[IN THE PRIVY COUNCIL.]

1947 *Present:* **Lord Wright, Lord Porter, Lord Uthwatt, Sir Madhavan Nair and Sir John Beaumont.**

THE MUNICIPAL COUNCIL OF COLOMBO, Appellants, *and* K. M. N. S. P. LETCHIMAN CHETTIAR, Respondent.

Privy Council Appeal No. 25 of 1946.

S. C. 69—D. C. Colombo, 3,092.

Acquisition of land within street lines—Matters to be considered in determining compensation payable—Meaning of market value—Land Acquisition Ordinance (Cap. 203), ss. 21, 22 (f)—Housing and Town Improvement Ordinance (Cap. 199), ss. 5, 7, 19 (1) and (4), 108.

Where, in assessing the compensation payable in consequence of the compulsory acquisition of a strip of land situate within sanctioned street lines and forming part of a larger land of the owner, the Supreme Court held that, in a case in which a small strip of land of little intrinsic value, forming part of a larger estate of the owner, was acquired, the proper method of valuing it was to ascertain the market value of the entire estate and to assign to the land acquired a proper proportion of that value—

Held, that section 21 of the Land Acquisition Ordinance requires the Government Agent and the Court to take into consideration first the market value of the land to be acquired at the time of awarding compensation. The market value is the price which a willing vendor might be expected to obtain in the open market from a willing purchaser. The owner of the land, who is notionally the vendor, cannot also be the purchaser, and the fact that he owns other land in the neighbourhood is irrelevant for the purpose of ascertaining the market value of the land to be acquired, though such fact is the foundation of a claim under heads (b) and (c) of section 21 for damage for severance and other injurious affection to his other property by reason of the acquisition.

"The Supreme Court, in valuing the acquired strip as part of the rest of the land of the respondent which is not either actually or notionally in the market, have not ascertained the market value of the acquired strip; they have attempted to ascertain the loss which the respondent has sustained by reason of the acquisition of the acquired strip. That method finds no warrant in the Ordinance."

Government Agent, Western Province v. Archbishop (1913) 16 N. L. R. 395 and *Government Agent, Kandy v. Marikar Saibo (1911) 6 S. C. D. 36*, overruled.

Held, further, (i) that the acquired strip of land could be used for any purpose which did not involve the erection of a building;

(ii) that, in the case of the acquired strip, it was probable that its inclusion within street lines had little, if any, effect upon its market value since, from its size and shape, it was obviously unsuitable for development as a building site. Any claim to compensation based on loss of building value in the acquired strip would have to be made under heads (b) or (c) of Section 21 and based on evidence that the acquisition of the acquired strip prejudiced the development of the other land as a building estate;

(iii) that section 19 (1) of the Housing and Town Improvement Ordinance is concerned with the lines of what is physically a street, and not with land between street lines which is not a street.

APPEAL from a decree of the Supreme Court. The judgment of the Supreme Court is reported in *(1942) 44 N. L. R. 170.*

The respondent was the trustee of a Hindu temple situate in Colombo. The temple premises comprised an area of a little over 11 acres, bounded on the west by Bambalapitiya Road, and on the south by Vajira Road which was of a width varying from 8 to 12 feet.

On August 8, 1919, the appellants, the Municipal Council of Colombo, by Resolution passed pursuant to section 19 (4) of the Housing and Town Improvement Ordinance, defined street lines for Vajira Road designed to secure a uniform width of 40 feet for that Road and, in the year 1942, the appellants compulsorily acquired under the Land Acquisition Ordinance the land of the respondent situate within such building lines. The piece of land so acquired was a strip of land 1,140 feet long with a width of between 26 and 32 feet and embraced an area of just under three-quarters of an acre. It formed part of the respondent's estate aforementioned.

For the land so acquired the appellants offered compensation amounting to Rs. 14,500, which sum included a token value of Rs. 5 in respect of the land comprising the acquired strip. The only figure which the respondent challenged was the sum of Rs. 5 stated to be the value of the acquired strip. He claimed a sum of over Rs. 56,000 based on the contention that the acquired strip should be valued as first-class building land, it being agreed that the proper value of land of that class in the locality was Rs. 50,000 per acre. Alternatively, he claimed that if no building could in law be erected on the acquired strip the compensation should be approximately Rs. 21,900.

The Supreme Court, applying the principle laid down in two earlier decisions, held that in a case in which a small strip of land of little intrinsic value, forming part of a larger estate of the owner, was acquired, the proper method of valuing it was to ascertain the market value of the entire estate and to assign to the land acquired a proper proportion of that value. On this basis, the compensation payable to the respondent was assessed at Rs. 28,242. The appellants, thereupon, appealed to His Majesty in Council.

D. N. Pritt, K.C., L. M. D. de Silva, K.C., and *R. K. Handoo,* for the appellants.

C. S. Rewcastle, K.C., J. Chinna Durai and *T. B. W. Ramsay,* for the respondent.

January 28, 1947. [*Delivered by* SIR JOHN BEAUMONT]—

This appeal from a decree dated December 17, 1942, of the Supreme Court of the Island of Ceylon, raises certain questions as to the construction and effect of the Land Acquisition Ordinance (Chapter 203, Legislative Enactments of Ceylon) and of the Housing and Town Improvement Ordinance (Chapter 199, Legislative Enactments of Ceylon) and it will be convenient at the outset to refer to the material provisions of these enactments.

By the Land Acquisition Ordinance it is provided, so far as material, by section 3 that 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 to examine such land and report whether the same is fitted for such purpose. By section 5 the Survey-General is required to make his report and upon receipt thereof the Governor may direct the Government Agent to take order for the acquisition of the land. By section 6 the Government Agent is required to give notice that the Government proposes to take possession of the land, and that claims to compensation from all interested in such land may be made to him. By section 7 the Government Agent is required on the day fixed for the enquiry to enquire summarily into the value of the land, and to determine the amount of compensation which, in his opinion, should be allowed therefor, and to tender such amount to the persons interested who have attended the enquiry. Section 8 provides that in determining the amount of compensation the Government Agent shall take into consideration the matters mentioned in section 21, and shall not take into consideration any of the matters mentioned in section 22. Section 11 provides, so far as material, that when the Government Agent proceeds to make enquiry as aforesaid if he is unable to agree with the persons interested as to the amount of compensation to be allowed he shall refer the matter to the determination of the District Court in manner thereinafter appearing. A later section provides that the reference to the District Court shall be heard by the District Judge and two assessors and, if the assessors do not agree, the opinion of the Judge is to prevail. Section 21 is in these terms:—"In determining the amount of compensation to be awarded for land acquired under this Ordinance, the District Judge and assessors shall take into consideration:—

(*a*) firstly, the market value at the time of awarding compensation for such land;

(*b*) secondly the damage, if any, sustained by the person interested at the time of awarding compensation, by reason of serving such land from his own land;

(*c*) thirdly the damage, if any, sustained by the person interested at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner, or his earnings; and

(*d*) fourthly, if in consequence of the acquisition he is compelled to change his residence, the reasonable expenses, if any, incidental to such change."

Section 22 directs that the Judge or Assessors shall not take into consideration the matters enumerated under seven heads. The only one which may be regarded as relevant to the present appeal is the sixth:—"Any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put." Section 26 provides that if the Government Agent, or any person interested, is dissatisfied with any award made by the Court under the provisions of the Ordinance, he may appeal therefrom to the Supreme Court.

By the Housing and Town Improvement Ordinance it is provided, so far as material :—

Section 5 :—that no person shall erect or re-erect any building within the limits administered by a local authority except in accordance with plans, drawings and specifications approved in writing by the Chairman.

Section 7 :—that (1) The Chairman shall not—

(*a*) approve any plan or specification of any building ; or

(*b*) consent to any alteration in any building, which shall conflict, or cause such building to conflict, with the provisions of this or any other Ordinance.

Section 19, so far as material, is in these terms. " (1) Every building erected or re-erected after the commencement of this Ordinance within the administrative limits of any local authority —

(*a*) shall be erected either upon the line of an existing street not less than twenty feet in width or upon the line of a new street defined or approved by the Chairman or otherwise authorised under this or any other Ordinance ; and

(*b*) shall either abut upon the street or have all the land between at least one face of such buildings and the street reserved for the use of the building.

. . . . . .

(4) The local authority may by resolution from time to time, subject to the standards prescribed by rule 8 of the Schedule, define the lines by which any existing street or any part or continuation thereof shall be bounded, and the lines so defined shall be deemed to be the lines of the street.

Where application is made for sanction to re-erect any building which projects beyond any street line so defined or to re-erect any part thereof which so projects, the Chairman may require that such buildings shall be set back to the street line : "

The Section then contains certain provisions and definitions not relevant to this appeal.

Section 108 provides that " (1) No person shall erect any masonry boundary wall or gateway—

(*a*) within the street lines of any street for which street lines have been defined ; or

(*b*) in the case of any street for which no street lines have been defined, within twenty feet of the centre of the street, unless in such case he shall have received the written permission of the Chairman. "

Rule 8 of the Schedule requires that every new street intended for carriage traffic which is defined or approved by a local authority or a Board of Improvement Commissioners shall be of not less than 40 feet in width.

At all material times the respondent was the trustee and, as such, the owner of a Hindu temple known as " Palaya Kadiresan Kovil "

situate in Colombo. The temple premises comprised an area of a little over 11 acres, bounded on the west by a road called Bambalapitiya Road, and on the south by Vajira Road which, before the present acquisition proceedings, was of a width varying from 8 to 12 feet.

On August 8, 1919, the appellants, by Resolution passed pursuant to section 19 (4) of the Housing and Town Improvement Ordinance, defined street lines for Vajira Road designed to secure a uniform width of 40 feet for such road and, in the year 1942, the appellants compulsorily acquired, under the Land Acquisition Ordinance, the land of the respondent situate within such building lines. The piece of land so acquired (which is hereinafter referred to as "the acquired strip") was a strip of land 1,140 feet long with a width of between 28 and 32 feet and embraced an area of 2 roods 37.2 perches, that is, just under threequarters of an acre. It formed part of the respondent's estate before referred to.

For the land so acquired the appellants, pursuant to the provisions of the Land Acquisition Ordinance, offered, or caused to be offered, to the respondent, compensation amounting to Rs. 14,500 made up as follows :—

	Rs.	c.
(*a*) Tenements on the acquired strip	2,700	0
(*b*) An old boundary wall thereon	6,840	0
(*c*) Trees thereon	1,008	50
(*d*) The land comprising the acquired strip (token value) ..	5	0
	10,553	50
plus :—		
(*e*) 10 per cent. of Rs. 10,553.50 for compulsory purchase ..	1,055	35
(*f*) Loss of income from certain stalls placed upon the land during festivals	2,800	0
	14,408	85
(*g*) Sum added by appellant for sake of round figures	91	15
Total ..	14,500	0

Of these figures, the only one which was challenged by the respondent was the sum of Rs. 5, stated to be the value of the land acquired.

The offer of the appellants was not accepted by the respondent and, accordingly, reference was made to the District Judge under the Ordinance. On such reference the respondent claimed a sum of over Rs. 56,000 based on the contention that the acquired strip should be valued as first-class building land, it being agreed that the proper value of land of that class in the locality was Rs. 50,000 per acre. In the alternative, the defendant claimed that if no building could in law be erected on the acquired strip the compensation should be approximately Rs. 21,900.

At the hearing the Assessors differed in their opinions and the District Judge accepted the value placed on the acquired strip by the appellants. Accordingly, on March 9, 1942, he passed a decree that the compensation payable to the present respondent in respect of the portion of land already acquired by the present appellants and for the building, trees, boundary wall and loss of income from stalls was Rs. 14,500 which included 10 per cent. for compulsory purchase. The respondent was ordered to pay the costs of the appellants.

From this decision the respondent appealed to the Supreme Court and the appeal was heard by the Chief Justice, Soertsz and Keuneman JJ.

Mr. Justice Soertsz was of opinion that the enclosing of the acquired strip between street lines did not have the effect of preventing it from being used and valued as building land, and he was impressed with what he considered to be the injustice involved in a contrary view. "It is contended," he said, "that the effect, in law, of the laying down of this street line, was to make it impossible for a building or any part of a building to be erected on the land within that line, and that consequently, that piece of land ceased to have any market value at all, and had to lie sterile till such time as the Council should think fit to take it over as a gift or release it from this deadly incubus". Applying the principle which had been laid down by the Supreme Court in the case of *The Government Agent, Western Province v. Archbishop*[1], that in a case in which a small strip of land of little intrinsic value, forming part of a larger estate of the owner, was acquired, the proper method of valuing it was to ascertain the market value of the entire estate and to assign to the land acquired a proper proportion of that value, he valued the whole estate of the respondent at the rate of Rs. 50,000 an acre, assigned to the acquired strip a part of the total value proportionate to its acreage, and, after making certain deductions which he thought reasonable, assessed the compensation payable to the respondent at Rs. 28,242.

The Chief Justice agreed with Mr. Justice Soertsz and, in a short judgment, based his opinion on the principle followed by the court in *Government Agent, Western Province v. Archbishop,* and in an earlier case to the same effect *Government Agent, Kandy v. Marikar Saibo* of which a short note appears in *(1911) 6 Supreme Court Decisions at page 36.*

Mr. Justice Keuneman took a different view. He thought that the enclosing of the acquired strip within building lines had the effect of preventing it from being built upon and that it could not therefore he valued as building land. He did not dispute the principle laid down in *Government Agent, Western Province v. Archbishop* but thought that the principle could not be applied in the present case since the acquired strip had a legal restriction placed upon it in relation to building which did not apply to the rest of the land. He expressly stated that it would not be correct to value the strip as a separate entity since, on account of its shape and size, it might be of no value to a prospective purchaser. He considered, however, that the evidence which had been called for the respondent showed that a possible development of the respondent's estate would be by building houses upon it, the gardens or yards of

[1] *(1913) 16 N. L. R. 395.*

which might include the acquired strip, and that the compulsory acquisition of such strip would deprive the respondent of this advantage. On this basis he awarded compensation amounting to Rs. 19,360.

In the result the Supreme Court passed a decree setting aside the Order of the District Court and entering judgment for the present respondent in the sum of Rs. 28,242. It was ordered that the present appellants pay to the present respondent his taxed costs of the appeal, and also one-third of his taxed costs in the District Court. From this decree the present appeal is brought.

In their Lordships' opinion the cases of *Government Agent, Western Province v. Archbishop* and *Government Agent, Kandy v. Marikar Saibo* were wrongly decided, and this has occasioned error throughout the proceedings in Ceylon. Section 21 of the Land Acquisition Ordinance requires the Government Agent and the Court to take into consideration first the market value of the land to be acquired at the time of awarding compensation. The market value is the price which a willing vendor might be expected to obtain in the open market from a willing purchaser. The owner of the land, who is notionally the vendor, cannot also be the purchaser, and the fact that he owns other land in the neighbourhood is irrelevant for the purpose of ascertaining the market value of the land to be acquired, though such fact is the foundation of a claim under heads (*b*) and (c) of section 21, for damage for severance and other injurious affection to his other property by reason of the acquisition. The Supreme Court, in valuing the acquired strip as part of the rest of the land of the respondent which is not either actually or notionally in the market, have not ascertained the market value of the acquired strip ; they have attempted to ascertain the loss which the respondent has sustained by reason of the acquisition of the acquired strip. That method finds no warrant in the Ordinance.

Bearing in mind the terms of section 21 of the Ordinance, it is clear that the offer by the appellants to the respondent, of Rs. 14,500 for the acquired strip, whilst it may have been justified in the result, was arrived at on a wrong basis. The value of the tenements, the wall, and the trees on the acquired strip, should have been included in the market value of such strip ; so also should the loss of income from stalls which could be placed on the land during festivals, since that is a matter which a purchaser would take into account if he were buying the strip. The respondent might have claimed compensation under section 21 (*b*) for the cost of erecting a new boundary wall between his land and Vajira Road, but he did not do so. It would appear, however, from the evidence that the value placed by the appellants on the old boundary wall was really based on the cost of building a new wall.

In the District Court it was not open to the District Judge to vary the basis of the award except as claimed by the respondent and, as he rejected the respondent's claim, he had no alternative but to uphold the award.

Their Lordships are quite unable to agree with the reasoning or the conclusion of Mr. Justice Soertsz in the Supreme Court. They feel no doubt that the effect of the inclusion of the acquired strip between street lines was to prevent it from being dealt with as building land. It is true that the only express prohibition against building on land within

street lines is that contained in section 108 of the Housing and Town Improvement Ordinance, which deals only with boundary walls and gateways, but, in their Lordships' view, the effect of section 5, which provides that no person shall erect any building within the limits administered by a local authority, except in accordance with plans approved in writing by the Chairman, and of section 7, which prohibits the Chairman from approving any plan of any building which shall conflict with the provisions of the Ordinance, ensure that no purchaser would buy land between street lines with a view to building upon it. However, this consideration does not render the land sterile and valueless as Mr. Justice Soertsz thought. It can be used for any purpose which does not involve the erection of a building. In the case of the acquired strip, it is probable that its inclusion within street lines had little, if any, effect upon its market value since, from its size and shape, it was obviously unsuitable for development as a building site. Any claim to compensation based on loss of building value in the acquired strip would have to be made under heads (*b*) or (*c*) of section 21 and based on evidence that the acquisition of the acquired strip has prejudiced the development of the other land of the respondent as a building estate.

Mr. Justice Keuneman, as already indicated, took a different view, and thought that the acquired strip could not be built upon. In effect, though not in terms, the basis upon which he assessed compensation was that of injurious affection to the other land of the respondent. This is a legitimate basis but, in their Lordships' view, the damage assessed by the learned Judge has not been proved. A surveyor called by the respondent suggested that the respondent's land might be developed by building upon it small houses, with gardens or yards, which could ambrace the acquired strip and that, in this way, the acquired strip could be made use of without being built upon, and so possessed a substantial value; and the learned Judge accepted this view. There was, however, no evidence, nor indeed any suggestion, that the respondent intended or had ever contemplated developing his land in this way. Nor was there any evidence that such development would be more advantageous than other methods of development in which buildings might be erected abutting direct on the widened Vajira Road. There was no evidence that the 11 acres bounded by the narrow Vajira Road which the respondent formerly possessed was any more valuable than the 10¼ acres bounded by a 40-foot road which the respondent will in future possess.

Their Lordships heard a long argument on behalf of the appellants as to the meaning and effect of section 19 (1) of the Housing and Town Improvement Ordinance, the contention being that that sub-section by implication forbade building within the limits of street lines. In their Lordships' view that sub-section is concerned with the lines of what is physically a street, and not with land between street lines which is not a street. They think it unnecessary, therefore, to discuss that sub-section.

Both parties expressed their unwillingness to the remission of this case to the Authorities in Ceylon to start the proceedings *de novo* on the correct basis, and their Lordships think there would be no advantage in adopting such a course. It is probable that a fresh offer made by the

appellants, founded on a correct basis, would not differ materially from the previous offer, and their Lordships can see nothing in the evidence to suggest that that offer was inadequate.

Their Lordships think that, in view of the course which the proceedings took in Ceylon, and of the fact that leave to appeal to their Lordships' Board was sought by the appellants in order to obtain a ruling as to the construction of the Ordinances involved, the fair course is to allow each party to bear his or their own costs throughout.

Their Lordships will, therefore, humbly advise His Majesty that this appeal be allowed, that the decree of the Supreme Court of Ceylon dated December 17, 1942, be set aside and that the decree of the District Court dated March 9, 1942, so far as it orders that the compensation payable to the respondent is Rs. 14,500, be restored. There will be no order as to costs throughout the proceedings.

Appeal allowed.