

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

DOSSABHAI BEJANJI MOTIVALA (ORIGINAL CLAIMANT) APPELLANT, v.
THE SPECIAL OFFICER, SALSETTE BUILDING SITES, RESPONDENT.*

1912.

March 20.

THE SPECIAL OFFICER, SALSETTE BUILDING SITES v. DOSSABHAI
BEJANJI MOTIVALA (ORIGINAL CLAIMANT) RESPONDENT.*

Land Acquisition Act (I of 1894)—Compulsory acquisition—Compensation—Collector's award—Government directing Collector to publish his award on a lower valuation.

When the Collector, appointed under the Land Acquisition Act of 1894, once makes the inquiry prescribed by the Act and reaches his own conclusion as to the amount of compensation to be awarded to the claimant, it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which, as the result of his inquiry, he has determined to offer.

Cross appeals from the decision of J. D. Dikshit, Assistant Judge of Thana.

The Government of Bombay acting under the provisions of the Land Acquisition Act, 1894, issued a notification on the 22nd November 1906, claiming to acquire for a public purpose 1318 acres and 10 gunthas of Khajan lands belonging to the Powai estate, which was under the management of Dossabhai Bejanji.

E. H. Waterfield, Special Officer of the Salsette Building Sites, conducted the inquiry into the amount of compensation to be awarded to the claimant. He arrived at the conclusion that compensation should be awarded at the rate of Rs. 50 per acre for the Khajan land. But he directed: "These papers will be submitted to the Collector, as directed by him and in accordance with the Government Resolution No. 8397, R. D., of 30th August 1906, as the compensation I propose to award exceeds Rs. 10,000."

Upon the receipt of orders of Government, the Special Officer published his award, which ran as follows:—

* Cross appeals Nos. 206 and 204 of 1910.

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"Government in their memorandum No. 10578 R. D., of 17th October 1908, have directed me to award compensation at the rate of Rs. 4 per acre for Khajan land and Rs. 120 per acre for kharif land, and I therefore make my award accordingly."

The Special Officer then made a reference to the District Court under section 19 of the Land Acquisition Act.

The District Court modified the award by directing that compensation for the Khajan lands should be made at the rate of Rs. 14 per acre.

Both parties appealed to the High Court.

In Appeal No. 206 of 1910.

Raike and *Bhandarkar*, with *S. V. Bhandarkar* and *Pherozshah Jamsetji*, for the Powai estate.

G. S. Rao, Government Pleader, for the Crown.

In Appeal No. 214 of 1910.

G. S. Rao, Government Pleader, for the appellant.

Nobody appeared on behalf of the respondent.

BACHELOR, J. :—This is an appeal under the Land Acquisition Act, and the question really to be decided is whether after the Collector under the Act has made the enquiry prescribed by the Act, and has reached his own conclusion as to the amount of compensation to be awarded to the claimant, that conclusion can be set aside by the Government, and Government can direct the Collector to substitute a smaller amount than that which, as the result of his enquiry, he had determined to offer. In my opinion the question must be answered in the negative.

It arises in the following state of facts. Some 1,728 acres of Khajan land were decided to be acquired under the Act. The present appellant before us is concerned with 1,318 of those acres, the balance belonging to another claimant, who has preferred a similar appeal.

The Resolution of Government directing the publication of the notification for the acquisition of this land is numbered 12104, and is dated the 22nd December 1906. By that

Resolution, the Special Officer, Salsette Building Sites, was directed to take order for the acquisition of the land. This officer was at the time Mr. E. H. Waterfield who proceeded to institute the enquiries and conduct the procedure prescribed by the Land Acquisition Act. As the result of his enquiries he concludes his judgment in these words:—"I therefore propose to award in the present case compensation for the Khajan land at the rate of Rs. 50 per acre". In point of fact the present claimant has been awarded, not Rs. 50, but Rs. 14 per acre, and it is necessary to explain how this result has been arrived at.

Although Mr. Waterfield's opinion was in favour of an award of Rs. 50 per acre, he felt himself disabled from giving effect to that opinion by reason of certain executive orders of Government contained in their Revenue Department Resolution No. 8397 of 1906. That was a Resolution which embodied in its preamble a letter from the Secretary to the Government of India, Department of Revenue and Agriculture, dated the 28th of June 1906, and which directed that copies of this letter from the Government of India should be forwarded for information and guidance to the various officers and Departments concerned with these matters. The important portion of the Government of India letter so far as this appeal is concerned is to be found in paragraph 3, which it seems desirable to set out *in extenso*. It runs as follows:—

"If the officer making the award is not the Collector of the District, he might be required, before making the award, to refer to the Collector any case in which he proposes to award more than 10 per cent. in excess of the original estimate, or more than Rs. 10,000 or some similar limit. The Collector should have the power of requiring all cases to be referred to him before the award is given; and the acquiring officer should make his final order according to the instructions received from the Collector."

In pursuance of these instructions Mr. Waterfield conceived it to be his duty to abstain from making a definite award in accordance with his opinion and to submit the papers to his superior officer. He did so in August 1907, and on the 17th October 1908 he received a Memorandum No. 10578 from the Revenue Department of the Bombay Government, in

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which the Secretary of that Government was directed "to state that Government approved of the valuation fixed by Mr. Stevens on the Khajan land, namely, Rs. 4 per acre. The Collector of Thána should, therefore, be requested to arrange for the issue of that award at that rate in respect of the Khajan land." Constrained by this imperative direction, Mr. Waterfield couches his final order in the following terms:—

"Government in their Memorandum No. 10578 of the 17th October 1908 have directed me to award compensation at the rate of Rs. 4 per acre for Khajan, and I therefore make my award accordingly."

From this enforced order made by the Collector under the Act the present appellant made a reference to the District Court. The District Court, however, declined to raise the compensation money beyond the sum of Rs. 14 per acre, and hence this appeal is brought.

It has been contended by Mr. Raikes, for the appellant, that although the appointment of a Collector under the Act rests wholly with the local Government, yet when they have once appointed that officer, he must be allowed to prosecute his enquiries under the Act up to their end, without interference from the Government in their executive capacity. It appears to me that that argument must prevail. It is, I think, clear on the facts which I have set out that if the view presented to us by Government is to prevail, the result is simply this: that after the enquiries laid down by the Act have been made and concluded it is open to the Government to interpose, to set those inquiries at nought, and to substitute for the Special Collector's opinion their own opinion as to what is the fair compensation for the land acquired. It appears to me that under the Act no such power as this is vested in the Local Government. Reference may be made to section 11 of the Act which provides that on the day fixed for enquiry the Collector shall proceed to enquire into any objections received and into the value of the land and the respective interests of the various claimants, and then "shall make an award, under his hand, of the compensation which, in his opinion, should be allowed for the land"

Section 15 lays down that the Collector in determining the amount of compensation shall be guided by the provisions of sections 23 and 24. And they in turn describe the matters which are, and which are not, to be considered in determining the compensation.

Then in section 25 we have the provision that when the applicant has made a claim to the compensation, the amount awarded to him by the Civil Court shall not be less than the amount awarded by the Collector under section 11.

I can only say for my own part that these provisions of the Act seem to me to be too clear to admit of any doubt. In my opinion, when once the Special Collector under the Act has been appointed by the Local Government, the Act casts upon that Collector the duty not only of initiating the enquiries, but of conducting those enquiries to their lawful end in the award of a particular sum for compensation. If the contrary view were accepted it would follow that the Government would be empowered to do, what they claim in this case, to have validly done, and that is to set aside, not only the Collector's opinion, but the whole antecedent procedure and enquiry, and to substitute for them an investigation of their own, which was made behind the back of the interested claimant, and which was otherwise inconsistent with the provisions of the Statute.

It was suggested by the learned Government Pleader that the instructions contained in the Bombay Government's Resolution of the 30th August 1906 might be saved as being a rule issued under section 55 of the Act. From what I have already said, it would be clear that in my opinion no such argument is tenable inasmuch as those instructions would not be consistent with the Act. In any case the instructions themselves are in the Resolution expressly described as not being rules issued under the Land Acquisition Act. It is indeed clear that they are nothing more than administrative orders or instructions and have no further sanction or validity than they claim in that character.

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Then it was suggested that the order of Mr. Waterfield's proposing to award Rs. 50 per acre was not an award but was a mere proposal for an award. It seems to me that this argument comes with a certain want of grace from the representative of Government, since if the order fell short of being an award, it fell short only by reason of those very executive orders of the Government whose validity is now in dispute. And if I am right in thinking that those orders are of no effect, then it follows that the award is that which Mr. Waterfield would have made had he not been restrained by these orders.

Reliance was then sought to be placed, as reliance was placed by the learned District Judge, on the case of *Ezra v. The Secretary of State*⁽¹⁾. Mr. Rao quoted, as specially favouring his contention, the observations to be found at pp. 88 and 89 of the report. It seems to me, however, that we should be on very doubtful ground if we assumed that the instructions of the Land Acquisition Board, which were before the Calcutta Bench in that case, bore any real resemblance to the instructions of the Government with which we have to deal now. The Board's instructions in *Ezra's case* are not set out but are alluded to merely by the numbers of the Exhibits. It is unnecessary, therefore, to say more than that, in my opinion, there is nothing in the report to satisfy me that those instructions stood on the same legal footing as the orders of Government conveyed to Mr. Waterfield.

While, therefore, this Court would not be bound by the Calcutta decision even if the facts in both cases were identical, I see no reason to suppose that there is any essential similarity between the two sets of facts. The case was afterwards taken on appeal to the Judicial Committee (I. L. R. 32 Cal. p. 605), but the report contains no ground for suggesting that the argument now attempted on behalf of the respondent was ever presented to the Privy Council. There is indeed reason to suppose that, if it had been presented, it would not have succeeded inasmuch as their Lordships are careful to point out

(1) (1902) 30 Cal. 36.

that it is the Special Collector's business "to fix the sum which in his best judgment is the value and should be offered;" in other words, as the Statute enacts, it is the Collector's opinion which is to prevail, not the conflicting opinion imposed on him by another authority acting upon other materials.

In this case, it seems to me, as I have said before, that if the action of Government is to be sustained the result is a modification of the Act by substituting for the Collector's opinion, the opinion of the Executive Government.

For these reasons, I think that the argument for the appellant should be allowed.

The result is that we must set aside the award made in the lower Court, and restore that order for compensation at the rate of Rs. 50 per acre, which would have been the Special Collector's award, but for the attempt of Government to substitute another measure.

On the Kharip land the compensation will remain as ordered by Mr. Waterfield at the rate of Rs. 120 per acre, and there will be the usual statutory compensation of 15 per cent. over all. There will be interest at 6 per cent. from the date of taking possession until payment under section 34 of the Act.

The appellant to have his costs throughout.

Appeal No. 214 of 1910 is dismissed.

HEATON, J. :—I concur in the conclusion at which my learned colleague has arrived, and I have but little to say on my own account. The principal reason, that which appeals to me most closely as sufficient for holding the opinion which has been expressed, is that the award on which the compensation was tendered to the claimant was not the award of the Special Collector. It does not state the compensation which in his opinion should be allowed for the land. "It does not," to use the words of the Privy Council, "state the sum which in his best judgment is the value". It states the sum which according to the opinion of another authority altogether is the compensation which should be awarded. So far as can be judged from the terms of Mr. Waterfield's order, it is a sum which he

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would never himself have offered as compensation, and which in his judgment apparently is strikingly inadequate. That being so, it seems to me quite impossible to hold this award of Rs. 4 an acre to be an award made by a Special Collector. There are only a few words which I would say about the Calcutta case; they are these: to a considerable extent the argument proceeded on the question as to how information might be brought before the Special Collector. As to that I do not wish to say a word which would suggest the slightest difference of opinion from what is expressed in the Calcutta judgment. But if, and this seems to me very doubtful indeed, that judgment goes the length of saying that the Special Collector should set aside his own opinion and his own conscience and substitute for it an estimate made by some body else, then I should find the very greatest difficulty in following that conclusion.

Appeal No. 214 of 1910 is dismissed.

Decree reversed.

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THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT, v.
BHAGUBHAI DAYABHAI, OPPONENT.*

Bombay Regulation II of 1827, section 56†—Pleader—Pleader in the mofussil—Duty towards client—Winding up proceedings—Pleader must not represent parties whose interests are conflicting.

By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding.

* Civil Application No. 204 of 1912.

† The section runs as follows:—

A pleader accused of a criminal offence, or guilty of misbehaviour or neglect of duty, shall be liable to be suspended or dismissed . . . ; but nothing herein contained shall prevent a party from instituting an action for damages against his pleader when he may consider himself injured by his acts or omissions.