

1911.

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JUSAB
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HAJI ADAM.

in his father's hands whether self-acquired or ancestral—that he can sustain the suit but not so as to charge the maintenance on the father's property; and upon the issue whether Rs. 7-8-0 agreed to be paid for maintenance of the plaintiff in the "talaknama" of the 2nd April 1911 is not a proper amount of maintenance having regard to the position and income of the defendant, and if not what other sum would be proper maintenance for the plaintiff—that Rs. 7-8-0 as agreed to be paid is a proper amount. There must, therefore, be a decree in favour of the plaintiff declaring that he is entitled to recover from the defendant maintenance at the rate Rs. 7-8-0 per month and for recovery of arrears at that rate due from the 1st March 1911 to judgment. As the plaintiff was offered maintenance at that rate before the institution of these proceedings each party must bear his own costs.

Attorneys for the plaintiff: *Messrs. Jehangir Mehta & Sonji.*

Attorneys for the defendant: *Messrs. Tyabjee Dayabhai & Co.*

H. S. C.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1911.

November 25.

RE THE LAND ACQUISITION ACT, CAUSE IN THE MATTER OF
(1) GOVERNMENT (2) PESTONJI JEHangIR MODI AND ANOTHER.

Land Acquisition Act (I of 1894), sections 3 (b), 11, and 31 (1) and (2)—Compensation money deposited in Court under section 31 (2)—Claim of Government to deduct poundage and fees paid by Government on such deposit out of the moneys deposited—Person interested in compensation moneys—Compensation money how to be apportioned among.

Government sought under the Land Acquisition Act (I of 1894) to acquire a piece of land vested in the City of Bombay Improvement Trust under Schedule C of Bombay Act IV of 1898, and in the occupation of one Pestonji Jehangir under an agreement with the Improvement Trust under which he had the right to obtain a lease of the land for 99 years when certain buildings had been erected in accordance with the terms of the said agreement.

The amount payable as compensation for the land was fixed by the Collector under section 11 of the Act and was apportioned under the same section between

the Government, the Improvement Trust and Pestonji Jehangir. The amount awarded to the Improvement Trust was deposited by the Collector in Court under section 31 (2) of the Act and poundage and fees thereon were paid by Government.

Pestonji Jehangir raised objections to the basis on which his claim had been valued, but this matter was settled by a consent decree. Government thereon claimed to deduct the amount of the poundage and fees paid by them from the amount deposited in Court.

Held, that the Court had only power to direct payment of the compensation money without any deduction to the person or persons interested therein and consequently had no power to direct that a portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court.

Semble: it is possible for a person to be interested in the compensation money within the meaning of clause 11 of the Act without having an interest in the land in the legal sense of the term, and that the Collector and the Court should apportion the sum awarded among the persons interested as far as possible in proportion to the value of their interests, the market value of which might afford some guide as to the amount to be apportioned in respect of that interest, but only considered in relation to the total sum awarded as compensation.

In this case Government sought to acquire a piece of land vested in the Improvement Trust and in the possession of one Pestonji Jehangir under an agreement with the Improvement Trust. The facts of the case are sufficiently set forth in the judgment of the Court.

Strangman (Advocate General), for Government.

Jardine, for claimants Nos. 2 and 3.

Setälwad with *Kanga*, for claimant No. 4.

MACLEOD, J.:—A certain plot of land, abutting on Hornby Road, known as "The Dispensary Plot," was vested in the City of Bombay Improvement Trust under Schedule C of Bombay Act IV of 1898. Thereafter, Government sought to acquire this plot for the extension of the Victoria Terminus Station of the G. I. P. Railway, and notified their desire to acquire it under the Land Acquisition Act, in August 1908. Proceedings followed before the Collector for ascertaining the amount of compensation payable, in which the parties appearing were the Improvement Trust and one Pestonji Jehangir, who was in occupation of the premises under an agreement with the

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Improvement Trust. The Collector fixed the compensation payable at the rate of Rs. 80 a square yard, and though Pestonji disputed the award, on the ground that that figure was inadequate and asked for a reference to the High Court on that account, he did not pursue the matter when it came before the Court and so far the reference is dismissed with costs against him.

Out of the compensation money so fixed a certain sum was awarded to Government in respect of their reversionary rights to the land, and there is no dispute now regarding that part of the award.

The Improvement Trust then claimed from the Collector the balance of the compensation to the complete exclusion of Pestonji Jehangir on the ground that he had no interest in the land. Pestonji claimed that he was in occupation of the land under an agreement with the Trust, with a right to obtain a lease for ninety-nine years when certain buildings had been erected according to the terms of the agreement on the land. Mr. Delves, a witness for the Improvement Trust, in answer to this, conceded that a purchaser from the Trust would make a deduction due to Pestonji being in occupation and the consequent risk of litigation. He fixed such deduction at Rs. 25,000 ; and the Collector adopting this method of valuing Pestonji's interest awarded to Pestonji Rs. 25,000 and the balance to the Improvement Trust. As the Improvement Trust were not persons competent to alienate within the meaning of the Act, the Collector was bound to deposit this amount awarded to them in Court under section 31 (2) of the Act. Pestonji dissatisfied with the apportionment effected by the Collector asked that this question also should be referred to the Court.

After the hearing had been proceeded with for some time an arrangement was arrived at between Pestonji and the Improvement Trust with regard to the apportionment ; so I am no longer concerned with the question what is the value of Pestonji's interest. But, I think, it is competentⁿ to me to remark that the method adopted by the Collector at the suggestion of Mr. Delves was absolutely and entirely wrong.

The Collector has under section 11 to inquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation he has to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claims he has information. Under section 3 (b) the expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. It is quite possible that a person may be interested in the compensation money without having an interest in the land in the legal sense of the term. The Act does not indicate how the Collector is to effect the apportionment, and, sections 20 to 28, which deal with the proceedings of the Court when a reference has been made under section 18, are also silent on the question.

It was suggested in argument that in apportionment the market value of each interest has to be ascertained but with only a fixed sum to apportion this would obviously lead to difficulties. The various rights of female members of a Hindu undivided family in the joint family property have no market value though such members would be persons interested in the compensation money. Again, even if the market value of the various interests could be ascertained, their total value would not be likely to coincide with the sum to be apportioned. I think what the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interests, and it is impossible to lay down any general rule which can be followed. The market value of an interest, if ascertainable, may afford some guide towards ascertaining the amount to be apportioned in respect of that interest, but that can only be considered in relation to the total sum awarded as compensation. There remains a question as regards the refund to Government of the poundage and fees which they paid when they deposited the money in Court under section 31. It is clearly the duty of Government to deposit in Court the whole of the compensation money which they may be required to

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deposit by the Act free from any deduction, and, when a demand is made by Court Officials under the Court Rules for poundage and fees in respect of such deposit, Government have to pay such poundage and fees in addition to the compensation money. They now ask that when a decision is arrived at regarding who is entitled to the money so deposited, the poundage and fees should be paid back to them out of the said money. There is no doubt that this course has been followed by this Court in the past, though as far as I know the question whether Government are, as a matter of right, entitled to such a refund has never been argued. But in considering what is the character of the money so deposited by Government in Court, and what are the powers of the Court under the Act with regard to that money, it seems clear to me that the money is compensation in respect of the land acquired under the Act, and that the Court has only power to direct payment of such money without any deduction to the person or persons interested therein, and consequently that the Court has no power to direct that a portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court.

When Government are acquiring land for a Company, as in this case, the Company have to execute an agreement under section 41 of the Act with the Secretary of State for India providing *inter alia* for the payment to Government of the costs of acquisition, and the poundage and fees which may become payable during the course of the proceedings should be included in the costs of acquisition. If Government are acquiring land for their own purposes, then the payment of poundage and fees to the High Court is not a payment out of pocket to Government. It is merely the debiting of a certain sum to one account and crediting it to another. But however that may be, as long as the Act is silent on the question, and the Court is only authorized to apportion or pay out the compensation money which has been deposited in Court under the Act free of all deductions to the person or persons interested, then if Government consider that the poundage and fees

should be paid out of the money so deposited, they can take steps to get the Act amended.

Therefore there will be an order in terms of the consent decree between claimants 2 and 3 and the Improvement Trust. Costs of Government, exclusive of poundage and fees, awarded against claimants Nos. 2 and 3, to be paid out of the money to which they are now entitled.

Attorney for Government: *Mr. E. F. Nicholson.*

Attorneys for the claimants Nos. 2 and 3: *Messrs. Nanu, Hormusji & Co.*

Attorneys for claimant No. 4: *Messrs. Crawford, Brown & Co.*

H. S. C.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

SHIVRAM NARSINGRAO (ORIGINAL PLAINTIFF), APPELLANT, *v.* MAHADEV NARAYAN KULKARNI (ORIGINAL DEFENDANT), RESPONDENT.*

1912.

July 30.

Patilki vatan—Court-sale of the vatan lands in execution of decree against holder of vatan—Levy of full assessment by Collector—Character of vatan land not changed by the levy—Suit by next holder of vatan within twelve years of the death of his predecessor—Limitation.

The plaintiff's father held the land in dispute as *patilki vatan* which were sold in 1875 to the defendant at a Court-sale held in execution of a decree. The Collector thereupon levied full assessment on the land and assigned the assessment for remuneration for service. The plaintiff's father died in 1905. In 1909 the plaintiff brought a suit against the defendant to recover possession of the land. The lower Courts dismissed the suit on the grounds that the land had ceased to be *vatan* and that the suit was brought beyond time. The plaintiff appealed:—

Held, that the land did not lose its character as *vatan* merely because the Collector levied full assessment and altered the mode of remuneration.

Held, also, that the plaintiff's suit was in time, since on the death of the plaintiff's father in 1905, the plaintiff became entitled to the land as the next holder of the *vatan*, and the defendant's interest in the land as the vendee of the right, title and interest of the plaintiff's father came to an end.