Privy Council Appeal No. 119 of 1927.

Vallabhdas Naranji, Khot of Kanjur - - - - *Appellant*

v.

The Development Officer, Bandra - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH APRIL, 1929.

Present at the Hearing:
THE LORD CHANCELLOR.
LORD CARSON.
SIR CHARLES SARGANT.

[*Delivered by* LORD CARSON.]

This is an appeal against a decree made on the 24th February, 1926, by the High Court of Judicature at Bombay, varying an award dated the 28th July, 1924, by the Assistant Judge at Thana on a reference made under Section 18 of The Land Acquisition Act, 1894. The land in question is part of the village of Kanjur, and the area in dispute in this appeal is stated to be about 26¾ acres. Some of the lands were in the possession of *sutidars* who had rights of permanent occupancy in their rice fields. The first question which was argued before this Board on the present appeal was the claim of the appellants that certain buildings which had been erected by the Government on the land at the date of the Government's declaration of the 4th November, 1920, under the Sixth section of the Land Acquisition Act had become and were the appellant's property, and that he should be allowed the value of the land in the state in which it then was; that is

to say, with the buildings on it. The way that question has arisen is as follows :—

It appears that in 1919 the Government resolved to acquire the land in question and other land under the said Act, and by arrangement with certain of the *sutidars* they took possession of such land, including a portion which was in the occupation and the property of the appellant. Upon such land, including a portion in the possession of the appellant, they proceeded to erect certain buildings without the necessary notification, which was not served until the 4th November, 1920, when the Government notified, under the Land Acquisition Act, Section 6, a declaration that 52 acres more particularly described therein, situated in the said village and including the land in question in this appeal, were needed for a public purpose, and the Collector took order for the acquisition thereof. It is to be observed that the Government were in a position by law at any moment to regularise their position by such a notification—a fact which becomes material when it has to be considered what the nature of their trespass was under the law as applicable on the question of the right of the appellants to have the buildings which were erected on the lands before the 4th November included in the valuation. The Assistant Judge held that the appellant was not entitled to have the said buildings erected by the Government included in the valuation, but that he was entitled to compensation for the occupation of the land by the officials before the notification of the 4th November, 1920, and he awarded such compensation in the form of interest on the value of the land computed from the date when the Government took possession. On appeal to the High Court of Appeal at Bombay that Court confirmed on this point the judgment of the Assistant Judge and refused to allow the value of the building to be considered in assessing the amount of compensation to be paid to the appellant. In the course of his judgment the learned Chief Justice said : " It is curious to have to remark that Government entered upon this area before the land was actually notified for acquisition. They seem to have done so in the belief that they could get the consent of the occupants to such possession. They not only took possession, but erected buildings on the land." The learned Chief Justice, however, held that the question was decided by the principles laid down in the case of *Premji Jivan Bhate* v. *Cassum Juma Ahmed* (1895, I.L.R., 20 Bombay, 298), and he quoted from the Judgment of Sargent, C.J., in that case as follows :—" It is well-established law in England that if a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. This is also the law in India, with the exception that the party building on the land of another is allowed to remove the building." Now up to a

certain point there was no difference between Counsel for the parties as to the law applicable to the case. It was agreed on both sides that the English law as comprised in the maxim, "*quidquid plantatur solo solo cedit,*" has no application. In 1866, in consequence of a difference of opinion between certain divisions of the Courts, the law was carefully reviewed in a case referred to a Full Bench, *Thakoor Chunder Poramanick* v. *Ram Dhone Bhuttacharjee*, 6 Sutherland Weekly Reporter 228. In the order of reference it is stated that the question involved was "whether a person who, being in possession of land as proprietor, erects *pukka* buildings (of brick, etc.) thereon, has a right, on being subsequently ejected from the land as having no title, to pull down those buildings and remove the materials. In the present case, we decided that he has no such right. Since we so decided, it appears that another Division Bench have, in the case of *Gobind Poramanick* v. *Gooroo Churn Dutt,* 3 Weekly Reporter 71, decided to the contrary effect." The judgment was given by Barnes Peacock, C.J., who stated as follows :—

> "We have not been able to find in the laws or customs of this country any traces of the existence of an absolute rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself."

And later on he adds :—

> "We think it clear that, according to the usages and customs of this country, buildings and other such improvements made on land do not, by the accident of their attachment to the soil, become the property of the owner of the soil; and we think it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bona fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil, the option of taking to the building, or allowing the removal of the material, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess."

The question is, what is meant by a "mere trespasser" as contradistinguished from possession under "any *bona fide* title or claim of title." In the case quoted the Defendant had erected buildings on land sold to his predecessors in title by a widow during the lifetime of the widow, but which sale was held void as being improperly made by the widow, and it is to be noted that the case reported in Sutherland 3 Weekly Reporter, and referred to in the reference, was in no way overruled. It is therefore worth while to consider the view taken by the learned Judges in that case, who stated the law as follows: "But, in the present case, we have a trespasser who has tortiously entered upon the land of another and built a house thereon. Without going so far as to say under no circumstances could acquiescence by the party injured in the act of the injury done, be inferred, we are clearly of opinion that no such acquiescence was either pleaded or proved in the present case. We, therefore, think the plaintiff is

clearly entitled as against the defendant, a trespasser, to possession of his land, leaving the defendant at liberty to remove the bricks of his house."

Again, in cases reported in 6 Bombay High Court Reports 80 (1869), *Narayan bin Raghoji* v. *Bholagir Guru Mangir*, etc., where H., knowing that B. claimed certain land as his own, nevertheless purchased the land from a third person and erected a bungalow thereon, which B. did not interfere to prevent. Couch, C.J., in giving judgment, said, " H. took the risk, and as he was informed of B.'s claim it was not necessary for the latter to give a notice. We cannot, however, apply to cases arising in India the doctrine of the English law as to buildings, viz., that they should belong to the owner of the land. The only doctrine which we can apply is the doctrine established in India that the party so building on another's land should be allowed to remove the materials."

In the recent case before this Board (1927) *Nayaran Das Khettry* v. *Jatindra Nath Roy Chowdhury* (54 I.A. 218), the statement first quoted from the judgment of Sir Barnes Peacock was cited with approval, and it was added that such statement " seems to have been accepted for many years as a correct pronouncement."

It was contended, however, on behalf of the appellant that in the various cases relied upon there was at least some genuine claim or belief in the party erecting the buildings that he had a title to do so, even though he was eventually held to be a trespasser ; and it was urged that no such claim or belief existed in the present case, in which it was said the Government, without any pretence of right, tortiously invaded the appellant's property and proceeded to deal with it as their own. The learned Counsel for the respondents, whilst contending that such was not the true state of facts, and that the respondents could not be considered mere trespassers, was prepared to argue that, even if it were so, once it was admitted that the English maxim did not apply, the logical consequence followed that in any case of trespass by building on the lands of another, such trespasser had a right to remove the structure or be paid the value thereof by the owner, and he relied upon the fact that no case drawing a distinction in the nature or degree of the trespass could be found. Their Lordships, however, do not think it necessary to give a decision upon this far-reaching contention. They agree with what was apparently the view of both Courts in India that under the circumstances of this case, as already set forth, by the law of India, which they appear to have correctly interpreted, the Government officials were in possession " not as mere trespassers " but under such a colour of title that the buildings erected by them on the land ought not to be included in the valuation as having become the property of the landowner. They considered, and their Lordships agree, that the justice of the case was met by holding that the appellant was entitled to compensation for

the occupation of the lands by the officials before the notification of the 4th November, 1920, which, as before stated, was awarded in the form of interest in the value of the land computed from the 27th November, 1919, the date when the Government took possession. This method of compensation has not been questioned by the respondents.

The case of *The Secretary of State for Foreign Affairs* v *Charlesworth, Pilling & Company* (28 I.A. 121) was referred to in the course of the argument to support a claim that at all events the appellants had at the crucial date a right to call upon the respondents to remove the buildings, and that they were entitled to be paid for their land with such a right attaching to it. Whether that case applies or whether such a right would be of any value, their Lordships do not think it necessary to decide, as it is admitted that no such claim was put forward before either of the Courts in India. Their Lordships must hold, therefore, that the Courts below were right in disallowing the claim of the appellants in respect of buildings, and on this point the appeal fails.

The appellant has also appealed against so much of the judgment of the High Court as reduced the value placed upon the land by the District Judge. The main contentions were (1) that as the land had admittedly potentialities as building land the High Court had not the evidence before it to reduce the estimate made by the District Judge, and in fact ignored the evidence upon this point, and (2) that the District Judge, when he dealt with the transaction relating to a plot of the land, Survey No. 170, containing 16,000 square yards, and sold in the month of April, 1920, at 8 annas per square yard, was right in accepting this transaction as a reasonable guide to the value of all the land in question, on the ground that this plot was not so favourably situate as the bulk of the land. The High Court has very fully dealt with these considerations and given their reasons for not being able to accept the conclusions at which the District Judge had arrived.

Their Lordships are unable to find any principle involved which could lead them to say that the High Court were wrong in arriving at the decision to which they have come, and as the questions involved are ones of valuation and not of principle, their Lordships, in accordance with the usual practice of this Board, must decline to speculate as to the proper amount to be awarded under such circumstances.

The appeal upon this point accordingly fails.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

VALLABHDAS NARANJI, KHOT OF KANJUR,

v.

THE DEVELOPMENT OFFICER, BANDRA.

DELIVERED BY LORD CARSON.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1929.