1942 *Present :* **Howard C.J., Soertsz and Keuneman JJ.**

LETCHUMAN CHETTIAR, Appellant, *and*
MUNICIPAL COUNCIL, Plaintiff.

69—D. C. Colombo, 3,092.

Land acquisition—Land with street lines—Mode of assessing compensation—Land with two streets adjacent to building block—Value of land as building land—Housing and Town Improvement Ordinance (Cap. 199), s. 19.

Where a land, which is part of a larger land, is acquired in land acquisition proceedings the correct mode of assessment is to ascertain the value of the entire land and then to estimate the value of the portion taken at that rate, subject to any restrictions that may affect its value,—

[1] *29 Cr. L. J. 106.* [2] *37 Cr. L. J. 205.*

Held, further, **by Howard C.J. and Soertsz J. (Keuneman J. dissenting),—the purpose of section 19 of the Housing and Town Improvement Ordinance is to ensure that every building has easy access to a street of certain dimensions, and if any one erecting a building has two streets adjacent to his building block, it is open to him to erect his building in relation to one of these streets and in that event there is nothing to prevent him from erecting his building to the extreme limit of his land on the other side of the street going beyond any street line that has been laid down on that side.**

It is also open to him in such a case to construct suitable streets in conformity with the requirements of the Ordinance to serve buildings erected on the land to the extreme limit of his land, ignoring street lines.

Held, also **(by the whole Court),—where a land on a part of which a street line has been placed could be utilized for building cottages, reserving the portion of the land within the street line as part of a courtyard or garden attached to a cottage, that land may be assessed as building land subject to such restrictions as exist.**

THIS was a proceeding for the compulsory acquisition of land under the Land Acquisition Ordinance. The appeal raised the question of the correct method of assessing the value of a piece of land acquired by the Municipal Council of Colombo for the purpose of widening an adjacent public street called Vajira road.

The facts are stated in the judgments of Soertsz and Keuneman JJ.

H. V. Perera, K.C., (with him *N. Kumarasingham*), for the defendant, appellant.—The piece of land which is to be assessed was acquired under the Land Acquisition Ordinance in order to widen Vajira road. The Municipal Council claims that the strip of land has no value on the ground, that under the Housing and Town Improvement Ordinance (Cap. 199) the portion acquired cannot now be built upon. The section in Cap. 199 dealing with buildings to be erected upon street lines is section 19. Under that section every building must either abut upon the street or have the space between the building and the street reserved for the use of that building. Its purpose is to see that every building has a street to which it should have access. It is a provision of the Legislature as to what a building should conform to when it has only one street line. In the present case, however, the premises has two road frontages, and there is no prohibition against building beyond the line of one street as long as the line of the other street is preserved. Further, the property is so big that it is possible for the defendant to open up new streets to serve buildings which may be erected on the land.

The piece of land in question must be valued according to the value of the rest of the land—*Government Agent, Western Province v. Archbishop*[1]. It is the value of the land, with all its potentialities and with all the actual use of it by the person who holds it, that is to be considered in assessing the compensation. See *Browne and Allan on The Law of Compensation (2nd ed.), p. 97.*

Even assuming that the owner cannot build on the land within the street line it was still open to him to use it as part of a courtyard or garden attached to a building. The whole block of a land comprising the house and garden has to be valued as a single unit.

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

E. F. N. Gratiaen (with him *D. W. Fernando* and *S. J. Kadirgamar*), for the plaintiff, respondent.—A tribunal assessing compensation may take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which it might within a reasonable period be applied—*Halsbury's Laws of England (2nd ed.), Vol. 6, p. 45.* For the present the piece of land in question is part of a block of 12 acres of merely bare temple land. With regard to its potential use as a building site, on a proper reading of section 19 and rule 2 of the Schedule in Chapter 199, the whole area of the site cannot proceed beyond the line of the street. Any proposed plan taking in the strip of land in question for use as a courtyard would not have been passed. It has not been established by evidence that any building scheme along Vajira road would have been passed by the public authority or would have been feasible. An improvement scheme which an owner has no right to carry out is too speculative to be treated as a factor which will influence the market value of a land—*Newnham v. Fernando et al.*[1] The right view of the effect of the laying down of a street line was taken in *Chairman, Municipal Council, Colombo v. Fonseka et al.*[2] and *Newnham v. Gomis*[3]. In *Government Agent, Western Province v. Archbishop (supra)* no part of the property under consideration in that case was in any way subject to restrictions. That is not the position in the present case.

The judgment of the Privy Council in *Raja Vyricherala Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam*[4] is helpful to determine the amount of compensation to be awarded when land is acquired.

H. V. Perera, K.C., in reply.—The case of *Raja Vyricherala Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam (supra)* can well be cited in favour of the appellant. In view of the provision in the Land Acquisition Ordinance for payment of compensation the value of a land is not affected by the laying down of a street line.

Cur. adv. vult.

December 17, 1942. HOWARD C.J.—

I have had the advantage in this case of reading the judgments of both my brother Judges. In both of these judgments the facts are set out in detail. It is, therefore, only necessary for me to make reference to the law that should be applied. The general principle with regard to the valuation of land compulsorily acquired by the Government was laid down in *Government Agent, Kandy v. Marikar Saibo*[5]. In this case it was held that 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. This case was followed by the Court in *Government Agent, Western Province v. Archbishop*[6] where the same principle was followed. The test adopted in that case by the District Judge of ascertaining the market value of the particular portion of land acquired regardless of the rest of the land was described by Pereira J. as fallacious. I would also refer to the words of Lord Dunedin in *Corrie v. McDermott*[7] that the value that has to be assessed is "the

[1] *(1932) 1 C. L. W. 339*
[2] *(1937) 38 N. L. R. 145.*
[3] *(1933) 35 N. L. R. 119.*
[4] *(1939) L. R. A. C. 302.*
[5] *6 S. C. D. 366.*
[6] *16 N. L. R. 395.*
[7] *(1914) A. C. 1056.*

value to the old owner who parts with his property, not the value to the new owner who takes it over". In this connection the question arises as to any impairment in the value of the land by reason of restrictions, vide *Stebbings* case [1], and no doubt, as was decided in *Newnham v. Gomis* [2], any depreciation in value caused by the laying down of street lines may be taken into consideration. I agree, however, with my brother Soertsz J's interpretation of section 19 of the Housing and Town Improvement Ordinance and am of opinion that judgment should be entered for Rs. 28,242 in favour of the defendant. I also agree with the other members of the Court with regard to the order as to costs.

SOERTSZ J.—

This appeal raises the question of the correct method of assessing the value of a piece of land which the Municipal Council of Colombo has acquired under the provisions of the Land Acquisition Ordinance, for the purpose of widening an adjacent public street called and known as Vajira road.

This piece of land is shown on the plan P 2 as the portion coloured pink—a ribbon varying in width between 28 and 32 feet, and 1,140 feet in length, and so comprising an area of 2 roods 37.20 perches. It lies on the extreme south of the premises bearing assessment Nos. 123 and 139, Bambalapitiya road, a property of 11 acres 1 rood and 12 perches in extent, and bounded on the west by another public street commonly known as the Colombo-Galle road.

This comparatively large land is situated in a residential area of a very popular suburb of the City and, it is agreed that, regarded as a whole, it is susceptible of profitable development as a building estate. In these circumstances, it is with some surprise that one finds that all that the Municipal Council is prepared to pay in respect of the soil of this three-quarter extent of land is the sum of five rupees, and that this sum is offered not as something justly due to the defendant, but as a purely gratuitous payment. To quote from the evidence given by the Municipal Assessor:—

> "I would not say that five rupees was offered for this land; we offered nothing for the land. But as we had to pay something in payment of the Transfer of Title (in reality, of course, there is not in these cases any deed of Transfer of Title) we offered five rupees."

This extraordinary result is ascribed to a street line laid down as far back as in the year 1919 in conformity with a resolution passed in that year by the Municipal Council under the provisions of section 18 (4) of Ordinance No. 19 of 1915, which was the Ordinance then in force, defining the northern limit of Vajira road, at that time known as 11th lane, Bambalapitiya, in such a way as to take in the whole of the strip of land that has been acquired.

It is contended 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.

[1] *L. R. 6 Q. B. 37*

[2] *35 N. L. R. 119*

This view of the effect, in law, of the laying down of a street line is sought to be supported by the judgments delivered by this Court in the cases of *Newnham v. Gomis* (*supra*) and *Municipal Council v. Fonseka* [1].

In the earlier case, the only question submitted for consideration or, at any rate, as would appear from the judgment, the only question considered was whether the laying down of a street line should be regarded as the first step in acquisition proceedings in a case in which the land is subsequently acquired under the Land Acquisition Ordinance. That submission was made, in that case, with a view to contending that, if that were the case, any depreciation in value consequent on the laying down of the street line should not be counted against the owner. This Court rejected that contention. That question has not been raised in this case, and there is no occasion for us to consider it. That judgment has, therefore, no bearing on the question now arising, namely, whether the laying down of a street line necessarily renders the land within it sterile. In the second case referred to above the question that arises here was considered incidentally. Koch J. said, in the course of his judgment.

> "Mr. Keuneman, on behalf of the Chairman, largely depends on the effect of section 18 (1) (*a*) of the Housing Ordinance . . . . The effect of this provision, he argues, is to effectually prevent a building to be erected within the street lines which have been validly laid, and to render the space within those lines sterile and unbuildable. I think the argument is sound."
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> It may well be that, in the circumstances of that case, such was the effect of the laying down of the street line; but if that statement was intended to be of universal application, I respectfully disagree. The effect of a street line would, in my opinion, depend on the facts of each case (see *Corrie v. McDermott* (*supra*)).

It is, however, clear that the Council does not appear to have contemplated the good fortune that accrues to it from this interpretation of the law in the latter case, if it is regarded as an interpretation of invariable application, with complete equanimity. The Municipal Assessor, who was the sole witness called by the Council in this case, had declared, in the course of his evidence in the case of *Newnham v. Gomis* (*supra*), that he considered this mode of assessment as "grossly unfair", and in the course of his evidence in the present case he went on to say—

> "This offer (that is the offer of five rupees) is liable to be misconstrued because of the fact that the land is within sanctioned street lines. We try to be as generous as possible with people whose lands are affected and, although the land had no market value, we gave Rs. 1,000 odd for the trees and plants on the land. Our policy is to try to be as generous as possible, consistent with our legal obligations as a Public Authority."

This offer of a "thousand rupees odd" for a land which, in his view, is worth nothing at all, is not the only instance of unscientific assessment that has resulted, in this case, from this attempt on the part of the Assessor to reconcile reason with emotion. We find that he has awarded Rs. 2,800

[1] *38 N. L. R. 145.*

"on account of a certain income the temple derives from stalls" which used to be built every other year on this strip of land, during the festival season. I fail to see how this award can be justified, for, the fundamental premise of the Assessor's case is that once the street line was laid down—and that happened in 1919—no stalls could have been put up on this land. That is not all. The Assessor awards Rs. 6,840 on account of compensation for what he vividly describes as "a very old and dilapidated wall which will fall down at the first gust of wind", and which, he asserts, is not worth anything more than Rs. 4,456; a further sum of Rs. 2,750 is awarded as compensation for three inconsiderable tenements that stood on this piece of land. These sums, Rs. 5; Rs. 1,008.50; Rs. 2,800; Rs. 6,840; Rs. 2,750 added together yield the total Rs. 13,353.50. The Assessor then adds ten per cent. to this total sum less the Rs. 2,800 given as income from stalls, that is to say he adds Rs. 1,055.35 to the Rs. 13,353.50, in view of the compulsory nature of the acquisition. But still doubtful of the adequacy of his generosity, and in pursuit of "a round figure", he throws in Rs. 91.15 and offers the defendant Rs. 14,500.

It is obvious that this is an unsatisfactory method of assessment. It is whimsical.

The defendant refused to accept the amount offered, and when the question was referred to Court, he filed answer and claimed Rs. 56, 687.35 on the basis that the land acquired was marketable building land at the date of the acquisition. In the alternative he averred that, if it is found that it is not such land, the true amount of compensation due to him was not Rs. 14,500 but Rs. 21,899.85.

After trial, the learned District Judge upheld the plaintiff's assessment. The Assessors, acting in an unusual manner, and not as required by section 24 of the Land Acquisition Ordinance, delivered separate judgments. One of them agreed with the trial Judge; the other held that the defendant was entitled to Rs. 47,811.50.

If I may say so with due deference, the judgment of the trial Judge affords us hardly any assistance. It is a reproduction of the law that the Assessor was allowed to lay down in the course of his evidence.

The appeal from the judgment came up, in the first instance, before my brother Keuneman and myself but, as we were unable to agree on the principle on which assessment should be made in this case, it became necessary for us to act under section 38 of the Courts Ordinance and, thereupon, My Lord the Chief Justice associated himself with us.

I have had the privilege of reading the judgment prepared by my brother Keuneman and I find that we are agreed that the value or, I should say, the absence of value put upon the soil of the portion of the land acquired cannot be justified in any way at all.

But, we take different views in regard to what the correct method should be for assessing that value. My brother is of opinion that this is land on which buildings cannot be erected at all and that "a prospective purchaser would not be willing to give the same value for the strip in question as he would for land on which buildings can be erected". In this view of the matter, he has examined the evidence of Marikar, the witness called by the defendant and, upon that evidence, he has held that this strip of land "could be utilized for providing courtyards in front

of the cottages (that is the hypothetical cottages shown in the scheme proposed by the witness) until the time of the acquisition by the Council", and calculating upon the basis of the difference in rent value between a cottage with a courtyard and one without such an appurtenance,' and making a deduction on account of rates and repairs, and capitalizing the resulting sum at 15 years' purchase, he has arrived at the figure Rs. 10,800. To this he has added Rs. 6,880 as compensation for the wall, and 10 per cent. on account of the compulsory nature of the acquisition and has awarded Rs. 19,360 to the defendant.

For my part, I am unable to take the view that, in the circumstances of this case, the land acquired is land on which buildings cannot be erected. Alternatively, I am of opinion that even if the view I have just indicated is erroneous, nevertheless, in the circumstances of this case, this strip of land can be so incorporated in a scheme of building blocks as to constitute and serve as appurtenances to the buildings erected on those blocks and that, for that reason, the land acquired must be assessed with the rest of the land as land suitable for building, subject to such restrictions as really exist.

In land acquisition proceedings, the correct mode of assessment is, I agree, that laid down in the case of *Government Agent, Kandy v. Saibo*[1] and followed in *Government Agent, Western Province v. Archbishop*[2], namely, "to find the value of the entire land and then to estimate the value of the portion taken at that rate". The value that has to be assessed is in the words of Lord Dunedin in *Corrie v. McDermott* (*supra*) "the value to the old owner who parts with his property, not the value to the new owner who takes it over". But, of course, in applying these tests it is a necessary point of inquiry how far restrictions affect the value.

Taking this mode of approach, I cannot see my way to interpret section 19 of the Housing and Town Improvement Ordinance in the manner suggested by my brother Keuneman. In my view, the purpose of section 19 is to ensure that every building has easy access to a street of certain dimensions and if anyone erecting a building has two streets adjacent to his building block, it is open to him to erect his building in relation to one of these streets and, in that event, there is nothing to prevent him from erecting his building to the extreme limit of his land on the side of the other street, going beyond any street line that has been laid down on that side. The only way of escape to the Public Authority is to forestall him by compulsory acquisition of the piece of land belonging to him that lies within the street line on the usual terms of acquisition. Moreover, in a case like the present case, where the defendant, besides having two adjacent streets, one on the west, and the other on the south of his land, has a land some twelve acres in extent, it is open to him to construct suitable streets in conformity with the requirements of the Ordinance to serve buildings erected on the land, and, in that case too, he may build right up to the extreme southern and western limits of his land, ignoring any street lines, unless the Public Authority concerned acquires the land involved, for despite the street lines the land continues to be his till it is acquired.

[1] *6 S. C. D. 36.*

[2] *16 N. L. R. 395.*

Coming next to the matter of restrictions, the only definite prohibition against an owner in the position of the present defendant is that imposed by section 108 of the Housing and Town Improvement Ordinance, which says that,—

> "no person shall erect any masonry or boundary wall or gateway within the street lines of any street for which street lines have been laid down."

This is the only express statutory restriction, and the only restriction that has to be taken into account in assessing the value of the land in a case like this.

I do not think that an inference that an owner of a land is, in every case, prohibited from building beyond a street line laid down on his land can fairly be drawn from the existence of the restriction just mentioned or from the statement in the latter part of section 19 (4) that,—

> "where application is made 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 building shall be set back to the street line."

I cannot understand how, with these facts as the premises, the conclusion could be said to be that "therefore, the Chairman may require that a building shall not be erected to project beyond a street line in every case".

It is said that this view of section 19 (4) and of section 108 leads to an anomalous state of things. I do not agree. But if it does, it is for the Legislature to intervene. We must interpret the law as it is, and in the case of an enactment such as this which imposes restraints and restrictions, we must interpret the words employed by the Legislature as favourably to the citizen as can reasonably be done. It is possible that in view of the interpretation given in the earlier cases I have referred to of section 18 (4) of the old Ordinance, the Legislature was content to frame the present section 19 in this way, or more probably, the Legislature failed to contemplate and provide for a case like this where there are two adjacent streets in existence and the possibility of other streets being constructed. But this is speculation. I do, however, concede that where there is only one street serving a land and the land is not of a size or nature to lend itself to the construction by the owner of another suitable street to serve it, the owner must build either upon the line of the existing street or must have all the land between at least one face of his building and the street reserved for the use of the building. In such a case there is, in effect, a prohibition against building beyond the street line.

In this view of the matter I hold that but for the acquisition the defendant would have been entitled to build on the land acquired if he—

(*a*) divided and disposed of his land in such a manner as to relate all buildings that may be erected upon it to the existing street on the west of the land or,

(*b*) constructed streets of his own to serve buildings that may be erected on the southern side of his land, that is to say, the side on which the street line in question was laid down.

But, in view of the fact that on the western limit of this land there are buildings in existence to-day abutting on the Colombo-Galle road, which would have to be demolished in order to give direct access from the

road on that side to buildings that may be erected on this land, and also in view of the fact that if buildings that may be erected on the southern side of this land—that is on the side of the acquisition—are going to be erected in such a way as to go beyond the street line, the defendant would have to use some other part of his land in order to construct a road to serve those buildings, I do not propose to assess the value of the land acquired as land on which buildings could have been erected despite the street line, because there is not sufficient material before us for such an assessment to be made.

But, as I have already observed, there is an alternative view. Assuming that, in law, the owner could not, once the street line had been laid down, put up buildings on the land within the line, or assuming that even if he could, it would not be economical for him so to build for the reason that he would either have to demolish buildings or to construct other streets, it was still open to him to reserve the portion of his land within the street line as part of the courtyard or garden attached to his building. In this city, particularly in areas like that in which this land is situated, there are hundreds of houses and bungalows with such courtyards and gardens attached to them, and it is indisputable that the more such open land there is attached to a building, the more valuable are the premises. Such a piece of land is as much and as valuable a part of the premises as the part on which the building itself stands, and so far as the soil is concerned, it is due to be assessed in the same way, subject to any statutory restrictions or to any defects inherent in the land itself affecting its value.

In my view, it would be fallacious in assessing the value of a building block to treat the portion of land on which one intends one's buildings to stand as more valuable than the rest of the block which is going to be one's garden or courtyard. The whole block must be valued as a single unit. That, at any rate is, I believe, the way in which purchasers value building blocks they desire to acquire.

What then are the restrictions and drawbacks in this case? It is said that the value of this land is affected by the presence of the street line which is a warning that the land within it may sooner or later be acquired. I do not, however, regard that fact by itself as affecting the value of the land for, in my view, upon the acquisition, the owner is due to be fully compensated. The warning will, of course, affect the value of the land if it is a warning that it is liable to be acquired without any compensation being paid in respect of the soil, and that is the question that is begged by the Municipal Assessor from the beginning to the end of his assessment.

In my view, upon a proper interpretation of the law, there is no such warning necessarily implied by the laying down of a street line. The only restriction that, in this case, affects the value of this land is that imposed by section 108 of the Ordinance already referred to, but I do not consider that that restriction affects the value substantially. There are so many efficient substitutes for masonry boundary walls and gates. But, I suppose that some deduction may reasonably be claimed on this account. There is another matter referred to in the evidence of the Assessor as affecting the value of this land, in fact, namely, that there is a Hindu Temple on it, and a Buddhist Temple in its immediate vicinity.

It is said, to use the Assessor's words "there are daily disturbances from the temples", meaning that the tom-tomming and bell-ringing that take place every day and, in an intensive manner, on festival days, will not attract the better class of building investors.

This is not an unreasonable objection and I think that a deduction should be made on that account too. Both these deductions must, in the nature of things, be largely conjectural, and it would not, therefore, serve any useful purpose to remit the case for further investigation on these point. We are, I think, in a position to make a rough estimate as to what those deductions should be.

Both sides were agreed for the purpose of this case, that the best building land in this neighbourhood, free from restrictions, defects and drawbacks would be worth Rs. 50,000 an acre. I think it would be reasonable to deduct Rs. 10,000 per acre owing to the presence of the two temples and the consequent depreciation in the value of the land. A further deduction of Rs. 5,000 an acre owing to the restriction imposed by section 108 would be more than adequate. These deductions reduce the value of the land acquired to Rs. 35,000 per acre. The extent acquired is 2 roods 37.20 perches, and its value, ignoring decimal points, is Rs. 25,675. I would add ten per cent. for compulsory acquisition, and that yields the total Rs. 28,242, which, on the evidence in the case, I consider a fair value for the land acquired and everything on it.

I would, therefore, enter judgment for this amount in favour of the defendant. In regard to costs, I agree to make the order proposed by my brother Keuneman, although I should have been disposed to give the defendant half the taxed costs in the Court below for the reason that, on my assessment, he gets nearly half the amount he claimed. I would therefore, set aside the judgment of the District Judge and direct that judgment be entered in the manner I have stated.

KEUNEMAN J.—

This is a proceeding for the compulsory acquisition of land under Chapter 203. The land acquired is lot 1 in P. P. No. A1197 of 2 roods 37.20 perches, forming part of premises bearing assessment Nos. 123 and 139, Bambalapitiya road. This strip of land was acquired for widening Vajira road. The plaintiff tendered compensation of Rs. 14,500, but this was not accepted. In his answer the defendant claimed the sum of Rs. 51,788.50 as compensation.

The compensation tendered by the plaintiff was made up as follows :—

	Rs.	c.
Compensation for loss of income from certain tenements demolished	2,700	0
Value of 1,140 feet of boundary wall ..	6,840	0
Value of trees	1,008	50
Compensation offered for sterile land ..	5	0
10 per cent. for compulsory acquisition ..	1,055	35
Compensation allowed in respect of temporary booths ..	2,600	0
Total ..	14,208	85

The plaintiff offered the round sum of Rs. 14,500.

It has been established in this case that the land acquired comes within street lines sanctioned by a resolution of Council on August 8, 1919, and subsequently approved by Council (vide *Government Gazette* No. 7,053 of September 19, 1919—P4).

The contention of the plaintiff is that in consequence of the Housing and Town Improvements Ordinance (Chapter 199), the portion acquired could not be built upon before the acquisition, and that owing to the restriction on the user of this portion it was of no value to any prospective purchaser. The compensation, therefore, was only given in respect of certain tenements demolished on this land, of the value of trees and a wall standing thereon, and of the loss of income from temporary booths erected on the occasion of an annual festival. It is to be noted that the main premises is the site of a Hindu temple.

For the defendant, it was argued that as the whole premises has two road frontages, viz., the line of the Galle road, and the line laid down for Vajira road, there was no prohibition contained in section 19 of the Housing and Town Improvements Ordinance against building beyond the street line of Vajira road, as long as the line of the Galle road was preserved intact.

The argument is based on the construction placed by appellant's Counsel upon the words of section 19 of Chapter 199 (Housing and Town Improvements Ordinance). The material words relied upon are as follows :—

"Every building erected or re-erected . . . .

(*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".

Counsel argued that the section was not drafted in the form of a prohibition against building otherwise than on the line of an existing street or of a new street. He contended that there were two street "lines" in this case, the "line" of Galle road, and the "line" of Vajira road, and urged that, as long as the appellant had for his land the line of Galle road, there was no prohibition against his building beyond the street line of Vajira road. Counsel emphasized the fact that the word "street" was used in the singular, and stated that as long as any street line existed in respect of the appellant's land, the Chairman could not refuse permission to build on any other portion of the appellant's land, even though that portion fell within sanctioned street lines.

Appellant's Counsel admitted that this interpretation would lead to a curious anomaly. Under section 19 (4), where the street line cuts through a building, if the owner applies for sanction to re-erect the building, he can be required by the Chairman to set back the building to the street line, subject to the payment of compensation. At the same time the Chairman was powerless to prevent any new building being erected within the sanctioned street line. Counsel contended that this latter element had been overlooked. I do not believe that such an important matter could have been forgotten, and I think it is incumbent upon us to look for an interpretation of the section that does not lead to so startling an anomaly. In my opinion such an interpretation can be obtained from the words of the section itself.

I do not think that when the Legislature used the words the "line of the street" it had in contemplation the names or labels which for the purpose of convenience have been applied to the various streets in the city. All the streets even in the city do not run straight, they turn sometimes at an angle, and in the country where the land is hilly even at an acute angle. It is not an unknown experience for a land to be bounded on two sides by a street, which bears the same name. In my opinion the "line of the street" here has relationship not to the streets as separately named, but has relationship to the land, and although the land may have in popular language two or more road frontages, it may have only one line of street, which need not necessarily be a straight line.

I think the words of seciton 19 (1) (*b*) have a special significance in this connection, viz., "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". No question arises when the building abuts upon the street, at whatever point of the compass the street may lie. But the later words, in my opinion, contemplate the possibility of the line of the street being on more than one "face" of the building. Where that state of things exists, all the land between one "face" of the building *only* and the street line must be reserved for the use of the building, while the land between the other faces of the building and the street need not be so reserved.

I think these words throw a light on the meaning of "street" and "line of the street", and that the word "street" has no relationship to the names applied to the various streets, and that the line of the street has relationship only to the particular land or building, and that the line of the street may be on more than one side of the land or building.

I may here refer to sections 20 and 21. Section 20 requires that any person wishing to lay out a new street should give notice to the Chairman of his intention. Section 21 (*b*) empowers the Chairman to give written directions with regard to "the line of the new street, so as to ensure that it forms a *continuous* street with any existing street or approved new street specified by the Chairman".

Now it is common experience that these "new streets" run at right angles to the existing street, but still they are to be regarded as *continuous* with the existing street.

I am therefore of opinion that the construction of section 19 suggested by appellant's Counsel cannot be accepted, and that the Chairman has under section 5 neither the power nor the discretion to allow any building inside a sanctioned street line. Although the portion within the street line remains the property of the owner, the street lines define the boundaries of the street, and all erections and re-erections of buildings must be on the line of the street as so defined.

Further, from the facts, it is clear that the strip of land in question does not extend to the line of the Galle road. There is a portion of land intervening, which had been previously acquired by the Municipality. Again, the whole line of the Galle road, immediately adjacent to the strip in question, is now occupied by a number of boutiques, and it has

not been shown that it would be an economical proceeding to demolish these boutiques, so as to provide the strip in question with a value as building land.

I do not think that the decision in *The Government Agent, W. P. v. Archbishop*[1] compels me to value the strip acquired on a basis proportionate to the value per acre of the rest of the defendant's land. I do not think that case went further than to decide that where the whole land is of the same character, the proper course is to find the market value as near as it can be ascertained, and then to estimate the value of the portion acquired at that rate. It would, of course, not be correct to value the strip as a separate entity, which on account of its shape and size may be of no value to a prospective purchaser. Pereira J. himself drew attention to an important qualification of the rule. "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". If the situation or physical condition of the land can make this difference, I think it is equally true that where the strip in question has legal restrictions placed upon it, which do not apply to the rest of the land, the real value of the strip will not be a proportionate value of the rate per acre of the rest of the land. No doubt it must be borne in mind that the strip in question in fact forms part of a large land, but the physical infirmities or legal restrictions attaching to the strip in question must be taken into account in determining the value of the strip.

This case must accordingly be decided on the basis that there was a prohibition against erecting buildings on the strip in question. See *Ujagar Lal v. The Secretary of State for India in Council*[2].

Counsel for the appellant, however, argued that in spite of the prohibition against building on this strip, it could still be regarded of value as a building site. He pointed out the rule which required that in the case of domestic buildings, factories, and workshops, the total area covered by all the buildings should not exceed two-thirds of the total area of the site (Rule 2 in the Schedule), and argued that the portion which could not be built upon may be allocated as the portion left free of buildings.

I do not think this argument can be accepted. Under rule 2 of the Schedule, which deals with the reservation of a proportion of the site, the one-third portion not covered with buildings except of the kind allowed "shall belong exclusively to the domestic building, factory, or workshop, and shall be retained as part and parcel thereof". Where street lines have been laid down, there is always the prospect of the portion within the street lines being acquired for the widening of the street, and it would not then be reasonable to expect that the owner will be in a position to retain that portion as part and parcel of his building. Besides, I do not think the evidence called in the case supports the contention of appellant's Counsel. The Municipal Assessor, who has had a very wide experience, gave it as his opinion that the value would be seriously affected, in fact would be reduced to nothing at all. No witness for the defence contested the proposition that the value would be diminished, and I am of opinion that the prospective purchaser would not be

[1] *16 N. L. R. 395.*

[2] *L. R. 33 Allahabad 733.*

willing to give the same value for this strip in question as he would for land on which by law buildings can be erected. It is reasonable to conclude that the restriction on the user must be reflected in the value.

The defendant, however, led evidence to show that there were many other uses to which the strip of land could be put, other than its use for erecting buildings. I do not think I need deal with the argument that it would be used for the planting of fruits, vegetables and flowers, for the reason that, even on this basis, the defendant has not succeeded in showing that he would be entitled to any increase in the compensation to be awarded.

There is, however, one manner of user of the premises which deserves more serious consideration. Mr. Marikar, Licensed Surveyor, called for the defence, produced a sketch plan in which by using the street line sanctioned for Vajira road, twenty cottages could be erected on the land immediately adjacent to the strip in question. This witness contended that the strip in question could be utilized for the purpose of providing courtyards in front of the cottages, until the time of acquisition by the Council. He said that the cottages could each be rented with the compounds for Rs. 50 to Rs. 70 per month, and that if the compounds were acquired, the rent would be diminished by Rs. 7.50 for each cottage. Working on this potential rent of Rs. 7.50 per month in respect of each cottage, or Rs. 150 per month for the whole strip, he arrived at the figure of Rs. 19,237.50 as being the value of the strip in question as bare land.

The Municipal Assessor, who was cross-examined on this point, denied that the cottages shown by Mr. Marikar could command the rent of Rs. 50 to Rs. 70 a month, and gave it, as his opinion, that not more than Rs. 15 to Rs. 20 each could be obtained for them per month. He added that people who occupy that type of house do not worry about a courtyard, and stated that the removal of the courtyard would result not in a depreciation, but in an appreciation of the rent. I am unable to follow this last opinion, and the Municipal Assessor has not fortified his opinion by giving reasons or providing instances. I think it is more reasonable to accept the opinion of Mr. Marikar, that a tenant will pay an enhanced rent for a cottage with a little courtyard in front, rather than for one which abuts directly on the street. But the question of value has still to be determined. In view of the unfavourable opinion formed by the District Judge of Mr. Marikar's evidence, I am reluctant to accept his estimated rent of Rs. 50 to Rs. 70 for the buildings with courtyards, and his estimate of the diminution in rent of Rs. 7.50 for each cottage when the courtyards are removed. At the same time I am not able to accept the opinion of the Municipal Assessor, that the removal of the courtyards will not result in a depreciation of the rent and in fact will bring about an appreciation of the rent. I do not think there is anything in the evidence which can enable me to accept that opinion. The evidence is not very satisfactory as to the actual amount of depreciation in the rent, by the removal of the courtyards. For the purposes of this case, however, I do not think any useful purpose will be served by sending the case back for the recording of further evidence on the point, for, in my opinion, it will be safe to fix the figure of Rs. 4 as the amount of depreciation in the case of each cottage, caused by the removal of the courtyard

This would mean an annual income of Rs. 48 per cottage, or Rs. 960 in respect of all the cottages. From this, accepting Mr. Marikar's basis, a quarter, *i.e.*, Rs. 240, must be deducted in respect of rates and repairs, leaving a balance of Rs. 720. Mr. Marikar capitalized this sum at 15 years' purchase. I do not find in this case any evidence which tends to show that Mr. Marikar is wrong. Accepting that basis, the value of the strip to the prospective purchaser would be Rs. 10,800. It is obvious that the defendant on this basis cannot claim for the loss of income from the stalls or for the buildings and trees on the strip. But the item of Rs. 6,800 for the boundary wall which could have been utilized under the scheme must be added, bringing the grand total to Rs. 17,600. Adding 10 per cent. for compulsory purchase, the total value would be Rs. 19,360. I think the defendant is entitled to receive this amount. I enter judgment for that amount.

The appellant is entitled to the costs of this appeal. As regards costs in the District Court, the appellant has succeeded in obtaining a sum appreciably in excess of that awarded by the Chairman. At the same time, the appellant claimed in his answer a sum of Rs. 51,788.50, which is an extravagant claim, and cannot be supported on any basis spoken to in this case. In the circumstances the appellant will be entitled to receive 1/3 of his taxed costs in the District Court.

Judgment varied.