estimate the market-value of the stone made available for use, and this value was its selling price, from which the cost of getting the stone had to be deducted. The sum arrived at in that way would not be less than that fixed by one of the assessors, viz., Rs. 1,13,000. Next it was argued that the High Court had been right in assessing the entire compensation due to every one who had an interest in the property as the mirasidars had, and that no question of title as between parties with conflicting interests could arise on this inquiry. Disputes as to the apportionment of the compensation could be the subject of proceedings other than the present under sections 37–39 of the Act. The respondents, as cross-appellants, should have the amount of compensation awarded by the High Court increased to Rs. 1,59,764. Fifteen per cent. on this amount was payable to the respondents on this account under section 42 of the Act.

Mr. *J. H. A. Branson* replied: Afterwards on the 18th of February their Lordships' judgment was delivered by Lord HOBHOUSE.

JUDGMENT.—These appeals arise from the circumstance that the Government of India is desirous of saving from destruction, and of preserving as public monuments, certain works in the vicinity of Madras known as the Seven Pagodas of Mahabalipuram. The works are on the open sea beach, and they are constructed out of a small extent of granite hill which lies exposed at that spot. They consist, partly of raths or monolithic temples completely disengaged from the hills, partly of caves cut into the living rock, and partly of figures carved upon its face. The place is very celebrated. Fergusson speaks of it as "more visited and more "described than any other place in India." One gigantic rock-carving he describes as "the most remarkable thing of its class in "India." He speaks of the raths as "the oldest examples of their

"class," and ascribes them to the fifth or sixth century A.D. Crole thinks they are several centuries older than that: perhaps belonging to the second century B.C. Whatever their origin, there is no doubt of their historical interest and value, or that the destruction of them would be a public misfortune.

The hills supply granite of good quality, for which there is some demand in Madras, and it has been quarried for many years past. No injury to the monuments was anticipated from the original style of working, but when the zamindar took to blasting the local authorities felt alarmed and advised the Government to interfere.

The zamindari belongs to a joint family who may be called the Mudaliars. In the year 1885 some negotiations for the purchase of the property took place between the Government and the then head of the family, who was willing to sell at a very moderate price; but those may be passed over, because the Government was advised that no satisfactory title could be procured in that way, and that it was better to proceed under the Land Acquisition Act X of 1870.

The notices required by that Act were given, and the matter came before the Sub-Collector of the district, who under the provisions of the Act (sections 15 and 18) referred the question to the District Court. The terms of the reference showed the properties which the Government sought to take, and the offer and claims made in respect of them. The Mudaliars claimed an exclusive right to the lands, and demanded upwards of 9½ lakhs of rupees as compensation. Another class of villagers, called mirasidars, denied that the Mudaliars had any right in the bulk of the lands, apparently those parts where granite could be quarried, and asserted their own exclusive right to them, and demanded upwards of Rs. 30,000. A priest or custodian of a temple was stated to claim a large compensation, but by his statement in the record he does not claim anything except leave to use the blocks called mandapams. The Sub-Collector offered Rs. 190-13-11 for the whole.

When the parties came before the District Judge, they agreed that the inquiry should be confined to determining the value of the property. Therefore nothing was then decided as between the rival claims of the zamindars and the mirasidars. The claims

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for compensation were reduced by the claimants' assessor to Rs. 25,800 for the temples and works of art, and Rs. 1,13,800 for the unquarried stone. For the carvings and temples the District Judge allowed nothing, as he found that they never had been, and never were likely to be, a source of any income. The claim for stone, reduced as it was, he considered to be still highly exorbitant. It was arrived at by estimating the contents of the hills at about 25 millions of cubic feet. Putting the value of 1 rupee on each 100 feet, as the claimants did, a much larger sum than Rs. 1,13,000 is brought out. How the claimants' assessor effected the reduction to the latter sum does not clearly appear. Nor is it of much importance to know, because no evidence was given to enable the Court to judge of the rate at which the stone was being carried to market, and no details serving to show what part of the market price should be attributed to the ownership of the stone, as distinguished from the labour bestowed on preparing it and carrying it to market.

The District Judge found that the only evidence available to him of the value of the ownership was a lease by which the zamindar had granted the right of quarrying over portions of the hills for five years at the rent of Rs. 140 a year. He found that at the same rate a right of quarrying over the whole area might command a rent of Rs. 200. On this sum he allowed twenty-five years' purchase, bringing out the sum of Rs. 5,000 as the value of the stone. A further sum of Rs. 124 as. 15 was added for some small plots, the price of which was not in dispute. It was also agreed that the zamindar's peshcush should be reduced, and that he should have liberty to remove the trees growing on the ground. The District Judge's award proceeded on these grounds, and further directed that each party should bear his own costs.

It is agreed that on the point of costs the award is erroneous, because the sum awarded exceeded the sum tendered by the Collector, and in that case the 33rd section of the Act directs that the costs shall be paid by the Collector.

It is also pointed out that the award does not give the additional 15 per cent. on the market-value, which is directed by section 42 of the Act to be paid by the Collector. It is a matter of very little importance, but according to the exact terms of the Act the award is only to ascertain the market-value, and then the

Act itself imposes a further obligation on the Collector to pay the 15 per cent. The effect is the same whether the award is silent about the added percentage, or expressly includes it as has been done by the High Court.

There is no reason to suppose that the award would not have been put into correct shape on application to the District Judge. But all parties were dissatisfied with the principle of his valuation. The Mudaliars appealed to the High Court, and the Government met their appeal by objections in which they adhered to the original offer of the Collector. No appeal was presented by the mirasidars. Their Lordships have been informed by the Counsel of the parties that in a subsequent proceeding it has decided that the claim of the mirasidars is not well founded.

The case was heard by Mr. Justice Wilkinson and Mr. Justice Shephard. As regards the temples and carvings, they both agreed with the District Judge that they have no market-value. It is highly improbable that they should have any. No evidence was offered to show that there is any; and Mr. Justice Wilkinson adds that the claimants' Counsel did not assist the Court by suggesting any price which might be offered as a fancy price. Their Lordships find themselves in a like position with the High Court, and all they can do is to express agreement with the Courts below on this point.

With respect to the stone, Mr. Justice Wilkinson thought that the District Judge had awarded too much in respect of the zamindar's rent. He thought that the basis of calculation should be the actual rent of Rs. 140 instead of the estimated rent of Rs. 200; and that instead of 25 years only 15 should be allowed. That cuts down the market-value to Rs. 2,100.

On the other hand, the same learned Judge held that the District Judge had erred in omitting to notice the evidence as to the actual profits earned by the persons who work the quarries. He refers to evidence showing that there are about 46 persons in the village who earn their livelihood by stone-quarrying; and calculating their annual profits at Rs. 100 apiece, he concludes that the amount of profits of which the claimants would annually be deprived may be set down at Rs. 4,600. On this amount he allows ten years' purchase, and so brings out a sum of Rs. 46,000, which he says is the damage sustained by the persons interested

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by reason of the acquisition injuriously affecting their property or earnings.

Mr. Justice Shephard agrees with his learned colleague as to the amount of compensation, but not in his reasoning. He says that no question arises with respect to loss of earnings under clause 3 of section 24 of the Act. But he adds that the only way of ascertaining the market-value is to take the aggregate of the profits or earnings derived from the land and to capitalize it.

By their decree the High Court altered the award of the District Judge by substituting the sum of Rs. 55,458–11–3 (which includes the additional 15 per cent.) for the sum of Rs. 5,124–15–0; and by ordering the respondent to pay the costs of the claimants in the District Courts; they also ordered him to pay a proportion of the costs in the High Court. From that decree the present appeals are brought.

It appears to their Lordships that the District Judge was right in estimating a rent for the whole of the lands instead of taking the rent actually received for part. It was the best, if not the only, method he had for getting at the market-value of the ownership. As regards the number of years' purchase, though it seems large, no reasons are given why it was fixed on, nor why the High Court took a much smaller period; and their Lordships see no cause for departing from the opinion of the District Judge, who had all the parties and their agents before him. They therefore agree with the District Judge as regards the value of the zamindar's interest calculated on the footing of the rental.

In estimating the price of the stone, it seems to them that the two learned Judges, though differing in language, have in effect followed the same principle. Each has included the earnings of the quarrymen, and the estimated loss of those earnings, as an element in the compensation. Whether they are included directly as earnings injuriously affected, according to one Judge, or indirectly as swelling the market-value, according to the other, the result is the same. Their Lordships are of opinion that an erroneous principle has been introduced by the High Court. No compensation is tendered by the Collector or ordered by the Act, except to persons interested in the land. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market-value of the

land. But no compensation is given to persons not interested in the land, on the ground that their earnings may be affected by the change of ownership, or indeed on any ground. The 46 quarrymen are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of the zamindar, who is interested. The market-value of a property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner; it may be expense to him. And the award of the High Court has the extraordinary result of putting a large sum into the pocket of the Mudaliars on the ground that some of their neighbours will be injured by losing their employment.

The conclusion is that the High Court have been mistaken in departing from the principles which the District Judge followed in assessing compensation, and that his award should in substance be reinstated. It will suffice if the decree of the High Court is varied by inserting the figures Rs. 5,124-15-0 instead of the figures Rs. 55,458-11-3, and with that variation affirmed. That will leave the original award as to market-value standing, and will also leave standing the directions of the High Court as to payment of costs. The Collector will, of course, have to pay 15 per cent. on the sum awarded according to the provisions of section 42 of the Act before he can make his title perfect. With respect to the costs of these appeals, their Lordships think it right that each party should bear his own. They will humbly advise Her Majesty in accordance with these opinions.

Appeal allowed; decree varied.

For the appellant—*The Solicitor*, India Office.

For the respondent—*Shanmugaraya Mudaliar*, Mr. *R. T. Tasker*.