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period of two years should be calculated backwards from the date of the presentation of the petition on which the adjudication is made.

[On the merits, their Lordships discussed the evidence and agreed with the learned District Judge that the sales were not *bona fide*.]

In the result the appeals fail and are dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Madhavan Nayar.

1926, September 16.

SENJA NAICKEN AND ANOTHER (APPELLANTS), PLAINTIFFS,

v.

SECRETARY OF STATE FOR INDIA (RESPONDENT), DEFENDANT.*

Land Acquisition Act (I of 1924), sec. 6 (1)—Contribution of one anna only, by Government towards acquisition—Validity of acquisition.

In the absence of proof that the acquisition of a particular land is brought about by improper motives or that the Land Acquisition Act is set in motion to annoy a private owner, the contribution of even one anna by the Government towards the compensation for the acquisition of a land for a public road (the rest of the amount required for the purpose being contributed by the villagers) satisfies the proviso to section 6 (1) of the Act which provides that no declaration of acquisition shall be made unless the compensation to be awarded is to be paid . . . wholly or *partly* out of the public revenue. *Ponnaia* v. *Secretary of State for India*, (1926) 51 M.L.J., 338, dissented from;

* Second Appeal No. 1755 of 1922.

Chatterton v. *Cave*, (1878) 3 App. Cas., 483 and *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*, (1891) I.L.R., 18 Calc., 99 (P.C.), distinguished.

SECOND APPEAL against the decree of the District Court of Salem in Appeal Suit No. 135 of 1921 preferred against the decree of the Principal District Munsif of Salem in Original Suit No. 20 of 1920.

The facts are given in the Judgment.

K. Ramanatha Shenoi for appellants.—Contribution of one anna, a trifling amount, towards the compensation amount, viz., Rs. 600, required for the purpose, does not satisfy section 6 (1) of the Land Acquisition Act. "Part" in that sub-section means a substantial part though not a major portion. It has been found in this case that the villagers wanted to acquire this land out of spite towards the owner. Under such circumstances it has been held that the acquisition is illegal; see *Ponnaia* v. *Secretary of State for India*(1). "Part" does not mean a "particle;" see *Chatterton* v. *Cave*(2). Unless the provisions of the Act are strictly complied with, the acquisition is illegal especially if there is improper motive; see *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*(3)

Government Pleader (*C. V. Anantakrishna Ayyar*) for respondent.—The finding is that the acquisition is required for a public purpose; and the declaration to that effect is conclusive. Even if the villagers were prompted by any other motive, that is irrelevant and immaterial, *Chatterton* v. *Cave*(2) dealt with the wording in the English Copyright Act, the considerations in which are different from those under the Land Acquisition Act. However small the amount contributed by the Government may be, it is a "part" of the compensation within section 6 (1) of the Act. The real ground of decision in *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*(3) being that if the provisions of the Act are not complied with, the acquisition is illegal, it is no authority for this case, in which all the provisions of the Act have been complied with. Hence *Ponnaia* v. *Secretary of State for India* (1) which relies on the above two cases is wrong. Supposing the amount of compensation is enhanced on appeal, the excess will have to be paid only by the Government and not by the villagers.

(1) (1926) 51 M.L.J., 338. (2) (1878) 3 App. Cas., 483.
(3) (1891) I.L.R., 18 Calc., 99 (P.C.).

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K. Ramanatha Shenoi replied.

This Appeal first coming on for hearing before Mr. Justice ODGERS and Mr. Justice VISWANATHA SASTRI, the Court delivered the following :—

JUDGMENT.

A similar question was under discussion in Appeal Suit No. 165 of 1923 before SPENCER and RAMESAM, JJ. (since reported as *Ponnaia* v. *Secretary of State for India* (1), and we feel that it is inexpedient that the question should be decided by us before we have had an opportunity of seeing the judgment which will shortly be delivered by the other Bench. We feel that it is also important to find out exactly how this sum of Rs. 926-7-6 was deposited by the ryots in this case ; was it deposited for the specific purpose of constructing this road and was it accepted as such or was there simply a credit to the General Revenues, of the amount? The form of the receipt granted to the ryots may be material and the way in which the money has been credited in the books of the Government officers. There will be a finding called for on the nature and terms of the deposit made by the ryots in this case and the District Judge will kindly deal with any evidence either already on record or additional as the parties may produce on this point. The finding will be submitted within six weeks and ten days will be allowed for filing objections.

[In pursuance of this Order, the District Judge submitted a finding, the effect of which is given in the Judgment of ODGERS, J., *infra*.]

This Second Appeal coming on for final hearing after the return of the finding of the Lower Appellate Court upon the issue referred by the High Court for trial, on Thursday 19th August 1926, and having stood over till

(1) (1926) 51 M.L.J., 338.

this day for consideration, the Court delivered the following:—

JUDGMENT.

ODGERS, J.

ODGERS, J.—This was a suit by two inhabitants of Thidavoor, Athur Taluk, Salem District, against the Secretary of State, for a declaration that certain notifications and subsequent proceedings taken by the Government officials under the Land Acquisition Act are illegal and *ultra vires*. The Plaintiffs are the owners of the property in question which was acquired for the purpose of forming a road by a Government notification, dated 14th September 1918. The learned District Munsif dismissed the suit. On appeal to the learned Judge the same result was reached. It appears that the cost of the road was defrayed by private contributions and that the Government added the sum of one anna from public revenue. When the Second Appeal first came on before Mr. Justice VISVANATHA SASTRI, and myself we found that a similar question as to whether the provisions of section 6, clause (1) had been complied with was under discussion in Appeal No. 165 of 1923 before SPENCER and RAMESAM, JJ. (since reported as *Ponnaia* v. *Secretary of State for India* (1)). We therefore deferred our decision on the question but sent the case down for a finding as to how the contributions were deposited by the ryots in order that we might discover whether that money could be fairly termed public revenue or not. The learned District Judge, now Justice WALLACE, in the Lower Appellate Court had held that the compensation awarded was at the time of the award "public revenue" and that as soon as the public agency had applied the private funds for public purposes, private ownership in these funds ceased and they became public revenues.

(1) (1926) 51 M.L.J., 338.

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The finding called for has now been returned and it is to the effect that the contributions were accepted as such by the Government and kept as separate deposit for the purpose of constructing the road. It therefore seems to me that the contributions cannot be said to be public funds as they were never merged in the general funds of the public.

However that does not decide the matter. It is admitted that the Government contributed one anna to the cost and the question is whether this satisfies the requirement that the compensation was paid wholly or partly out of public revenues (see Exhibit II). We have now the advantage of the judgment of SPENCER and RAMESAM, JJ., and they held that the condition in the section is not satisfied by the payment of one anna. The question is can this decision be accepted by us? The learned Judges seem to apprehend that if a small contribution were deemed to satisfy the section, it may be a mere device for private persons to employ the Act for private ends or for the gratification of private spite or malice. I think it fair to assume that the Government by whom the acquisition has to be made would not knowingly or willingly lend itself to any such acquisition or employment of the Act and in this particular case the Collector of Salem in his proceedings, dated 12th July 1916, Exhibit A, found there was no objection to the construction of a road through this land provided the people concerned contributed the cost. Now the learned Judges in the case referred to held that the words "partly out of public revenues" was not satisfied by the contribution of a particle, for which they relied on *Chatterton* v. *Cave*(1). This case will have to be examined in some detail as the whole of the

(1) (1878) 3 App. Cas., 483.

ratio decindendi of the learned Judges appears to rest on this and possibly on one other case which they cite at the end of their final judgment after a finding had been returned, namely *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*(1). *Chatterton* v. *Cave*(2) was a case of infringement of copyright where two plays had been separately adapted from a common source by the parties to the litigation. The matter was left to the Lord CHIEF JUSTICE, COLERIDGE, and he found that

"the extent to which the one was taken from the other was so slight and the effect on the total composition was so small that there was no substantial and material taking of any one portion of the defendant's drama from any portion of the plaintiff's."

It is there that the distinction between "part" and "particle" is made. Lord O'HAGAN at page 497 says,

"No doubt any scene or point or incident or line or word in a drama is part of it; and no doubt it is the duty of a court of construction to carry out the plain intention of the legislature strictly even though it may not approve of them as sound in principle or wise in policy or just in operation. But we should scrutinize carefully the terms of a statute before we lend ourselves to administer it with ill results and see whether it forces us inevitably to produce them."

He then goes on to apply the same construction to the statute giving copyright in dramatic productions as those which afford protection to copyright in books and to hold that to render a writer liable for literary piracy he must be shown to have taken a material portion of the publication of another. He observes that the question in every case must be one of fact:

"Part" is not necessarily the same as "particle" and there may be a taking so minute in its extent and so trifling in its nature as not to incur the statutory liability."

With great deference I gravely doubt whether the analogy of a question of copyright can be applied to a

(1) (1891) I.L.R., 18 Calc., 99 (P.C.). (2) (1878) 3 App. Cas., 483.

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matter under the Land Acquisition Act. I invited the learned Advocate for the appellant to say where a "particle" would end and "part" begin of this sum of Rs. 600. It is true an anna is a very small part of Rs. 600. But nevertheless it is a part. It is not to be forgotten that their Lordships in the case considered above were not dealing with an original subject at all. Admittedly both of the litigants had derived their compositions from a common source and it stands to reason that before you can compel a man to pay damages for stealing the product of your brain, time and labour, you must be able to point out that any resemblance between his production and yours is not merely accidental but is a designed theft of the product of your brain. Otherwise as their Lordships point out one might go to the absurdity of objecting to a man using the same words though in a different collocation as you have done. As their Lordships say it is a question of fact as to how much similarity will establish the fact of this theft, it seems to me that this case has no resemblance to the question of money whether any amount however small is a definite proportion of the whole.

The other case *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*(1) involves the question of the power of a guardian. There a guardian acting in a dual capacity as guardian of the minor Maharaja and Chairman of the Municipality gave up a part of his ward's property to the Municipality for the nominal compensation of Rupee one. It was held that no valid title to the land was established against the ward, as the guardian did not act in the interests of the minor. That case in my opinion has nothing whatever to do with the

(1) (1891) I.L.R., 18 Calc., 99 (P.C.).

present. Had there been evidence that this acquisition had been brought about by any indirect motive or that the Act had been set in motion in order to annoy the owner, one would have felt very loath to say that the acquisition was right and proper. But the Collector seems to have considered the matter carefully and there is no evidence before us of any improper motive on the part of those who desired that the path should be made. It cannot of course be argued that the land was not acquired for a necessary purpose because that once the notification has been made it is to be presumed that the purpose is necessary.

There is one other consideration which I think operates in favour of the view I have taken. Suppose on appeal the compensation had been enhanced. There is no doubt that the Government would have to defray the extra sum out of the public revenues and having once undertaken the acquisition they could not call on the constituents again.

For all these considerations I am therefore of opinion that with respect the decision in Appeal No. 165 of 1923 [*Ponnaia* v. *Secretary of State for India*(1)] cannot be followed. I would therefore hold that the contribution of one anna does satisfy the proviso in section 6, clause (1) of the Land Acquisition Act. In the result the Second Appeal fails and must be dismissed with costs.

MADHAVAN NAYAR, J.—I have had the advantage of reading my learned brother's judgment with which I agree.

The facts of the case need not be re-stated. Section 6, clause (1) of the Land Acquisition Act provides that when it appears to the Local Government that any particular land is needed for a public purpose, a declaration

(1) (1926) 51 M.L.J., 338.

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shall be made to that effect by a prescribed officer of the Government. This clause is subject to the proviso that "no such declaration shall be made unless the compensation to be awarded for such property is to be paid . . . wholly or partly out of public revenues or some fund controlled or managed by a local authority." In this case we are concerned with the question as to how far a declaration is valid if the Government contributes towards the payment of compensation for a piece of land acquired under the Act only one anna out of the public revenue, the remainder being paid by private contributions; in other words, can it be said that in such circumstances, compensation has been paid partly out of the public revenue within the meaning of the proviso and consequently the declaration made under section 6, clause (1) is valid?

It is argued for the appellants that in order to constitute a payment, payment partly out of public revenue, the part of the compensation paid from the public revenue must be a substantial sum and not merely such a small sum as one anna. On the other hand, it is contended for the Government that the requirement of the proviso that the compensation is to be paid partly out of public revenue is complied with if some part of the compensation however small it may be, is paid out of the public funds.

The appellants' argument is supported by the decision of SPENCER and RAMESAM, JJ., in Appeal No. 165 of 1923 [*Ponnaia* v. *Secretary of State for India* (1)] in which the learned Judges held that the requirement of the proviso above referred to was not satisfied by the contribution of a "particle," viz., one anna, as in the present case. With due deference I am

(1) (1926) 51 M.L.J., 338.

not able to agree with this view. In the course of the judgments, reference is made to two cases, namely, *Chatterton* v. *Cave* (1) and *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*(2) in support of their conclusion. For the reasons given by my learned brother I agree with him in thinking that the decision in *Chatterton* v. *Cave* (1), which, dealing with the question of the infringement of copyright held that there cannot be a violation of 3 and 4 Will 4, c. 15, s. 2, where the matter or thing taken from the first work and introduced into the second is not material and substantial, cannot afford any guidance in solving the present question, as the considerations involved in the two cases are totally different. The decision in *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*(2) is also not of much use. In that case the guardian of the estate of a minor Maharaja who was also the Chairman of the Municipality made over a part of the minor's property to the Municipality for the compensation of the nominal sum of one rupee. At the instance of the Maharaja, the Privy Council set aside the acquisition of the land mainly on the ground that the procedure set forth in the Land Acquisition Act was not complied with in acquiring the land. After referring to sections 11 and 13 of the Act, their Lordships of the Privy Council observe as follows :—

"On a day fixed the Collector who, after the declaration is by section 7 to make order for the acquisition of the land, is to proceed to inquire summarily into the value of the land, and to determine the amount of compensation which, in his opinion, should be allowed for it, and to tender such amount, to the persons interested. And in determining the amount of compensation he is ordered to take into consideration the matters mentioned in section 24 one of which is the market value, at the time of awarding compensation of the land. It is obvious

(1) (1878) 3 App. Cas., 483. (2) (1891) I.L.R., 18 Calc., 99 (P.C.).

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that the offer of one rupee compensation was not in accordance with the duty of the Collector under these sections, and it would be altogether wrong to treat one rupee as the amount of compensation determined under section 13. Section 14 says that if the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same. This was never done."

Later on, the ground for declaring the acquisition invalid is more pointedly stated by their Lordships in this way:

"Although the Court of Wards had not power to alienate the land for the purpose for which it was required, possession might have been lawfully taken of it if the provisions of the Land Acquisition Act had been complied with. But they were not. The Collector made no inquiry into the value of the land. He was the Chairman of the Municipality, and his sole object appears to have been to benefit the town, forgetting that, as the representative of the Court of Wards, it was his duty to protect the interest of the minor, and to see that the provisions of the Act were complied with."

These extracts make it abundantly clear that the acquisition in that case was set aside not on the ground that the compensation paid was only one rupee but that in determining the amount of compensation the provisions of the Act were not complied with. The learned Judges (SPENCER and RAMESAM, JJ.) seem to be of the opinion that if the words of the statute are not construed in the way they suggest, then

"the owners should be deprived of their ownership by a mere device of private persons employing the Act for private ends or for the gratification of private spite or malice."

I don't think that this result would follow. It may be assumed that the Government will not improperly employ the Act to enable an individual to satisfy his private ends. In this case there is no evidence that the Collector has been prompted to make the acquisition by any indirect motive. The evidence shows that the Collector considered the matter carefully and found

that there was no objection to the acquisition of the land in question provided the people concerned contributed the cost.

The consideration pointed out by my learned brother that if on appeal the compensation is enhanced the Government would have to defray the extra amount from out of the public revenues is also in favour of the view that we are taking in this case.

It is true that one anna is a small part of Rs. 600, still it cannot be denied that it is part of that amount. If one anna is not to be considered as a part of the amount for the purposes of this proviso, then how are we to find what portion of it will form a part of it to satisfy the meaning of the words in question in the proviso? If the Legislature intended that a *substantial portion* of the compensation should be paid out of the public revenue, then it would have used appropriate language to convey that idea.

For the above reasons I agree with my learned brother that the contribution of one anna out of the public revenue for the payment of the compensation satisfied the proviso in section 6, clause (1) of the Land Acquisition Act.

The Second Appeal must therefore be dismissed with costs.

N.R.