APPELLATE CIVIL.

1926 March, 16.

Before Mr. Justice Mukerji and Mr. Justice Boys.

THE COLLECTOR OF BAREILLY (OPPOSITE PARTY) v. SULTAN AHMAD KHAN (OBJECTOR).*

Act No. I of 1894 (*Land Acquisition Act*), *section* 23, *sub-section* (2)—*Method of assessment of valuation*—*Revenue-free land*—"*Land*"—*Trees*—*Wells*.

Held (1) that 40 years' purchase was not too high a valuation for perpetual revenue-free land in the district of Bareilly, and (2) that the 15 per cent. allowable under sub-section (2) of section 23 of the Land Acquisition Act, 1924, is to be calculated on the value of the trees and wells as well as of the land on which they stand. *Krishna Bai* v. *The Secretary of State for India in Council* (1) and *Sub-Collector of Godavari* v. *Seragam Subbaroyadu* (2), followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Mr. *G. W. Dillon*, for the appellant.

Maulvi *Mukhtar Ahmad* and Maulvi *Muhammad Abdul Aziz*, for the respondent.

MUKERJI, J.—This is an appeal by the Collector of Bareilly in a land acquisition case. The land acquired was a perpetual revenue-free land, and one of the questions raised was at how many years' purchase the value should be assessed. The profits found were Rs. 42 a year and the learned District Judge allowed forty years' purchase.

The first ground of appeal is that this is too much. We are of opinion that it is not and we are fortified in our view by the judgement of this Court delivered by another Bench in the connected appeal No. 430 of 1922.

* First Appeal No. 431 of 1922, from a decree of H. N. Wright, District Judge of Bareilly, dated the 24th of June, 1922.

(1) (1920) I.L.R., 42 All., 555. (2) (1906) I.L.R., 30 Mad., 151.

The next point argued is that the 15 per cent. awarded by the learned District Judge should not have been awarded on the value of trees. It is argued that under section 23, sub-section (2) of the Land Acquisition Act the 15 per cent. is to be awarded on the market value of the land. But under the definition of the land as given in the Act itself the land would include trees standing thereon. We therefore do not see why the value of the trees should be excluded in calculating the 15 per cent. allowed by the statute. This view of ours is supported by *Krishna Bai* v. *The Secretary of State for India in Council* (1), and *Sub-Collector of Godavari* v. *Seragam Sub-Varoyadu* (2). We may point out that what is awarded under clause 2 of sub-section (2) of section 23 is not the value of trees but compensation for the taking away of trees. This means that in addition to the present market value of the land and trees to be awarded by the Collector, he has to award something for the potential value of the trees taken away. It is on this potential value that the 15 per cent. is not to be allowed. We have not got before us any figure which shows that anything has been awarded for the potential value of trees. We understand that the figure that is awarded for the trees is the present market value of them.

Mukerji, J.

The next point urged is that the 15 per cent. compensation for a compulsory acquisition should not have been awarded for the wells. We take it that the wells go with the land and therefore the value of the wells should be added to the value of the land, as apart from the wells. In this view the 15 per cent. should be allowed for wells as well. The Judge was therefore right in calculating the 15 per cent. on the

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entire value of the three figures shown at page 6 of the printed record.

BOYS, J.—It appears to me that the unfounded contentions raised here for the Crown that the learned District Judge had allowed 15 per cent. twice over on the wells and should not have allowed it at all on the trees have only been rendered possible by the way in which the account has been stated in the order of the learned District Judge.

"Land" as defined in section 3 (*a*) of the Land Acquisition Act includes wells and trees, etc., and if one total market value is shown for it as provided for by section 23, item "*first*," i.e., "market value of land under section 23, item "*first*," Act I of 1894," with separate items going to make the total, i.e., "land under section 20, Circular I-A-VIII;" "wells under section 24 ditto;" "trees under section 98 ditto," etc., no confusion can arise and much of the time of this Court would have been saved, for it would have been impossible to raise the contentions with which we have had to deal.

"Damage", if any, for taking trees under section 23, item "*second*," would similarly appear as an item altogether independent of the market value of the land and of the "value" of the trees as part of the market value of the land.

BY THE COURT.—The result is that the appeal fails and is hereby dismissed with costs.

Appeal dismissed.