***Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of the Secretary of State for India in Council* v. *Shanmugaraya Mudaliar and others, and Shanmugaraya Mudaliar and others* v. *The Secretary of State for India in Council (Consolidated Appeals), from the High Court of Judicature at Madras, delivered 18th February* 1893.**

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

These appeals arise from the circumstance that the Government of India is desirous of saving from destruction, and of preserving as public monuments, certain works in the vicinity of Madras known as the Seven Pagodas of Mahabalipuram. The works are on the open sea beach, and they are constructed out of a small extent of granite hill which lies exposed at that spot. They consist, partly of raths or monolithic temples completely disengaged from the hills, partly of caves cut into the living rock, and partly of figures carved upon its face. The place is very celebrated. Fergusson speaks of it as "more "visited and more described than any other place "in India." One gigantic rock-carving he describes as "the most remarkable thing of its class in India." He speaks of the raths as "the

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oldest examples of their class," and ascribes them to the fifth or sixth century, A. D. Crole thinks they are several centuries older than that: perhaps belonging to the second century B.C. Whatever their origin, there is no doubt of their historical interest and value, or that the destruction of them would be a public misfortune.

The hills supply granite of good quality, for which there is some demand in Madras, and it has been quarried for many years past. No injury to the monuments was anticipated from the original style of working, but when the zemindar took to blasting the local authorities felt alarmed and advised the Government to interfere.

The zemindary belongs to a joint family who may be called the Mudaliars. In the year 1885 some negotiations for the purchase of the property took place between the Government and the then head of the family, who was willing to sell at a very moderate price; but those may be passed over, because the Government was advised that no satisfactory title could be procured in that way, and that it was better to proceed under the Land Acquisition Act X of 1870.

The notices required by that Act were given, and the matter came before the Sub-Collector of the district, who under the provisions of the Act (Sections 15 and 18) referred the question to the District Court. The terms of the reference showed the properties which the Government sought to take, and the offer and claims made in respect of them. The Mudaliars claimed an exclusive right to the lands, and demanded upwards of 9½ lacs of rupees as compensation. Another class of villagers, called Mirasidars, denied that the Mudaliars had any right in the bulk of the lands, apparently those parts where granite could be quarried, and asserted their own exclusive right to them, and demanded upwards

of Rs. 30,000. A priest or custodian of a temple was stated to claim a large compensation, but by his statement in the record he does not claim anything except leave to use the blocks called mandapams. The Sub-Collector offered Rs. 190. 13. 11 for the whole.

When the parties came before the District Judge, they agreed that the inquiry should be confined to determining the value of the property. Therefore nothing was then decided as between the rival claims of the zemindars and the Mirasidars. The claims for compensation were reduced by the claimants' assessor to Rs. 25,800 for the temples and works of art, and Rs. 113,800 for the unquarried stone. For the carvings and temples the District Judge allowed nothing, as he found that they never had been, and never were likely to be, a source of any income. The claim for stone, reduced as it was, he considered to be still highly exorbitant. It was arrived at by estimating the contents of the hills at about 25 millions of cubic feet. Putting the value of 1 rupee on each 100 feet, as the claimants did, a much larger sum than Rs. 113,000 is brought out. How the claimants' assessor effected the reduction to the latter sum does not clearly appear. Nor is it of much importance to know, because no evidence was given to enable the Court to judge of the rate at which the stone was being carried to market, and no details serving to show what part of the market price should be attributed to the ownership of the stone, as distinguished from the labour bestowed on preparing it and carrying it to market.

The District Judge found that the only evidence available to him of the value of the ownership was a lease by which the zemindar had granted the right of quarrying over portions of the hills for five years, at the rent of Rs. 140 a year. He found that at the same rate a right

of quarrying over the whole area might command a rent of Rs. 200. On this sum he allowed 25 years' purchase, bringing out the sum of Rs. 5000 as the value of the stone. A further sum of Rs. 124. 15 was added for some small plots, the price of which was not in dispute. It was also agreed that the zemindar's peshcush should be reduced, and that he should have liberty to remove the trees growing on the ground. The District Judge's award proceeded on these grounds, and further directed that each party should bear his own costs.

It is agreed that on the point of costs the award is erroneous, because the sum awarded exceeded the sum tendered by the Collector, and in that case the 33rd section of the Act directs that the costs shall be paid by the Collector.

It is also pointed out that the award does not give the additional 15 per cent. on the market value, which is directed by Section 42 of the Act to be paid by the Collector. It is a matter of very little importance, but according to the exact terms of the Act the award is only to ascertain the market value, and then the Act itself imposes a further obligation on the Collector to pay the 15 per cent. The effect is the same whether the award is silent about the added percentage, or expressly includes it as has been done by the High Court.

There is no reason to suppose that the award would not have been put into correct shape on application to the District Judge. But all parties were dissatisfied with the principle of his valuation. The Mudaliars appealed to the High Court, and the Government met their appeal by objections in which they adhered to the original offer of the Collector. No appeal was presented by the Mirasidars. Their Lordships have been informed by the Counsel of the parties that in a subsequent proceeding it has

been decided that the claim of the Mirasidars is not well founded.

The case was heard by Mr. Justice Wilkinson and Mr. Justice Shephard. As regards the temples and carvings, they both agreed with the District Judge that they have no market value. It is highly improbable that they should have any. No evidence was offered to show that there is any; and Mr. Justice Wilkinson adds that the claimants' Counsel did not assist the Court by suggesting any price which might be offered as a fancy price. Their Lordships find themselves in a like position with the High Court, and all they can do is to express agreement with the Courts below on this point.

With respect to the stone, Mr. Justice Wilkinson thought that the District Judge had awarded too much in respect of the zemindar's rent. He thought that the basis of calculation should be the actual rent of Rs. 140 instead of the estimated rent of Rs. 200; and that instead of 25 years only 15 should be allowed. That cuts down the market value to Rs. 2,100.

On the other hand, the same learned Judge held that the District Judge had erred in omitting to notice the evidence as to the actual profits earned by the persons who work the quarries. He refers to evidence showing that there are about 46 persons in the village who earn their livelihood by stone-quarrying; and calculating their annual profits at Rs. 100 apiece, he concludes that the amount of profits of which the claimants would annually be deprived may be set down at Rs. 4,600. On this amount he allows 10 years' purchase, and so brings out a sum of Rs. 46,000, which he says is the damage sustained by the persons interested by reason of the acquisition injuriously affecting their property or earnings.

Mr. Justice Shephard agrees with his learned colleague as to the amount of compensation, but not in his reasoning. He says that no question arises with respect to loss of earnings under Clause 3 of Section 24 of the Act. But he adds that the only way of ascertaining the market value is to take the aggregate of the profits or earnings derived from the land and to capitalize it.

By their decree the High Court altered the award of the District Judge by substituting the sum of Rs. 55,458. 11. 3 (which includes the additional 15 per cent.) for the sum of Rs. 5,124. 15; and by ordering the Respondent to pay the costs of the claimants in the District Court; they also ordered him to pay a proportion of the costs in the High Court. From that decree the present appeals are brought.

It appears to their Lordships that the District Judge was right in estimating a rent for the whole of the lands, instead of taking the rent actually received for part. It was the best, if not the only, method he had for getting at the market value of the ownership. As regards the number of years' purchase, though it seems large, no reasons are given why it was fixed on, nor why the High Court took a much smaller period; and their Lordships see no cause for departing from the opinion of the District Judge, who had all the parties and their agents before him. They therefore agree with the District Judge as regards the value of the zemindar's interest calculated on the footing of the rental.

In estimating the price of the stone, it seems to them that the two learned Judges, though differing in language, have in effect followed the same principle. Each has included the earnings of the quarrymen, and the estimated loss of those earnings, as an element in the com-

pensation. Whether they are included directly as earnings injuriously affected, according to one Judge, or indirectly as swelling the market value, according to the other, the result is the same. Their Lordships are of opinion that an erroneous principle has been introduced by the High Court. No compensation is tendered by the Collector or ordered by the Act, except to persons interested in the land. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market value of the land. But no compensation is given to persons not interested in the land, on the ground that their earnings may be affected by the change of ownership, or indeed on any ground. The 46 quarrymen are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of the zemindar, who is interested. The market value of a property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner; it may be expense to him. And the award of the High Court has the extraordinary result of putting a large sum into the pocket of the Mudaliars on the ground that some of their neighbours will be injured by losing their employment.

The conclusion is that the High Court have been mistaken in departing from the principles which the District Judge followed in assessing compensation, and that his award should in substance be reinstated. It will suffice if the decree of the High Court is varied by inserting the figures Rs. 5,124. 15 instead of the figures Rs. 55,458. 11. 3, and with that variation affirmed. That will leave the original award as to market value standing, and will also leave

standing the directions of the High Court as to payment of costs. The Collector will, of course, have to pay 15 per cent. on the sum awarded according to the provisions of Section 42 of the Act before he can make his title perfect. With respect to the costs of these appeals, their Lordships think it right that each party should bear his own. They will humbly advise Her Majesty in accordance with these opinions.