

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1917.

October 2.

VISHNU NARAYAN VAIDYA (ORIGINAL CLAIMANT), APPELLANT v. THE DISTRICT DEPUTY COLLECTOR, KOLABA (ORIGINAL OPPONENT), RESPONDENT.*

Ancient Monuments Preservation Act (VII of 1904), sections 10 and 21—Land Acquisition Act (I of 1894), sections 53, 54—Award of Court—Appeal to High Court—Practice.

An appeal lies to the High Court, under sections 53 and 54 of the Land Acquisition Act (I of 1894) from an award of the Court for acquisition of immoveable property under section 10 of the Ancient Monuments Preservation Act (VII of 1904).

Section 21 of the Ancient Monuments Preservation Act clearly applies to the purchase of moveable antiquities or relics and the compensation which may have to be paid for incidental damage caused by the removal or protection of such objects of historical interest or art-value. In ascertaining the market value of such moveable antiques and the amount of compensation to be paid to adjacent owners for acts done under the Act, such acts being clearly enough indicated and by implication defined in section 20, only the provisions of the Land Acquisition Act enumerated in section 21 are to guide the Court.

APPEAL from the decision of K. B. Wassoodew, Assistant Judge of Thana.

Proceeding for compulsory acquisition of land with ancient monuments under section 10 of the Ancient Monuments Preservation Act (VII of 1904).

By a notification published on the 30th August 1911, the Government of Bombay declared their intention to acquire certain pieces of land together with the Dominican Church and the Cathedral standing thereon. On acquisition of the same the Special Officer held an enquiry into compensation to be awarded and determined the amounts to be paid for the land and the

* First Appeal No. 2 of 1915.

Ancient Monuments, under section 21 of the Ancient Monuments Preservation Act, 1904.

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On a reference under section 18 of the Land Acquisition Act, 1894, the Assistant Judge awarded an increased amount of compensation.

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The claimant appealed to the High Court.

At the hearing a preliminary objection was raised that no appeal lay to the High Court.

Kania with *S. D. Joglekar*, for the appellant.

S. S. Patkar, Government Pleader, for the respondent.

BEAMAN, J.:—The Government Pleader raised a preliminary point that no appeal lay. He relied on the terms of section 21 and argued that the enumerated sections of the Land Acquisition Act exclude, and designedly exclude, sections 53 and 54 which sections confer the right of appeal. On a careful consideration of the scheme of the Act as a whole, we are of opinion that the answer to this question depends upon whether the case before us falls properly within section 10, and if so, whether the terms of that section are in any wise affected or controlled by the enumeration of certain sections of the Land Acquisition Act in section 21. There is no doubt but that the case before us is a case of acquisition under section 10. Where that is so, the mode of ascertaining the value of the property acquired is that of the Land Acquisition Act without any qualification whatever. The whole of the Act, therefore, appears to us to be imported by reference in dealing with cases of acquisition under section 10. Section 21 clearly applies to the purchase of moveable antiquities or relics and the compensation which may have to be paid for incidental damage caused by the removal or protection of such objects

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of historical interest or art-value. In ascertaining the market value of such moveable antiques and the amount of compensation to be paid to adjacent owners for acts done under this Act, such acts, we think, being clearly enough indicated and by implication defined in section 20, only the provisions of the Land Acquisition Act enumerated in section 21 are to guide the Court. It is difficult to understand why the right of appeal conferred by sections 53 and 54 was taken away in such cases since the enumerated sections do include section 18 which gives at any rate a right of appeal from the purchasing officer to the civil Judge. Assuming, however, that it was the intention of the Legislature to exclude appeals in all cases of ascertaining the market value or amount of compensation under section 21, we see no reason why the right of appeal distinctly conferred in all cases falling properly under section 10 should thereby have been intended to be taken away. The sections deal with quite different classes of objects and it is reasonable to suppose that where the Government was actually acquiring immovable property under section 10, it intended the owners to have the full rights which they would have under the Land Acquisition Act. We are, therefore, of opinion that an appeal lies.

Upon the merits, speaking for myself, I have little or nothing to say. It is always very difficult in cases of this kind to find any solid ground upon which to base an accurate estimate of the market-value of property of this peculiar kind. The learned Judge below has endeavoured to find out the ordinary market-value of such land as is not covered by the ancient monuments themselves and given the owner compensation upon that basis. Then as regards the monuments themselves he has computed their value as old masonry. After some consideration, although such a mode is open to

obvious sentimental objections, I doubt whether a valuing Court situated as an Acquisition Officer is or a Court sitting in appeal upon his decision could make any other calculation or introduce any other factors than those to which the Court below has confined itself. Eliminating all other considerations which might be urged in support of putting an artistic or sentimental value upon any monuments which it was thought desirable to preserve under this special Act, I think that we have no sufficient reason to interfere with the decision arrived at by the lower Court. I would, therefore, confirm the decree of that Court.

The appeal is dismissed with all costs upon the appellant.

HEATON, J. :—I concur.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Kajji.

LADHABHAI LAKHMSI (PLAINTIFF) *v.* SIR JAMSETJI JIJIBHOY AND OTHERS (DEFENDANTS).*

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August 5.

Lease—Lessee given the option of purchasing the land leased within a certain time for a fixed price—Assignment of the lease—Legal assignee of the lessee entitled to the benefit of the option to purchase—Coveyance—Vendor and purchaser—Purchaser to accept such title as the vendor possessed—Recitals about the title—Originating summons—Estoppel.

By an Indenture dated 1st March 1913, the defendants leased to one B. P. M. a plot of land for a term of ninety-nine years. Under clause 7 of the Indenture the lessee obtained a right to purchase the premises demised at a price named within eighteen years from the date of the lease, the purchaser accepting such title as the vendors had. By an Indenture of Assignment

* O. C. J. Suit No. 379 of 1917.