APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah.

DAYA KHUSHAL AND OTHERS (ORIGINAL CLAIMANTS), APPELLANTS, *v.* THE ASSISTANT COLLECTOR, SURAT (ORIGINAL REFERRER), RESPONDENT.* 1913. *July* 23.

Land Acquisition Act (I of 1894)—Compulsory acquisition of land for quarrying purposes—Special adaptability for quarrying is element for consideration—Compensation.

Where a piece of land is compulsorily acquired by Government for quarrying purposes its special adaptability for quarrying is an element for consideration in fixing the amount of compensation.

APPEAL from the decision of M. S. Advani, District Judge of Surat.

The Government of Bombay acquired, on behalf of the Bombay Baroda and Central India Railway, under the Land Acquisition Act, 1894, 2 acres and 30 gunthas of land at Pardi in the Surat District, for quarrying purposes. On the land in question there were old quarries. Permission was not obtained from the Collector to work the quarries. The claimants demanded compensation for the land at the rate of Rs. 2,000 per acre. The District Judge, however, treated the land as a purely agricultural holding and awarded compensation at the rate of Rs. 32-8-11 per acre. The claimants appealed to the High Court.

G. K. Parekh, for the claimants.

S. S. Patkar, Government Pleader, for the respondent.

BATCHELOR, J. :—This is an appeal from an award by the learned District Judge of Surat under the Land Acquisition Act. Two acres and thirty gunthas of land belonging to the appellants have been acquired by Government for the B. B. & C. I. Railway, and it is important to note that the land has been acquired for the purpose of quarrying.

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The short point involved in the appeal is, whether the special adaptability of the land for quarrying is a matter to be excluded from consideration or not. The learned Judge below was of opinion that it should be excluded because the appellants had never obtained from the Government permission to quarry, and under section 65 of the Land Revenue Code the right of Government to mines and mineral products in land such as this is expressly reserved.

Now, to begin with, the appellants are entitled to claim that the compensation should be awarded to them on the footing that the "value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it": see *In the matter of the Land Acquisition Act X of 1870; Munji Khetsey*[1]. It is quite true that under section 65 of the Land Revenue Code the appellants are not entitled as of right to work the minerals in their land. That circumstance, however, is not decisive of the question as to the market value of the land. For, under Rule 39 of the Rules framed under section 214 of the Land Revenue Code it is provided that "The Collector may, at his discretion, sell by public auction or otherwise dispose of the right to remove...stone...or any other material which is the property of Government for such periods, in such quantities and on such terms as he thinks fit." By this rule the Collector is empowered, if he so chooses, by private treaty with the appellants to authorize them to quarry in this land. It is admitted before us that in actual practice it is common for the occupants of such lands to obtain the Collector's permission to quarry on the payment of certain fees, and this admission receives countenance from the circumstance that a special scale of fees has been sanctioned for the removal of stone and other materials from

(1) (1890) 15 Bom. 279 at p. 283.

the soil. So far, therefore, the appellants appear to be in no worse case than would be the owners of agricultural land for which, on its acquisition, the claim is made that the market value should be estimated on the footing of its building site value, because in the case of agricultural land its conversion into a building site equally requires the permission of Government and is equally subject to the levy of certain fees. Yet in *Bhujabalappa* v. *Collector of Dharwar*[1] it was held that certain land, though technically agricultural land, was rightly valued on the basis of its being suitable for building purposes by reason of its proximity to a large town. The case, therefore, appears to us to fall within the principle which was laid down by the Court of Appeal in England in *Lucas and Chesterfield Gas and Water Board, In re*[2]. That was a case where the land was acquired for the purpose of making a reservoir. The land had a special adaptability for the construction of a reservoir, and it was laid down that the tribunal assessing the compensation ought to include in its consideration this special adaptability as an element of value, and that the consideration of this element was not to be excluded merely by reason of the fact that the land could not be actually used for the reservoir unless statutory powers for its compulsory purchase were first obtained. In delivering judgment Lord Justice Vaughan Williams quoted what was said by Mr. Justice Grove in *In Re Countess Ossalinsky and Manchester Corporation*[3] to the following effect:—"If the land has what I may call an adventitious value, that is, something beyond its mere agricultural or normal value—and that is a marketable value in this sense, that persons wishing, for a purpose for which the land is peculiarly applicable, to purchase that land would give a higher price for that land—then the arbitrator has a fair right to take

(1) (1899) 1 Bom. L. R. 454. (2) [1909] 1 K. B. 16.

(3) Referred to in [1909] 1 K. B. 16 at pp. 24, 26.

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that into consideration; it is a matter no doubt contingent, but still it is a matter which is not to be ignored or put out of consideration by an arbitrator." So, here, it seems to us that the special adaptability of this land for quarrying is a matter which ought to be considered. In the result it may or may not be that the market value of the land will be held to be enhanced owing to the special adaptability. But the question is one which, we think, ought to be included in, and not excluded from, consideration. What the Court has to determine is the market value of this land, and it may be that a willing purchaser would increase the price otherwise payable for the land by reason of its adaptability for use as a quarry, and that the price so offered would still be an increase on the ordinary agricultural price notwithstanding that the purchaser had to allow deductions on account, first, of the risk of not obtaining the Collector's permission under rule 39, and, secondly, of the fees which would be payable to the Collector in the event of permission being had. But the matter is one which, as we say, ought, in our opinion, to be considered, and since the learned Judge below has declined to consider it, we must now reverse his award and remand the case to him in order that he may decide it afresh in the light of the foregoing observations.

It will be open to either party to adduce fresh evidence with a view to throwing light on the question what is the market value of this land considered as a parcel of land with special adaptability for use as a quarry.

Costs will be costs in the reference.

We note for possible future guidance that the question as to the land's adaptability as a quarry, which we have discussed above, is the only question urged on behalf of the appellants.

Award reversed. Case remanded.

R. R.