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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Starling.

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MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY, *Appellant v.* SYED ABDUL HUK KURMALKER, *Respondent.**

[8th September, 1893.]

Municipality—Municipal Act, III (Bom.) of 1888, *ss.* 298, 299 *and* 301—*Land acquisition—Compulsory acquisition—Set-back—Compensation paid to owner for land with buildings thereon taken—Basis of valuation of such land—*15 *per cent. addition to compensation not allowed—Act XII of* 1888, *s.* 3—*Practice—Appeal from decision of Judge of Small Cause Court granting compensation for land taken by municipality.*

Where, in case of set back, land with buildings thereon was taken up by the Municipal Commissioner from a private owner under Act III of 1888, ss. 298, 299 and 301,

Held, that the amount of compensation awarded to the owner should be calculated with regard to the price given within a few years previously for land of a similar character in the immediate neighbourhood of the land in question.

Held, also, that the addition of 15 per cent. could not be allowed.

The Municipal Commissioner v. *Patel Haji Mahomed* (1), followed.

[185] An appeal lies to the High Court from a decision of the Chief Judge of the Small Cause Court of Bombay granting compensation to the owner of land taken by the municipality in case of a set-back under the Municipal Act III of 1888, ss. 298, 299, 301.

[R., 10 Bom. L. R. 907 (912).]

APPEAL to the High Court against the decision of the Chief Judge of the Small Causes Court (see Act XII of 1888, s. 3).

The respondent had claimed compensation from the appellant in respect of certain lands, together with the buildings thereon, situate at the junction of Apollo Street and Byrne Lane and in Byrne Lane in the City of Bombay, which were taken up by the appellant on behalf of the municipality, and the Chief Judge had awarded to the respondent a sum of Rs. 25,665-8-3 as compensation and interest thereon, at the rate of 5 per cent. per annum, from the 8th February, 1882, until payment.

From this decision the Municipal Commissioner appealed to the High Court.

Inverarity and *Scott*, for the appellant.

Lang (Acting Advocate-General) and *Macpherson*, for the respondent.

Lang raised the point that no appeal lay. The only section giving an appeal to the High Court is s. 3 of Act XII of 1888, but the appeal there given was only in cases under ss. 503 and 504 of the Municipal Act (III of 1888). He referred to ss. 298, 299, 301, 345 and 346 of the Municipal Act (III of 1888).

Per Curiam:—We think an appeal lies.

The argument of the appeal then proceeded. The following authorities were referred to:—*In the matter of the Land Acquisition Act* (2); *The Municipal Commissioner for the City of Bombay* v. *Patel Haji Mahomed*(1); Statute 38 and 39 Vict., c. 36, s. 19, cl. 2.

Cur. adv. vult.

* Municipal Appeal No. $\frac{M.}{15}$ of 1892.

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JUDGMENT.

STARLING, J.—The question for determination in this appeal is the amount to which the respondent is entitled in compensation in respect of a piece of land on the south side of Bruce Lane, [186] and running from Apollo Street to Church Lane, taken up by the Municipal Commissioner as a set-back. That amount is to be the value of the land as acquired, and that would be the market value of the land at the time when possession was taken by the municipality. That value, in our opinion, is the price which a man, intending to use the land, of which the set-back was a portion, for the purposes for which it could be most profitably employed at that time, having regard to all its surrounding circumstances, would probably give for it.

The basis of valuation adopted by the surveyors, who were called on behalf of the respondent, seems to us to be faulty. In the first place, they calculate the value the land might have to the purchaser after he has built upon it and let out his building to tenants. They assume that the building will at once be fully let (allowing only for average casual vacancies), and theyassume that a person buying to build will be content, at the time of purchase, to look forward to a net return of only 4 or 5 per cent. on the total cost of land and buildings, assuming his speculation to be entirely successful. It seems to me that a man buying a piece of land as a speculation for building purposes would require a larger percentage than that, certainly in this country, and would not pay a price for the land alone which would only enable him to get that comparatively small percentage after he had erected his buildings and run the risk of their letting well or not. There are also other minor items, which seem to us to have been taken too favourably for the owner. Consequently we do not think that such a basis of valuation should be accepted in any case, certainly not when there is any more practical basis to work on.

In the present case there are materials of a much more practical character to hand, *viz.*, the price given within the last few years for land of a similar character in the immediate neighbourhood, the price given by the respondent for the large plot of land of which the portion taken by the municipality forms a part, and, lastly, the price which he offered to take for the very piece.

In Ex. No. 3 there are three plots marked which have changed hands comparatively recently. That coloured green [187] was purchased by Haji Allarakhia Nathu at the beginning of 1891 to build on at a price which showed the rate per square yard was about Rs. 46. It had no building on it at that time, so that the difficulty which arises in determining how much is to be allowedfor buildings does not arise; but it is not so well situated as Sirdar's Palace is, for Apollo Street is there only half the width; it is opposite the respondent's property. Of the blue piece, plot A is, however, in our opinion, in quite as good a position as the respondent's property, though it has not so large a frontage to Apollo Street. The whole of the blue plot was sold in 1885 at a price which worked out a rate of about Rs. 100 a square yard, including buildings, the value of which is disputed; but, taking all things into consideration, we are of opinion that the value of the land itself cannot be taken at more than Rs. 50 a square yard for the whole plot; and assuming that the value of part A, as facing the wide part of Apollo Street, was worth double that amount, that would only give Rs. 100 a square yard for that portion, which we consider a very full rate for that piece.

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The property coloured red was purchased in 1886 for a price which worked out to under Rs. 60 a square yard *including buildings*, and, deducting the value of the buildings, would probably leave the value of the land at about Rs. 30 a square yard.

This last plot is not in anything like as good a position as the front portion of the respondent's premises, though it is somewhat better than that of those abutting on Church Lane.

In 1886 the respondent purchased the whole plot of land known as the Old Secretariat, of which the strip now in dispute is a portion, at a price which, after deducting the value of existing buildings, would give about Rs. 30 a square yard, and on the 21st July 1888, he offered to sell the strip to the Municipality at the rate of Rs. 50 a square yard.

Within the last few years there does not seem to have been any material change in the value of land in the Fort. Consequently, all the foregoing materials can be used in this case without making any allowance for possible change of value.

[188] In calculating the compensation payable to the respondent, the strip of land has been divided into three portions; one coming up to Apollo Street containing, as finally settled by the Chief Judge of the Small Causes Court, 74·72 square yards, another at the Church Lane end containing 17·60 square yards, and the third between those two containing 183·93 square yards. Now, taking into account all the facts we have just drawn attention to, we think the respondent will be amply compensated if he is allowed Rs. 80 a square yard for the first portion, Rs. 50 a square yard for the second, and as a high value has been put upon the two end pieces because of the open space between them, which space must be kept open or with only low buildings thereon, in order to justify the value we have put on them, we think that the third piece cannot be worth more than Rs. 20 a square yard. That will work out as follows:—

74·72 at 80 = 5,997·60
17·60 at 50 = 880·00
183·93 at 20 = 3,678·60

10, 536·20

Of course these amounts are to a certain extent only approximate; but, in a matter of this kind, it is absolutely impossible to ascertain a mathematically exact value of any piece of land, and the utmost that can be done is to take into consideration all the surrounding circumstances and from them deduce, as a jury, the value which the owner ought to receive.

To the amount of Rs. 10,536-3-2 as calculated above must be added the sum of Rs. 181-12-3, the value of old erections allowed by the Chief Judge and not appealed against, which brings the total compensation up to Rs. 10,717-15-5.

The respondent by his objections has asked that he should be allowed 15 per cent. on the amount awarded him as on account of the compulsory nature of the acquisition. That point has already been decided against the respondent in the case of *The Municipal Commissioner for the City of Bombay* v. *Patel Haji Mahomed* (1), and we see no reason to differ from the decision in that case.

[189] The award of the Chief Judge of the Small Causes Court must, therefore, be varied by inserting the sum of Rs. 10,717-15-5 in the place

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of Rs. 25,665-8-3. The respondent will retain the costs awarded to him in the Court below, but must pay the costs of the appellant in this Court.

Attorneys for the appellant;—Messrs. *Crawford, Burder and Co.*

Attorneys for the respondent:—Messrs. *Brown and Moir.*

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Before Mr. Justice Starling and, on appeal, before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

JIJIBHOY MUNCHERJI JIJIBHOY AND OTHERS, (*Plaintiffs*), *v.* BYRAMJI JIJIBHOY AND OTHERS (*Defendants*).* [13th and 16th October. 1893.]

Costs—Taxation—Attorney and client—Trustees—Bills of costs paid by majority of trustees—Right of dissenting trustee to have bills taxed even after payment.

In a suit relating to a charitable trust the decree directed that the costs of all parties thereto, when taxed, should be paid out of the trust fund. Certain bills of costs were subsequently furnished to the trustees by the attorneys. Two of the trustees thought the bills reasonable and agreed that they should be paid. The third trustee objected to the amount of the bills as exorbitant, and desired that they should be taxed. Notwithstanding his protest, however, the other trustees paid the bills without taxation. He, thereupon, took out a summons calling upon his co-trustees and the attorneys to show cause why the bills should not be taxed and why they should not refund any sum which had been overpaid.

Held, that the dissenting trustee was entitled to have the bills taxed, although they had been paid, and that the High Court had jurisdiction to order taxation to be made.

BY the decree made in this suit on the 5th January, 1889, it was ordered that a scheme should be prepared for the management of certain charities called the Jijibhoy Dadabhoy Trusts. The scheme was subsequently settled in chambers, and an order was made directing (*inter alia*) that the costs of all parties to the suit when taxed as between attorney and client should be paid out of the Trust Fund.

[190] The trustees of the charities were the plaintiffs in the suit, and were three in number, *viz.*, Jijibhoy Muncherji Merwanji, Rustomji Nanabhoy Byramji and Dadabhoy Bomanji Jijibhoy. In the month of September, 1890, the trustees changed their solicitors, and the suit and matters connected with it were transferred to Messrs. Ardesir Hormasji and Dinsha, who, on the 12th April, 1893, by request sent in their bills of costs for work done from September, 1890 to the end of March, 1893. There were two bills of costs sent in, one for Rs. 11,329-13-0 and the other for Rs. 842-2-0. These bills less (an abatement of Rs. 500) were paid by the two first mentioned trustees on the 21st June, 1893.

On the 21st August, 1893, the third trustee, Dadabhoy Bomanji Jijibhoy, took out a summons calling on his co-trustees and the solicitors (Messrs. Ardesir Hormasji and Dinsha) to show cause why the said bills of costs should not be taxed by the Taxing Master, and why such sums as might be taxed off should not be refunded to the charities by the solicitors.

The objecting trustee (Dadabhoy Bomanji Jijibhoy) in his affidavit stated that the bills sent in appeared to him to be exorbitant, and that he had called upon his co-trustees to get them taxed before settling them, but

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* Suit No. 375 of 1886.