APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1909. *April 7.*

THE TRUSTEES FOR THE IMPROVEMENT OF THE CITY OF BOMBAY (ORIGINAL OPPONENT NO. 1), APPELLANTS, *v.* JALBHOY ARDESHIR SETT AND ANOTHER (ORIGINAL CLAIMANT AND OPPONENT NO. 2), RESPONDENTS.*

Land Acquisition Act (I of 1894), section 23—"Market value of land"—Methods of assessing the market value—Correct methods laid down—City of Bombay Improvement Act (Bombay Act IV of 1898)—Valuation by Collector—Acquisition of interest by claimant after Collector's award—References to the Tribunal of Appeal—Consolidation of references.

The Government of Bombay, acting on behalf of the Improvement Trustees, under the City of Bombay Improvement Act (Bombay Act IV of 1898), notified for acquisition nine parcels of land in December 1898. At the date of the notification, J., the owner of the parcels, was in unencumbered possession of only one of them; and the remaining parcels were let on permanent leases as building sites. Between the dates of notification and acquisition, J. bought out the interests of the tenant in one of the parcels. The situation of the land was such that the whole plot consisting of the nine parcels was capable of forming a valuable quarry. The Collector in assessing compensation dealt with all the parcels separately; and refused compensation on a quarrying basis. As regards the seven parcels, the award was arrived at on a rental basis. In all the nine cases, references were claimed and made to the Tribunal of Appeal constituted under section 48 of the City of Bombay Improvement Act (Bombay Act IV of 1898). After the Collector had made his award and before the references were heard, J. bought out the tenants' rights in the seven parcels. J. next applied to the Tribunal of Appeal for consolidation of the references into one: this was allowed. The Tribunal of Appeal allowed J.'s claim for compensation for the whole land on a quarrying basis. On appeal, it was objected that the consolidation was wrongly allowed for J. was thereby permitted to advance a claim—namely the claim to the quarrying value—which otherwise he would not have been able to make.

Held, that the consolidation was rightly allowed and had not the effect which was contended for. It was not by reason of the consolidation of references that J. was enabled to put forward what might be called the quarrying claim: that claim was already before the Collector and the Tribunal, and, whether good or bad, had to be decided on quite other grounds than the arbitrary division of the land made by the Collector.

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Held, further, that compensation should not be assessed on a quarriable basis, for the land was never a marketable quarry at the material time, and did not become so till after the Collector had made his award.

Per BATCHELOR, *J.*:—For the purposes of ascertaining the market value of land under section 23 of the Land Acquisition Act (I of 1894), the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it.

Collector of Belgaum v. *Bhimrao*(1) followed.

The method contemplated by the Land Acquisition Act (I of 1894) for assessing compensation is that of ascertaining first the market value of the land as if all separate interests combined to sell; and then of apportioning that value among the persons interested. The "market value of the land" means the price which would be obtainable in the market for a concrete parcel of land with its particular advantages and its particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal rights.

Per HEATON, *J.*:—Taking the scope of the Land Acquisition Act (I of 1894) and its words, it seems that in ascertaining compensation for land taken up neither the method of valuing each interest in it separately nor the method of valuing the land as a whole and then apportioning to each person interested the share to which he is entitled, is excluded. What is intended is a fair and reasonable estimate of the compensation to be awarded: and this is to be arrived at by taking into consideration certain specified matters and excluding from consideration others. The Act seems to leave a great deal to the discretion of the Collector and the Court, and amongst other matters, to leave it to their discretion to ascertain the market value of the land by either of the two methods. This opinion does not conflict with what was decided in *Collector of Belgaum* v. *Bhimrao*(1).

APPEAL against the decision of Tribunal of Appeal appointed under section 48 of the City of Bombay Improvement Act (Bombay Act IV of 1898).

In December 1898, the Government of Bombay, acting on behalf of the Trustees for Improvement of the City of Bombay, published a notification for acquiring a piece of land belonging to one Jalbhoy. The piece consisted of nine parcels of land. The situation of the piece on the top of a cliff was such that it formed by itself a valuable quarry.

At the date of the notification Jalbhoy was in unencumbered possession of one parcel alone. The remaining parcels were let

(1) (1908) 10 Bom. L. R. 657.

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out by him as building sites on permanent tenure. After the notification and before the date of the award by the Collector, Jalbhoy purchased tenants' right in one more parcel.

The Collector valued all the nine plots separately on the rental basis and awarded Rs. 11,803-14-8 as compensation to Jalbhoy for the whole piece of land.

On Jalbhoy's application, the Collector referred all the nine cases to the Tribunal of Appeal.

After the date of the Collector's award and before the references came on for hearing before the Tribunal of Appeal, Jalbhoy bought the tenants' rights in the seven remaining parcels. This made him the owner of all interests in all the nine plots of land.

Jalbhoy next urged upon the Tribunal of Appeal to consolidate all the nine cases into one, as he had become owner of all interests in the whole piece consisting of nine parcels of land. The consolidation prayed for was allowed and the cases were heard together as one appeal.

Before the Tribunal of Appeal, Jalbhoy claimed compensation for the whole piece on a quarryable basis. The Tribunal allowed the claim and fixed the amount of compensation to be awarded to Jalbhoy at Rs. 42,364. The grounds of the decision were as follows:—

It was argued that the purchase of the tenants' rights long after the date of Declaration disentitled the claimant to any quarrying rights, and these rights were destroyed by his having let the land for building purposes on a permanent tenure. It was also argued that at any rate, at the date of the Declaration, the tenants were parties entitled to a part of the compensation in their own rights.

We have to consider therefore if the tenants' interest, which the claimant has purchased from the several tenants of the seven plots, falls under the purview of section 49 (2). If it does, the claimant's right to claim compensation for the quarry becomes very questionable.

The effect of a notification under the Act is to put an end to the right of the parties to interfere with the land or to add anything to its value, so as to become entitled to enhanced compensation. The valuation of the land to be acquired must be made, keeping in view the market value that a prudent purchaser would pay at the date of the Declaration. The question therefore to determine was, what was the value of the land on that date.

In the present case what we have to consider is, whether there is any interest created or enlarged by the claimant, after the date of notification, so as to

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increase the amount of compensation to be paid for the land, under section 49 (2). It seems not. The right to quarry was in the owner of Nowroji Hill and till within the last 10 years quarrying had been carried on quite close to the plots in question. We think the right was not totally destroyed by the letting of the plots for building purposes, but was simply kept in abeyance during the occupation of the land by the tenants.

The owner of the Hill was, so as to say, possessed of the freehold. He owned the soil and had the right to quarry, but that right he could not exercise so long as his tenants occupied the land. That right would revive, and he would become repossessed of it at any time he bought out the tenants.

The claimant was the only person to appear before the Tribunal claiming full compensation for all interests. The tenants did not appear, and did not make any claim.

Under these circumstances, if this view was correct, it would follow that no new interest was created after the date of Notification, nor was any interest that previously existed enlarged after that date. The interest in the right to quarry was there; it was in abeyance for a time. The tenants, who had taken the land on lease for building purposes, had no right to quarry; they were entitled to the use of the surface-land only. When, therefore, the landlord bought out the tenants' building rights, he became repossessed of what he originally had as the owner of the soil in the seven plots. As to plots 505 and 510 there was no dispute and claimant was admittedly the owner of all interests in them.

The case presents another difficulty; for, if each plot is taken separately it is so very small in size that it would not be possible to carry on quarrying operations with safety. In that case we think it fair that something extra should be allowed for the chance of acquiring the other plots so as to get a quarriable area.

Under the Land Acquisition Act, section 23, we have to ascertain the market value of the land. To do this, it has been held by my predecessor in office that it was not necessary to value the interests of the landlord and the tenant separately, but all interests should be valued together. In reference No. 22 of 1905, Mr. Macleod said that it was not intended that the Collector should split up interests and value them separately and independently; as for instance to treat a landlord's interests and a tenant's interests in the same land as distinct things to be valued apart from each other.

The treatment of the different References as one Reference strengthened claimant's contention demanding compensation for his quarry rights. The question for decision is an important and difficult one, and I have consequently expressed my willingness to grant a certificate of Appeal to the High Court. We are inclined however to hold and we find that claimant has not acquired any new or enlarged interest in terms of section 49 (2) so as to increase the amount of compensation to be paid for the land.

The Tribunal further worked out alternatively compensation on a rental basis: and in doing so, they remarked as follows:—

"If the method adopted by us for the above valuation is not accepted by the High Court, the other method to follow would be to determine what a prudent purchaser would pay on valuing each plot separately and allowing some extra value in consideration of the chance of acquiring the adjoining plots so as in the end to get a large quarriable area. In that event we would adopt the valuation made by the collector, but with this modification that instead of allowing 14¾ years' purchase as he has done, we would increase the number of years' purchase to 18·18."

The Trustees appealed to the High Court.

Lowndes and *Jardine* (with Messrs. *Crawford, Brown and Company*) for the appellants:—It is not competent to the claimant to acquire a new interest in the plots after the date of the Notification issued under the Land Acquisition Act (I of 1894). The claimant Jalbhoy bought up the tenant's rights in seven plots after the date of the Collector's award. But as soon as the Collector's award was made, the land vested absolutely in His Majesty under section 50 of the City of Bombay Improvement Act, 1898. The tenants had no other interest left to them except the right to receive compensation awarded, and Jalbhoy cannot claim to have got anything more than such right by reason of the said purchase.

The Tribunal of Appeal erred in allowing the cases to be consolidated before them. The consolidation cannot be allowed where its effect is to enable a party to put forth a claim which he could not make if the consolidation were not allowed.

Further, the Tribunal have erred in valuing the land here on the basis of an unencumbered free-hold and then proceeding to divide the amount into different interests. Property to be acquired must be valued *rebus sic stantibus* at the date of declaration. Land in the abstract can have no market value. There can be no such thing as the market value of land in the abstract separate from the interests therein. What one buys in the market is the interest in the land. The market value of land must mean the aggregate value of various interests in it. The words used in a conveyance of land are always "the right, title and interest of X. Y. Z."

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The difficulty of attempting to value land in the abstract will be apparent from the following instances :—

(1) It has been held by the Privy Council that the Collector's award is merely an offer made on behalf of Government. If the Collector is to value in the abstract, how can he make an offer to various persons having an interest in the land? In *In re Esufali Salebhai* [1] Macleod, J., has held that the term "claimant" in the Land Acquisition Act, 1894, means the aggregate body of claimants and that the offer has to be made to the claimants as a body. I submit that this is not a right interpretation.

(2) The land is acquired free from all incumbrances, *e. g.*, easements How can you value land in the abstract free from easements? The easements might be more valuable than the land and you must value them separately.

(3) In cases of Toka tenure, the interest of the Toka tenant has a market value and is sold every day. Free-hold is never sold. It was held that the Government was not a party interested in the valuation of Toka tenure land under the Land Acquisition Act. The City of Bombay Improvement Act was, therefore, amended subsequently so as to make the Government a party interested.

(4) In lands held on Sanad tenure, there is a chance of Government resuming the land. How can you value such land as unencumbered free-hold? If you do, how can you apportion the interest of Government, which is merely a chance of Government resuming the land?

I submit that even under the Land Acquisition Act the separate interests in land and not land in the abstract are to be valued. Section 9 of the Land Acquisition Act speaks of claims to compensation for all interests in the land. Section 11 also refers to interests in the lands, sections 19, 20, 21 and 23 contemplate separate awards of compensation in case of persons holding separate interests in the lands. The whole scheme of the Land Acquisition Act is to compensate ndividuals for their separate interests. The principles of English Law, therefore apply here,

(1) (1908) 10 Bom. L. R. 994 at p. 998.

according to which the value to the owner and not to the acquiring body is to be determined and awarded. See *Stebbing* v. *Metropolitan Board of Works*.(1); *Penny* v. *Penny* (2); *Abrahams* v. *Mayor, Aldermen, and Commons of the City of London* (3); Cripps on compensation (4th Edn.), p. 109.

The appellants further submitted that owners of separate properties cannot combine so as to secure a larger value for their combined properties. Value of a large area made up of irregular plots if sold as one plot would be much larger than the aggregate values of the separate irregular plots. Such valuation is not allowed, for by so valuing you would be giving each separate owner more than he is entitled to by way of compensation for his interest. See *Mayor of Tynemouth and Duke of Northumberland* (4).

You may give something more for the possibility of the claimant acquiring the adjacent lands and thus increasing the value of his interest. But the possibility must not be very remote. The tenants in the present case are Fazandar tenants and have a permanent interest in the land. Jalbhoy is the Fazandar and has the right to receive the ground-rent and nothing else. The tenants are the owners of the land subject to the payment of ground-rent, there being no power of re-entry in Jalbhoy. The tenants and Jalbhoy, therefore, cannot combine.

Further, it is not the tenants who come and ask to combine but a person who has bought up the tenants' rights after the notification. No difference exists between an outsider and a Fazandar buying up the tenants' rights. If the tenants cannot claim to combine, how can a person who has bought their rights do so?

As regards the principle of valuation, the observations in *Government of Bombay* v. *Merwanji Muncherji Cama*(5) and *Collector of Belgaum* v. *Bhimrao*(6) are against me.

The true principle is to value the interest of each holder of a tenure and give him a sum equivalent to the purchase-money of

(1) (1870) L. R 6 Q. B. 37 at p. 41.
(2) (1867) L. R. 5 Eq. 227 at p. 235.
(3) (1868) L. R. 6 Eq. 625 at pp. 629, 633.
(4) (1903) 19 T. L. R. 630.
(5) (1908) 10 Bom. L. R. 907 at p. 918.
(6) (1908) 10 Bom. L. R. 65.

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such interest: *Dinendra Narain Roy* v. *Tituram Mukerjee*[1]; *Fink* v. *Secretary of State for India*[2]. These cases were decided under the Land Acquisition Act. But the present case falls under section 49 (2) of the City of Bombay Improvement Act. It shows pointedly that you must value the separate interests separately.

Jalbhoy is not entitled to valuation on the quarrying basis. Originally, there were two alternatives before the owner of these plots. (1) Hanging on to the land without the prospect of any return in the immediate future on the chance of quarrying it later on when the same could be profitable, or (2) letting out the land immediately for building purposes and getting an immediate return for the same. The owner here chose the second alternative and got a large return during these years. He cannot now claim the profits of quarrying.

Strangman (Advocate General) with *Inverarity* (instructed by *Pestonji, Rustam* and *Kola*) for the respondent.—The question as to how the value is to be assessed resolves itself into two other questions. (1) Is it land or various interests in land which are to be valued; and (2) Is the Collector to be allowed to prejudice the owner by splitting up the land as he thinks fit and making separate cases and separate awards for the parcels into which the land is split up. I submit, the answer to the first question is land; and the second question must be answered in the negative. As to the first question, I rely on the plain meaning of sections 3*a*, 4, 6, 9, 11, 18, 20, 21, 22, 29 and 30 of the Land Acquisition Act; and on the case of *Collector of Belgaum* v. *Bhimrao*[3]. If the argument of the appellants is to be given effect to then you must substitute "market value of the separate interest in the land," for the phrase "market value of land" in section 23 of the Land Acquisition Act, 1894.

In the present case, Jalbhoy was the common owner of the soil and the quarry. It is quite immaterial to what use the owner may have put his land. If you treat the interests as having

(1) (1903) 30 Cal. 801. (2) (1907) 34 Cal. 599.
(3) (1908) 10 Bom. L. R. 657.

combined, then why not assume a combination for a common owner. The claimant was at the date of the declaration entitled to the value of the land on the quarrying basis minus what it would cost him to buy out the tenants. The market value is what a purchaser would give for all the interests combined.

Lowndes in reply:—Once you assume combination there is no obstacle to valuing the land on a quarriable basis. But the combination must either rest on fact or be assumed in law. There is none in fact, under what law then can it be assumed? The whole scheme of the Land Acquisition Act is compensation; therefore the enquiry must be what is the man losing? The Court cannot undertake to "compensate" for land in the abstract. The English practice is to compensate for separate interests. See Lands Clauses Consolidation Act, 1845 (8 and 9 Vict., c. 18), sections 9, 12, 15, 16, 18; Housing of the Working Classes Act (53 and 54 Vic., c. 70), section 21 (1).

BATCHELOR, J.:—This is an appeal from a decision of the Tribunal of Appeal appointed under section 48 of the City of Bombay Improvement Act, 1898, and has reference to the amount of compensation to be awarded to the claimant, Jalbhoy Ardesir Sett, in respect of nine parcels of land which have been acquired by Government for the Improvement Trustees under the Improvement Act, 1898. The compensation awarded by the Special Collector was Rs. 11,803, and on appeal to the Tribunal this sum was increased to Rs. 42,364 with interest at 6 per cent. on Rs. 30,560. Against this award the Improvement Trustees bring the present appeal, contending that the Tribunal has applied wrong principles in assessing the compensation and that an excessive sum has consequently been allowed.

The facts are not in dispute, and for present purposes may be shortly stated as follows. In December 1898 the nine parcels were notified in connection with a scheme under section 27 of the Improvement Act, and at that time Jalbhoy was in unencumbered ownership of only one of the parcels, No. 505, the others being let on leases. The land is such that the whole plot, consisting of the nine parcels, forms in itself a valuable quarry, but it is not profitable to quarry any small area such as a single parcel.

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Between the notification and the acquisition Jalbhoy bought out the interest of the tenant of parcel No. 510. In acquiring the land the Special Collector dealt separately with parcels 505 and 510, to which apparently a part of No. 512 was also added, and refused Jalbhoy's claim to receive compensation on a quarrying basis. Jalbhoy appealed to the Tribunal, his general claim for quarrying value being included in the reference. As to the remaining parcels, the Collector made separate awards, valuing the house-holders' interests on a rental basis, and assessing the interest of Jalbhoy as Fazandar at 25 years' purchase of the rents. None of the tenants claimed a compensation reference to the Tribunal, but Jalbhoy did claim this reference in each case, and in each case he made it without prejudice to his general claim for quarrying value as embodied in his appeal regarding parcels 505, 510 and 512. After the Collector had made his award, and before the references to the Tribunal came on for hearing, Jalbhoy bought out all the remaining tenants. When the references were taken up by the Tribunal, Jalbhoy applied that they should be consolidated and that his claim for compensation on a quarrying basis should be allowed. Mr. Lowndes's first objection to the decision under appeal is that the Tribunal was wrong in allowing the references to be consolidated with the result that Jalbhoy was thus permitted to advance a claim—namely, the claim to the quarrying value—which otherwise he would not have been able to make. But in my opinion the consolidation had not this effect, and was rightly allowed. Mr. Lowndes concedes that Jalbhoy could not be prejudiced by any parcelling out of the land which the Collector might choose to make, and, that being so, the objection seems to me to fail. For it was not by reason of the consolidation of references that Jalbhoy was enabled to put forward what may be called the quarrying claim: that claim was already before the Collector and the Tribunal, and, whether good or bad, had to be decided on quite other grounds than the arbitrary division of the land made by the Collector. Moreover it must be remembered that Jalbhoy as Fazandar owner of some of the plots and as lessor of the others with the prior right of buying out the lessee had an interest in the whole area acquired.

To pass now to the main argument which has been addressed to us: it turns upon the meaning of the words "the market value of the land" in section 23 of the Land Acquisition Act. The Advocate General has contended that the compensation to be awarded must be ascertained by reference to the value of the land itself considered, as he put it, as unencumbered freehold, that is, on the assumption that all interests combine to sell; Mr. Lowndes, on the other hand, has urged that the true meaning of the Act is that compensation should be awarded by the valuation of the separate interests existing in the land. It appears to have been assumed at the bar that the choice between these alternative constructions must determine the result, but for my own part I am not clear that such an assumption is well founded. However that may be, I think that the point in controversy is, so far as this Court is concerned, concluded by the case of *Collector of Belgaum* v. *Bhimrao*[1]. While that case stands, I can see no room for the appellants' present contention, and I did not understand Mr. Lowndes to suggest that the contention could be allowed under the Land Acquisition Act so long as the case retains its authority. The decision, to which I was a party, is a decision of this Appeal Court and has the high authority of Jenkins, C. J., who in delivering the judgment laid down that for the purposes of ascertaining the market value of land under section 23 of the Land Acquisition Act "the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it." That, as I understand it, was said in general terms upon the construction of the Act, and formed the *ratio decidendi*. So far as the Land Acquisition Act is concerned, I think the ruling is decisive, and it is of course binding upon us now. The only ground upon which Mr. Lowndes sought to avoid this decision was, if I followed his argument correctly, that here the land was acquired not under the Land Acquisition Act, but under the Bombay City Improvement Act. The distinction certainly exists, but in my opinion it is not material. For the Improvement Act incorporates the relevant provisions of the Land Acquisition Act, including section 23, and I can find no good reason for supposing that

(1) (1908) 10 Bom. L. R. 657.

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the Improvement Act intends, or operates, to effect a fundamental change in the methods of the Land Acquisition Act. No such far reaching effect ought, I think, to be given to section 49 (2) of the Improvement Act, which merely reproduces section 21 (b) of the English statute, the Housing of the Working Classes Act, 1890, and which may receive ample meaning without recourse to the unlikely hypothesis that so important a change in the Acquisition Act was intended to be made by way of indirect and somewhat far—fetched inference. In my opinion, therefore, it would be enough to say that the decision in the *Collector of Belgaum's* case[1] is fatal to the contention that the land here should be valued on the footing of assessing the separate interets.

But as I am anxious to avoid any appearance of treating unceremoniously the careful and elaborate argument we have had from Mr. Lowndes, I will notice briefly the main points which he has discussed. His chief reliance was placed upon certain particular sections of the Land Acquisition Act, such as sections 3 (g) (iv), 9 (3) and 31 (1) (2) (3) and (4) as showing that the word "land" was used in the Act as equivalent to "interest in land." The Advocate General, on the other hand, has pointed to a number of other sections where the word "land" appears to denote the physical object. It would be tedious to analyse all these sections individually, nor do I think it necessary to do so. There can be no doubt that the word "compensation" is occasionally used to mean the particular sum awarded for the acquisition of a particular interest, but that is quite consistent with the position taken by the Advocate General. Reading the Act as a whole, I can come to no other conclusion than that it contemplates the award of compensation in this way: first you ascertain the market value of the land on the footing that all separate interests combine to sell; and then you apportion or distribute that sum among the various persons found to be interested: sections 3, 11, 18, 19, 20 and especially sections 29 and 30 are to my mind decisive upon the point. Section 31 (3) which Mr. Lowndes claims in his favour appears to me to tell the other way, for, though the sub-section is not perhaps worded with

(1) (1908) 10 Bom. L. R. 657.

perfect accuracy, we have the antithesis marked between land and an interest in land. That distinction is, as I understand it, preserved throughout the Act, where "land" is always used to denote the physical object, which is after all the thing that has to be acquired. Provision is made for compensation to all persons interested, but claims on this head are, I think, to be adjusted in the apportionment prescribed under sections 29 and 30, and do not fall to be considered till after the Court has determined the market value of the land under section 23 (1).

Then Mr. Lowndes urged that the theory which I am endeavouring to justify would lead to unwelcome results in its practical application, and he gave us two or three instances of such difficulty. I have considered those instances to the best of my ability, but am not prepared to concede that the difficulties suggested are inevitable under my view of the Act, and in any case, if that view is right, the argument is no more than an argument *ab inconvenienti*, and the answer would be that our Act is less convenient than would be an Act prescribing valuation by separate interests. I must not of course be taken to express an opinion that an Act drawn so as to impose as a first step the valuation of separate interests would in fact be a better or more convenient statute than that which we have: my opinion goes no further than that that is not the meaning of the Land Acquisition Act.

As to the argument that under the English Acts dealing with similar subjects it is the established practice to value separate interests, I can only say that the English Acts in their scheme and structure differ so materially from the Land Acquisition Act that in my opinion it would be unsafe to make any inference from the practice prevailing in England. I repeat that I by no means assert that the difference in procedure must necessarily lead to any substantial difference in the result; I limit myself to saying that in my judgment the method contemplated by the Land Acquisition Act is that of ascertaining first the market value of the land as if all separate interests combined and then of apportioning that value among the persons interested. It is said that that method may on occasion prove downright imprac-

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ticable or unfair, but it will be time to consider such a case when it actually arises.

Then comes the question; does this view of the methods of the Act decide the appeal in the respondent's favour? In my opinion it does not. For, though the market value of the land has to be ascertained on the assumption that all separate interests combine, that, I think, only means that the separate interests are taken to combine so as to give a complete title to the assumed purchaser and the acquiring body, not so as to impress upon the land a character which it did not bear or to give to it a value which it never had in the market; for it is still the "*market* value of *the* land" which has to be determined; and by that is meant, I think, the price which would be obtainable in the market for that concrete parcel of land with its particular advantages and its particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal rights. If that is correct, it furnishes an answer to the contention that the full quarriable value must be allowed because this land is in fact by natural formation a quarry. That may be so; but it was never a marketable quarry at the material time, and did not become so till after the Collector had made his award. At the material time the claimant could not have obtained a quarry price for the land in the market because admittedly the permanent building leases, containing no provision for re-entry, stood between him and any immediate ability to quarry; and the determining factor is the value to the owner, not the value to the acquiring body after acquirement. The case, therefore, seems to me to fall within the principles which have been applied in English cases to owners of land adaptable for use in reservior sites, and to use the language of Vaughan Williams L. J., in a recent case of that sort, *In re Lucas and Chesterfield Gas and Water Board*[1], I would say that the land here had an adaptability value on the footing of its possibility as a quarry, but that it was not a realised possibility, nor was it competent to the claimant to convert it into a realised possibility by the expedient of buying out the permanent tenants

(1) [1909] 1 K. B. 16.

after the Collector's award had been made; see sections 49 (2) and 50 of the Improvement Act.

If I am right in thinking that that is the law, there is an end of the matter; but since the point was taken, I may add that in my judgment there is really no particular hardship in this view. For it was the claimant himself who, in pursuance of his own financial interests, sacrificed and abandoned the quarry user of the land for the consideration of the rents obtainable from the permanent tenants; in other words, he himself put it out of his power to use the land as a quarry and he did so with his eyes open and for what he regarded as sufficient consideration. I do not think that he has any fair grievance if when the land comes to be acquired, it is acquired in the character in which alone he had the power of using it.

The most that he can fairly claim, in my opinion, is the market value of the land in that character plus a special allowance for its adaptability as a quarry at some future date; and to that I think he is entitled. There is no evidence as to the amount at which this special allowance should be calculated. The Tribunal recognising that the full quarriable value might not be sustained in appeal, give us an alternative finding that as allowance for the special adaptability value the number of years' purchase adopted by the Collector should be increased from 14$\frac{2}{7}$ to 18·18. The correctness of this method was at first challenged by Mr. Lowndes and defended by the Advocate General, but subsequently Mr. Lowndes informed us that he would not dispute it, as his clients were more interested in getting this Court's decision on the questions of principle than in cutting down the allowance suggested by the Tribunal.

The result is that if I am right as to way in which this land should be valued, there is now no dispute as to the quantum of compensation. In these circumstances and having regard to the special knowledge and experience possessed by the Tribunal on such points, we must adopt the alternative finding, that is to say, the market value of the land will be determined on the valuation made by the Collector subject to this modification that the number of years' purchase will be increased from 14$\frac{2}{7}$ to 18·18 years as allowance for the special adaptability value.

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In the circumstances of the case we make no order as to costs.

HEATON, J.—I agree in the order proposed.

The Tribunal have given two valuations: That which they prefer is arrived at by computing the market-value of the land as a whole. But the computation is vitiated because they have taken the quarrying value of the land as realized and not as latent. They have, in short, given to the owners what they consider the land is worth to the acquirer after acquisition, not what they estimate, it would have fetched in the market at the date of the acquisition. Because there is this defect in the computation, I agree with my learned colleague, that the valuation cannot be accepted.

The second and alternative valuation was arrived at by taking each plot separately and allowing some extra value in consideration of the chance of acquiring the adjoining plots so as in the end to get a large quarriable area. How precisely this was done, is not explained in detail. The Honourable the Advocate General on behalf of the claimants did not attack that valuation in particular; his argument was that the other valuation must be accepted. Mr. Lowndes for the Improvement Trust withdrew the objections to the alternative valuation which at one time he urged. That being so it seems to me we must accept the alternative valuation.

On the general question, which was most strenuously argued, it is necessary to say a few words.

Mr. Lowndes for the Appellant argued that the correct method of ascertaining compensation for land taken up is to value separately each interest in it. The Honourable the Advocate General for the respondent argued that the correct method is to value the land as a whole and then to apportion to each person interested the share to which he is entitled. Both appealed to the provisions of the Land Acquisition Act in support of their arguments; and we have had those provisions carefully read and commented on. Taking the scope of the Land Acquisition Act and its words and giving them the best consideration I can, it seems to me that neither method is excluded and that what is intended is a fair and reasonable estimate of the compensation to be

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awarded and that this is to be arrived at by taking into consideration certain specified matters and excluding from consideration others. The Act seems to me to leave a great deal to the discretion of the Collector and the Court, and amongst other matters, to leave it to their discretion to ascertain the market value of the land either by the method advocated by Mr. Lowndes or by that which receives the support of the Honourable the Advocate General. I do not think this opinion conflicts with what was decided in *Bhimrao's* case[1]; for in that case it was not held that valuation by computing different interests separately was universally wrong, but that it was correct to follow the other method in that case. But Mr. Lowndes argues that even if the Land Acquisition Act leaves the question open yet section 49 cl. (2) of the Bombay Improvement Act, which Act incorporates certain portions of the Land Acquisition Act, absolutely requires that the compensation must be ascertained by valuing separately the separate interests. The argument does not convince me. I think the Bombay Improvement Act leaves the choice of method open, just as the Land Acquisition Act does. The latter part of clause 2 of section 49, no doubt does contemplate the valuation of a separate interest and when a case such as is contemplated there actually arises—it has not arisen before us—no doubt such valuation as is required will be made.

R. R.

(1) (1908) 10 Bom. L. R. 657.

APPELLATE CIVIL.

Before the Honourable Mr. Justice Chandavarkar, Acting Chief Justice, and Mr. Justice Heaton.

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JIVANJI JAMSHEDJI LAKDAVALA (ORIGINAL DEFENDANT), APPELLANT, *v.* BARJORJI NASSERVANJI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Appointment of a Committee for management of property—Appointment acquiesced in by owner—Committee in management for a long time—Suit by Committee against a trespasser in ejectment—Title.

The Parsi Panchayat at Bombay appointed a committee to manage the property of the Parsi Anjuman at Surat. The committee managed the property

* Second Appeal No. 121 of 1908.