1931

KASHI PRASAD v. NOTIFIED AREA OF MAHOBA.

I agree with the decision of the Lahore High Court and hold that the time could not be extended.

The third point is whether the Collector could review his own order. The Collector, in doing so, professed to act under section 53 of the Land Acquisition Act. But that section applies to "the court". "The court" is defined in the Land Acquisition Act as the principal court of civil jurisdiction, namely, the court of the District Judge. The Civil Procedure Code, therefore, did not in terms apply to the proceedings before the Collector. The Collector, therefore, it seems, had no power to review his own order.

The Collector's ultimate order that the applicant's application was beyond time was correct. This would be a sound ground for my not interfering with the order under revision. Besides, I have held that this Court has no jurisdiction to interfere. For both the reasons the petition fails, and it is hereby dismissed with costs.

PRIVY COUNCIL.

J.C.* 1932 *February*, 29.

PRAG NARAIN (APPLICANT) *v.* COLLECTOR OF AGRA (OPPOSITE PARTY).*

[On appeal from the High Court at Allahabad.]

Land Acquisition Act (I of 1894), section 18—Owner and permanent tenants—Agreement by tenants as to compensation—Collector making two awards—Owner objecting to amount awarded but not to apportionment—Increase in amount awarded—Rights of owner.

Where in proceedings under the Land Acquisition Act, 1894, the owner of the land has objected under section 18 to the amount awarded but has not objected to the apportionment between himself and permanent tenants, who had accepted the compensation offered to them, the owner is not entitled to an increased amount resulting from his objection less the compensation accepted by the tenants, but only to such proportion of the increased amount as accords with the apportionment awarded. The Government, and not the owner, is entitled to the benefit arising from the tenants having accepted compensation upon a lower value.

Present: Lord RUSSELL OF KILLOWEN, Lord SALVESEN, and Sir DINSHAH MULLA.

Rohan Lal v. *Collector of Etah* (1) approved on the above point.

The Act does not appear to contemplate that where more than one person is interested in a parcel of land acquired there should be more than one award relating thereto. Where some of the persons interested accept the compensation offered, the officer should not make an award as to the compensation to be paid to them, leaving the compensation to be paid to the others to be dealt with by a later award; if he has done so the awards should be read together.

It is well settled that the Judicial Committee will not interfere with a decree merely as to the value of the property acquired, unless it is based upon a wrong application of principle, or some important point in the evidence has been overlooked or misapplied. *Narsingh Das* v. *Secretary of State for India* (2), followed.

Decree of the High Court affirmed.

APPEAL (No. 100 of 1930) from a judgment and decree of the High Court at Allahabad (May 3, 1928) varying a decree of the District Judge of Agra.

The decrees were made on a reference by the Collector of Agra under section 18 of the Land Acquisition Act, 1894, for the determination of the court as to the amount of compensation to be awarded to the appellant for his property acquired together with other property under that Act.

The facts appear from the judgment of the Judicial Committee. Dan Dayal there mentioned was owner of a small part of the property acquired other than that belonging to the appellant.

1932. January 21, 22. *Dunne, K. C.* and *Narasimham,* for the appellant.

DeGruyther, K. C. and *Jardine,* for the respondent.

February 29. The judgment of their Lordships was delivered by Lord RUSSELL OF KILLOWEN:—

This appeal is brought from a judgment of the High Court of Judicature at Allahabad relating to

(1) (1929) I.L.R., 51 All., 765. (2) (1924) I.L.R., 6 Lah., 69 (72).

1932

PRAG NARAIN v. COLLECTOR OF AGRA.

the compensation payable to the appellant under or by virtue of the Land Acquisition Act (I of 1894), which will be referred to as the Act.

The facts require to be stated in some detail for the proper appreciation of the points which are involved.

On the 9th of July, 1923, the land acquisition officer of Agra (called hereafter the officer) issued a general notice under the Act for the acquisition of a block of land in the city for the purposes of a new police station. The block measured just over 1 acre, and included certain land and houses belonging to the appellant, which were known by the name Katra Nandram, and which amounted in area to some 4,109 sq. yards.

There were 18 claimants to compensation in respect of the entire block of lands, including the appellant and one Dau Dayal. The appellant's claim (as finally amended) was for Rs. 3,34,598, made up of Rs. 2,46,780 for the land (*i.e.*, at the rate of Rs. 60 per sq. yard) and Rs. 87,818 for the buildings.

The officer considered the cases of the 18 claimants and heard evidence, the hearing of which ended on the 23rd of December, 1923. As to the 16 claimants other than the appellant and Dau Dayal, an agreement was come to as to the amount of compensation payable to each for his interest; but for the purpose of acquiring a title under the Act the officer seems to have drawn up a formal award (dated the 31st of December, 1923) relating to the compensation payable to those 16 applicants.

On the 10th of January, 1924, he made his award dealing with the claims of the appellant and Dau Dayal. In it he states that agreement had since the hearing been reached with the other claimants, that an award statement regarding them had been drawn up and the amount paid, and that the present award related

to the cases of the appellant and Dau Dayal only. By that award he divided the appellant's land into three zones, to which he attributed different figures, as follows:—(1) 400 sq. yards of land with a street frontage of 120 feet, he put at Rs. 13 per sq. yard; (2) 495 sq. yards, "spotted over with the houses of permanent tenure holders," he put at Rs. 6 per sq. yard; and (3) the remaining 3,214 sq. yards, which consisted of the non-frontage land upon which there were no permanent tenure holders, he put at Rs. 8 per sq. yard. These figures worked out at Rs. 33,882 for land. For buildings he fixed a figure of Rs. 34,537, making a total figure of Rs. 68,419. To this sum had to be added the 15 per cent. provided for by section 23 (2) of the Act, so that the total compensation awarded by the officer to the appellant for his interest was Rs. 78,682.

It would appear that, so far as concerned the 495 sq. yards, the sum to be paid to the appellant was reduced from Rs. 8 per sq. yard (the full value of the non-frontage land) to Rs. 6 per sq. yard owing to the interest therein of the permanent tenure holders.

Both the appellant and Dau Dayal were dissatisfied with the award and applied for a reference to the District Judge under section 18 of the Act. In the case of the appellant the District Judge affirmed the award of the officer as to the buildings and allowed Rs. 34,537. In regard to the land he allowed Rs. 20 per sq. yard for all except the 495 sq. yards over which the permanent tenure holders had rights, making a further sum of Rs. 72,280. As regards the 495 sq. yards, he only allowed Rs. 220 as the capitalised value of the rents (Rs. 5 or thereabouts) of which the appellant was in receipt. In addition, he allowed a sum of Rs. 1,200 in respect of a claim for loss of rents, making a total sum of Rs. 1,08,237 in respect of buildings and land, which with the 15 per cent. above-

1932

PRAG NARAIN v. COLLECTOR OF AGRA.

mentioned, resulted in a total sum of Rs. 1,24,292 fixed as compensation for the appellant.

From that decision the appellant appealed to the High Court at Allahabad, asking that the full amount of compensation claimed by him be allowed. The High Court allowed the appeal in part and modified the decree of the District Judge to the extent now to be mentioned. As regards the valuation of the land at Rs. 20 per sq. yard, they agreed with the District Judge. As to his valuation of the buildings they increased the rate per 100 cubic feet allowed by him. As regards the 495 sq. yards, the High Court considered that the District Judge was not justified in assuming that the appellant's rights in this land were limited to the receipt of Rs. 5 per annum. The learned Judges considered that since the appeal to the District Judge only related to amount and not to apportionment, he ought to have accepted the officer's rates of apportionment, viz., one-fourth to the tenants and three-fourths to the appellant. Applying these proportions to the 495 sq. yards, the result would be that the appellant would be entitled to Rs. 15 per sq. yard in respect thereof. The appellant in the High Court claimed to be entitled to the whole Rs. 20, less only the sums which by agreement had been paid to the tenants and accepted by them, but this contention was disallowed by the High Court. As a result it appeared that the judgment of the High Court involved an addition of Rs. 11,231 to the amount allowed by the decree of the District Judge.

Encouraged no doubt by the knowledge that each of his previous applications has resulted in an increase in his compensation, the appellant has now appealed to His Majesty in Council.

In his case lodged here the only point taken was that the compensation awarded was too low, the valuations placed upon the land and buildings res-

pectively being insufficient in amount. An appeal confined to these contentions had obviously small hope of success. It is well settled that this Board will not review the decree of an Indian Appellate Court merely upon questions of value; and in this connection it will be sufficient to cite the words used by Lord BUCKMASTER in delivering the judgment of the Board in the case of *Narsingh Das* v. *Secretary of State for India* (1) :—

". . . it has been repeatedly laid down by the Board that in such cases they will not interfere with judgments of the Courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached, unless there is something to show, not merely that, on the balance of evidence, it would be possible to reach a different conclusion, but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied."

Counsel for the appellant concentrated upon a different point. He contended that since the High Court had valued the 495 sq. yards at Rs. 20 per sq. yard, the whole of the resultant sum of Rs. 9,900 belonged to the appellant subject only to the payment thereout of what might be necessary to satisfy the claims of the tenants; and that since the tenants had by agreement accepted a sum amounting to Rs. 990 (or Rs. 2 per sq. yard), the appellant was entitled to the whole difference between these two sums (viz., Rs. 8,910) and not merely to three-quarters of Rs. 9,900.

Their Lordships are unable to take this view. Indeed, it appears to them that the possibility of raising such a contention has only arisen from a failure to observe strictly the provisions of the Act.

As their Lordships read the Act, the duty of the Collector under section 11 of the Act is to make an award in regard to three matters, viz., (1) the area of the land included in the award; (2) the total compensa-

(1) (1924) I.L.R., 6 Lah., 69 (72).

1932

PRAG NARAIN v. COLLECTOR OF AGRA.

tion to be allowed for that land, and (3) the apportionment of that compensation among all the persons interested in that land.

The Act does not appear to contemplate that where more than one person is interested in a parcel of land there should be more than one award relating thereto.

Their Lordships do not by this mean that the whole of the land at any one time to be acquired under the Act must necessarily be dealt with in one award; but only that any one piece of land (forming part of the whole) in which more than one person has an interest for which he can claim compensation, ought not to be made the subject of more than one award. Each award should contain within its four corners the fixing of the value of the land with which it deals, and the apportionment of that value between the various persons interested in that land.

In the present case the difficulty has arisen from the fact that the officer has dealt with the land by two documents, and, so far as the 495 sq. yards are concerned, that particular parcel of land figures in both. Their Lordships, however, think that the two documents (the later of which specifically refers to the earlier) must be read together as constituting one award in relation to that parcel of land, by which the officer awards the compensation to be allowed for that land at a figure of Rs. 8 per sq. yard and awards the apportionment of that compensation in the proportion of three-fourths to the appellant and one-fourth to the tenants.

The only objection ever taken by the appellant was to the amount awarded as compensation. No objection was ever made to the award as to apportionment; the apportionment accordingly stands and the appellant must be held bound thereby. There can therefore be no foundation for the appellant's claim to be entitled to the extra amount which the tenants might have received if they had not by agreement

accepted one-quarter of a lower valuation. All that the appellant can claim is his awarded proportion of the Rs. 20 per sq. yard. The gain is a gain of the Municipality which acquired the land, as it was held to be in the case of *Rohan Lal* v. *The Collector of Etah* (1).

The appellant further contended that he had been hardly dealt with in the courts below as to costs, but their Lordships see no reason for suggesting any alteration of the decrees in this regard.

In the result this appeal fails and should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *Barrow, Rogers* and *Nevill.*

Solicitor for respondent: *Solicitor, India Office.*

MISCELLANEOUS CIVIL.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice and Mr. Justice Bajpai.

NATIONAL GUARANTEE AND SURETYSHIP ASSOCIATION (APPLICANT) *v.* PRAYAG DEB BANERJI AND OTHERS (OPPOSITE PARTIES).*

1931 *July*, 27.

Administration—Surety for administrator—Release of surety from future liability—Power of court to grant release on revocation of letters of administration—Contract Act (IX of 1872), sections 129 and 130—Continuing guarantee.

Although a surety for the due administration by a grantee of letters of administration cannot claim as of right to be relieved of all future liability by merely expressing his intention to revoke, either by notice or by an application to the court, and although the case of a surety whose security has been accepted by a court cannot be treated as one falling under sections 129 and 130 of the Indian Contract Act so as to entitle him to put an end to the guarantee at his

*Testamentary Case No. 23 of 1929.

(1) (1929) I.L.R., 51 All., 765.