APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1905.
April 19.

ANANDRAV VINAYAK AND OTHERS (ORIGINAL CLAIMANTS), APPELLANTS, *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

City of Bombay Improvement Act (Bom. Act IV of 1898)—Trustees for the Improvement of the City of Bombay—Acquisition of property—Scheme of development—Portion fully developed—Portion capable of further development—Rental capitalized at 16⅔ and 16 years' purchase—Six per cent. investment—Allowance for the risk attendant upon scheme of development.

A certain property was acquired by the trustees for the Improvement of the City of Bombay under the powers of the City of Bombay Improvement Act (Bom. Act IV of 1898). The said property, though a single parcel, was treated by the Tribunal of Appeal as falling under two categories, that part which abutted the street was regarded as fully developed and the portion lying at the back as capable of further development. The rental for the front part was capitalized by the Tribunal at 16⅔ years' purchase and the back portion at 16 years' purchase. The scheme of development provided for the erection of four blocks of chawls running practically at right angles to the front premises and these chawls were to have three upper floors for residential purposes, while in each case the ground floor was to be used for godowns.

Against the decision of the Tribunal the claimants appealed urging that the Tribunal ought to have allowed four upper floors to the hypothetical chawls and that it was wrong in allowing only 16⅔ and 16 years' purchase. The trustees also preferred a cross-objection that the allowance made by the Tribunal of ⅔ year's rental was not sufficient for the risk attendant upon a scheme of development such as that adopted by it on the basis of its award.

Held, confirming the decision of the Tribunal on all points that, (1) it cannot be said that the scheme of development involving four upper floors was so obvious that it would enter into the calculations of an intending purchaser and influence his offer; (2) the Tribunal's estimate of 16⅔ years' purchase for the front and 16 years' purchase for the back premises was fair and reasonable, the difference between 16⅔ years' purchase and 16 years' purchase was due to the allowance of ⅔ year's rental as a reward for the enterprise and compensation for risks so that the purchase was treated at a 6 per cent. investment; (3) the allowance made by the Tribunal at ⅔ year's rental for the risk attending upon the proposed scheme of development was adequate.

APPEAL under section 48 (11) of the City of Bombay Improvement Act (Bom. Act IV of 1898) against the decision of the Tribunal of Appeal composed of C. P. R. Young, President, R. J.

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Kent, Government Assessor, and W. A. Chambers, Municipal Assessor, appointed under section 48 (3) of the said Act.

Certain land consisting of 2,760 square yards with buildings thereon situate at Bombay originally belonged to one Paramanandas Jivandas, deceased. The said land was acquired by the trustees for the Improvement of the City of Bombay and the claimants Dwarkadas Govardhandas, Haridas Govardhandas and Bhagwandas Govardhandas, that is, the surviving minor grandsons of the said Paramanandas represented by their guardian Anandrav Vinayak claimed Rs. 2,05,169 as compensation for the property, but the Special Collector appointed under section 3 (*c*) of the Land Acquisition Act (I of 1894) awarded only Rs. 74,360-12-0. Subsequent to the award Govardhandas Khatav was associated with Anandrav Vinayak in the guardianship of the minors' property and these two requested the Special Collector to make a reference to the Tribunal on the ground that the amount awarded was insufficient. The Special Collector, thereupon, having made a reference, No. 23 of 1903, to the Tribunal, the claimants increased their claim from Rs. 2,05,169 to Rs. 2,25,567. The Tribunal after the inspection of the premises and on consideration of the proposed schemes of development and the evidence passed an award for Rs. 84,729-12-10 in the following terms :—

The award, therefore, of the Special Collector must be increased and the claimants will receive Rs. 84,729-12-10 or an increase of Rs. 10,170-14-0 which sum must be paid in by the Collector to this office with interest at 6 per cent. thereon from the date on which the Collector took possession.

Government must also pay the taxed costs of this Reference.

The following are extracts from the Tribunal's judgment :—

* * We may at once say that we have inspected the property, which is situated in the heart of the city, close to important markets and thoroughfares, and cannot agree with the view of the Special Collector that it is normally developed, but inasmuch as the present buildings produce fairly high rentals and have still in the opinion of the Special Collector considerable life to run although the contemplated buildings produce a large increase of rent, the constructional cost is so heavy that the value of the property is not increased so much as might be expected.

We agree on the whole with the proposed scheme of development of the property suggested by claimants' Engineer Mr. Raghunath Makund, subject to certain modifications.

For reasons that will be apparent hereafter, Mr. Raghunath found himself compelled to submit two alternative schemes.

In his original scheme he proposed to leave untouched the three chawls which line the frontage of the property but to demolish the buildings in the rear and to erect in their stead four new chawls running lengthways down the rear of the property from north to south. Each of these four chawls was separated from the other by a space that measured on the ground amounted to 18 feet, but which from the first story upwards was reduced to 10 feet owing to the projection of gallaries with which Mr. Raghunath proposed to furnish his chawls.

Each of the four chawls was to have a ground floor and four upper stories and was to be as long as the somewhat inconvenient shape of the property allowed. The front chawls have been referred to in the proceedings as chawls A, B, C and the proposed chawls as chawls D, E, F, G.

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The evidence, however, disclosed two obvious defects in this scheme: (1) on the ground first and 2nd floors of the two centre chawls E and F would receive little light or no direct light, and (2) part of chawl D threatened to block the lights of an adjoining building on the east.

Having regard to these objections and in case we should be constrained to regard the former scheme as impracticable, Mr. Raghunath suggested an alternative scheme which though similar in principle differed somewhat in detail.

The main features of the new scheme were the elimination of the three southern rooms on the 2nd, 3rd and 4th floors of chawl D so as not to block the lights of the building abovementioned, and the sacrifice of the gallaries and eaves in the two centre chawls so as to give them more light and air.

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We may say at once that this elimination of the eaves in chawls E and F is a device that we are unable to sanction, and that the only satisfactory means of affording sufficient light and air to the lower stories of these buildings is to reduce the height of all four chawls by one storey. As regards the other objection to Mr. Raghunath's original scheme, namely, that chawl D would block the lights of the adjoining building on the east, it is quite obvious that it would do so. Mr. Stevens, one of the claimants' own witnesses, admitted that in another case he had given it as his opinion that the age of this building was forty years; our inspection of the building caused us to agree with him. No evidence was adduced to rebut the presumption thus raised that the lights were ancient, and in our opinion they must be regarded as such, and chawl D must, therefore, be curtailed in the manner suggested by Mr. Raghunath.

With this exception as regards chawl D, the elimination of upper storey in each chawl leaves us free to adopt either of Mr. Raghunath's schemes. In each scheme the ground floors were to be utilized as godowns, the reason being that godowns fetch higher rentals per 100 square feet than living rooms.

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As regards the number of years' purchase, or the question of the return that investors in chawls in this neighbourhood expect, we have had a considerable body of evidence which owing to the importance of the point it will be necessary to consider in some detail.

The evidence offered falls under 2 heads: (*a*) that of actual sales and purchases of land in the vicinity within the last few years; (*b*) the opinions of experts.

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Upon this evidence it seems to us impossible to arrive at any other conclusion than that the number of years' purchase for the front chawls should be $16\frac{2}{3}$.

Turning to the hypothetical chawls in the rear, we think that if built and bought as a going concern they too would stand upon the footing of a 6 per cent. investment; but inasmuch as they are not built, it is obvious that the risks of miscalculation are far greater, and that even if these calculations as to cost and return should turn out correct, a building scheme of this magnitude can hardly be expected to fill at once.

Mr. Stevens admitted that in his opinion no one would enter upon a building speculation such as this without a considerable margin for profit.

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It seems clear, therefore, that if a property sold as a going concern will fetch $16\frac{2}{3}$ times its net rentals, some deduction, in addition to the deductions for loss of capital and interest on the constructional cost, should be made.

The deduction must of course vary with the risk; in some cases where the development was small and obvious we have considered that there was no risk, have made no deduction; in others we have reduced the rents till we considered that we had eliminated the risks.

In the present case, however, we have given what we consider to be fair rents for a building already built at the existing ratio of supply and demand and we must, therefore, compensate the purchaser for his risks and give him some attraction to induce him to embark upon an expenditure which the actual owner has never cared to incur, though now he would have us believe that the venture is so obvious and safe.

The evidence, however, as to the amount to be deducted is very meagre, and under such circumstances we consider it to be our duty to err on the side of liberality to the landlord and we therefore propose to capitalize the hypothetical chawls at 16 years' purchase, or roughly speaking, at $6\frac{1}{4}$ per cent. We thus give the purchaser $\frac{2}{3}$ year's rentals as a reward for his enterprise and as a compensation for his risks, making of course the usual deductions in addition for capital expended on the land lying idle and for interest on the constructional cost.

Capitalizing, therefore, the net rentals of the front chawls at $16\frac{2}{3}$ years' purchase and those of the hypothetical chawls at 16 years' purchase, and making the usual deductions for loss on capital expended or lying idle, we find that the value of the property as shown by the annexed schedules, works out to

Rs. 84,831·55, and that deducting the value of chawls A, B, C and the value of the old materials and Government dues, the value of the land is Rs. 57,720·80, or Rs. 21 per square yard.

Being dissatisfied with the award of the Tribunal the claimants applied to the President for a certificate to appeal to the High Court under section 48 (11) of the City of Bombay Improvement Act and he having granted it they appealed urging that the Tribunal was wrong in reducing the height of the chawls D, E, F, G by one storey, that it ought to have allowed four storeys to each of the said chawls, that it was wrong in allowing only 16⅔ years' purchase in capitalizing the rental of the existing chawls A, B, C referred to in the judgment and 16 years' purchase in capitalizing the rental of the said chawls D, E, F and G and ought to have allowed at least 20 years' purchase for all the chawls A, B, C, D, E, F and G, that it was wrong in accepting a basis of valuation which brought out the value of the appellants' land as vacant land at Rs. 21 per square yard, and that it was wrong in not allowing Rs. 4 per 100 cubic feet as rent for living rooms and Rs. 5 per 100 cubic feet as rent for godown accommodation in the chawls D, E, F and G in valuing the property in the second scheme of development. The respondents also preferred cross-objections under section 561 of the Civil Procedure Code (Act XIV of 1882) urging *inter alia* that the Tribunal did not make sufficient allowance for the risk attendant upon a scheme of development such as that adopted by it as the basis of its award.

Inverarity and *Bahadurji* for the appellants (claimants).

Raikes (acting Advocate-General) with Government Solicitor for respondent 1 (Secretary of State for India in Council).

Lowndes and *Weldon* for respondent 2 (Trustees for the Improvement of the City of Bombay, a body corporate incorporated by the City of Bombay Improvement Act, Bom. Act IV of 1898).

JENKINS, C. J.—This appeal relates to the acquisition of property under the powers of the City of Bombay Improvement Trust Act.

Before the Special Collector the appellants carried in a claim for Rs. 2,05,169, but only Rs. 74,360-12 was allowed. This award

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was not accepted by the persons interested, and the matter was referred for the determination of the Tribunal of Appeal, and there the appellants preferred a claim for Rs. 2,25,567. The amount awarded was Rs. 84,729-12-10, or Rs. 10,470-14-0 more than was awarded by the Special Collector.

The claimants being still dissatisfied, have, on the prescribed certificate, preferred this present appeal to the High Court, and the Trustees for the Improvement of the City of Bombay have filed objections to the Tribunal's award.

The property in question, though a single parcel, has for the purposes of this appeal been treated as falling under two categories, that part which abuts on Hanuman Lane being regarded as fully developed, and the portion lying at the back as capable of further development.

This is in accordance with the decision of the Tribunal, which dissented from the view of the Special Collector that the back premises were incapable of further development.

The compensation awarded by the Tribunal in respect of the market value of the property represents the capitalized rentals of the front portion in its present condition, and of the back portion as hypothetically developed. This rental has been fixed by the Tribunal at the figure appearing in its award and it has been capitalized at 16⅔ years' purchase for the front and 16 for the back premises.

Though both sides at one time questioned the correctness of this rental, it has been agreed before us to accept the rate fixed by the Tribunal and this has considerably simplified the enquiry. No contest now arises as to the front premises: the dispute is limited to those at the back, and in respect of them to the three points, (*a*) whether the Tribunal ought to have allowed 4 upper floors to the hypothetical chawls thereon, (*b*) whether the Tribunal was wrong in allowing only 16⅔ and 16 years' purchase, and (*c*) whether sufficient allowance was made by the Tribunal for the risk attendant upon a scheme of development such as that adopted by it as the basis of its award.

The claimants impugn the decision of the Tribunal on the first two points, and the Improvement Trustees its determination on the third.

Though two alternative schemes of development were formulated on behalf of the claimants, we are now admittedly only concerned with the first. This provides for the erection of four blocks of chawls running practically at right angles to the front premises, and according to the scheme these chawls were to have three upper floors for residential purposes, while in each case the ground floor was to be used for godowns.

It is in respect of these chawls and their erection that these three objections are urged.

It is apparent on the face of things that no question of law or principle is involved, but only matters of facts, and those of a very special character requiring the application of expert knowledge and opinion.

If it be, as was said by Lord Brougham in *Earl of Bandon* v. *Becher* [1] that "a Court of Appeal ought never to reverse the judgment of an inferior Court unless quite confident that the judgment given in the Court below is wrong," then in this case we should be especially sure of our ground before we interfere, when regard is had to the questions that arise and the fitness of the Tribunal for their decision.

The Tribunal is specially constituted under the City of Bombay Improvement Act, 1898, for the purposes of determining the market value of land acquired under the Act. It consists of a President and two assessors, and hitherto the practice has been to appoint as assessors those, whose professional training might be expected to equip them with experience useful in inquiries as to land value.

Of the two assessors, one is Mr. Kent, an Engineer in Government service, and the other, Mr. Chambers, is well known to have practised for many years as an Architect and Surveyor in the City of Bombay and is thus a person whose profession gives authority to his opinion in matters of valuation. Mr. Chambers, moreover, has been a member from the first of the Tribunal, which has now been in existence for some years and during that period a wide and useful experience as to land values must have been gained, and a specialized knowledge acquired, which we do not possess. Moreover in this case the members of the Tribunal

(1) (1835) 3 Cl. & Fin. 479, at p. 512.

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have personally inspected the premises in question as well as some of those to which the evidence relates.

It is obvious then, that, though we are in no sense bound by the determination of the Tribunal, its opinion is entitled to the greatest weight on the matters which arise in this appeal, and that its award is not lightly to be set aside.

The attitude of a Court of Appeal in cases of this class is illustrated by the decision of the Privy Council in *The Secretary of State for India in Council* v. *Shanmugaraya Mudaliar* (1). There the Government of Madras acquired under the Land Acquisition Act a plot of land containing quarries.

The District Court assessed the value at 25 years' purchase. The High Court on appeal reduced this to 15 years. On appeal to the Privy Council it was said by their Lordships at p. 378: "As regards the number of years' purchase, though it seems large, no reasons are given why it was fixed on, nor why the High Court took a much smaller period; and their Lordships see no cause for departing from the opinion of the District Judge, who had all the parties and their agents before him."

It is unlikely that the District Judge had the large experience of valuing land possessed by the Tribunal in this case, and yet we find that, notwithstanding the absence of reasons, the view of the District Judge was restored apparently on the ground of the better opportunities possessed by him for arriving at the true value of the land.

Applying these observations to the present case we will first deal with the appellants' objection that the Tribunal ought to have allowed four upper floors to each chawl.

It is difficult to reconcile this with the appellants' concession that the Tribunal's rate of rental is to be accepted. That rental was fixed by reference to the essential conditions of the scheme adopted by the Tribunal, one of which was the rejection of the proposed fourth story. But apart from this, it is obvious that an addition to the height of a building must tend to darken the lower floors that face it, and the point at which it will depreciate their letting value is a matter on which the Tribunal's view must carry great weight.

(1) (1893) 16 Mad. 369.

Can it be said that a scheme of development involving four upper floors is so obvious that it would enter into the calculations of an intending purchaser and influence his offer?

It seems to me impossible to answer this in the affirmative having regard to the Tribunal's opinion, and I certainly do not think there are on the record materials that would justify our upholding the appellant's contention that, contrary to the Tribunal's conclusion, four upper floors should be allowed.

And now we come to the complaint that the Tribunal should have allowed a greater number of years' purchase. The difference between the $16\frac{2}{3}$ years' purchase for the front and 16 years' purchase for the back premises is due to the allowance of a $\frac{2}{3}$ year's rental as a reward for enterprise and a compensation for risks, so that the purchase has been treated as a 6 per cent. investment.

It appears to us that this is a fair and reasonable estimate, and even Mr. Stevens, one of the claimants' expert witnesses, says, "I don't think any one would go in for a speculation of this kind unless he was sure of at least 6 per cent."

The several specific instances adduced in support of the claimants' contention have been carefully examined and analysed by the Tribunal, nor has any effective criticism been advanced, that shakes the soundness of its view so that on this point too we think there is no ground to disturb the Tribunal's conclusion.

Though we think, for the reasons stated in Appeal 110 of 1904, that the Improvement Trustees are entitled to file cross-objections, yet on the merits we hold that the objection urged by them cannot succeed.

No doubt on principle it is proper to make some deduction for the risk attendant upon the proposed scheme of development. This is recognized by the Tribunal, and an allowance of $\frac{2}{3}$ year's rental has been made. The Improvement Trustees however ask for more. Though we are disposed to think that this allowance may be small, this is a matter of detail rather than of principle, and we are not prepared to say that the Tribunal is wrong. It is true that Mr. Raghunath Mukhund's evidence suggests the inference that a greater margin would be ordinarily allowed in

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land speculations, but this margin, Mr. Stevens evidently thinks excessive.

The evidence is, as the Tribunal remarks, very meagre, and we do not think the respondents have made good their contention that a greater deduction should be allowed. In coming to this conclusion we have not overlooked the respondents' contention that the expectation as to the demand for godowns is too sanguine, and the reasoning of the Special Collector, but we think there is reliable evidence in support of the Tribunal's view. The result then is that the respondents have failed to convince us that we ought to increase the allowance for deduction made in the award.

Though by common consent rental, in the sense explained above, has been taken as the basis of valuation, it is legitimate to test the result by a reference to the price at which it works out per square yard, and while the Rs. 21 per square yard cannot be regarded as excessive, we are of opinion that tested even by the instance of Bhugwan Hemraj's land it cannot be considered as obviously too low, when regard is had to the respective advantages and disadvantages of the two properties.

The conclusion, therefore, to which we come, is that the Tribunal's award should be confirmed, and the appellants should pay the costs of the appeal and the respondent Trustees pay the costs of the objections. The respondents will only get one set of costs.

G. B. R.

Award confirmed.