

## APPELLATE CIVIL.

*Before Mr. Justice Anantakrishna Ayyar.*

1929,  
April 19.

BRAHMANANDAM, APPELLANT,

v.

SECRETARY OF STATE FOR INDIA AND ANOTHER,  
RESPONDENTS.\*

*Indian Court Fees Act (VII of 1870), sec. 8—Court-fee payable on an appeal for additional compensation under Land Acquisition Act (I of 1894).*

In an appeal to the High Court under the Land Acquisition Act claiming additional compensation, the court-fee payable under section 8 of the Court Fees Act on the appeal is not merely on the additional amount claimed in the appeal but also on the 15 per cent payable thereon in case of success.

APPEAL sought to be preferred against the decree of the Court of the Subordinate Judge, Ellore, in C.C. No. 15 of 1926 in O.P. No. 24 of 1926.

*V. Vijanna* for appellant.—Amount of compensation awarded is determined by the considerations mentioned in clauses (i) to (vi) of section 23 (1) of the Land Acquisition Act and not by reference to section 23 (2) also which deals with the 15 per cent, which is only a solatium for the compulsory nature of the acquisition. Hence the same expression and also the expression “amount claimed” in section 8 of the Court Fees Act should be interpreted so as not to include the 15 per cent; see *The Secretary of State for India in Council v. Shanmugaraya Mudaliar*(1).

*Government Pleader (P. Venkataramana Rao)* for the respondents.—Several sections in the Land Acquisition Act (e.g.), 11, 13, 15, 23, 24 and 31 speak of the amount of compensation determinable and determined as including the 15 per cent. Section 15 enacts that the amount of compensation

\* Stamp Register No. 17672 of 1928.

(1) (1893) I.L.R. 16 Mad., 389.

awardable shall be determined according to sections 23 and 24 which includes section 23 (2) under which, the 15 per cent is added. The case quoted by the appellant was under the old Act X of 1870, under which, the 15 per cent was awarded under a separate section. See also Stamp Register No. 9324 of 1923 and *Mahomed Ali Anjad Khan v. Secretary of State for India*(1).

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### JUDGMENT.

The question that has been referred to me is whether an appellant whose lands were acquired under the Land Acquisition Act (I of 1894), but who, being dissatisfied with the amount of compensation awarded to him by the Court on a reference made to it under section 18 of the Act, appeals to the High Court, is bound to include in the valuation of his appeal the amount of 15 per cent of the excess market value, and pay court fee thereon, or whether he is entitled to value his appeal only at the excess market value claimed by him and pay court fee on that amount only, while insisting in case of success in the appeal that he should be decreed not only the excess market value claimed by him but also 15 per cent on the same.

The answer to this question turns on the proper construction to be placed on section 8 of the Court Fees Act. Section 8 runs in these terms:—

“The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.”

It was argued on behalf of the appellant that, under section 23, sub-section (1) of the Land Acquisition Act, the amount of compensation to be awarded is determined

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(1) (1903) I.L.R., 30 Calc., 501.

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by the considerations mentioned in clauses (i) to (vi) of the section and that in construing section 8 of the Court Fees Act, the expression "the amount awarded" should be taken to cover only the amount awarded, having regard to the considerations mentioned in clauses (i) to (vi) only of section 23, and that the expression, "amount claimed", in section 8 should also receive a similar construction. I am unable to accede to that contention. Under the Land Acquisition Act, it is the amount of compensation that should be allowed for the land that has to be determined; and in determining the amount of compensation the Court has to take into consideration not only the provisions of clauses (i) to (vi) of section 23, sub-section (1), but also the provisions of sub-section (2) of that section. Sub-section (2) of section 23 expressly enacts:—

"In addition to the market value of the land as above provided, the Court shall in every case award a sum of 15 per centum on such market value, in consideration of the compulsory nature of the acquisition."

As I understand the Act, the amount of compensation to be awarded includes not only the market value, but also the 15 per cent on such market value. A reference to the other sections of the Land Acquisition Act, in my opinion, makes this clear. Under section 11, the Collector shall make an award of the compensation which in his opinion should be allowed for the land, and also "the apportionment of the said compensation among the claimants." Again, under section 31, "the Collector shall tender payment of the compensation awarded by him to the persons interested;" and if they did not consent to receive it,

"the Collector shall deposit the amount of compensation in the Court to which a reference under section 18 would be submitted."

It is clear that the expression "amount of compensation awarded by the Collector" in section 31 includes not only the market value but also the 15 per cent thereon, since it is clear that the Collector is bound to tender to the claimants the said 15 per cent also and to deposit the same in Court, if the claimants did not consent to receive the same. Again, section 15 of the Act enacts that

"in determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24,"

that is, not only by the provisions of sub-section (1), clauses (i) to (vi) of section 23, but also by sub-section (2) of section 23.

It seems to me to be clear that the extra amount of compensation claimed by the appellant in an appeal should under section 8 of the Court Fees Act include also the 15 per cent of the market value and that he should pay court fees on the total amount including the 15 per cent. He cannot, it seems to me, value his appeal only at the excess market value claimed by him in the appeal, and at the same time in case of success, not only claim to have that excess market value decreed to him but also claim that the appellate decree should automatically give him an additional 15 per cent of the said excess market value. An appeal is different from the claim put forward by him before the Collector. When once the Court, on a reference to it under section 18 of the Land Acquisition Act, determines the amount of compensation to be awarded for the land acquired, the claimant, if dissatisfied with the amount of compensation so awarded by the Court, should, in case he prefers an appeal, value his appeal at the figure which represents the difference between the amount of compensation awarded to him and the amount of

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compensation that he claims in the appeal. The amount of compensation awarded to him includes, in my view, the 15 per cent also of the market value, and the extra amount of compensation that he claims in the appeal should also include the 15 per cent of the excess market value which he claims in the appeal.

Of course it is open to an appellant in a land acquisition appeal, as in any other appeal in which he claims a sum of money from the other side, to give up a portion of his claim and confine his claim to any particular amount to which he may restrict his claim in appeal. In such cases, he is of course bound to pay court fee only on the amount to which he has so confined his claim in the appeal; but in such a case, in the event of success in his appeal, the decree of the appellate Court should award only the amount claimed by him in the appeal, and not more. *Mahomed Ali Anjad Khan v. Secretary of State for India*(1). In the case before me, the appellant, while valuing his appeal at the extra market value only, claims in the event of success an extra 15 per cent also. To entitle him to do so, I think, on a proper construction of section 7 of the Court Fees Act, that he is bound to include in the valuation of his appeal the extra 15 per cent also and pay the court fee due on the total amount.

No reported decision on the exact point that I have to decide now has been brought to my notice either by the learned Advocate for the appellant or by the learned Government Pleader. The appellant, however, relied on the observations of the Privy Council in the *Mahabhalipuram Land Acquisition case, The Secretary of State for India in Council v. Shanmugaraya Mudaliar*(2). The observations relied on are at pages 376,

(1) (1903) I.L.R., 30 Calc., 501.

(2) (1893) I.L.R., 16 Mad., 369.

377 and 379. I am of opinion that the observations relied on by the appellant do not really help me in the decision of the present question. The Privy Council had not to decide any question as to the proper amount of court fee payable in a land acquisition appeal. The decision itself was passed under the provisions of the Land Acquisition Act (X of 1870).

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The learned Government Pleader drew my attention to sections 11, 13 and 24 of the old Act of 1870 and also to sections 11, 15 and 23 of the present Act. Sub-section (2) of section 23 of the present Act (I of 1894) does not find a place in section 24 of Act X of 1870. On the other hand, section 42 of the old Act provided as follows:—

“In addition to the amount of any compensation awarded under part 2 or part 3 of this Act, the Collector shall in consideration of the compulsory nature of the acquisition pay 15 per centum on the market value mentioned in section 24.”

The observations of the Privy Council relied on by the learned Advocate for the appellant were made with reference to the provisions of section 42 of the old Act, and as already mentioned, do not help me in deciding the question of court fee now referred to me. I may note that in cases of appeals by the Government in Land Acquisition cases, it has been held in S.R. No. 9324 of 1923 that the Government should pay *ad valorem* court fee on the amount of compensation decreed to the claimant to which objection is taken in appeal.

For the above reasons, I have come to the conclusion that the appellant in the present appeal, in case he wishes to have the 15 per cent also included in the appellate decree in case of his success, is bound to include the said 15 per cent also in the valuation of his appeal and pay court fee on the total amount.

I answer the question referred to me accordingly, and give leave to the appellant to amend the valuation

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given in the appeal memorandum, should he elect to do so, and pay court fee thereon within one week after reopening of the High Court in July 1929.

N.R.

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APPELLATE CIVIL.

*Before Mr. Justice Anantakrishna Ayyar.*

1929,  
Aug. 15.

ONTHATH SABJU SAHIB (DEFENDANT), APPELLANT,

v.

THE MALABAR DISTRICT BOARD (PLAINTIFF),  
RESPONDENT.\*

*Malabar Compensation for Tenants' Improvements Act (I of 1900)*  
—Lease by President of District Board of roadside poramboke lands—Lease providing that lessee should vacate land, when required, without claiming any compensation for any improvements—Notice to quit—Construction of substantial building on land by lessee—Claim by lessee for compensation for building, whether can be made under the Act—Roadside poramboke lands, whether included under the Act for purposes of compensation.

Where the District Board of Malabar leased certain lands forming roadside poramboke to a lessee under an express condition that he should quit the lands, when required, without claiming any compensation for improvements of any sort made by him thereon, and the lessee, on being required to quit, claimed compensation for a substantial building erected thereon by him, under the Malabar Compensation for Tenants' Improvements Act;

*Held*, that the Act applied only to leases of agricultural holdings or building sites, and not to leases of roadside poramboke lands; and that, consequently, the lessee could not claim any compensation under the Act.

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\* Second Appeal No. 614 of 1928.