

credit for the net amount realised before seeking to enforce their charge. The order which I propose to make is that after the applicants have realised all their other securities for the debt due to them by the insolvent and have given credit for the net amount realised, the Official Assignee be directed to pay to them so much of the sum of Rs. 33,752-5-2 in his hands as may be necessary to satisfy the balance of such debt.

1928
 IN THE
 MATTER OF
 L. W.
 NASSE,
 MANUKLAL
 DOLATCHAND
 & Co.
 ORMISTON, J.

Creditors 2, 8 and 9 must pay the applicants' costs of the application for review. The case involves a large sum of money an important and difficult questions of law arose. The hearing was also protracted. I have noted in my previous order the time occupied up to its date. The trial of the issue of fraudulent preference has occupied the equivalent of a full day. I allow as advocate's costs Rs. 340, and special costs at Rs. 170 a day for three days.

PRIVY COUNCIL.

MA SIN AND OTHERS

v.

COLLECTOR OF RANGOON

(AND CONNECTED APPEAL).

J.C.*
 1928
 Feb. 12.

(On Appeal from the High Court at Rangoon.)

Land acquisition—Declaration of intended acquisition—Later declaration cancelling first declaration—Land referred to in both declarations—Date at which compensation to be calculable—Land Acquisition Act, (1 of 1894), ss. 6, 23.

A Government declaration under s. 6 of the Land Acquisition Act, 1894 declared that land belonging to the appellants respectively and land belonging to other persons were required for public purposes. Five months later the Government issued another declaration for the acquisition of the appellants' land only; the declaration stated that the earlier declaration was thereby cancelled.

* PRESENT :—VISCOUNT DUNEDIN, LORD CARSON and SIR CHARLES SARGANT.

1929

MA SHIN
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RANGOON.

Held, that having regard to s. 23, sub-sec. 1 of the Land Acquisition Act, 1894, the compensation should have been based upon the value of the land at the date of the later declaration.

Decree of the High Court reversed.

Consolidated Appeals (No. 106 of 1927) from a decree of the High Court (February, 1 1926) modifying two decrees of that Court in its Original Jurisdiction.

The decrees appealed from were made in appeals from decrees or orders in two references under section 19 of the Land Acquisition Act, 1894.

In both cases the dispute was as to the market value of the land. The only question of principle which arose was as to the date upon which the market value was to be ascertained, having regard to the fact that the Government had published in October, 1923, a declaration of its intention to acquire the appellants' land, which cancelled a declaration of May, 1923, referring to the appellants' land and to certain other land.

The High Court, on appeal (Rutledge, C.J., and Maung Ba, J.), held that the material date for consideration was that of the earlier notification, since in their view that notification practically remained good so far as the plots in question were concerned.

1929, February 12. *Samuel Moses* for the appellants.

Sir George Lowndes, K.C., and *E. B. Raikes* for the respondent.

Reference was made to the Land Acquisition Act, 1894, sections 6, 19, 23, 48.

February 12. The judgment of their Lordships was delivered by—

VISCOUNT DUNEDIN.—This is an appeal from the High Court of Judicature at Rangoon, in a case in which they have altered the finding of the Judge of

the High Court of the Original Side in a land acquisition case.

The Government on the 31st May, 1922, had published a declaration under section 6 of the Land Acquisition Act, 1894, that the appellants' land was required for a public purpose, and that declaration included, besides the land which they desired to take from the appellants' certain land belonging to other people. The Government seemingly changed their mind about requiring the land of the other people, and accordingly on the 6th October 1923, they published another declaration under section 6, specifying the same land belonging to them, but, at the same time, announcing that the former declaration was cancelled.

The matter went before the Collector and he gave a certain award, to which their Lordships need make no further allusion. An appeal was taken to a Judge of the High Court and that Judge made an award by which he awarded Rs. 6,500 per acre in respect of one plot and Rs. 3,800 per acre in respect of another plot. Appeal and cross-appeal were taken to the Appellate Court, and the Appellate Court altered that judgment, replacing the figure of Rs. 6,500 per acre by a figure of Rs. 5,600 per acre, and replacing the figure of Rs. 3,800 per acre by a figure of Rs. 2,750 per acre.

The Appellate Court, in considering the sales upon which they based their judgment, after mentioning the two notifications, which their Lordships have already referred to, then said:—

“ Though the word ‘ cancelled ’ was used to mean that the first notification was either superseded or modified, the first notification practically remained good so far as these two plots of Maung Ba Kyaw and Ma Sin are concerned. So in our opinion the market value at the date of the publication of the first notification should be the market value to be considered.”

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 OF
 RANGOON.

Their Lordships are unable to take that view, because it is absolutely in the teeth of Clause 1, sub-section 1, of section 23 of the Land Acquisition Act, 1894, which says that, in determining the amount of compensation to be awarded, the Court shall take into consideration "the market value of land at the date of the publication of the declaration relating thereto under section 6."

Now, it is perfectly certain that the only notification which gave right to take this land was the second notification, and therefore that date must be the date taken. That really vitiates the judgment of the Appellate Court. It is apparent from the figures that all this land was galloping upwards in value, and in particular, that sales were proved, after the date of the first notification, but before the date of the second, which showed a highly increased value, and that it was in considering those sales, as well as the former sales, that the learned Judge of first instance came to the result that he did. Their Lordships are therefore clearly of opinion that the judgment of the Appellate Court cannot stand and that, as there seems nothing to be said against the judgment of the Judge of first instance, that must be reverted to.

Their Lordships will humbly advise His Majesty accordingly to allow the appeal, to set aside the decree of the High Court in its Appellate Jurisdiction with costs, and to restore the judgment of the first Judge. The appellants will have the costs of this appeal.

Solicitors for appellants : *T. L. Wilson & Co.*

Solicitors for respondents : *Sanderson, Lee & Co.*