

ELLIS v. FERNANDO.

D. C., Colombo, 2,147.

1899.

April 26.

Land Acquisition Case—Ordinance No. 3, of 1876—Market value—Tests for determining—Amount tendered—Amount awarded—Costs.

Per LAWRIE, J.—It is fallacious to determine the market value of a house by what another house in the neighbourhood fetched, because the one may have advantages or disadvantages which the other wants, such as difference of view, light, air and drainage, and of the fashion and popularity of the road or street in which they are situated.

Rental is a better test of value than price obtained in the neighbourhood, but the number of years' purchase varies according to the money market, or according to the supply and demand for land as contrasted with other securities.

Per CURIAM.—Under section 29 of the Ordinance No. 3 of 1876, costs are payable by the contesting person, even though the District Judge awards a less sum than what was brought into Court by the Government Agent, provided that the sum awarded does not exceed the sum actually tendered under section 8.

IN this land acquisition case the plaintiff, who was the Government Agent for the Western Province, brought into Court Rs. 1,713 as the amount of compensation tendered under sections 8 and 38 of Ordinance No. 3 of 1876 by him to the defendant, who was the owner of the property acquired by Government, as compensation, and Rs. 171 as 10 per cent. for compulsory acquisition, making a total of Rs. 1,884. The defendant claimed Rs. 4,000.

After evidence heard before the District Judge and two assessors, the District Judge and Assessor Daniel awarded the sum of Rs. 1,800 as the market value of the property under sub-section 1 of section 21 of the Ordinance, they being of opinion that Rs. 180 per annum would be a fair rental, and the market value should be placed at ten years' rental. Assessor Green stated that, though Rs. 180 should be taken as the yearly rental, the capital value of the property should be calculated not at 10 per cent., but at 8 per cent., because the buildings standing thereon were old, at which rate he assessed the value to be Rs. 2,250.

The District Judge entered judgment for Rs. 1,800 and directed the defendant to pay the costs incurred by the Government Agent and the fees of the assessors.

Defendant appealed.

Dornhorst, for appellant, argued that the market value as found by Assessor Green should prevail, and that as the District Judge had awarded Rs. 1,800 only instead of Rs. 1,884 brought into Court by the plaintiff, the defendant should not have been cast in costs.

Ramanathan, S.-G.—The market value, as found by the District Judge and Assessor Daniel, stood the following tests :—(1) Lands in the neighbourhood changed hands at the time of the acquisition

1899.
April 26.

at the same rate per acre which the Government had tendered to defendant, and this value being added to the actual cost of the materials and labour used in respect of that house gave a total of Rs. 1,800 ; (2) the rental being found to be Rs. 180 a year, buyers of small properties usually expected a return of 10 per cent. for their investments, and hence the capital which such persons would lay out on such a property would be only Rs. 1,800. And as to costs, section 29 directed when the amount awarded does not exceed the sum tendered the costs shall be paid by the contesting person. The sum tendered by the Government Agent under section 8 was only for the value of the land, viz., Rs. 1,713, and this was so stated in the libel and admitted by the answer. The Government Agent had at the time of reference to Court resolved to add 10 per cent. on the market value of Rs. 1,713 as permitted in section 38, and had brought into Court the additional Rs. 171 also, but this sum was not tendered to defendant out of Court under section 8. Hence the amount awarded by Court, viz., Rs. 1,800, does not exceed the sum tendered, and costs in such a case are payable by defendant. He cited D. C., Colombo, 2,131 (decided by the Supreme Court on 7th June, 1899).*

Dornhorst, in reply.

Cur. adv. vult.

* The judgment of the Supreme Court in D. C., Colombo, 2,131, delivered by WITHERS, J., was as follows :—

This is virtually an appeal to us to interpret our judgment of the 14th November last, and especially that part of it in which we said, " We make no order as to costs," and which has been embodied in the decree in these words : " This Court does not see fit to make any order as to costs."

In that judgment we decided, rightly or wrongly, that the Government Agent tendered to the defendants by way of compensation for land of theirs acquired by the Government a sum of Rs. 15,840. This was the sum awarded as the market value of the property acquired.

The defendants claimed a sum of Rs. 19,000. The District Court adjudged a sum of Rs. 16,482, which represented the Court's award of Rs. 14,984·37 with 10 per cent. thereon. We further decided that the District Court had no authority to award the additional 10 per cent., as that was the right or duty of the Government Agent under the provisions of section 38 of the Land Acquisition Ordinance of 1876. For that reason we reduced the award to the sum of Rs. 14,984·37 originally tendered by the Government Agent as the market value of the property, and for the additional reason that the defendants had not satisfied us that they were entitled to more on that account.

When the case went back the plaintiff asked the District Court to tax his costs. The Secretary of the District Court refused to tax his costs as between party and party, and the plaintiff brought the matter up before the District Judge, who refused to order the costs to be taxed. He felt himself unable to make such an order in view of our declaration that we would make no order as to costs. Hence this appeal. I am not quite sure that an appeal lies ; but I think we are competent to deal with the matter in revision, as the record is before us, and make such order as may seem to be just.

The Attorney-General supported the appeal, and he informed us that when the case was before us on the former occasion we advisedly declared that we should

28th August, 1899. LAWRIE, A.C.J.—

1899.
August 28.
—

In land acquisition cases where the District Judge and the two assessors are agreed on any question referred to them, I think the Court of Appeal should not interfere, unless it very clearly appears that the Court of first instance has erred.

Here I accept the united verdict that the fair net rental per annum which could be obtained for this house after payment of taxes and repairs is Rs. 180.

But though I accept that, I am free to consider whether the multiplication of the rent by so many years' purchase is a right way to ascertain the market value.

I think it is the difference of view, and light and air and drainage, and of the fashion and popularity of the road or street, which may make it unreasonable to award the same price for one house as for another in the same neighbourhood which on a survey seems to be undistinguishable in size and position. A house is more valuable because more in fashion and request. It is fallacious to speak of the market value of a house in the neighbourhood: one may have fetched say Rs. 3,000, but the offer or demand of Rs. 5,000 for another house of the same size standing very near may be quite inappropriate, because the one may have innumerable advantages or disadvantages which the other wants. So I think rental is a better test of value than what has been got for land in the neighbourhood. So it is considered in selling

make no order as to costs, because Mr. Loos, who appeared for the Government Agent in the former appeal, directed our attention to the provisions of the 29th section of the said Ordinance, which enacts that "when the amount awarded does not exceed the sum tendered by the Government Agent, or the sum which the Government Agent shall have offered to give under section 13, such costs shall be paid by the person or persons who shall have contested the amount," and that the Chief Justice observed that it would be superfluous to make any order as to costs when the Legislature had ordained the payment of costs. I sat with the Chief Justice on that occasion, but I have quite forgotten the incident. I have no doubt, however, that it occurred, and the fact was not contradicted by Mr. Dornhorst. Mr. Dornhorst contended that what really was tendered by the Government Agent was an amount of Rs. 14,000 as the market value of the property acquired and Rs. 1,440 as 10 per cent. on that amount, making up Rs. 15,840. But this is going over the old ground again, for we found, as I said before, rightly or wrongly, that what the Government Agent did tender as a matter of fact as the market value for the land was an amount of Rs. 15,840. It must be taken as settled that that was the amount tendered under section 8 as compensation for the value of the land to the persons interested.

Therefore, under section 29 the contestants must pay the amount of the costs, which by section 38 are to be deducted from the amount of compensation and percentage. We left it an open question whether the Government Agent is required to pay 10 per cent. on the sum of Rs. 15,840. If he is, the costs are to be deducted from such amount and percentage.

That question remains open. In my opinion the District Court must tax the Government Agent's costs, and the record must go back with that intimation. I would make no order as to costs of this appeal.

1899.
 August 28.
 LAWRENCE,
 A.C.J.

land in England : estates are usually sold according to the rental (timber which yields no rental is usually valued separately), rental is the ordinary basis, and the number of years' purchase varies according to the money market or according to the supply and demand for land as contrasted with other securities. Of old, even in my recollection, thirty-three years' purchase was common for land in Scotland ; now it is much less.

Here the District Judge and one of the assessors gave ten years' purchase at Rs. 180 per annum ; two witnesses, Vincent Perera and Don Alwis, fifteen years' purchase at Rs. 200 per acre.

Mr. Green, the other assessor, makes a more suitable calculation. He says, Government is compulsorily taking from the claimant a subject which at the date of acquisition yielded Rs. 180 a year, and the equitable compensation is a capital sum which, if invested, would yield the same annual income. This assessor says, it is impossible now to get 10 per cent. for money, that more than 8 per cent. cannot be got, and he allows Rs. 2,250 as compensation, which at 8 per cent. would yield Rs. 180.

This seems at first sight equitable, but on further consideration the nature of the subject sold must be considered. This income of Rs. 180 per annum is derived from an old house which sooner or later must have been re-built, and even while it stood the rental from it was necessarily fluctuating, if not precarious, depending on weather and the necessity for repairs.

For most men it is better to have Rs. 1,800 to invest permanently in a good security at a less rate of interest than a house yielding Rs. 180 per annum which from the nature of things cannot last for many years more.

But, after all, these considerations lead the Court away from the right track : the question is, what is the market value ? not what opportunities there are for investing that value when received. In my opinion the best of the evidence is that if the claimant had wished to sell his house he would not have got more than ten years' purchase on the rental.

The difficulty in the case is that for five years before this acquisition Government has been gradually acquiring land at Fishers' Hill for harbour and graving dock accommodation and each lot acquired raised the value of what remained.

Davit Alwis says he speculated a good deal in land, buying it up on the chance of its being needed by Government. At the end claimants demand for what remained as much as was demanded for larger areas a year or two before.

It is plain that latterly the market value was what speculators thought they could squeeze out of Government.

The conclusion to which I come is that Rs. 1,800 is sufficient compensation, but that as the Government Agent offers Rs. 1,848·36 that sum should be awarded. At first I was inclined to think that as the Government Agent had offered Rs. 1,731·06 as the market value, and as the Court awarded Rs. 1,800 as the market value, the defendant should have costs, but I am bound by the words of the Ordinance :—

“ When the sum awarded does not exceed the sum tendered by the Government Agent, or the sum which the Government Agent shall have offered to give under section 13, such costs shall be paid by the person who shall have contested the amount.”

Here the sum awarded does not exceed the sum tendered.

I would affirm with costs.

I am unable to draw a distinction between this case and case No. 2,131 in which the Government Agent was held entitled to his costs.

WITHERS, J.—

I saw no valid reason for pronouncing the award to be wrong, except so far as it is Rs. 84·36 short of the amount tendered by the Government Agent. I was at first rather captivated by Mr. Green's calculation, but the Court was not bound to accept it. The land was rightly valued as a residential property, as that was the use to which the land was best adapted and always had been adapted. What I was doubtful about and wished to consider was, who ought to pay the costs. At first I thought the Government Agent ought to pay the costs, and that this case was distinguishable from the other land acquisition case referred to in the argument ; but upon comparing the two cases carefully, I can find no distinction. As we said in that other case, the Government Agent must be taken to have offered Rs. 1,884·36 as compensation, though this was apparently compounded of a market value and 10 per cent. for compulsory acquisition. But that 10 per cent. cannot be added till after the award has been determined outside the Court or inside the Court.

I agree in affirming the award.

1899.
August 28.
LAWRENCE,
A.C.J.

