PRIVY COUNCIL.

J. C.*
1925.
June 12.

NOWROJI RUSTOMJI WADIA, CLAIMANT *v.* THE GOVERNMENT OF BOMBAY.

[On appeal from the High Court of Judicature at Bombay.]

Land acquisition—Appeal to Privy Council—Practice—Valuation of property—Appeal only upon questions of law—Land Acquisition (Amendment) Act (XIX of 1921), section 2.

In accordance with the practice of the Judicial Committee in appeals involving the valuation of property in India, their Lordships will entertain an appeal under Act XIX of 1921, section 2 as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.

Narsingh Das v. *Secretary of State for India*[1], followed.

Decision of the High Court affirmed.

APPEAL (No. 43 of 1924) from a decree of the High Court in its Appellate Jurisdiction (September 20, 1921) varying a decree of the Court in the Original Jurisdiction.

The question in the appeal was as to the amount which the appellant should receive from the respondent Government as compensation for land in the City of Bombay, notified in October 1917, for compulsory acquisition under Act I of 1894 for municipal purposes.

The appellant had purchased the land in 1912 for Rs. 50,204.

The Collector, acting under section 11 of the above Act, awarded as compensation Rs. 98,724, of which, the land being held on foras tenure, Rs. 224 was paid to Government, the amount awarded to the appellant being Rs. 98,500.

At the instance of the appellant the Collector referred for the determination of the Court, under section 18 of

* *Present*:—Lord Sumner, Lord Blanesburgh, Sir John Edge, Mr. Ameer Ali, and Lord Salveser.

(1) (1924) 6 Lah 69 ; L. R. 52 I. A. 133.

the Act, the question of the amount payable as compensation.

The trial Judge (Kajiji J.) upon his view as to the prospective value of the land per square yard increased the compensation to Rs. 1,39,970.

Upon appeal the learned judges (Macleod C. J. and Shah J.) were of opinion that there was no evidence to show that the claimant would have realised more than the sum awarded by the Collector if the property had been put up for sale in October 1917.

1925, April 30, May 1:—*Sir George Lowndes, K. C.* and *E. B. Raikes*, for the appellant.

Dunne, K. C. and *A. M. Talbot*, for the respondent Government.

The arguments were mainly upon the evidence but reference was made for the respondent to *Narsingh Das* v. *Secretary of State for India*[1] and *Charan Das* v. *Amir Khan*[2].

June 12:—The judgment of their Lordships was delivered by

LORD SUMNER:—In 1917 the Municipality of Bombay acquired a plot of land for purposes connected with an existing hospital, and the usual statutory proceedings took place before the Collector of Bombay to fix the amount of compensation to be paid for the land. The owner, being dissatisfied with the amount awarded, viz., Rs. 98,724, claimed a reference to the High Court, and in 1920 Kajiji, J., varied the Collector's award by increasing the rate to be allowed per square yard superficial from Rs. 8 to Rs. 10. This raised the total compensation to Rs. 1,39,970. Upon an appeal by the Municipality the High Court set aside the learned Judge's decree and dismissed the reference. They thus

(1) (1924) 6 Lah. 69; L. R. 52 I. A. 133.

(2) (1920) 48 Cal. 110; L. R. 47 I. A. 255.

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in effect confirmed the Collector's award. From this decision the claimant now appeals.

The value to be placed at a given moment on a plot of land, which is not in the market or the subject of bargain and sale, but owes a large part of any value it possesses to the prospective results of development work, to be undertaken thereafter at an uncertain time and at an estimated cost, is not only in its essence a question of fact but is one upon which, almost above any other, opinions will differ, without its being possible to give irrefragable reasons for any particular conclusion.

It has been declared in decisions of the Board, by which their Lordships are now bound, that appeals in valuation cases will only be entertained on questions of principle. (See *Secretary of State for India* v. *India General Steam Navigation and Railway Company, Ltd.*[1]; *Rangoon Botatoung Company, Ltd.* v. *The Collector, Rangoon*[2], per Lord Macnaghten; *Charan Das* v. *Amir Khan*[3], per Lord Buckmaster—"this Board will not interfere with any question of valuation"—and *Narsingh Das* v. *Secretary of State for India*[4]). Errors in law, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, are matters that can and will be dealt with on appeal by this Board, but when, as in the present case, a difference of opinion has occurred between two Indian Courts upon the number of rupees per yard to be allowed for a plot of land, as to which their Lordships can form no opinion of their own, it would be alike unprofitable and impracticable to embark on a comparison of the decisions of these Courts. In cases relating to the acquisition of land the whole matter, both of fact and of law, is a proper

(1) (1909) 36 Cal. 967; L. R. 36 I. A. 200.

(2) (1912) 40 Cal. 21 at p. 27; L. R. 39 I. A. 197 at p. 201.

(3) (1920) 48 Cal. 110 at p. 118; L. R. 47 I. A. 255 at p. 261.

(4) (1924) 6 Lah. 69; L. R. 52 I. A. 133.

subject of appeal in India, for there local knowledge and experience enable the learned Judges to form useful judgments upon the whole case. The amending Act of 1921 declares awards under the Land Acquisition Act, 1894, to be decrees, so as to bring them within the general rules as to appeals to this Board, but it does not prescribe any special mode, in which they are to be treated. This Board has found it necessary to limit the extent of the inquiry, in order to spare the parties costly and fruitless litigation. Just as in cases where there are concurrent findings of fact in the Indian Courts, it has long been the general rule of the Board not to allow such findings to be re-opened here (*Naraganty Lutchmeedavamah* v. *Vengama Naidoo*[1]; *Umrao Begum* v. *Irshad Husain*[2]), so it has now been settled that this Board will not review the decree of an Indian appellate Court merely upon questions of value. Where their Lordships have neither the materials nor the experience on which to found an opinion of their own, in a matter where the opinions of competent Courts in India differ (and *a fortiori* where they concur), it is not their practice to interfere as an appellate tribunal, unless there appears to be error in law or miscarriage of justice.

In view of this practice the present case may be shortly dealt with. The plot to be acquired was irregular in shape and contour. Except at one point, and there only by a narrow passage, it had no access to any road. Part of it was hollow and low-lying, so that in the rains water accumulated there to the depth of several feet. No transactions were proved in respect of land closely adjacent to or precisely similar to this plot and such transactions as had occurred were cases

[1] (1861) 9 Moo. I. A. 66 at p. 87.

[2] (1894) 21 Cal. 997; L. R. 21 I. A. 163.

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of development and sale at dates not at or about the material time, viz., 1917. The question, whether or not there had afterwards been an upward trend in market values generally, was not only highly disputable as a matter of opinion, but was not affirmatively supported by any satisfactory proof.

Both parties admitted that the most satisfactory use, to which the land could be put, was the erection of workmen's dwellings, and the value of the land for this purpose accordingly became the question to which both directed their attention. Development of this kind required the dedication of a considerable part of the surface, in order to provide an access road, and also the raising of the whole surface to one level, free from risk of flooding, by permanently filling in the cavities with suitable loose material. Estimates of the area of land required for the road and of the cost of filling in per cubic yard were accordingly prepared, and were agreed on both sides. It does not appear, however, that any allowance was made for the time required to enable the made ground to settle, or for the risk that unexpected settlements might take place, and probably these factors were beyond any exact estimation. Of course the circumstances that might exist, when the work was done and the realisable value of the developed site could be ascertained, were alike beyond human foresight.

Kajiji J. appears to have addressed himself to the question of the fair compensation for land taken in 1917, to be allowed as at that date, as if it were an algebraic problem, which could be solved by an abstract formula. He sought to ascertain what value per yard the land might be supposed to have, if improved at some uncertain date, by treating the cost of filling in the cavities as a determined sum, to which there could not be any addition, and by deducting this sum alone

from the supposed realisable value after future development. From these somewhat abstract factors he arrived at a concrete rate per superficial yard to be paid presently by way of compensation. In doing so he took no account of the factor of interest on the cost of the filling in and the other development work during the uncertain interval before the time of realisation might arrive.

From his conclusions thus arrived at the High Court dissented. Their reasons are not very clearly given, but this may be due to the fact that the evidence, which they discussed, is not very clearly recorded. At any rate, as it appears to their Lordships, they fell into no error of principle in their criticisms of the judgment of Kajiji J., or in the process by which they arrived at their own conclusions. In dissenting from the method, which the learned Judge seems to have followed, they were certainly right. Factors such as he omitted to notice may be of great importance or of little, or even may be truly negligible, according to the circumstances of the particular case, but it cannot be right to ignore them altogether, as having no place at all in a rigid system of calculation. They were guided by their own view, as they were entitled to be, of the weight of the various pieces of evidence, nearly all of indirect bearing on the problem in hand—and in many cases only imperfectly developed. They thought, as they were entitled to think, that the grounds, on which the supposed rise in general market values was rested, were so unsubstantial in themselves and so distantly related to the circumstances of the site in question, as not to amount to any evidence on which to rest the judicial conclusion that something should be allowed for a rising market.

After carefully examining the evidence and the way in which the High Court appears to have dealt with it

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in arriving at the conclusion now under appeal, their Lordships are unable to find that there has been any error in principle or in law in the method of arriving at it. They will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for appellant: Messrs. *T. L. Wilson & Co.*

Solicitors for respondent: *Solicitor, India Office.*

Appeal dismissed.

A. M. T.

ORIGINAL CIVIL.

Before Mr. Justice Taraporewala.

1925. *February* 13.

VALLABHDAS MEGHJI, PETITIONER *v.* CAWASJI FRAMJI & Co., RESPONDENTS*.

Arbitration—Resignation of both arbitrators—Fresh appointment by one party —Failure of other party to appoint—Appointment to act as sole arbitrator— Validity—Indian Arbitration Act (IX of 1899), section 9.

Where, in the case of a reference to two arbitrators, one appointed by each party, both arbitrators resign, either party can under section 9 of the Indian Arbitration Act, 1899, appoint a new arbitrator and may, on the failure of the other party after due notice, to make any appointment, appoint that arbitrator to act as sole arbitrator.

ON November 5, 1917, Vallabhdas Meghji entered into partnership with Cawasji Framji & Co. in equal shares to conduct a piece-goods business at the Mulji Jetha Market, Bombay. Clause 8 of the partnership agreement provided: "If any dispute might arise, it will be decided by arbitrators, but perhaps if the arbitrators differ then the matter must be decided by an umpire". Cawasji Framji & Co. dissolved the partnership from October 20, 1922.