

ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar.

IN THE MATTER OF THE LAND ACQUISITION ACT I OF 1894.

*IN THE MATTER OF RUSTOMJI JIJIBHAI AND ANOTHER.**

1905.

December 2.

*Land Acquisition Act (I of 1894), section 18 (2)—Reference by Collector—
Grounds of objection—Additional grounds urged before Court—Issues.*

Section 18, sub-section 2, of the Land Acquisition Act requires that any person interested who has not accepted the Collector's award and requires the Collector to make a reference to the Court "shall state the grounds on which objection to the award is taken." Such requirement is one of the conditions precedent to the obligation of the Collector to make the reference.

Held, that as section 147 of the Civil Procedure Code applied the claimant at the hearing is not confined to the grounds set out in his notice.

Held, further, that he is entitled to advance claims in respect of portions of the land taken up not referred to in his notice.

REFERENCE by the Collector of Bombay.

The material facts of this case relating to the points decided in that portion of the judgment recorded below are as follows:—

The land belonging to the claimants Rustomji Jijibhai and Sorabji Seodia were compulsorily acquired by the Collector on behalf of Government according to the provisions of the Land Acquisition Act on 6th December 1902. On the 24th February the Collector made his award and apportioned the sum awarded between the claimants above-named and others. The claimant Seodia objected to the award and embodied his objections in a letter, dated 13th April 1904, demanding a reference to the High Court. This letter ran as follows:—

Land Acquisition Act, 1894,
and
Land at Babula Tank Road.

Please take notice that I object to the award made by you in this matter and dated the 24th day of February 1904 on the following grounds:—

That you are in error in holding that the full monthly letting value of the house on plot (11) on the plan H was Rs. 70 per month and the proper number of years purchase to be given for that property was 16½ years and that you ought to have held that the said monthly value was Rs. 75 and the number of

* Reference from Collector of Bombay, No. L. R.—1435 of 1905.

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years purchase was 20. Also that you are in error in allowing 5 per cent. for vacancies and collection in respect of the said house and that you should not have allowed more than 3 per cent. for such purposes.

And in pursuance of section 18 of the above-mentioned Act I request that the above matters be referred by you for the determination of the High Court.

The claimant Rustomji also objected to the award and demanded a reference stating his objections in a letter, dated 14th April 1904, in the following terms:—

Land Acquisition Act, 1894.

Please take notice that I object to the award made by you in this matter and dated the 24th day of February 1904 on the following grounds:—

1. That you are in error in holding that a part of the rents paid by the sub-tenants for the timber depôts forming portion of the above property represents trade profits and that you should have held that the rents paid by the respective occupants of these timber depôts is regulated solely by the position of the respective timber depôts.
2. That you are in error in holding that the full monthly letting value of the house on plot (10) on the plan H was Rs. 70 per month and the proper number of years purchase to be given for that property was $16\frac{2}{3}$ years and that you ought to have held that the said monthly letting value was Rs. 75 and the number of years purchase was 20. Also that you are in error in allowing 5 per cent. for vacancies and collections in respect of the said house and that you should not have allowed more than 3 per cent. for such purposes.
3. That you are wrong in valuing the vacant land forming plot 2 on the said plan H at only one-half the rate at which you have valued the land occupied by the tenants of the timber depôts and that you should have valued the said vacant land at the same rate as the back part of the land occupied by the timber depôts.

And in pursuance of section 18 of the above-mentioned Act I request that the above matters be referred by you for the determination of the High Court.

The claimant Rustomji's Solicitors subsequently wrote the following letter, dated 2nd June 1905, to the Government Solicitor:—

Land Acquisition Act, 1904,

and

Land at Babula Tank Road.

Dear Sir,

Referring to the notice of the 12th April 1904 given to the Collector under section 18 of the above Act by Mr. Rustomji Byramji Jijibhoy, one of the persons interested in the above land, stating his objection to the amount of compensation awarded to him for the land, we beg to state that, in addition to the grounds of objection contained in the above notice, Mr. Rustomji Byramji Jijibhoy objects to the amount of compensation awarded him on the following

grounds, *viz.*, that in valuing the stable property the Collector ought to have taken 16 and $\frac{2}{3}$ years purchase of the rents received for the said stable property and not 11 $\frac{1}{2}$ years purchase only, and that in valuing the land available for timber depôts the Collector should have included in his valuation the piece of vacant land marked No. 7 on the plan exhibit H and lying to the north of the Chawl No. 6.

These objections will be urged before the High Court under the reference.

The Collector by a notification, dated the 18th March 1905, referred the matter to the High Court. When the case came on for hearing, counsel for the claimants raised the following issues:—

1. What are the correct rentals of the houses on plots (10) and (11)?
2. What are the proper deductions for (a) vacancies and collections and (b) repairs in respect of the said houses?
3. What is the correct number of years purchase to be allowed in respect of the rent of the said houses?
4. What is the correct value of the said houses and of each of them?
5. What is the correct life to be assigned to the stables?
6. What is the correct number of years purchase to be allowed in respect of the rents of the said stables?
7. What is the correct value of the said stables?
8. Whether plots (3) and (4) should not be valued according to the ultimate rents obtained for such plots, plot (3) to include (3-a) and (3-b)?
9. Whether the area of plots (2) and (5) valued by the Collector should not be valued on the same basis as plots (3) and (4)?
10. Whether plot (7) should not be valued on the same basis as plots (3) and (4)?
11. Whether 28 $\frac{1}{2}$ years purchase is not the correct number of years purchase in respect of the rents of plots (3) and (4) and (9)?
12. What is the value of plots (2), (3), (4), (7) and (9) respectively?
13. General issue.

Issues raised on behalf of Government:—

14. Whether the claimants are entitled to raise any and which of the issues which have been raised having regard to the provisions of section 18 of the Land Acquisition Act?
 15. Whether the amount awarded by the Collector is not sufficient?
- Issue 14 was tried as a preliminary issue.

Strangman with Inverarity for the claimants:—We are entitled to raise issues on any point connected with the Collector's award once the reference is made to this Court. The claimants' letters set out certain objections to the award to satisfy section 18 of the Act and to enable the Collector to make a reference. Once

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the reference is made we are at liberty to open up the whole case *de novo* and are not restricted to the specific objections set out in the claimants' letters to the Collector demanding the reference. *Ezra v. Secretary of State for India*¹⁾.

Scott (Advocaté-General) with *Kirkpatrick* for Government:—
The claimants cannot be allowed to travel outside the objections specified in their letters demanding this reference.

Those letters are in the nature of pleadings in a suit and the rules as to issues thereon apply to issues raised on those letters.

We contend further that under section 18 (2) (a) of the Act the claimants are barred from relying on the objections raised in their solicitors' letter of the 2nd June 1905 as that was written more than six weeks after the date of the award, and this argument applies with still greater force to issues raised on objections which have only been made for the first time in Court and for which we are not prepared.

CHANDAVARKAR, J.—This is a reference by the Collector of Bombay, made under the provisions of section 18 of Act I of 1894, for the determination by this Court of the amount of compensation for a land with buildings standing thereon in the vicinity of the Sir J. J. Hospital. The land in question was compulsorily acquired by the Collector according to the provisions of the Act by a declaration published in the *Bombay Government Gazette* on the 6th of December 1902. The Collector by his award, dated the 24th of February 1902, and made under section 23 of the Act, adjudged Rs. 3,09,266-6-7 as the total amount of compensation to be paid for the land and buildings thereon, and directed that amount to be apportioned among the claimants as follows:—

To Rustamji Byramji Jijibhoy	Rs. 2,75,595-10-10
To the Official Assignee on behalf of the insolvent		
Borah Nurbhai Gazikhan	14,329-5-2
To Edulji Framji Motivala	9,452-2-0
To Sorabji Cowasji Seodia	9,889-4-7

On the 1st of March 1904, the Collector gave notice of his award to the persons abovementioned; and, as is admitted before me by the parties concerned, the notice was received on the 4th of March 1904.

1) (1905) 32 Cal. 605.

Of the four claimants, two, *viz.*, the Official Assignee on behalf of the insolvent Borah Nurbhai Gazikhan, and Edulji Framji Motivala, accepted the award.

Sorabji Cowasji Seodia, however, by a written application to the Collector, dated the 13th of April 1904, required him, under the provisions of section 18 of the Act, to refer the matter for the determination of the Court, his objection being to the amount of the compensation. The grounds on which the said objection was taken were stated in the application, as required by sub-section 2 of section 18.

On the 14th of April 1904, Rustomji Byramji Jijibhoy followed with his written application to the Collector under section 18. He also objected to the amount of the compensation and stated his grounds, which had reference to other parts of the land than those which formed the subject-matter of Sorabji Cowasji Seodia's application.

The Collector accordingly made this reference on the 18th of March 1905.

On the 2nd of June last Rustomji Nanabhoy Byramji's Solicitors informed the Solicitor to Government that in addition to the grounds of objection stated in his written application, he objected to the amount of compensation awarded to him on other grounds also. The grounds are stated in the Solicitors' letter.

Mr. Strangman, appearing for the claimant, Rustomji Nanabhoy Byramji Jijibhoy, has raised new issues, with reference to the amount of compensation awarded to him by the Collector, involving not only the grounds of objection stated in Mr. Rustomji's written application to the Collector, but also the additional grounds stated in his Solicitors' letter.

The learned Advocate General, appearing for Government, has raised the preliminary objection that these additional grounds are not open to the claimant upon this reference and that he must be confined to the grounds of objection stated in his written application to the Collector.

Section 18, sub-section 2, no doubt requires that any person interested, who, having not accepted the Collector's award, requires the Collector to make a reference to the Court, "shall state the grounds on which objection to the award is taken." Such requirement is one of the conditions precedent to the

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obligation of the Collector to make the reference. But there is no provision in the Act which expressly lays down that the claimant in question should be confined to those grounds by the Court in determining his objection. It is usual in statutes to find provisions of that kind. For instance, section 542 of the Code of Civil Procedure provides that an appellant shall not without the leave of the Court urge or be heard in support of any other ground of objection than the grounds set forth in his memorandum of appeal. The omission in Act I of 1894 of a provision similar to that contained in the Code of Civil Procedure with reference to appeals affords an argument of weight in support of Mr. Strangman's contention and it must be upheld unless, having regard to the context of the different provisions of Act I of 1894, its object and its policy, there is a necessary implication that the Legislature intended to confine a claimant to the grounds set forth in his written application to the Collector.

On the question of such intention it is, however, to be remarked that, while section 18 requires that a claimant objecting to the award and desiring a reference shall state the grounds of objection in his written application to the Collector, section 19, clause (d) requires the Collector, in making the reference, to state the grounds on which the amount of compensation was determined by him, if the claimant's objection be to such amount. Now, if the Legislature intended that the Court, in hearing the reference, should confine itself to the grounds of objection set forth by the claimant in his written application to the Collector, why did it not say in section 19, clause (d) that the Collector shall confine himself to those grounds and give his reply to them, "for the information of the Court"? Further, sections 23 and 24 lay down matters which the Court shall or shall not take into consideration. There is no reference in them to the claimant's grounds of objection set forth in his written application to the Collector. Again, section 53 provides that "save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act." According to that Code (see section 147) the Court may frame issues not merely from the plaint or written statement but from allegations made by the parties or by any persons present on their behalf or

by their pleaders. If the written application to the Collector is tantamount to a plaint,—and it cannot be treated as anything less than a plaint in a suit—what is there in Act I of 1894 which takes away from a claimant the right he has according to section 53 of that Act to invoke the aid of section 147 of the Civil Procedure Code?

It is true that the land in this case which has been compulsorily acquired by the Collector and which forms the subject-matter of his award is divided into plots, and that whereas the claimant's written application, made to the Collector under section 18, sub-section 2, set forth grounds of objection to the amount of compensation which had reference not to all but only one of the plots, his Solicitors' letter relied upon grounds which touched another plot or parcel of the land. And it is this which the learned Advocate General contends the claimant cannot be allowed to do. His argument is that the claimant must be confined to the plot mentioned in his written application. The answer to that, however, is that the Act speaks of the land as a whole and the amount of compensation awarded in respect of it. The claimant objects to that amount and though the Act requires him to state his grounds of objection in his written application to the Collector, and though such ground may refer only to a part of the land, the Act by section 19, clause (d), substantially makes it incumbent upon the Collector to state his grounds for awarding the amount with reference to the whole land, and not to that particular part.

In my opinion, therefore, the provisions of sub-section 2 of section 18 are merely a condition precedent to the Collector's reference; and that after the Collector has made the reference, their operation ceases, and the Court in dealing with it has to act in accordance with sections 23 and 24 of the Act and the provisions of the Code of Civil Procedure so far as these apply.

Attorneys for the claimant: *Messrs. Craigie, Lynch & Owen.*

Attorney for Government: *Mr. E. F. Nicholson*, Government Solicitor.

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