

*Present:* Pereira J. and Ennis J.

THE GOVERNMENT AGENT, WESTERN PROVINCE  
*v.* THE ARCHBISHOP.

89—D. C. Negombo, 8,905.

*Land acquisition—Matters to be taken into consideration for ascertaining amount of compensation to be paid to owner—Test of market value.*

Section 21 of the Land Acquisition Ordinance specifies certain matters to be taken into consideration in awarding compensation, but the list there given should not be taken as exhaustive; in the case of some of the matters mentioned, there may be in special cases considerations (not mentioned in the Ordinance) that may go a great way to minimize their importance.

PEREIRA J.—The portion of the land (acquired) may be situated in a most favourable position; it may be a portion of an extent of land of very great value; but, in view of the size of the portion and the shape given to it by Government in slicing it off from the rest of the land for the purpose of acquisition, its market value may be nil. In such a case the proper course is to find the market value as near as it can be ascertained of the entire land, and then to estimate the value of the portion of land taken at that rate.

<sup>1</sup> (1902) 3 Br. 200.

<sup>2</sup> (1904) 10 N. L. R. 196.

<sup>3</sup> (1904) 1 Bal. 40.

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THE facts appear from the judgment of Ennis J.

*A. St. V. Jayewardene*, for the appellant.—The compensation awarded by Court is insufficient. The Judge should have assessed the market value of the whole land and then estimated the value of the portion of land taken at that rate. (*Government Agent, Kandy, v. Saibo*.<sup>1</sup>) It is wrong to try to value a small piece of a whole land by itself in a case like this.

*Garvin, Acting S.-G.*, for the respondent.—The principle on which compensation should be awarded is to find out the market value and add to it compensation for severance. The market value is what the price of land would fetch in the open market. In the case cited 50 per cent. was added for severance. Counsel cited *Stebbing v. The Metropolitan Board of Works*.<sup>2</sup> The only issue framed was as to the market value.

*A. St. V. Jayewardene*, in reply.

*Cur. adv. vult.*

August 29, 1913. PEREIRA J.—

This is a proceeding on a libel of reference under the Land Acquisition Ordinance. What the District Judge had to decide is clearly indicated in section 17 of the Ordinance. That section enacts: "As soon as the assessors have been appointed the District Judge and assessors shall proceed to determine the amount of compensation," meaning, of course, the sum payable as compensation to the party whose land has been acquired under the Ordinance. It was hardly necessary to frame any issue, although, of course, it was open to the parties to agree to any issue or issues being tried. After the minute as to the assessors having taken their oaths, there is the record of an issue in the proceedings, which is as follows: "What is the fair market value of the land to be acquired?" It does not appear in what circumstances this issue was framed. Was it agreed on by the parties, or did the Court frame it in terms of the latter alternative mentioned in section 146 of the Civil Procedure Code? It does not appear that the parties agreed to this issue, and if it was framed by the Court, I need only say that this was not the issue that had to be tried by the Court. The issue as clearly indicated in the Ordinance was, what amount of compensation the defendant was entitled to receive for the portion of his land taken over by Government. Now, section 21 of the Ordinance specifies certain matters to be taken into consideration in awarding compensation, but, clearly, it is not intended that the list there given should be taken as exhaustive, and it is manifest that, in the case of some of the matters mentioned, there may be, in special cases, considerations (not mentioned in the Ordinance) that may go a great way to minimize their importance. The first matter mentioned in the Ordinance is the market value of

<sup>1</sup> (1911) 6 S. C. D. 36.

<sup>2</sup> (1871) L. J. N. S. (Common Law) 1.

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the portion of land acquired. Now, a portion of land may be situated in a most favourable position; it may be a portion of an extent of land of very great value; but, in view of the size of the portion and the shape given to it by Government in slicing it off from the rest of the land for the purposes of acquisition, its market value may be nil. In such a case it would be safer to follow the principles laid down by this Court in the case of *Government Agent, Kandy, v. Saibo*<sup>1</sup> in assessing the amount of compensation to be awarded. There Middleton J., in a judgment acquiesced in by the Chief Justice, says: "The proper course is to find the market value as near as it can be ascertained of the entire land, and then to estimate the value of the portion of land taken at that rate." The test adopted by the District Judge of ascertaining the market value of the particular portion of land acquired in this case regardless of the rest of the land is fallacious. Of course, it may be that a portion of a large extent of land may be so situated, that its real value may not be a proportionate share of the value of the entire land, but that cannot be said of the particular portion of land that has to be dealt with in this case. There is, in my opinion, very satisfactory evidence in the case that the market value of the entire land is Rs. 15,000 an acre. At that rate the value of the portion acquired (2½ perches) would be Rs. 234.37. I would set aside the judgment appealed from and enter judgment for the defendant for Rs. 234.37, and Rs. 60 as damages to the parapet wall (total Rs. 294.37). The defendant should, I think, have his costs in both Courts.

ENNIS J.—

I agree. The reference to the District Court was to ascertain the compensation to be paid for 2½ perches of land compulsorily acquired. For some unexplained reason the only issue framed was, "What is a fair market value of the land to be acquired?" And it was argued on appeal that the evidence showed that the land he acquired was so small that nobody would buy it if offered in the market, and that therefore the land to be acquired had no market value. It is clear, however, that the land had some value, or the Government would not have offered Rs. 93.12 as its "market value." In the circumstances, it seems to me that the only point to be considered is whether the value has been appraised on a fair basis, irrespective of whether it is to be regarded strictly as "compensation" or as "market value." The rule laid down by Mr. Justice Middleton in *Government Agent, Kandy, v. Saibo*<sup>1</sup> appears to me to be the proper guide for the ascertainment of compensation in such a case as this, and that the value should be ascertained by taking a proportionate part of the market value of the whole land of which it is a part. Considered in this way, I fail to see why the land should not be regarded as a building site.

<sup>1</sup> (1911) 6 S. C. D. 36.

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The Government assessor valued the entire land as a building site at from Rs. 8,000 to Rs. 9,000 per acre, but admitted that in doing so he did not consider the value of neighbouring lands or the prices realized by such lands at recent sales. Mr. Soysa gave evidence that he paid at the rate of Rs. 18,000 per acre for similar land close by, but thought he had paid at the rate of Rs. 1,000 more than its market value. He considered that the land, part of which is now to be acquired, was worth Rs. 15,000 per acre. Mr. Fernando also valued the land at Rs. 15,000 per acre, while the District Mudaliyar thought that Rs. 10,000 per acre would be the value as a building site. I see no reason to send the case back for the finding of the District Court as to the value of the entire land as a building site. The evidence, in my opinion, shows that Rs. 15,000 per acre, the rate claimed, is a fair valuation.

*Set aside.*

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