GOVERNMENT AGENT *v.* PERERA.

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April 8.

D. C., Colombo, 2,203.

(The " Mount Mary " Case.)

Land Acquisition Ordinance—Ordinance No. 3 of 1876—Acquisition for public purpose—Finality of Governor's decision—Jurisdiction of District Court to revise Governor's decision—Sufficient and proper compensation—Standards of valuation—Market value.

In the acquisition of a private land for a public purpose the Governor is not bound to take the report of the Surveyor-General as to its fitness for such purpose.

His decision on the question whether a land is needed or not for a public purpose is final, and the District Court has no power to entertain objections to His Excellency's decisions.

Of the several tests by which the market value of a land may be arrived at, one of the truest and fairest is the actual amount paid for a similar allotment of land in the same vicinity about the time of the acquisition.

IN this land acquisition case the Government Agent of the Western Province (Mr. G. M. Fowler), upon receiving the order of the Governor to acquire an allotment of land situate in Maradana, Colombo, and the house standing thereon, called " Mount Mary," assessed the value thereof and tendered to its owner, Mr. James Perera, the defendant, Rs. 39,750, as sufficient and proper compensation therefor, under section 8 of the Ordinance No. 3 of 1876. As the owner declined the amount tendered, the Government Agent brought the money into Court and prayed the District Court of Colombo to inquire into and determine the amount of compensation to be paid by him.

The owner pleaded that the land was not required for a public purpose; that the sum of Rs. 39,750 was not tendered to him; and that that amount was not sufficient and proper compensation. He claimed Rs. 67,500.

On behalf of the Government Agent three methods of valuation were proved. The first method was by assessing the land and house. It was shown that the land itself was not all of one kind: 2½ acres of it were flat and good, and the remaining three were partly scooped out for gravel, partly hilly, and partly sloping. The 2½ acres of good land were valued at Rs. 7,000 per acre and the remaining land at Rs. 3,000 per acre, and the house was sworn to be buildable for about Rs. 12,000. The total value of the house and land thus arrived at was Rs. 39,750. The second method of valuation was by capitalizing the rent. It was shown

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that the rent of the house was Rs. 1,200 a year. At four per cent., which was the rate allowed by the English banks on fixed deposits, Rs. 1,200 would represent a capital of Rs. 30,000, so that, if this method of valuation were accepted, the Government Agent would appear to have allowed Rs. 9,750 too much. The third method of valuation was according to the prices paid for similar lands in the vicinity. It was proved that "Karlsruhe," which includes a commodious house and about 5 acres of ground, situated next adjoining "Mount Mary," was offered by its owner to the Government for Rs. 40,000 and was declined.

The learned District Judge, after hearing evidence for the plaintiff and defendant, and considering the opinions of the assessors nominated by each of the parties, held that the amount tendered by the plaintiff was sufficient and proper compensation, and dismissed the defendants claim with costs.

The defendant appealed. The appeal was heard on 9th March, 1903.

Dornhorst, K. C., (with him *Elliott*), for the appellant. The principles upon which the Court will exercise its jurisdiction over bodies to which the Parliament has given powers of making compulsory purchases of land were settled in *Webb. v. Manchester Railway Company, 4 M. & C. 117.* The Lord Chancellor observed that it was his duty to see whether this transaction was a *bonâ fide* proceeding upon the powers given by the Act, or whether it was a mere colour to cover another object; the powers given were so large and so injurious to the interests of individuals that every Court ought to keep such bodies most strictly within those powers. The Crown is not different from a private person in similar cases. The liberty of the subject must be carefully guarded. There is no proof in the present case that "Mount Mary" is required for a public purpose. In *Moses v. Marsland, 1 K. B. 671 (1901)*, it has been held that a place used for public purposes means, not a place used in the public interest, but a place to which the public can demand admission, or to which they are invited to come. That decision of Bruce, J., followed the case of *Josolyne v. Meeson, 53 L. T. 319.* See also *Mersey Docks v. Cameron Jones; 11 H. L. Rep. 443 (1864)*. The Government Agent has not shown for what public purpose the land acquired was needed, but the defendant has established that the Government intended to put up some buildings for the guards serving on the Kelani Valley Railway. That is not a public purpose. *Unde 29 and 30 Vict. c. 118, section 7*, premises in which a certified

industrial school was held was considered not liable to the poor rate. *Queen v. West Derby, 10 Q. B. 283 (1875).* So, the Mersey Docks, though conferring great public benefit, were held rateable. *Mersey Docks v. Cameron Jones, 11 H. L. Rep. 478.* The benefit must be direct and exclusive. *Queen v. Harrowgate Commissioners, 15 Q.B. 1,012 (1850).* [Layard, C.J.—Has it not been held that the Governor only can decide whether a land is needed for a public purpose or not?] No. [Moncreiff, J.— see section 6 of Ordinance No. 3 of 1896: " It shall be lawful for the Governor," &c.] This is only discretionary. [Moncreiff, J.—But is not his discretion final on the question?] It is not conclusive as in the Indian Act No. 1 of 1894, section 6 (3), where it is expressly provided that " the said declaration (of the local Government) shall be conclusive evidence that the land is needed for a public purpose." Locally, it has been held in D.C., Colombo, 2,133, that land acquired for the establishment of a school is not land needed for a public purpose. Then, there was no legal tender of Rs. 39,750 to the appellant. *Elliott v. Podihamy, 2 C. L. R. 152.* No money was offered to him. And the amount intended to be offered was too little. The evidence recorded for the appellant justified an award of Rs. 65,000 at least. That was the market value of the property at the date of the acquisition, because Neyna Marikar offered to buy it for that amount.

Ramanathan, K. C., for the respondent.—The mandate of the Governor, given under section 6 of the Ordinance No. 3 of 1876, is conclusive. The Ceylon Ordinance is differently worded from the Indian Act. By section 4 the Governor determines whether land in any locality is " likely to be needed for any public purpose," and directs the Surveyor-General to report whether the same is " fitted for such purpose." And if the report is in the affirmative the Governor issues his direction to the Government Agent " to take order for the acquisition of the land " (section 6). The responsibility of the acquisition is cast entirely on the Governor. No power is given to any Court to review his discretion. *Bailey v. Ferdinandus, 3 N. L. R. 856.* As to the meaning of the term " public purpose," it may be compared with the term " public works," which according to Ogilvie means works constructed at public cost. On this analogy, acquisition for public purpose would mean acquisition of land paid for out of the public exchequer and brought to credit as a public asset. The case of *Josolyne v. Meeson, 15 L. T. 319 (1885),* governed the decision in *Moses v. Marsland,* 1 K. B. 671 (1901). The question in the former case was whether an ambulance station structurally disconnected with any building, and from which the public were rigorously

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excluded, was a public building within section 3 of "The Metropolitan Building Act, 1855," so as to require the builder to deposit plans and sections of the building, with the notice of its erection to the District Surveyor, under by-law made in terms of section 16 of the Amending Act of 1878. In the Act of 1855 a "public building" was specially defined as "every building used as a church or other public place of worship: every building used for purposes of public instruction; every building used as a college, public hall, hospital, theatre, public concert room, public ball room, public lecture room, public exhibition rooms, or for any other public purpose." In this Act "public purpose" means public purposes *ejusdem generis*. As every building there mentioned is one to which the public had access, "The Metropolitan Building Act, 1855," (*18 and 19 Vict. c. 122, section 3*), is not a useful guide for construing the Ordinance No. 3 of 1876. The cases which explain that Act do not apply to the present case. The only way of construing the expression "public purpose" in our Ordinance is to assign to it its ordinary meaning, as given by Ogilvie. If the land acquired is acquired by the Government at public cost, it would be land acquired for a public purpose. The Governor's mandate is final. [Layard, C.J.—Section 12 of the Ordinance supports that view. It provides that at any time after the Government Agent has made an award it shall be lawful for the Governor to direct that the land be taken possession of by some officer of the Crown, and that upon the said officer signing a certificate the said land shall absolutely vest in Her Majesty.] Quite so. Then, as to the "market value" of the property. That expression, occurring in section 21 of the Ordinance, has not yet been properly defined. It is neither cost value, otherwise known as natural value (Cripps *On Compensation, p. 119*); nor scarcity value, that is the value in times of scarcity; nor monopoly value; nor utility value or the value which one pays on account of the usefulness of the article to him; nor fancy value; but exchange value, which varies with the demand and supply, rising as the demand rises and falling as the supply falls. In exchange value, the cost of production and the profits of the producer are modified by the wants and resources of purchasers. Syme's *Industrial Science, p. 124.* In the Century Dictionary "market value" is said to be value established or shown by sales, public or private, in the ordinary course of business. Neyna Marikar's offer to buy the property in June, 1901, that is nine months before the Government Agent awarded the compensation, cannot be accepted as the market value of the property. That offer was not accepted in June, 1901. It was lost for good, as the Moorman bought another house in a better

locality for a smaller amount and he admitted he did not want "Mount Mary" in March, 1902. The Government Agent placed enough material before the Court to arrive at the market value of the property. It was shown that according to the price realized by the owner of "Karlsruhe," which was next to "Mount Mary," Rs. 39,750 for "Mount Mary" was sufficient compensation. An estimate according to cost value also pointed to that sum as reasonable. And if the test of worth at so many years' purchase be considered, it will be found that a very excessive amount has been offered. The expression "to be worth so many years' purchase" is said of property that would bring in, in the specified number of years, an amount equal to the sum paid. "To buy an estate at twenty years' purchase" means to buy it for a sum equal to the total return from it for twenty years. The yearly return from "Mount Mary" being Rs. 1,200, the sum of Rs. 39,750 awarded would represent thirty-three years' purchase, a most unusual limit of years. The usual period is from ten to twenty years' purchase. The sum awarded was offered in fact, but not accepted by the claimant.

Dornhorst replied on the question of tender and market value.

Cur. adv. vult.

8th April, 1903. MONCREIFF, J.—

This was a case under the Land Acquisition Ordinance, No. 3 of 1876. The Government Agent of the Western Province, proposing to acquire under the Ordinance a portion of land called "Mount Mary," offered to the claimant, James Perera, who now appeals, a sum of Rs. 39,750 by way of compensation.

It is said that the Government Agent did not tender the amount as required by the Ordinance, with "current coin in an outstretched hand," as the District Judge puts it. But, I think, the objection is not seriously meant. The offer was refused, and on a reference to the District Court the claimant was awarded the exact sum offered by the Government Agent.

The claimant appeals, urging that the land is not required for a public purpose within the meaning of the Ordinance, and that the valuation of the District Judge and the Crown Assessor is wrong. The Judge says that the land is required for quarters for drivers and guards of the Ceylon Government Railway, and that it is already plotted out for the construction of nineteen cottages for guards and drivers, the old main building being let as a club and hall.

Before entertaining the objection that the land is not required for a public purpose, we must find whether the apellant is entitled

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to raise it. The Indian Land Acquisition Act is based upon the same materials as our Ordinance, but differs in matters of detail, and comparison with it does not, I think, assist us much upon this point. By section 4 of our Ordinance—whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct the Surveyor-General or other officer generally or specially authorized by the Governor on this behalf to examine such land and report whether the same is fitted for such purpose. This course may be taken when the Governor thinks it likely that the land will be needed for the public purpose. Provisions follow as to what the authorized officer may and shall do, and section 6 provides: "the Surveyor-General or other officer so authorized as aforesaid shall then make his report to the Governor, whether the possession of the land is needed for the purposes for which it appeared likely to be needed as aforesaid." I think this sentence has not been intelligently adopted, because it implies that the officer authorized to examine the land and report whether it is fitted for the purpose for which the Governor thinks it likely to be needed reports to the Governor whether it is needed. However, according to the wording of the section, when the authorized officer has reported, whether he reports that the land is or is not needed, "upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government Agent to take order for the acquisition of the land." According to section 6 of the Indian Act, a declaration must be published in the *Gazette* to the effect that the land is needed for a public purpose or for a company, and the "said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be." There is no such provision in our Ordinance. No declaration is required. But it seems to me that the Governor has a discretionary, and not a compulsory power. He is not bound to take the report of the Surveyor-General or authorized officer, but it is left to him to say, with the advice of the Executive Council, whether the land is needed for the public purpose. I find no provision in the Ordinance for questioning his decision. I find no trace of an intention that it should be questioned.

The only remaining matter is the payment of compensation to persons interested. The "matter" which the Government Agent refers to the District Court is the value of the land and the amount of compensation. The District Court has no power to consider whether the land is needed for a public purpose. This view is, I think, confirmed by the terms of section 12, which

provides that " at any time after the Government Agent has made an award under section 10, or a reference to the Court under section 11 ", and certain formalities have been observed, " the said land shall vest absolutely in Her said Majesty free from all encumbrances ". If, therefore, the moment a reference is made under section 11 and before the matter referred is heard, the Governor can, by taking certain steps, cause the land to vest absolutely in the King, it is impossible to suppose that his decision to the effect that the land is needed for public purposes can be questioned. In my opinion, the appellant cannot enter upon that question.

Some criticism has been bestowed upon the remarks of Withers, J. in *Government Agent, Badulla, v. Cornalis* (*3 Browne, 27*) as to the tests of the market value of land. His suggestions were subject to " surrounding circumstances ". He did not mean that the rent of the land or the sum realized at a public auction was always a sound test. Indeed I understand him to mean no more than this, that any fact which may reasonably affect an estimate of the value of the land may be taken into consideration, provided that it is not rendered irrelevant by surrounding circumstances.

In this case, the Government Agent capitalized the rent which the owner had received at Rs. 30,000, allowed Rs. 3,750 because the land might be improved, added Rs. 6,000 in respect of building sites, and put the compensation due at Rs. 39,750. Mr. De Vos, the witness upon whom the respondent mainly relied, thought this was not a fair basis of calculation, the Judge rejected it, and I do not think it could be usefully applied here. We have no sufficient materials for applying it. Mr. De Vos valued the land (which is 5 acres 2 roods and 16 perches in extent) at Rs. 26,500 and houses at Rs. 13,000, thus producing a total market value of Rs. 39,500. I think this is not a satisfactory method.

It was pointed out in the *Canonry Case* (*3 Browne, 131*) that it is not always reasonable to reach the value of land with buildings upon it, and of buildings upon the land, by estimating their value separately. The land and the buildings depend intimately upon each other for their value, and when premises are sold not in lots but as a whole, it may be fallacious to value them piecemeal.

While accepting the various tests suggested as useful by way of comparison, we think the circumstances of the case offer a standard of valuation which can be easily applied. Karlsruhe estate, which adjoined " Mount Mary ", was sold in and after June, 1900, partly by auction and partly by private contract. Its elevation is slightly greater, and on one side it faces Campbell Park. On the other hand, in order to make "Mount Mary" completely fit for

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building purposes, it has been necessary to remove a cabook hill and fill up a depression of the ground with the materials. It appeared to us, however, on visiting the site that the advantage of the Karlsruhe estate for building purposes is very slight, and that the prices obtained for it might be taken as a fair indication of the market value of " Mount Mary ". Each of these estates had a fine house upon it. The Judge says that the Karlsruhe house was the more stately, and the Mount Mary house more commodious. 6 acres 3 roods and 4 perches of " Karlsruhe " were sold in lots by auction for Rs. 40,650. The remainder, which included the house, sold as follows: lot 2 (2 roods 12 perches), Rs. 5,000; (lots 4, 5, and 14 (4 acres 2 roods 26 perches), Rs. 36,000; total 5 acres 38 perches, Rs. 41,000. It would scarcely be fair to value "Mount Mary" by the average price per acre realized on the sale of the whole of this neighbouring property. It contained 12 acres, and the extra value of the house diminishes as the acres increase: the extent of " Mount Mary " is about five acres and a half. But finding that Karlsruhe house with 5 acres 38 perches of land sold privately for Rs. 41,000, it seems reasonable that the adjoining 5 acres 2 roods and 16 perches of " Mount Mary " with its house should be valued on the same basis. I would, therefore, suggest that a sum of Rs. 44,000 should be awarded to the claimant.

LAYARD, C.J.—

I agree. There are undoubtedly several tests by which the market value of any particular allotment of land may be arrived at, but one of the truest and fairest is the actual amount paid for a similar allotment of land situated in the same vicinity and used for similar purposes. The evidence discloses that an adjoining property called " Karlsruhe ", consisting of 5 acres, together with a house more stately than " Mount Mary " house, but less commodious, sold shortly prior to the Crown seeking to acquire " Mount Mary " for the sum of Rs. 41,000, or say Rs. 8,000 per acre. There is no reason to suppose that an inflated price was paid for " Karlsruhe " or that it realized any more than its market value. Judging from the price paid for Karlsruhe house and 5 acres, Mount Mary house with five and half acres would be worth Rs. 44,000, and I would award the claimant that amount. The claimant is entitled to costs in both Courts.