

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

1936
December 2

THE BOROUGH MUNICIPALITY OF AHMEDABAD (ORIGINAL APPLICANT),
APPLICANT v. JAYENDRA VAJUBHAI DIVATIA (ORIGINAL OPPONENT),
OPPONENT.*

Bombay Municipal Boroughs Act (Bom. Act XVIII of 1925), section 198—Widening of street—Compulsory acquisition—Compensation—District Judge—Power to add allowance of 15 per cent.—Land Acquisition Act (1 of 1894), sections 23, 24 and 25.

Sections 23, 24 and 25 of the Land Acquisition Act, 1894, constitute a code laying down the principles on which the District Court is to act in arriving at the compensation to be paid, and they are applicable to proceedings in the District Court under section 198 of the Bombay Municipal Boroughs Act, 1925. A District Judge acting under section 198, is therefore, entitled to allow 15 per cent. under section 23 of the Land Acquisition Act, 1894, on account of the compulsory nature of the acquisition.

The Municipal Commissioner for the City of Bombay v. Patel Haji Mahomed Ahmed Janu,⁽¹⁾ and *Municipal Commissioner for the City of Bombay v. Syed Abdul Huk,*⁽²⁾ distinguished.

CIVIL REVISION APPLICATION against the order passed by I. C. Munsiff, Assistant Judge at Ahmedabad.

Compensation for compulsory acquisition.

The Borough Municipality of Ahmedabad by its resolution dated April 4, 1934, resolved to acquire opponent's land for the purpose of widening a street in the Sankdi Sheri in the City of Ahmedabad. The Municipality valued the land at Rs. 87 per square yard.

The rate was not agreed to by the opponent and he did not accept the amount of compensation offered.

Therefore as required by the Act each party appointed two persons to act as their panchas and the panchas appointed a sirpanch but they failed to determine the amount of compensation.

* Civil Revision Application No. 326 of 1936.

⁽¹⁾ (1890) 14 Bom. 292.

⁽²⁾ (1893) 18 Bom. 184.

The Municipality, thereupon, presented an application to the District Court as required by section 198 of the Act to fix the amount of compensation, to be awarded for the compulsory acquisition of land. The Assistant Judge raised the following points for determination: "(1) What is the market value of the site in reference? (2) Is the opponent entitled to compensation for the compulsory acquisition? If so at what rate." The learned Judge held that the value of the land was Rs. 200 per square yard. He awarded compensation to the opponent at that rate and also allowed 15 per cent. in addition for compulsory acquisition under section 23 (2) of the Land Acquisition Act, 1894. His reasons were as follows:—

"The next question is whether the opponent is entitled to any compensation, and, if so, at what rate. I am considering only one item of compensation and that is based on the established principles of awarding fifteen per cent. for compulsory acquisition. The learned pleader for the Municipality urged that there was no provision in the Municipal Act for awarding fifteen per cent. compensation as we find in the Land Acquisition Act. He relied on two cases reported in 14 Bom. 272 and 18 Bom. 184. In the first place both these are original cases and one does not know whether these judgments were upheld or reversed on appeal. But assuming that they are still good law, the learned Judge disallowed the fifteen per cent. compensation in 14 Bom. on the ground that there were not express provisions in the Municipal Act. I fully agree that there is no express provision in the Municipal Act regarding the award of fifteen per cent. but there is a provision in the Act which lays down that the Court shall usually follow the same procedure as far as possible in municipal cases as in Land Acquisition cases. It appears that on this general provision the Courts have so far awarded fifteen per cent. in addition to valuation. Even in the two judgments produced by the Municipality I find that the learned Judges have awarded fifteen per cent. in all the five cases under reference. Even if we look to the Municipality's own *tumar* (correspondence) we find it recommended that fifteen per cent. should be paid by the Municipality. Apart from the customary award of fifteen per cent. there appears to be substantial reason for awarding this sum in excess of valuation. In private sales the parties buy and sell on mutual agreement. In cases of acquisition like this, the party is compelled to part with his land even though he has no desire to do so. The learned pleader for the opponent argued that . . . the Sankdi Sheri Street was popularly known as a 'street of gold' where several mill-owners of Ahmedabad have their properties. It is, therefore, in the fitness of things that fifteen per cent. be allowed for compulsory acquisition in addition to the flat rate of Rs. 200 per square yard arrived at above."

The Municipality applied to the High Court.

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U. L. Shah, for the applicant.

N. H. Bhagwati, with *P. A. Dhruva*, for the opponent.

BEAUMONT C. J. This is an application in revision under section 115 of the Civil Procedure Code, it being alleged that the learned Judge has exercised a jurisdiction not vested in him. The point raised is of some importance in connection with compulsory purchases under the Bombay Municipal Boroughs Act, 1925. Under section 118 the Municipality can lay down lines of the public streets, and acquire land for adding to a street, and then sub-section (3) (e) provides that compensation, the amount of which shall in case of dispute be ascertained and determined in the manner provided in section 198, shall be paid by the Municipality to the owner of any land added to a street under clause (b) of sub-section (3) for the value of the said land. So that, what is to be paid is compensation for the value of the land compulsorily taken. Then section 198 provides for the method of assessing compensation. If the amount is not agreed, the parties have to appoint arbitrators, who are to select a sirpanch, and in the event of this panchayat not arriving at a decision, then the matter shall, on application by either party, be determined by the District Court, which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court, with the two exceptions which are referred to in the proviso following. Now the question is whether the District Court, in fixing compensation for the value of the land, is entitled to allow fifteen per cent. on account of the compulsory nature of the acquisition. There is no express provision in the Bombay Municipal Boroughs Act allowing for such addition to the compensation, but under the Land Acquisition Act fifteen per cent. is allowed in respect of the compulsory nature of the acquisition, and the question is whether that provision in the

Land Acquisition Act can be treated as incorporated into section 198 of the Bombay Municipal Boroughs Act as being part of the procedure provided by the Land Acquisition Act. I agree that, *prima facie*, a provision of this sort, adding to the compensation to be payable for the value of the land, is not aptly described as Procedure, but still one has to look at the Land Acquisition Act and note the phraseology adopted. One finds Part III headed "Reference to Court and Procedure thereon". Then there are provisions for referring disputes as to compensation to the Court, and certain procedure is laid down, and then section 23 provides in sub-section (1) that in determining the amount of compensation to be awarded for land acquired under the Act the Court shall take into consideration certain matters therein specified, and then sub-section (2) provides that "in addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition". Then section 24 provides that the Court shall not take into consideration certain specified matters, of which the second is, any disinclination of the person interested to part with the land acquired, and then section 25 contains more provisions as to the method of calculating compensation. It seems to me that sections 23, 24 and 25 of the Act constitute a code laying down the principles on which the District Court is to act in arriving at the compensation to be paid, and it is quite impossible to leave out of that code sub-section (2) of section 23, as Mr. Shah has invited me to do. His contention is that the fifteen per cent. is an allowance of something in addition to the value of the land, which has to be paid for under the Municipal Act. But the truth is that the sections determine the basis on which the value of the land is to be ascertained on compulsory purchase and the allowance of the fifteen per cent. must be set off against matters disallowed under section 24. These provisions in the Land Acquisition Act are contained in a Chapter entitled

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“Reference to Court and Procedure thereon,” and I think that they must be treated as applicable to proceedings in the District Court under section 198 of the Bombay Municipal Boroughs Act. In my opinion, therefore, the judgment of the learned District Judge was correct, and he was entitled to allow the fifteen per cent. for compulsory purchase. The two cases on which Mr. Shah relied and which are referred to in the judgment of the lower Court, *Municipal Commissioner for the City of Bombay v. Patel Haji Mahomed Ahmed Jani*⁽¹⁾ and *Municipal Commissioner for the City of Bombay v. Syed Abdul Huk*,⁽²⁾ were cases in which there was no provision similar to that in section 198 (3) of the Bombay Municipal Boroughs Act incorporating the procedure under the Land Acquisition Act. Therefore those cases afford no assistance to me in deciding the present case. The application must be dismissed with costs.

Rule discharged.

J. G. R.

⁽¹⁾ (1890) 14 Bom. 292.

⁽²⁾ (1893) 18 Bom. 184.

APPELLATE CIVIL.

Before Mr. Justice Barlee and Mr. Justice Dicaia.

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KISANDAS LAXMANDAS GUJAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 4 TO 8), APPELLANTS v. GODAVARIBAI BHARAT GOVINDDAS GUJAR AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 1 AND 2).*

Indian Limitation Act (IX of 1908), section 10—Guardians and Wards Act (VIII of 1890), sections 34 (a) and 37—Guardian of property not an express trustee—Suit by minor on assignment of bond—Second suit for account in personal right—Limitation—Res judicata—Civil Procedure Code (Act V of 1908), section 11.

A guardian appointed under the Guardians and Wards Act, 1890, is not a trustee in whom property is vested for a specific purpose within the meaning of section 10 of the Indian Limitation Act, 1908.

* First Appeal No. 295 of 1931.