

entire fraud, concocted for the purpose of defeating his judgment. It is obvious that this was not a suit to set aside a sale under a decree within the meaning of cl. 14 of the Act.

Another case in the Agra High Court Reports, decided by Morgan, C.J., and Ross, J., was also referred to, in which the point as to the one year's limitation seems also to have been taken and overruled. That case is very imperfectly reported, and the ground of the decision seems rather to have been that the one year's limitation did not apply, because the defendant had been guilty of some fraud which prevented the rule of limitation from applying. Whatever may be the correct solution of that case, we certainly do not consider it an authority by which we ought to be influenced in our present judgment.

The case cited by Mr. Ghose—of *Ram Kant Chowdhry v. Kalee Mohun Mookerjee* (1) decided by Kemp and Birch, JJ., is a distinct authority in this Court in favour of the view we take of this question.

The appeal will consequently be allowed with costs. The decree of the lower Court will be reversed, and the plaintiff's suit will be dismissed with costs of the Court below.

*Appeal allowed.*

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## ORIGINAL CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Macpherson.*

IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870.)  
PREMCHAND BURREAL AND ANOTHER *v.* THE COLLECTOR OF  
CALCUTTA.

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Sept. 4.

*Land Acquisition Act (X of 1870)—Principle on which Compensation is to be given.*

Where Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood without any special reference to the uses to which it may be

(1) 22 W. R., 84.

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applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. In accordance with this principle the question for inquiry is, what is the market value of the property, not according to its present disposition, but laid out in the most lucrative way in which the owners could dispose of it.

APPEAL under the Land Acquisition Act (X of 1870) from the decision of the Judge of the 24-Pargannas, who was the Judge appointed to hear cases under the Act.

The case was sent up to the Judge by the Collector of Calcutta as he was not able to agree with the owners as to the amount of compensation to be paid for 2 bigahs 15 cottahs of land in Bow Bazar Street in Calcutta, which had been taken up by the Government. The property was a portion of a block which had been purchased by the owners Premchand Burrall and Nobinchand Burrall in July 1875 for Rs. 42,000, and they had, since the purchase, spent Rs. 3,000 on it for repairs to a demi upper-roomed house and other buildings on the land. The portion with which this appeal is concerned was the south portion of the part facing Bow Bazar Street, and having a frontage of about 127 feet, and contained all the buildings, which were admittedly valued at Rs. 15,590. The owners claimed Rs. 800 per cottah for the land alone exclusive of the buildings, amounting to Rs. 44,000. They claimed this as being the selling price of land in the neighbourhood, and they brought forward several instances of land in the neighbourhood having been sold at Rs. 800 per cottah and upwards.

The income of the portion, the subject of appeal, was stated by the owners to be Rs. 129-8, but they also stated that this did not represent the income fairly derivable from it; they showed that by dividing the property differently according to a plan they put in, and by improvements in the buildings, the receipts would have been but for the acquisition materially increased so as to amount to Rs. 172-7 per month or Rs. 2,069-4 a year. The Collector found that there was no instance of so large a block of land being sold at the rate of Rs. 1,000 per cottah; that there was no analogy between small plots and large blocks in this respect; and that the true test of the value of the latter was the income derivable from them. He took the

owners' estimated income of Rs. 172-7 per month, and allowed 16 years' purchase, deducting 12 per cent. on account of rates, repairs, and collection charges, which came to Rs. 29,135. This, together with the 15 per cent. allowed by s. 42 of the Act, was the amount of compensation tendered by the Collector amounting to Rs. 33,505-4.

The owners refusing to accept this amount the case was referred to the Judge.

The Judge, after stating the cases brought forward on both sides, continued: "The conclusions deducible from the foregoing are, that for small blocks with a frontage only it may be said that Rs. 1,000 per cottah is by no means high. Omitting No. 1 and 2 Wellington Street where the price was extravagant, and Beadon Square, which was a large block valued by arbitrators in 1867, all the other instances brought forward by the Burrals shew Rs. 800 to be the lowest, and Rs. 1,867 the highest, price per cottah, but with the exception of Chunee Lall Doss' purchases of 2 and 3 College Street, there were circumstances in all the cases tending to raise the price. It must, however, be noticed that 16 years' purchase of the gross income (without deducting anything for rates and taxes or depreciation) is more than the average price paid." The Judge found that the land alone represented Rs. 26,410 out of Rs. 42,000 paid by the Burrals for  $7\frac{1}{2}$  bigahs at the rate of Rs. 170 per cottah, but that the portion now acquired was on the whole more valuable than the remainder, and that Rs. 15,602 was a fair price at which to assess the land. He arrived at this amount on a calculation of the yearly income at Rs. 2-1-9 per cottah, and assuming that the whole would be fully built upon. Adding the value of the buildings, Rs. 15,590, the sum he awarded was Rs. 31,927.

The owners appealed from this decision to the High Court.

Mr. Jackson and Mr. Macrae for the appellants.

The Advocate-General, offg. (Mr. Paul) and the Standing Counsel (Mr. Kennedy) for the respondent.

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The arguments sufficiently appear in the judgment of the Court, which was delivered by

GARTH, C. J.—(MACPHERSON, J., concurring).—In this case I think that the learned Judge in the Court below has not done full justice to the owners of the property. He has substantially adopted the valuation of the Collector; and has made his award upon the supposition that the fair mode of estimating the price of the property in the market is to capitalize its present rental at so many years' purchase.

I consider that, having regard to the evidence on both sides, this is not a fair way of arriving at the market value. Where Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. Of course, if it can be satisfactorily shown that the purposes to which the land is applied are as productive as any other to which it is applicable, or that the price given by the owners is its full market value, it would be very just to assess the compensation upon that basis. But in this case I find no evidence to that effect. On the contrary, it would appear that a considerable portion of the land is virtually unoccupied, and that the owners had previously prepared a plan for laying out the whole area to much greater advantage; and, moreover, it is in evidence that the claimants bought the property at a lower rate, in consequence of the title having been seriously questioned by two professional gentlemen. We have therefore to consider, having regard to the evidence on both sides, what is a fair sum to award to the claimant in respect of this land; but, before we enter upon this question, there is a preliminary point which it is desirable that we should at once dispose of.

Mr. Jackson insists that his clients are entitled to the agreed price of the buildings, as they stand, in addition to the fair value of the land itself. But I do not see how, upon any prin-

ciple of compensation which has been suggested in argument, his claim in this respect can be supported; and I have tried in vain to discover why the learned Judge who tried the case in the Court below, or the assessors, thought it right to allow the owners this sum.

If you estimate the value of the property upon its present rental, and capitalize that rental into so many years' purchase, you are, in fact, taking into consideration the value of the buildings; and if you award the sum thus arrived at to the owners, you are, in fact, paying them the value of the buildings; so that, besides giving them the value of the buildings as they stand, you would be paying them for the buildings twice over.

But, then, suppose you proceed upon another principle. Instead of estimating the value of the property according to its present uses and its present rental, suppose you ascertain what it would be worth, if occupied in a different way, as for a bazar, or for shops, or other buildings of a lucrative character. Estimating it in this way, you must necessarily take into consideration that the present buildings must all be pulled down, because, until they are pulled down, the land could not be applied to its new and more advantageous uses; and all that the owners could possibly obtain, or ask, for the buildings, under such circumstances, would be the price of the old materials.

Then, there is again a third principle of valuation, in which the same result would follow as in the first mode of estimating the value; and that is to suppose the buildings to remain standing, and to estimate them at a capitalized rental value, while you estimate the remainder of the property at its market value, treating it as unoccupied land. This principle of valuation would prove anything but favourable to the owners, because they could not expect to get for Mrs. Romaine's house, with a bazar or shops built round it, as much rent as they have hitherto obtained; nor could they lay out the frontage land to advantage, with the small buildings which now occupy a portion of it obstructing the full range of the street. But if this principle were adopted, the owners could not then be entitled to the capitalized rental of the buildings as well as

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to their value as they stand, because they would in this way be again receiving the value of the buildings twice over.

This point being disposed of, it seems clear that the fairest and most favourable principle of compensation to the owners is that upon which the weight of the argument on both sides has been bestowed, *viz.*, what is the market value of the property, not according to its present disposition, but laid out in the most lucrative and advantageous way in which the owners could dispose of it.

And, after full consideration, it appears to me that the fair amount of compensation to award to the owners upon this principle is Rs. 39,500.

Three of the claimants' witnesses—one of them Shambhu Nath Rai, a large landowner in Calcutta, who, it seems, has had extensive dealings in house property—state the value of the claimants' land, back and front, at Rs. 800 a cottah. Now, having regard to the large area of back land, as compared with the frontage, and also to the fact that 15 cottahs are occupied by the tank, Rs. 800 per cottah seems rather a high average for the land all round. The frontage is, no doubt, valuable; and, making all due allowance for some of the properties mentioned by the witnesses commanding a higher price in consequence of the purchaser's requiring them for special purposes, I cannot estimate the frontage at less than Rs. 1,000 a cottah. Making the same allowance then which it is generally fair to do in cases of this nature for a little over-statement on the part of the claimants' witnesses, Rs. 700 a cottah would, probably, be a fair price for the entire area. This would give for the 55 cottahs Rs. 38,500. If, instead of calculating the whole area together, we were to estimate the front land (say 15 cottahs) at Rs. 1,000, and the back land at Rs. 600 per cottah, the result would be very nearly the same, say—

15 cottahs at Rs. 1,000 ...	15,000	0	0
40 cottahs at Rs. 600 ...	24,000	0	0

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Rs. 39,000 0 0

Or, if we were to adopt the evidence given for the Government, their first witness says that he purchased 32 and 33 Bow Bazar,

occupying an area very nearly of the same extent as the claimant's (between 54 and 55 cottahs) for Rs. 38,000. He gave this sum with the building in very bad repair—a fact which we all know depreciates, sometimes unduly, the value of house property. Taking then the claimant's property of equal extent to be worth an equal sum, the result would be much the same as the sum which we propose to allow. Then, if to this sum we add another Rs. 1,000 for severance of the portion adjoining Champatollah Lane, we consider the plaintiff will be properly compensated. The damage caused by severance is not considerable; the two portions of the property have been, in fact, divided by a wall, and the severed portion still retains a frontage upon Champatollah Lane.

We therefore set aside the award of the Judge, and fix the amount of compensation at Rs. 39,500, to which the Collector will of course have to add the statutory 15 per cent. The owners will have the costs of this appeal, and the costs to which they are entitled in the Court below will be calculated according to the rule adopted by Mr. Beaufort,—that is to say, the costs which would be allowed in a regular suit. The owners are also entitled to interest at 6 per cent. upon the sum which we award for compensation from the time when the Government took possession of the property.

*Decree varied.*

Attorney for the appellants : Mr. Carruthers.

Attorney for the respondent : *The Government Solicitor*  
*Mr. Sanderson.*

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