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February 21.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

KHAIRATI LAL (PETITIONER) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY.)*

Act X of 1870 (*Land Acquisition Act*), *s.* 55—*Part of property acquired for public purposes—Owner desiring that the whole shall be acquired—Right of owner not restricted to small or confined areas—Convenience of owner not the test.*

The Local Government having appropriated for public purposes under the Land Acquisition Act (X of 1870) some of the out-houses attached to a dwelling-house, and part of the compound in which they were situate, without taking the house with its other out-houses or appurtenances or the rest of the compound, the owner objected, under s. 55 of the Act, that the Government should take the whole of such property or none.

Held, applying to s. 55 the interpretation placed by the Courts in England upon the corresponding s. 92 of the Land Clauses Consolidation Act (8 & 9 Vic., c. 18), that the section was applicable, and the objection must be allowed. *Grosvenor* v. *The Hampstead Junction Railway Company* (1), *Cole* v. *The West London and Crystal Palace Railway Company* (2), and *King* v. *The Wycombe Railway Company* (3) referred to.

Held also that the rule was not in England restricted to small or confined areas, and that the test was not whether the part appropriated could be severed from the rest of the property without inconvenience to the owner.

THIS appeal arose out of a reference by the Collector of Meerut to the District Judge, under s. 15 of the Land Acquisition Act (X of 1870).

Certain buildings were appropriated by Government for the purposes of a railway line, in the city of Meerut. The buildings formed out-houses of a bungalow in cantonments, standing upon land the property admittedly of the Cantonment Committee.

The compensation offered by the Collector was at one time Rs. 825, at another, Rs. 1,717, calculated exclusive of the 15 per cent. to be paid under s. 42 of the Act. The owner declined this offer, claiming—

(1). With reference to s. 55 of the Act, that Government should appropriate the whole of the buildings appertaining to the bungalow,

* First Appeal No. 163 of 1887 from a decree of A. Sells, Esq., District Judge of Meerut, dated the 27th June, 1887.

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including the bungalow itself, and setting the total value at Rs. 35,672-15.

(2). That, in the event of the liability of Government to take the whole not being conceded by the Court, the owner was entitled to a sufficient sum to enable him to erect the buildings anew, and any other amounts that might be held due under s. 24.

On the 11th May, 1887, the District Judge passed the following order :—

"The land which has been appropriated, 3 bighas 18 biswas 12 biswansis in extent, forms a portion of a large compound, attached to a house within cantonment limits, the land is cantonment land admittedly, and the ownership of it vests in the Cantonment Committee. All that belongs to the claimant is the buildings upon the land, comprising a pucka house with its appurtenant out-houses. The appropriation does not interfere with the house itself, this is left at some 25 yards beyond the boundary of the appropriated land, but includes a portion of the cook-room, the sweeper's house, stables, latrines, some tiled servants' houses, and a small portion of the garden, and also an old tomb.

"For the claimant it is contended that the whole of the buildings, including of course the main residence, must be taken. It is urged that, in accordance with rulings of the English Courts (s. 92 of the English Act being parallel with s. 55 of Act X of 1870), the appropriation as made by the Collector, is the appropriation of 'part' only of a 'house', and that accordingly, the owner wishing it, Government is bound to take the whole of the buildings or none at all. Special stress is laid upon the Court's remarks in the case of *King* v. *The Wycombe Railway Co.* (1) (quoted at p. 47 of Ingram's Law of Compensation), in the case of the *Government of St. Thomas' Hospital* v. *Charing Cross Railway Co.* (quoted as above), and upon the authority also of English Judges, it is urged that the 'test' to be applied, in order to decide whether these buildings are or are not "part" of the house, is whether the portions acquired would pass on a conveyance of the house as part of the appurten-

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ances. Now, deciding strictly in accordance with the letter of this test, unquestionably the buildings now appropriated would form 'part' of the house. But it must be borne in mind that the circumstances of property of this description are different in India from those of property of the same kind in England, and especially that in the present case, the land itself is not the claimant's property. In England, such properties are, as a rule, very limited in extent; they are compact, and, as a rule, all available apace is utilized for some special purpose, and the taking of any particular portion may be presumed under such conditions to place the owner in difficulty, or put him to great inconvenience; and in many cases, in England, another test appears to have been applied, *viz.*, whether the plot or building to be appropriated is essential to the convenient occupation of the house, or whether, without great inconvenience to the owner of the house, it can be severed from the remainder. Unquestionably the stables and cook-houses and servants' huts are essential to the convenience of the occupant of the house; but I am of opinion that this fact would not necessarily make it incumbent upon Government to appropriate the whole of the buildings in the compound, unless it is shown that these could not *without inconvenience* be erected elsewhere. These buildings are of small value as compared with the main residence, and are usually of a kind readily demolished and as readily replaced—and here also the peculiar conditions of the claimant's occupation of the land are entitled to consideration. The land is not his own, it is simply a temporary loan as it were from Government, given for the purposes of building a residence, and so long as *without inconvenience* the buildings appropriated can be replaced by fresh buildings upon other sites, I am of opinion that the owner cannot force the appropriation of the whole. Now, the enclosure or compound is of very large extent, and a large portion of it would seem to have been invariably let out for cultivation. The area of 17 bighas is far beyond the requirements of any bungalow, and is far beyond that of the majority of compounds in Meerut, or any other station. This large area cannot certainly be considered as a necessary adjunct to the house, or as necessary for the convenience even of the occupant, and there is

ample space available within the area for the construction of the outhouses now proposed for removal. I have myself visited the place, and am certainly of opinion that the removal and re-erection of the buildings in another part of the compound would in no way inflict a hardship upon the owner, and I accordingly hold it is not incumbent upon the Government to appropriate the whole of the buildings within the area of the 17 bighas; and that s. 55 of Act X does not bar this partial appropriation, so long as adequate compensation is paid so as to enable the buildings to be reconstructed in another part of the enclosure."

The District Judge proceeded to assess the compensation due to the claimant in respect of such buildings only as were situate upon the area originally appropriated, at the sum of Rs. 2,590 plus 15 per cent. on the market value payable under s. 42 of the Act, with interest on the whole amount decreed at the rate of 6 per cent. from the date of appropriation, under the same section.

The claimant appealed to the High Court, on the ground *(inter alia)* that, with reference to s. 55 of Act X of 1870, he was entitled to require that the whole of the property in question should be taken, and compensation awarded to him in respect thereof.

The Hon. *T. Conlan* and Mr. *G. T. Spankie* for the appellant.

Munshi *Ram Prasad*, for the respondent.

EDGE, C. J. and TYRRELL, J.—This was a case under the Land Acquisition Act (X of 1870) which was referred by the Collector to the Judge of Meerut. The Government took some of the out-offices and some of the land in the appellant's compound for public purposes. The appellant had objected under s. 55 of that Act that the Government must take the whole or none. As a matter of fact, the Government pulled down some of the out-offices, cut down some of the trees, and appropriated some of the land. The Judge of Meerut, assessing the compensation to be given to the appellant, came to the conclusion that the case did not fall within s. 55 of the Act. We are perfectly satisfied that the correct interpretation of s. 55 is the same as the interpretation that has been put on the corres-

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ponding s. 92 of the Land Clauses Consolidation Act; and that in this case, for instance, the appellant objecting, the Government could not take under the compulsory powers of the Act the out-offices or that portion of the compound which they did take, unless they took the whole: that is to say, the house with its other out-offices and appurtenances and its compound, so far as the compound was the compound of the house. Several English authorities on the point have been quoted, among them the following:—*Grosvenor* v. *The Hampstead Junction Railway Company* (1), *Cole* v. *The West London and Crystal Palace Railway Company* (2) and *King* v. *The Wycombe Railway Company* (3).

The Judge of Meerut was quite wrong in supposing that the English Courts in putting the interpretation which they did upon s. 92 of the Land Clauses Consolidation Act were dealing only with small or confined areas. The convenience of the proprietor is not the test. The proprietor is entitled to stand upon his rights and say, 'You shall not apply your compulsory powers at all, unless you take the whole of my house.' Under these circumstances we allow the appeal and remand the case to the Judge, directing him to assess the compensation on the whole property in question. In doing so he will ascertain, as far as possible, what the market value of the property was at the time it was taken, deducting of course Rs. 32, the value of the trees taken by the appellant; and he will, on that market value, add 15 per cent. for compulsory sale. We allow the appeal with costs, which will be allowed by the Judge in finally deciding and making his award.

Appeal allowed.

(1) 26 L. J., N. S. Ch. 731. (2) 28 L. J., Ch. 767. (3) 29 L. J., Ch. 462.