

1910.

JAINABAI  
v.  
R. D.  
SETHNA.

of evading the rigid restrictions of the old law. But Courts will, I think, be wary against allowing Mahomedans under the guise of deeds of gifts to will away their property contrary to the provisions of their law. When a man says, "I give the whole of my property to myself for my life-time and on my death to my friend Z," were the Courts to validate such an intention whether wrapped up in the form of a trust or not, it would be lending themselves to defeat the Mahomedan law of wills. Apart from that consideration a will is of course revocable and therefore if, upon a true construction of the deed of 1902, it should appear to be in substance, whatever it may be in form, a testamentary disposition of property, it could, in the first place, take effect upon no more than one-third of the testator's estate, and in the next place, it would be open to him to revoke it at any time before his death.

These, I think, are reasons enough for my conclusion that the plaintiffs' suit fails and must be dismissed with all costs.

*Suit dismissed.*

Attorneys for plaintiffs:—Messrs. *Payne & Co.*

Attorneys for defendants 1, 2, 3, 6 and 7:—Messrs. *Matubhai, Jamietram and Madan.*

Attorneys for defendant 4:—Messrs. *Smetham, Byrne & Co.*

## ORIGINAL CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.*

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

THE GOVERNMENT OF BOMBAY, APPELLANTS, v. ESUFALI SALEBHAI, RESPONDENT.\*

*Land Acquisition Act (I of 1894)—"Land"—Acquisition of outstanding interests where Government owns fee-simple.*

PER CHANDAVARKAR, J.:—To acquire a land [Sec. under the Land Acquisition Act] is not necessarily the same thing as to purchase the right of fee-simple to it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like.

\* Reference No. 2 of 1906.

Appeal No. 34 of 1903.

1909.

November 1.

The definition given to the word "land" in section 3 (a) of the Act is not exhaustive..... The use of the inclusive verb "includes" shows that the legislature intended to lump together in one single expression—*viz.* "land"—several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it, all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require.

*PER* BATCHELOR, J. :—Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation, based upon the market value of the whole land, must be distributed among the claimants. In such circumstances there is no insuperable objection to adapting the procedure to the case on the footing that the outstanding interests, which are the only things to be acquired, are the only things to be paid for.

*APPEAL* from a reference to the High Court under section 18 of the Land Acquisition Act (I of 1894). In November 1902 Government notified their intention of acquiring, for a public purpose, a certain plot of land, with buildings on it, situate at Parel Road, and, after the usual notices had been issued and other formalities duly observed, the Collector entered upon an inquiry in December 1902. The only claimant appearing at this inquiry was Esufali Salebhai who was in possession of the land in his capacity as executor of one Salebhai Heptoola. On 14th May 1904, Government gave notice to the claimant to quit, and on 29th June the Government Solicitor set up the claim that the land belonged to Government, and that Salebhai was only a tenant by sufferance and had therefore no right to compensation except for the buildings. The inquiry proceeded, however, and the Collector on the evidence decided in favour of Government, and, after arriving at a valuation of the whole plot, awarded to the claimant compensation for the buildings alone. The claimant declined to accept the award and the Collector accordingly referred the matter to the High Court.

Macleod, J., on the reference made a slight alteration in the figures of the amount and awarded the whole sum to the claimant, on the ground that in the first place the Collector had no jurisdiction to decide the question of title as between Gov-

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALEBHAJI.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALEBIHAL.

ernment and the claimant, and, secondly, Government, after having once proceeded to acquisition under the Act, could not in such proceedings set up the claim of ownership. From this decision Government appealed.

*Robertson*, with him *Strangman*, Advocate-General, for the appellants:—

The Judge in the Court below held that he had no jurisdiction to come to any finding on the first six issues, *viz.*, as to title to the land as between Government and the claimant. And yet he awarded the total compensation to the claimant, whose title to it had been disallowed by the Collector. If the Collector had no jurisdiction, then the Judge had no jurisdiction to hear the reference. But the Collector had jurisdiction. It is his duty to ascertain the interest of the claimants, and in doing so he must necessarily decide the interest of Government. The two Allahabad cases, *Imdad Ali Khan v. The Collector of Farakhabad*<sup>(1)</sup> and *The Crown Brewery, Mussoorie, v. The Collector of Dehra Dun*<sup>(2)</sup>, must be distinguished; they were both decided under the old Act (X of 1870). The power of the Government to levy assessment on land under City of Bombay Land Revenue Act (Bom. Act II of 1876) shows they have interest in land.

*Jardine*, with *Setalvad*, for the respondent:—The rent due to Government on this land is a demand on it, and not an interest in it. But in any event the Act does not contemplate Government taking up land in which it is interested. Having put the Act into force, Government is estopped from making any claim to any interest. What is acquired is the land and all the interests therein: *Bombay Improvement Trust v. Jalbhoy*<sup>(3)</sup>. The Act thus cannot contemplate Government taking up its own interests, however small. Government could sell its interest to the acquiring body. In section 3 (b) the definition of "person interested" excludes Government, because Government is not interested in

(1) (1885) 7 All. 817.

(2) (1897) 19 All. 339.

(3) (1909) 33 Bom. 433.

the compensation. Section 23 contemplates that the compensation shall be the whole market value of all the interests in the land. See also *Collector of Belgaum v. Bhimrao*<sup>(1)</sup>, which is supported by *Jabhoy's case*<sup>(2)</sup>. Section 11 (ii) and (iii) clearly exclude Government, and aim at compensating the persons dispossessed. The Crown is not affected in any way by a statute unless there is express provision to that effect in the statute: *Secretary of State for India v. Mathurabhai*<sup>(3)</sup>. If Government has any claim here, it can file a suit.

*Robertson* in reply :—

With regard to the point of estoppel, there was no suggestion of this in any of the issues. But Government is not here acquiring its own interest, it is acquiring land in which it is interested. It is suggested Government might sell its interest to the acquiring body; but suppose Government is acquiring for itself. Section 11 (iii) does not force the Collector to apportion to any person more than compensation for his particular interest. There is no need for the Crown to be expressly mentioned. See *Bell v. Municipal Commissioners for City of Madras*<sup>(4)</sup>.

CHANDAVARKAR, J. :—In my opinion, Macleod, J., from whose decree passed upon a reference from the Collector of Bombay, under the Land Acquisition Act, this is an appeal, has taken too narrow a view of the Act, not supported either by the language and object of its provisions or the law relating to the rights of the Crown.

The question for decision arises under the following circumstances, shortly stated.

The land in dispute having been, in the opinion of Government, required for a public purpose, a declaration to that effect was published by them, and the Collector of Bombay adopted the preliminary steps and observed the formalities, required by the Act, for the compulsory acquisition of the property. The land had buildings on it. The respondent, who claimed both the land and buildings as owner, having declined the amount

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

(2) (1839) 14 Bom. 218.

(3) (1909) 33 Bom. 493.

(4) (1902) 25 Mad. 457 at p. 495.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

vs.  
ESUFALI  
SALUBHAL.

1909.]

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY.

vs.  
ESUFALI  
SALESHIAI.

of compensation offered by Government on the ground of inadequacy, the Collector commenced an inquiry into the value of the property for the purpose of determining the amount of compensation payable under the Act. In the course of the inquiry the Government Solicitor, who represented Government before the Collector, put forward their claim to the land as owners and averred that, as the respondent had held it as a tenant by mere sufferance, he was entitled to compensation in respect of the value of the buildings only. The Collector took evidence and, arriving at the conclusion that Government were owners of the land, he made an award of Rs. 41,693-2-3 as the amount of compensation payable to the respondent for the buildings. The respondent having refused to accept the award and asked for a reference to this Court, the Collector referred the matter accordingly.

Macleod, J., before whom the case came to be heard, has held that the Collector had no jurisdiction to go into and determine the question of title for the purposes of the inquiry before him; that the Act does not apply to land of which Government are, or claim to be, owners; and that, where they have begun by setting the machinery of the Act in motion for the compulsory acquisition of any land from a private individual as owner of it, they cannot plead in these proceedings their own right as owner and claim compensation in respect of it as against him. Upon this view, without going into the question of title to the land raised before him, the learned Judge has directed the whole amount of compensation, both for the land and the buildings, aggregating two lakhs of rupees and odd, to be paid to the respondent, who was claimant before the Collector.

The result of this decree is that the respondent is held not entitled to determination of his right to the land, although sections 30 and 31 of the Act distinctly contemplate that such right must be determined by the Court before the claimant can receive compensation. Further, if the construction which the learned Judge has put upon the language of the Act is correct, land of which the Crown is owner, but which is in the

occupation of a subject under a lease or the like, cannot be compulsorily acquired under the Act, however urgent, on public grounds, the need of such acquisition may be.

The result is not satisfactory from the public point of view. But if the Act, on a proper construction of its language, allows it, it cannot be helped. The learned Judge's view is supported by two decisions of the Allahabad High Court which he has cited—*Imad Ali Khan v. The Collector of Farakhabad*<sup>(1)</sup>; *The Crown Brewery, Mussoorie, v. The Collector of Dehra Dun*<sup>(2)</sup>. These, indeed, were decisions under the old Land Acquisition Act (X of 1870); but there is no material difference in principle or language between that and the present Act. In my opinion, the language of the Act, reasonably construed, does not lend itself to the interpretation put upon it by Macleod, J.

It is to be remarked at the outset that the Land Acquisition Act was passed by the legislature for the purpose of compulsorily acquiring any land when it is required for a public purpose or for companies. The legislature has constituted the Local Government the judge of that requirement, and the Collector, agent of that Government, for the purpose of compulsory acquisition. The Allahabad decision in *Imad Ali Khan v. The Collector of Farakhabad*<sup>(1)</sup> proceeds upon the ground that it is a contradiction in terms to speak of the Collector as seeking acquisition of a land which he asserts is his own. But the Collector is not seeking his own: he is merely the agent of the Local Government who are constituted the statutory authority to acquire the land compulsorily. When the land has been so acquired, the land becomes, indeed, absolutely vested in the Government free of all incumbrances (section 16); but that is for devoting the land to the purpose for which its compulsory acquisition was declared necessary. Such is not the case with land of which, in ordinary parlance, it is usual to speak as land owned by Government. Legally, the Local Government own no land. The Crown is the

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESURELI  
SALEBHAI.

(1) (1895) 7 All. 817.

(2) (1897) 19 All. 339.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUPALI  
SALEBHAL.

owner of all State lands and property, and these are vested in the Government of India in trust for the government of the country (21 & 22 Vic., c. 106, s. 37). And the Government, under that power, can use the Crown lands for any purpose. But the Crown remains owner unless the ownership has been transferred to a subject by way of fee-simple. This difference must be borne in mind in interpreting the provisions of the Land Acquisition Act.

It is quite true that there can be no such thing as the compulsory acquisition of land, owned by and in the occupation and control of the Crown. The Land Acquisition Act cannot apply to such lands, because all Crown lands being vested in the Government, they are competent and free to devote any of those lands to a public purpose. It is a contradiction in terms to say that the Government are compulsorily acquiring that which they have already acquired otherwise, both as to title and possession.

But suppose a land owned by the Crown and vested in the Government has been parted with in such a way as to create in favour of a subject of the Crown a limited right to hold and use it for specific purposes while reserving to the Crown the ownership of the land, *i. e.*, the freehold interests in it, not merely the Crown's right to land revenue. As an instance of this kind of land ownership reference may be made to the decision of Westropp, C. J., in *The Justices of the Peace for the City of Bombay v. The G. I. P. Railway Company*<sup>(1)</sup>. In such a case, the land with its freehold interests is not free so as to enable the Government to use it for a public purpose, unless they buy out the person who has the right to hold and use it. And if they buy, the purchase extends only to that person's right to hold and use, in fact, to his partial interest in the land, not to the ownership, because the latter is already in the Crown. Nevertheless, when the sale has taken place, the Crown "acquires" the land in the sense that it is free to use it for any purpose it likes. To acquire a land is not necessarily the same thing as to purchase the right of fee-simple

(1) (1872) 9 Bom. H. C. 217.

to it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like.

The Land Acquisition Act substitutes a compulsory for a contractual acquisition of land, where it is required for a public purpose. The object is to get at the *land* for a public purpose: and the word *land* has a definition expressly given to it in the Act, which is not exhaustive, because the Act says: "The expression 'land' includes benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth." The use of the inclusive verb "includes" shows that the legislature intended to lump together in one single expression—viz. "land"—several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it, all which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require.

Thus, in an ordinary case, where a land in the sense of fee-simple is owned by one person, and the buildings on it are owned by another, the Collector has to enquire into the market value of the land as land having buildings on it, and in so doing he fixes the value of each separately and apportions the compensation accordingly: *Dunia Lal Seal v. Gopi Nath Khetry* (1).

But it is said that the Act cannot have been intended by the legislature to apply where the Crown represented by the Government claims to be interested in the land as owner. In support of this view, Macleod, J., relies principally on sections 11, 15 and 23 of the Act, and he concludes that there is no "provision for the acquisition of anything less than permanent interests in the land, and land in the Act must mean land irrespective of any interests which have been created in it."

This conclusion is opposed to the wide meaning attached to the term "land" by the definition given in section 3 of the Act. It is true that in sections 11, 15 and 23, the word "land" appears

1906.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALEBHAI.

(1) (1895) 22 Cal. 820.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESUFALI  
SALEBHAI.

at first sight as if it were used in the ordinary sense, but even on that narrow construction due and full effect can be given to the language of those sections consistently with the right of the Crown to intervene and claim its interest as owner of a land acquired for a public purpose as against a claimant.

Macleod, J.'s view, as I understand it, is that because section 11 requires the Collector to determine "the value of the land," to state in his award its area and "the amount of compensation which should be allowed for the land," and because under sections 15 and 23 the Collector and the Court are bound to determine the amount of compensation with reference to "the market value of the land," the plain intention of the legislature appears to be that what they had in view as the subject-matter of compulsory acquisition and compensation was "land" as distinguished from any interest in it less than permanent. The fact that provision is made in the Act for the determination of the amount of compensation with reference to "land" while the Act is silent as to the acquisition of any interests less than permanent in it, has led the learned Judge to that conclusion. And in supporting his decree, the respondent's counsel has argued before us that in the case of a land of which the Crown is owner, the sections above mentioned can have no meaning and application. Of what use is it, asks the counsel, to determine the area of, and fix the compensation for such land, when the Crown, being its owner, has to pay nothing and receive nothing?

This argument would be unanswerable if it were clear that the determination of the area and of the amount of compensation was absolutely useless and irrelevant in the case of a land owned by the Crown, that, in fact, no necessity could conceivably exist or arise in the case of such lands. The necessity for such determination must, indeed, exist invariably where the land compulsorily acquired was owned by a subject of the Crown. Cases of that kind arising under the Act must, in the very nature of things, be more frequent than cases of lands owned by the Crown. Even if we assume that the legislature had those

more frequent cases in view in enacting the provisions of the Act now under discussion; it cannot be maintained that those provisions are altogether valueless and inapplicable to the rarer cases of lands owned by the Crown. Even as to these, it may be sometimes necessary to determine the area and the amount of compensation payable for the land, as distinguished from subordinate interests, as a matter of account, because the acquisition may be for a company or other body, from whose pockets the money is ultimately to come. Due and full effect is given to the sections if we have regard to these considerations. They are intended for most of the cases arising under the Act, and because in some cases they are superfluous, it does not follow that the latter were meant to be excluded from the operation of the Act.

According to Macleod, J., "*land* in the Act must mean land irrespective of any interests which have been created in it", such as the interest of a tenant from year to year or of a tenant holding for a period over a year. He says: "Take the case of a lease for ninety-nine years, fifty years of which have still to run when Government wish to acquire the land. How is the Collector to arrive at the value of the lessee's interest in the remainder of the term?" No doubt in the case of a fee-simple, the so-called tenant is and must be treated as the owner interested in the land entitled to compensation for it. So far I agree with Macleod, J. See *The Collector of Poona v. Kashinath*<sup>(1)</sup>. But I cannot agree when he says that "in the case of lands let out for a period over a year, it is difficult to see how the Government can take action under the Land Acquisition Act if it desires to put an end to the term, unless the words 'the compensation payable for the land' in section 11 can be paraphrased into compensation for those interests in the land which are not vested in Government." Now, as a matter of law, these words have been in effect so paraphrased in cases to which private individuals, not Government, were parties and which have been decided under the Act. In *The Collector of Poona v. Kashinath*<sup>(1)</sup>, there was a claim for compensation made by certain tenants, who held

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.  
—  
THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALEBHAI.

(1) (1886) 10 Bom. 585 at p. 591.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.

ESTABLISHMENT  
SALUBRAL.

under an unexpired lease of nine years of the land for gardening purposes at the time of compulsory acquisition by the Collector. And it was held by this Court that "as persons interested in the land under section 3, they are entitled to share in the total compensation awarded for the fee-simple of the property." In *Link v. The Secretary of State for India*<sup>(1)</sup> it was held that the term market value of land, as used in the Act, includes not only freehold interests, but also the interests of tenants, etc. In *Narain Chandra v. The Secretary of State for India in Council*<sup>(2)</sup>, it was decided that a yearly tenant is entitled to share in the compensation under the Act as well as a tenant for periods over a year. Macleod J., appears to have been pressed by the difficulty of ascertaining the value of the interest of a lessee holding for a fixed period in the unexpired term of his lease. No guidance is given, indeed, in the Act for the valuation of such interests. The reason appears to be that the legislature, having given a general direction that the amount of compensation payable for a land shall be determined according to its market value, left the decision as to the interests subordinate to the right of ownership or fee-simple to rest upon principles which the Collector or the Court may see fit to apply in each case on grounds of law and equity. Interests in or benefits arising out of land are various, and it would have been practically impossible to mention them exhaustively and provide for each of them in the Act.

The whole question is the intention of the legislature. Did it intend by this Act to exclude from its operation lands let out by Government, without a transfer of the fee-simple? Where that intention is not expressed in explicit terms, it has to be gathered not merely from the language of some sections but by a consideration and comparison of all the sections in the Act bearing on the question for determination, and also from the purview and policy of the Act. Sections 11, 15 and 23 of the Act, on which Macleod, J., has rested his reasoning, must be read with sections 30 and 31. These distinctly contemplate that the amount of compensation determined under those sections must be

(1) (1907) 34 Cal. 599.

(2) (1900) 28 Cal. 152.

paid to the person "entitled" to it, or where there are several persons claiming, it must be apportioned among them according to their respective rights. That is the paramount intention of the Act with reference to the payment. In that respect it follows the Lands Clauses Act in England, as to which it has been held that "it is the person who is entitled to the land who ought to have the money." Per Cotton, L. J., in *In re Manor of Lowestoft*<sup>(1)</sup>.

But it is urged that in any case the Land Acquisition Act cannot apply to the Crown, because the Crown is not mentioned in it. In *The Secretary of State for India v. Mathurabhai*<sup>(2)</sup>, there is a dictum of this Court that the rule of construction of English law, according to which the Crown is not affected by a statute, unless there are words in it to that effect, applies to India. That dictum was on the authority of the decision in *Ganpat Putaya v. The Collector of Kanara*<sup>(3)</sup>. The head-note to the report of *The Secretary of State for India v. Mathurabhai*<sup>(2)</sup> is misleading where it says that, according to the judgment in that case, "the rule of construction, according to which the Crown is not affected by a statute unless specially named in it, applies to India." The words "specially named" are the reporter's, not of the Court. The rule of English law is that a statute does not bind the Crown, unless it is named in it expressly or by necessary implication. See the Judgment of Wills, J., in *Cooper v. Hawkins*<sup>(4)</sup>.

In cases arising under the Lands Clauses Act in England, it has been held that the interests of the Crown are not affected by anything in the Act: *In re Manor of Lowestoft*<sup>(1)</sup>, but the ground of that, as explained by Baggallay, L. J., in that case, is that "you cannot by any process under the Lands Clauses Consolidation Act bring the Crown into Court as a litigant to contest any claim before the Court." But the Crown may waive its prerogative in that respect and intervene where its rights and revenue are affected and take the benefit of any particular Act, though it be not named therein. That is so "by the common

1909.  
IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.  
—  
THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALIBHAI.

(1) (1883) 24 Ch. D. 253, 257.

(2) (1875) 1 Bom. 7 at p. 9.

(3) (1889) 14 Bom. 213.

(4) [1904] 2 K. B. 164 at p. 166.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESUFALI  
SALEHJI.

law of the realm, and from time immemorial the prerogative rights of the Crown cannot be restricted by an Act of Parliament without express words," where its revenue is affected: *The Attorney-General v. Constable*<sup>(1)</sup>. And the right of the Crown to intervene and have a trial at bar where it is actually and immediately interested in the litigation, is a branch of the Royal prerogative. [Per Wiles, J., citing Chitty's Practice in *Dixon v. Farrer*<sup>(2)</sup>.] No doubt, though the whole amount of compensation, determined in the present case under the Act, is paid to the respondent, the Crown is not concluded by the payment and is entitled to claim it from him in a separate suit. But, nevertheless, the Court has a duty to perform under the express provisions of the Act before it decrees payment. It has to determine whether the person claiming the amount of compensation, whether for the land or the buildings on it or other interests in it, has the right to receive it in the capacity which he asserts. Under these circumstances it is not sound law, not to say justice, to say to the Crown: "You can sue the claimant if you think you are entitled to what he claims."

I have so far dealt with the case on the assumption that what is claimed on behalf of the Crown is the proprietary title to, or fee-simple of, the land and not merely the right to levy assessment, which exists in the case of lands held by one of its subjects as proprietor, liable to pay assessment. In *Naoroji Beramji v. Rogers*<sup>(3)</sup>, the opinion was expressed "that most, though not all, of the lands in Bombay are held in perpetuity," and were estates in which the possessors had a permanent interest. In the case of such lands, the fee-simple of the land would be in the occupier, not in the Crown; and the former would be entitled to the amount of compensation as owner interested in the land. Whether the Government demand called assessment or pension tax, or quit-rent, or ground rent, is in reality a tax or rent, is a difficult problem, which has given rise to serious controversy among statesmen and political economists. Macleod, J., thinks the demand in such cases is a

(1) (1879) 4 Ex. Div. 172.

(2) (1886) 17 Q. B. D. 653 at p. 664.

(3) (1867) 4 Bom. H. C. 1 at p. 103.

tax. I will not venture to discuss that question, because it is not necessary for the purposes of this case. By the pleadings in the Court below, the title asserted on behalf of the Crown is that of owner of the land, who let in the respondent as a tenant for specific purposes, meaning that the latter had no fee-simple of the property. The question before the Court, therefore, is whether at the date of acquisition by the Collector the respondent had any right to the land apart from the buildings, entitling him to receive the amount of compensation which remains after deducting the amount payable for the buildings as "a person interested in the land."

On these grounds, the decree appealed from must be reversed. As that decree was passed by the learned Judge on the ground of want of jurisdiction to decide the question of title, the disposal of the case by him must be regarded as one on a preliminary point and the case must be remanded for a decision on the question whether the claimant (respondent) had any interest in the land, as distinguished from his interest in it in virtue of the buildings, which entitles him to compensation.

If it be found that he had such interest, the Court below should determine the amount payable to him in respect of it and pass a decree accordingly. If, on the other hand, the Court holds that the respondent has no such interest in the land, he should have a decree for compensation in respect of the buildings only, since there is no dispute as to his right to it.

Before parting with the appeal, I ought to point out that, though the title of the Crown has been asserted in this case, the Crown is formally not on the record. It is represented by the Government of Bombay; but, according to law, in all litigation to which the Crown is a proper party, it is the Secretary of State for India who alone can represent it.

That is how it strikes me at present, and I say so because the point was not raised either before us or in the lower Court. If there is any legal defect on the ground I mention, it can be easily remedied by the Court bringing on the record the Secretary of State so as to make the decision final and binding in law as between the Government and the claimant.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESUFALI  
SALEBHAI.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESUFALI  
SALEBHAI.

See *Kishan Chand v. Jagannath* (1). All costs including those of this appeal shall be dealt with by the learned Judge in his discretion.

BACHELOR, J.:—This is an appeal by the Government of Bombay from a decision of Mr. Justice Macleod in a reference from the Collector of Bombay under section 18 of the Land Acquisition Act, 1894. The material facts are these. The land in question measures 13,141 square yards and in November 1902 was notified for acquisition by Government in order to the extension of the chemical laboratory in the vicinity of the Sir J. J. Hospital. Certain buildings of considerable value stood upon the land. The usual inquiry prescribed by the Act was begun and continued by the Collector, apparently on the footing that the title to the land as well as to the buildings was in the claimant-respondent, Esufali Salebhai; but on 29th June 1904 in the course of the inquiry, the Government Solicitor, appearing in what he described as "a new attitude," set up the contention that the land was entirely the property of Government and was held by the respondent on sufferance only. The Collector proceeded with his inquiry and dealt with this disputed question of title. In the end he found, for reasons stated, that the respondent "is thus only a tenant of Government on sufferance, and, Government having through their Solicitor given him notice to quit or deliver up possession of the land under acquisition (Ex. No. 14), which notice has already expired, is entitled to compensation for buildings only, which I accordingly grant." The Collector found that the amount of compensation due in respect of the buildings was Rs. 41,693-2-2, which sum he awarded to the respondent. The compensation due in respect of the land was estimated by the Collector at a little over Rs. 2 lakhs, but, of course, no part of this sum was awarded to the respondent, as the land was in the Collector's view, the property of Government. The respondent, being dissatisfied with this decision, claimed a reference to the High Court on the grounds (1) that the amount of compensation awarded for land and buildings was inadequate, and (2) that Government

(1) (1902) 25 All. 133.

were not entitled to the full value of the land. The reference was heard by Macleod, J., who altered the Collector's figure for the compensation due for both land and buildings from Rs. 2,38,438 to Rs. 2,35,264-7-1 *plus* 15 per cent. for compulsory acquisition and awarded this entire sum to the respondent. This the learned Judge did though he held that neither he nor the Collector had jurisdiction to determine the question of title between Government and the respondent. The result, therefore, is that the respondent gets the large sum of Rs. 2 lakhs on a claim which the learned Judge declined to adjudicate upon and which the Collector decided in favour of Government; in other words, Mr. Justice Macleod was of opinion that even if Government were the owners of this land, the large compensation due for its acquisition must none the less be handed over to the respondent. This result may, I think, be safely described as startling on the face of it; and it seems clear from the judgment that the learned Judge accepted it only because he conceived himself to have no means of avoiding it upon the language of the Act. That is the sole ground upon which the decision is sought to be justified in appeal, and it is manifest that upon no lower ground can it be supported. Mr. Jardine's argument was that if, owing to faulty draftsmanship or other defect of the Act, its plain effect is as the Court below held, then his client is entitled to take advantage of this circumstance. That, no doubt, is so; but the conclusion is one which the Court will be astute to avoid, if that can be done with due regard to the words of the statute. For we must not lightly attribute to the legislature the intention of working injustice by taking away A.'s property and giving it to B.; in this case taking away what, on the argument, is Government's property and giving it or its value to the respondent. The object of the Land Acquisition Act is to empower Government compulsorily to acquire land on payment of due compensation to the persons dispossessed, and compensation, as I understand it here, means indemnity for monetary loss suffered. It would be strange, indeed, if the result of such an Act were that a person from whom certain buildings were acquired was entitled not

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALBEHAL.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESUFALI  
SALBHAI.

only to receive compensation for his buildings acquired but to put into his pocket a very large sum of money in respect of land which *ex hypothesi* belonged to somebody else; that is, in substance, to take away one man's property and give it to another, and the name for a process of that sort is certainly not compensation. If, then, that is the apparent effect of the statute, we must proceed to consider whether it is its real effect, and in so considering we must apply the recognised rules of construction adapted to such a case. Those rules are stated by Maxwell in the following words:—"Where the language of a statute," says that learned author, "in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence." This passage, for which ample authorities are cited in the text, is adduced merely to illustrate the lengths to which the Court is entitled to go in such cases; here, I think, it is not necessary for us to go nearly so far.

For upon what grounds are we asked to take this severely technical view of the provisions of the Act? Stated briefly, the argument is that, under the Act, Government cannot acquire what is already their own property; that the land here being Government's, Government are not "persons interested" within the meaning of section 3 (b); that when once the compensation due for the whole property, land and buildings, has been ascertained, that whole sum must be awarded to the claimant, or, if there are several claimants, must be apportioned among the claimants; and that, since Government were not "persons interested" or claimants, the only claimant before the Court was this respondent, who consequently was entitled to receive the whole compensation, even though Government were in fact the owners of the land. That was the view which found favour with Macleod, J., and which, on that ground alone, is entitled to great respect: for, in the decision of references under this particular Act and in the administration of the Act generally, that learned Judge has special knowledge and experience to which I can make no claim.

I have, however, indicated why, in my view, the conclusion to which he felt himself compelled to come cannot be accepted unless it be imperatively required by the Act; and to those reasons may be added this consideration that, if the lower Court's reading of the Act is right, then Government could never acquire any parcel of land in which they themselves had any interest, great or small, for that interest would go for nothing. Mr. Jardine admits that this would be a necessary consequence, and suggests that, in order to remove the difficulty, Government would have first to sell their own interest so as to render the land a fit object for the operation of the Act. It appears to me that this comes very near to being a *reductio ad absurdum* of the case for the respondent, for it is surely unreasonable to hold that if Government are minded to acquire a parcel of land in which they already hold, say, nine-tenths of the entire interest, they must begin by selling the nine-tenths in order to acquire the entirety, and that though the entirety is acquired by nothing more or less than a forced sale to Government under the provisions of this Act. For the purposes of the present argument it is, of course, assumed that Government are the owners of the land here, and the foregoing considerations seem to me strongly to suggest that, in those circumstances, the respondent can, under the Act, found no claim to the value of the land. In *Rombay Improvement Trust v. Jalbhoy*<sup>(1)</sup> following *Collector of Belgaum v. Bhimrao*<sup>(2)</sup>, I expressed the opinion that the Act contemplates an inquiry to ascertain the value of the land itself considered as if all interests combined to sell; and I see no reason at present to alter that opinion as to the general scheme of the Act. It is, however, admitted that the point now before us was not decided in *Jalbhoy's case*, but is *res integra* for our decision now. As seems to be conceded on all hands, the draftsmanship of the Act has hardly stood the strain of the severe investigation which its provisions have undergone in this Court in recent years, and it is probably true that the form of procedure prescribed is not easy to adapt to cases of any great complication. But if we except certain matters of indirect inference

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY  
v.  
ESUFALI  
SALEBHAI.

(1) (1909) 33 Bom. 483.

(2) (1903) 10-Bom. L. R. 657.

1909.

IN THE  
MATTER OF  
THE LAND  
ACQUISITION  
ACT.

THE  
GOVERNMENT  
OF BOMBAY

v.  
ESUFALI  
SALEBHAI.

from the form of procedure, there is nothing in the Act which excludes from its operation cases where Government hold some interest in the land to be acquired, while the extreme frequency of such cases forbids the theory that they were omitted *per incuriam*. And as to the argument that in such cases the Collector would be acquiring, not the land itself, but the separate interest in the land, which the Act does not authorize, I think that that is open to this answer. The procedure laid down in the Act is so laid down as being appropriate to the special case which is considered in the Act, *i. e.*, the case where the complete interests are owned privately. But that special case is, as I understand it, singled out by the legislature as the norm or type with the intent that in other cases which only partially conform to the type the procedure should be followed in so far as it is appropriate, not that such cases should be excluded from the Act because they do not wholly conform to the type. In other words Government, as it seems to me, are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation, based upon the market value of the whole land, must be distributed among the claimants. In such circumstances, as it appears to me, there is no insuperable objection to adapting the procedure to the case on the footing that the outstanding interests, which are the only things to be acquired, are the only things to be paid for. There may be some difficulty in harmonising his view with some of the procedure sections of the Act, but bearing in mind the particular purposes for which that procedure seems to have been designed, I think the difficulty is immeasurably smaller than that which confronts us on the counter-construction; for, on that construction, as I have tried to show, the enactment is fertile not only of grave inconvenience, but of positive injustice.

On the other hand, all serious difficulty is removed if once it be conceded that the combined interests held apart from Government are in such a case as this the "land" to be acquired within the meaning of section 3 of the Act, and, in my opinion, there is nothing in the Act or the decisions which pro-

hibits the adoption of this view in the state of facts now before us. In this view the only things acquired from the respondent were the buildings, and they are "land" within the definition in the Act. For these reasons I am of opinion that Mr. Justice Macleod's decree should be varied by discharging so much of it as awards to the respondent the value of the land. As to the manner in which this last question should now be dealt with, it is probable that, as the learned Judge observed, the procedure adopted by the Collector was irregular; but the question before us is, not so much what orders the Collector ought to have passed on the subject, as what order we ought to pass now that in fact the controversy as to title has been placed before the Court, and the parties have incurred all the costs incidental to getting their evidence fully upon the Court's record. It is clear that to set aside the elaborate inquiry which the learned Judge has already made, would benefit nobody, and would merely entail further costs in time and money to both the parties, who are anxious to obtain a decision on the evidence already judicially recorded. I think, therefore, that our best course is not to interfere with the enquiry made, and I should have been glad if I could have seen my way to suggesting that this Appeal Court should now decide the question. But as the decision must, at least to some extent, depend upon the appreciation of oral evidence, I conceive that the proper course is to remand the case for a decision to the lower Court under O. XLI, r. 23. The issues which remain for decision will be these:—

- (1) At the material time what interest had the respondent in the land (apart from the buildings)?
- (2) To what compensation is he entitled in respect of that interest?

Upon these grounds I agree with the order proposed by my learned colleague.

Attorney for Government:—*Bowen.*

Attorney for respondent:—*Messrs. Nanu & Co.*