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ORDINARY, PRINTED.

Public Department.
Despatch
—, DATED 3-3-91
No. 6

INDEXED.

First copy sent to Press.

Returned for signature.

Despatched in print.

[Despatch Abstract.]

Forwarding as promised a memorandum &c in the Seven Pagoda Compensation Case which is before the Privy Council on appeal.

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18 , No.

Enclosures.

Current No.

Statement with ditto.

Order, &c., of Government—A.

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GOVT. OF FORT ST. GEORGE.

PUBLIC (1891) DEPARTMENT.

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of the appendix
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3/3/99

Letter to the Right Honorable the Secretary of State for India.

Dated 3rd ~~th~~ March.

No. 6 of 1891.

Forwarding as promised a memorandum &c. in the Seven Pagodas Compensation case which is before the Privy Council on appeal.

PUBLIC DEPARTMENT.

Letter—to

The Right Honorable the SECRETARY of STATE for INDIA.

My Lord,

With reference to your telegram of the 19th February, we have the honor to confirm the marginally-noted telegram sent to your Lordship on the 27th idem, and to forward, as promised therein, the accompanying concise statement of facts in the Seven Pagodas compensation case together with a printed copy of the Record of Proceedings.

Your telegram of 19th February last. We wish Privy Council appeal, Secretary of State for India *versus* Shunmugaraya Mudaliar, prosecuted. Papers will follow by next mail.

We have the honor to be,
My Lord,
Your Lordship's most obedient, humble servants,

(Signed) Wenlock.
" C. G. Arbuthnot
" H. E. Stokes
" J. H. Garstin

Fort St. George,
3rd March 1891

(v) Deed of gift, release and transfer of nearly 9 plots in the village of Mahabalipuram executed in favor of the Right Honorable the Secretary of State for India by Ramasami Mudaliar, Zemindar of Arambakam Mutta, of which Mahabalipuram is a part (exhibit M).

21. The witnesses are persons who have purchased stones at Mahabalipuram for construction of buildings and who speak to that fact, contractors who speak to the price of the stones available there and Mirasidars of Mahabalipuram who depose to their having been in the habit of quarrying and selling stones at Mahabalipuram (pages 87 to 97 of printed book).

22. The only witness examined on behalf of the Collector is Shanmuga Mudaliar, 2nd claimant, who is nephew of the late Zemindar. He admits that exhibit iii, the statement by Ramasami Mudaliar before the Sub-Collector, bears the signature of Ramasami Mudaliar and that he himself signed it, and states also that Ramasami Mudaliar was not in his proper senses for 7 or 8 years previous to his death, and he did not at all understand exhibit iii at the time of execution (page 97 of printed book).

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24. A petition was also presented to the District Court of Chingleput by the Government Pleader on behalf of the Collector (Mis. Petition No. 379 of 1886) praying that in determining the title of the several claimants in the compensation reference case the Court may take into consideration the value of the lands only but not the pagodas, *mandapams* and other stone images, as they are the property not of the Zemindar or Mirasidars but of the General Hindu Public, on whose behalf the Government comes forward to secure them from destruction (page 18 of printed book).

25. In pursuance of section 19 of the Act, Mr. Mahomed Ali Sahib Hazari, Deputy Tahsildar of Conjeeveram, appeared as assessor nominated by the Collector, and Mr. B. Rungiah Naidoo as assessor on behalf of the claimants.

26. The former expressed his opinion that the amount of Rs. 190-13-10 fixed by the then Sub-Collector, Mr. Mullaly, would be proper amount to be given as compensation, the Zemindar being allowed to cut down the trees and being also allowed a deduction of Rs. 12-8-0 per annum from the *peshcush*.

27. The claimants' assessor gave as his opinion that Rs. 25,800 should be given as compensation in respect to the carvings, &c., and Rs. 1,13,000 in respect of the unquarried stone. He agreed as to the amount proposed by the Collector to be deducted from the peshcush.

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29. The Judge says at para. 30 of his judgment: "This deposition bears the seal and signature of the late Zemindar, N. Ramasami Mudaliar, as also the signatures of the 2nd and 4th claimants as well as the attesting signatures of a karnam

and another person. It is certified by Mr. Mullaly to have been translated and understood by the Zemindar and declared by him to be correct" (page 105 of printed book).

30. The judgment further says:—

Shunmugaraya Mudaliar, 2nd claimant, one of those who signed it and the person above referred to as having been examined as a witness by the Collector's vakil, admits having signed the statement but says that he did so not because he agreed to its terms but to show that Ramasami Mudaliar signed it. He also states that Ramasami Mudaliar signed it under the impression that it referred to a certain extent of 4 *cawnies* and further insinuates that that individual was not in his proper senses at the time (page 105 of printed book).

31. But the Judge, though of opinion that Ramasami Mudaliar had been in his proper senses at the time of the execution of the document and also that Mr. Mullaly undoubtedly considered that he was so and also considers the explanation given by Shunmugaraya Mudaliar to be extremely weak, holds at the same time that the statement (exhibit iii) is not of a nature as to bind him or in fact any person but the late Zemindar, perhaps, in whose name alone it runs (para. 33 of the judgment).

32. He further says that, inasmuch as it has since been decided to proceed under the Land Acquisition Act, it is his duty to decide as to the amount of compensation to be awarded independently of any agreement made by the Zemindar (para. 34 of the judgment).

33. He then says that he does not consider the amount offered by the Collector as by any means adequate because though it may be sufficient for the land alone, no compensation has been allowed for the stone, which ought to have been (para. 36 of the judgment).

34. As he finds from the oral evidence adduced that large sums of money have been realised by sale of the stones quarried at the Seven Pagodas, which appears to be of a superior description, and from exhibit iv it further appears that the quarries have been fetching the late Zemindar an annual rent of Rs. 140, he considers that if it be necessary to stop the quarrying on the score of its being dangerous to the archæological remains, compensation is surely due to the present claimants for the deprivation of a long enjoyed source of income in spite of the fact that the late Zemindar may have been satisfied with the sum of Rs. 190 and odd (para. 36 of the judgment).

35. Further on he says that though from the statement filed by the claimants' 16th witness it would appear that the two hills contain upwards of 25 million cubic feet of stone (unquarried), which should be accepted as correct in the absence of any contradiction on the other side, yet as only a trifling portion of the entire stone of which these hills are composed can command any market value, even the award made by the claimants' assessor is highly exorbitant (para. 37 of the judgment).

36. He therefore regards as a fair basis of calculation the annual amount of Rs. 140, which was agreed to be paid to the Zemindar under exhibit iv referred to above, increased to Rs. 200, on account of the fact that the lease referred to in the exhibit was restricted only to certain portions of the hills. Capitalising this rent at 25 years' purchase, which comes to Rs. 5,000, he regards the sum as a fair compensation to award for the unquarried stone.

37. For the carving and temples he considers that no compensation is justly claimable as these have never been and are never likely to be a source of income (para. 38 of the judgment).

38. He therefore awards Rs. 5,000 as compensation for the unquarried stone; deducting from the sum of Rs. 190-13-10 (fixed by the Collector for the whole extent) Rs. 65-14-6 allowed by him for the stony puramboke, the balance is Rs. 124-15-0, which he would allow for the remaining extent. The total amount of his award therefore is Rs. 5,124-15-0 allowing also the *peshcush* deduction and liberty to remove trees agreed on by the Collector.

39. He also adjudges each party to the reference to bear his own costs (paras. 39 and 40 of the judgment).

7. The Government having subsequently appointed the Sub-Collector of the Chingleput district to take order for the acquisition of the lands and perform the functions of a Collector under the Act, on 19th June 1886, notice was issued by J. P. Fiddian, Esq., the Acting Sub-Collector, under sections 9 and 10 of Act X of 1870, calling upon all persons interested in the said lands to appear before him for the purposes mentioned in the above sections. The notice was also published in the village by beat of tom-tom, a copy of the same being also affixed in a conspicuous place on the 28th June 1886 (pages 5 to 7 of printed book).

8. In July 1886, in compliance with the above notice, three statements were presented to the Sub-Collector:—

(i) One by N. Vedachella Mudaliar, son of Ramasami Mudaliar, the registered Zemindar (then deceased), and N. Shunmuga Mudaliar, a son of the younger brother of the said Zemindar.
(ii) One by the Mirasidars and tenants of the village of Mahabalipuram, and
(iii) One by the Dharmakarta of Sthalasayana Perumal temple of the Mahabalipuram village (page 9 of printed book).

9. The claimants first mentioned, the Zemindars, set forth they are the only persons entitled to the hills, &c., required by the Government, and claimed a compensation amounting in all to Rs. 9,51,730-15-5.

10. Whereas the second set of claimants, namely, the Mirasidars, set forth that they, as a community, had the exclusive right of quarrying stones in the hills now required by Government, selling them and enjoying their profits, &c., and that such tenants as were cutting stones were each paying at the rate of 1 rupee a year to the community of Mirasidars, that the Zemindar had no right whatsoever to the same, and claimed a compensation of Rs. 31,640-10-0.

11. The Dharmakarta of the temple also claimed a compensation of Rs. 14,000 for certain *mandapams* (small roofed spaces) which he alleged were constructed for the use of the temple deity and were all along in the temple enjoyment.

12. Further, from the depositions given by these three sets of claimants, the right to quarry stones in certain parts of the hills, which was asserted by the Zemindar as belonging to him, was directly denied to be his by the Mirasidars, Narasimha Chariar, one of them, deposing to the fact that that right always belonged to the community until quarrying work was stopped under the orders of Government, and that he himself used to get an income of Rs. 50 per year, whereas the Dharmakarta, while denying the existence of any such right of the Mirasidars, he himself being one, persisted in his right to the said *mandapams* comprised in the said lands on behalf of the temple (pages 10 to 13 of printed book).

13. As therefore in this inquiry held under section 11 of the Act, relative to the rights of the various claimants *inter se* the Mirasidars disputed the right of the Zemindar to the land and stones and claimed the power of levying a yearly fee of 1 rupee a head from stone-cutters, and as the Dharmakarta also claimed the right to use three *mandapams* included in the land in question, the Sub-Collector, by his memorandum dated the 29th July 1886, resolved to refer the matter to the court under section 18 of Act X of 1870 (page 13 of printed book).

14. In this reference to the District Court, dated 16th August 1886, the Sub-Collector, agreeably to the provisions of section 18 of the Act, set forth, among other things, that claimants Nos. 1, 2, 3 and 4, being the Zemindar, his two nephews and his son claim exclusive right to the lands in question and demand Rs. 9 lakhs and odd as compensation; that claimants No. 5, who are the Mirasidars and tenants of the village, assert their right to some of those lands to the exclusion of the Zemindar and claim Rs. 31 thousand and odd as compensation, and that claimant No. 6, who is the Dharmakarta of Sthalasayana Perumal temple, claims a right to use three *mandapams* and fixes the amount of his compensation at Rs. 14,000; the Sub-Collector further encloses a schedule giving a description of the lands required by Government for archæological purposes, their survey and their extent. In his supplemental reference, dated 11th August 1886, the Sub-Collector furnishes, in accordance with clauses *c* and *d* of section 18 of the Act, information regarding the amount of compensation which he is prepared to give for the whole lands and the grounds on which the amount is determined (pages 14 and 15 of printed book).

15. In the statement of the grounds on which the amount of compensation of Rs. 190-13-11, &c., has been fixed, the Sub-Collector attaches importance—

(i) To the fact that the Zemindar, Ramasami Mudaliar, in his statement before the Sub-Collector, dated 7th December 1885, agreed to hand over the lands to Government at the following rates, viz.:—
Rs. 2 per *cawnie* for the stone *puramboke*,
Rs. 35 per *cawnie* for Ramanuja Jeer's garden and certain tope,
Rs. 15 per *cawnie* for the three pieces of sandy tracts on the sea-shore,
according to which calculation, the total comes up to the amount of Rs. 190 and odd, which the Sub-Collector awards.
(ii) The stony puramboke would be of no value whatever except for quarrying, which will destroy the valuable archæological remains.
(iii) As for the archæological remains themselves, it being the interest of the Government and the Zemindar and others to preserve them as they stand, and they being of no use except as they stand, no market value could be fixed on them (page 17 of printed book).

16. The reference thus made was filed in the District Court of Chingleput, as "Compensation Reference No. 3 of 1886" and came on for hearing before Mr. S. T. MacCarthy, District Judge, on the 12th day of March 1888.
The claimants were—

(i) Nallathur Ramasami Mudaliar, registered Zemindar of Mahabalipuram (since died).
(ii) Shunmugaraya Mudaliar, nephew of No. i.
(iii) Thiruvengada Mudaliar, brother of No. ii (said to be insane), by a guardian.
(iv) Vedachella Mudaliar, son of No. i.
(v) Narasimha Chariar and other Mirasidars of the village, 38 in number.
(vi) Srinivasa Raghava Chari, the Dharmakarta of Sthalasayana Perumal Coil, Mahabalipuram.

17. The claimants 1 to 4 claiming as before exclusive right to all the lands and compensation Rs. 9,51,730-15-5; No. 5 claimant denying the former's right to the stone quarries and claiming Rs. 31,640-10-0 as compensation; claimant No. 6 demanding on behalf of the temple Rs. 14,000 as compensation for the *mandapams*.

18. Notice having been duly served under section 19 of the Act, the Court proceeded to make the inquiry. *It was agreed on both sides that the inquiry should for the present be confined towards determining the value of the property.*

19. The claimants filed several exhibits and examined some 20 witnesses on their behalf.

20. The claimants' exhibits range in date from May 1874 to November 1887 and consist of the following kinds of documents (pages 20 to 74 of printed book).

(i) Deeds of agreements executed in favor of various persons by the residents of Mahabalipuram undertaking to supply granite stones for construction of buildings (A to C).
(ii) Extracts from the file book of licenses of the office of the Manager and Receiver of Narayanavaram Taluk (Forest Department), showing the rates at which the stones were sold in the forests attached to that taluk (exhibits D to E).
(iii) Extracts from the day-book of the office of the usufructuary mortgagees of the Narayanavaram Taluk, showing the rates at which the burnt and unburnt stones of the quarry were selling at those periods (exhibits D to H).
(iv) Survey showing the site of the big hill at Mahabalipuram, abstract statement giving the cubic contents and the estimated value of the hills, &c., statement giving the description, the lineal measurement and the estimated value of the several hills, &c. (exhibits J to L).

(v) Deed of gift, release and transfer of nearly 9 plots in the village of Mahabalipuram executed in favor of the Right Honorable the Secretary of State for India by Ramasami Mudaliar, Zemindar of Arambakam Mutta, of which Mahabalipuram is a part (exhibit M).

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GOVT. OF FORT ST. GEORGE.

PUBLIC (1891) DEPARTMENT.

Speech

Rev.

(Copy.)

LETTER to the Right Honorable the Secretary of State for India.

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No. 6 of 1891.

C.2/3

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Speech

Rev.

(Copy.)

LETTER to the Right Honorable the Secretary of State for India.

Dated 3~~th~~ March.

No. 6 of 1891.

C.2/3

3 March 1891, No. 6, Public.

despd 5/3/91
with the Statement of facts
and the record of Pros.

PUBLIC DEPARTMENT.

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Hes
2 Mar

Seven Pagodas

We have the honor to be,
My Lord,
Your Lordship's most obedient, humble servants,

2 March

(Signed) ~~WENLOCK.~~
(„) ~~C. G. ARBUTHNOT.~~
(„) ~~H. E. STOKES.~~
(„) ~~J. H. GARSTIN.~~

Fort St. George,
3d March 1891.

Copy Despatch with Memo of facts sent to Govt of India } despd 6/3/91

40. Against this decision of the District Judge, claimants ii, iii and iv appeal to the High Court of Judicature at Madras on the following grounds :—

(i) Because the order as to costs is contrary to the provisions of the Land Acquisition Act of 1870.

(ii) Because the compensation granted for the stone is not assessed on the proper basis and does not represent the market value thereof.

(iii) Because the refusal of compensation for the rock sculptures or carvings is wrong in law (page 108 of the printed book).

41. A memorandum of objections against the decision is also presented on behalf of the respondent (The Secretary of State for India), dated March 1888, for the following reasons :—

(i) The amount awarded by the Judge is excessive.
(ii) The compensation fixed by the Collector is reasonable and fair.
(iii) There is no market value for the stone said to be in the quarry.
(iv) The assertion of 16th witness that the two hills contain 25 million cubic feet of stone is a mere assumption on his part.

Supplemental memorandum of objections :—

(i) The claimants do not possess any exclusive ownership in the sculptures in question, which have, by usages from time immemorial, become public property incapable of the exercise of private ownership.

(ii) The injurious treatment to the rocks in their neighbourhood materially affects the safety of the sculptures (pages 109 and 110 of printed book).

42. The Zemindar having died since the hearing, his sons and nephews alone prefer this appeal, and they had also reduced their claim to Rs. 2,95,000.

This appeal coming on for hearing on the 24th April 1889, as Appeal No. 99 of 1888, before the Honorable Justices Messrs. Wilkinson and Shephard, the Court modifies the award of the lower court and awards to the claimants in the compensation case Rs. 55,458-11-3 as compensation as well as their costs in that court, viz., Rs. 315-2-0, and further adjudged that respondent in the appeal do pay to the appellants Rs. 2,177-3-8, being their proportionate costs of the appeal (page 112 of the printed book).

43. The grounds for their Lordships' modifying the decission of the lower court as they appear in the judgment are :—

That the order of the lower court as to costs is clearly wrong under section 33 of the Land Acquisition Act, which lays down that, when the amount awarded by the Judge exceeds the amount awarded by the Collector, the cost shall be paid by the Collector (page 114 of the printed book and lines 14 to 17 of the judgment).

44. While agreeing with the lower court that no compensation can be awarded for the temples, carvings, sculptures, &c., as they have no market value and their acquisition by Government will not injuriously affect either the property or the earnings of the claimants, their Lordships seeing that there is nothing on the record to show that the Zemindar ever obtained a higher rent than Rs. 140 a year or he ever collected any fees from the stone-cutters, allow 15 years' purchase or Rs. 2,100 under this head (page 115 of the printed book and lines 14 to 19 of the judgment).

45. On account of the loss of earnings of the stone-cutters, relying on the strength of the evidence of the 18th witness they allow a compensation of Rs. 46,000, being 10 times Rs. 4,600, the amount of profits of which the 46 persons in Mahabalipuram who are stated to have earned their livelihood by stone-quarrying (page 116, lines 1 to 3 of judgment).

46. Holding that the only way of ascertaining the market value of the property under section 24 of the Act is to take the aggregate of the profits or earnings derived from the land and capitalise at so many years' purchase, their Lordships allow the total amount of compensation of Rs. 55,458-11-3, made up of—

(i) Rs. 2,100 allowed in respect of the loss of rent to the Zemindar;
(ii) Rs. 46,000 allowed in respect of loss of earnings to the stone-cutters;

(iii) Rs. 124-15-5, being the value of the land alone fixed by the Sub-Collector in respect of which there is no dispute;

and 15 per cent. of the total of the said three items to be added under section 42 of the Land Acquisition Act (page 116, line 10 of the judgment).

47. Their Lordships point out in the judgment that the Judge of the court below has erred in the principle he adopted in assessing compensation in not taking into account the actual profits earned by the persons who work at the quarries as is clearly shown by the evidence on the record.

48. Mr. Justice Shephard, however, though agreeing with Mr. Justice Wilkinson in the conclusion at which he arrives, does not concur with him in the mode in which he arrives at it, viz., his taking into account the loss of earnings as a separate item for which compensation should be awarded, though under clause 3, section 24 of the Act, consideration may be useful allowing to him in determining the market value of the property (page 116, lines 13 to 21 of the judgment).

(v) Deed of gift, release and transfer of nearly 9 plots in the village of Mahabalipuram executed in favor of the Right Honorable the Secretary of State for India by Ramasami Mudaliar, Zemindar of Arambakam Mutta, of which Mahabalipuram is a part (exhibit M).

21. The witnesses are persons who have purchased stones at Mahabalipuram for construction of buildings and who speak to that fact, contractors who speak to the price of the stones available there and Mirasidars of Mahabalipuram who depose to their having been in the habit of quarrying and selling stones at Mahabalipuram (pages 87 to 97 of printed book).

22. The only witness examined on behalf of the Collector is Shanmuga Mudaliar, 2nd claimant, who is nephew of the late Zemindar. He admits that exhibit iii, the statement by Ramasami Mudaliar before the Sub-Collector, bears the signature of Ramasami Mudaliar and that he himself signed it, and states also that Ramasami Mudaliar was not in his proper senses for 7 or 8 years previous to his death, and he did not at all understand exhibit iii at the time of execution (page 97 of printed book).

23. Some nine exhibits are also filed on behalf of the Collector, exhibits i, ii and iv showing that the quarrying operations were allowed by Government to the Zemindar only to a limited extent with proper provisions to prevent danger to the images, stone cars, and other objects exhibiting curious workmanship on the hills. Exhibit iii, being statement, dated 7th December 1885, already referred to, made by Nallathur Ramasami Mudaliar, Zemindar, before the Sub-Collector of the Chingleput District, whereby he agreed to hand over to Government all the lands for a sum of Rs. 190 and odd. Exhibit vii, being a rough sketch showing the monuments endowed to Government in the village of Mahabalipuram, together with the lands, &c. Exhibit viii, being the correspondence referred to herein in the beginning, comprising the letter from the Sub-Collector of Chingleput and the Proceedings of the Government relating to the necessity to prevent the images, &c., of the hills being endangered by the quarrying operations conducted by the Zemindar in the hills (pages 75 to 86 of printed book).

24. A petition was also presented to the District Court of Chingleput by the Government Pleader on behalf of the Collector (Mis. Petition No. 379 of 1886) praying that in determining the title of the several claimants in the compensation reference case the Court may take into consideration the value of the lands only but not the pagodas, *mandapams* and other stone images, as they are the property not of the Zemindar or Mirasidars but of the General Hindu Public, on whose behalf the Government comes forward to secure them from destruction (page 18 of printed book).

25. In pursuance of section 19 of the Act, Mr. Mahomed Ali Sahib Hazari, Deputy Tahsildar of Conjeeveram, appeared as assessor nominated by the Collector, and Mr. B. Rungiah Naidoo as assessor on behalf of the claimants.

26. The former expressed his opinion that the amount of Rs. 190-13-10 fixed by the then Sub-Collector, Mr. Mullaly, would be proper amount to be given as compensation, the Zemindar being allowed to cut down the trees and being also allowed a deduction of Rs. 12-8-0 per annum from the *peshcush*.

27. The claimant's assessor gave as his opinion that Rs. 25,800 should be given as compensation in respect to the carvings, &c., and Rs. 1,13,000 in respect of the unquarried stone. He agreed as to the amount proposed by the Collector to be deducted from the peshcush.

28. The vakil on behalf of the Collector relied mainly on the statement given by the late Zemindar before Mr. Mullaly on the 7th December 1885, whereby he agreed to hand over to Government the lands in question in consideration of a total sum of Rs. 190 and odd and certain *beriz* deduction and wanted nothing for the images, pagodas, &c.

29. The Judge says at para. 30 of his judgment: "This deposition bears the seal and signature of the late Zemindar, N. Ramasami Mudaliar, as also the signatures of the 2nd and 4th claimants as well as the attesting signatures of a karnam

and another person. It is certified by Mr. Mullaly to have been translated and understood by the Zemindar and declared by him to be correct" (page 105 of printed book).

30. The judgment further says:—

Shanmugaraya Mudaliar, 2nd claimant, one of those who signed it and the person above referred to as having been examined as a witness by the Collector's vakil, admits having signed the statement but says that he did so not because he agreed to its terms but to show that Ramasami Mudaliar signed it. He also states that Ramasami Mudaliar signed it under the impression that it referred to a certain extent of 4 *cawnies* and further insinuates that that individual was not in his proper senses at the time (page 105 of printed book).

31. But the Judge, though of opinion that Ramasami Mudaliar had been in his proper senses at the time of the execution of the document and also that Mr. Mullaly undoubtedly considered that he was so and also considers the explanation given by Shanmugaraya Mudaliar to be extremly weak, holds at the same time that the statement (exhibit iii) is not of a nature as to bind him or in fact any person but the late Zemindar, perhaps, in whose name alone it runs (para. 33 of the judgment).

32. He further says that, inasmuch as it has since been decided to proceed under the Land Acquisition Act, it is his duty to decide as to the amount of compensation to be awarded independently of any agreement made by the Zemindar (para. 34 of the judgment).

33. He then says that he does not consider the amount offered by the Collector as by any means adequate because though it may be sufficient for the land alone, no compensation has been allowed for the stone, which ought to have been (para. 36 of the judgment).

34. As he finds from the oral evidence adduced that large sums of money have been realised by sale of the stones quarried at the Seven Pagodas, which appears to be of a superior description, and from exhibit iv it further appears that the quarries have been fetching the late Zemindar an annual rent of Rs. 140, he considers that if it be necessary to stop the quarrying on the score of its being dangerous to the archæological remains, compensation is surely due to the present claimants for the deprivation of a long enjoyed source of income in spite of the fact that the late Zemindar may have been satisfied with the sum of Rs. 190 and odd (para. 36 of the judgment).

35. Further on he says that though from the statement filed by the claimants' 16th witness it would appear that the two hills contain upwards of 25 million cubic feet of stone (unquarried), which should be accepted as correct in the absence of any contradiction on the other side, yet as only a trifling portion of the entire stone of which these hills are composed can command any market value, even the award made by the claimants' assessor is highly exorbitant (para. 37 of the judgment).

36. He therefore regards as a fair basis of calculation the annual amount of Rs. 140, which was agreed to be paid to the Zemindar under exhibit iv referred to above, increased to Rs. 200, on account of the fact that the lease referred to in the exhibit was restricted only to certain portions of the hills. Capitalising this rent at 25 years' purchase, which comes to Rs. 5,000, he regards the sum as a fair compensation to award for the unquarried stone.

37. For the carving and temples he considers that no compensation is justly claimable as these have never been and are never likely to be a source of income (para. 38 of the judgment).

38. He therefore awards Rs. 5,000 as compensation for the unquarried stone; deducting from the sum of Rs. 190-13-10 (fixed by the Collector for the whole extent) Rs. 65-14-6 allowed by him for the stony puramboke, the balance is Rs. 124-15-0, which he would allow for the remaining extent. The total amount of his award therefore is Rs. 5,124-15-0 allowing also the *peshcush* deduction and liberty to remove trees agreed on by the Collector.

39. He also adjudges each party to the reference to bear his own costs (paras. 39 and 40 of the judgment).

7. The Government having subsequently appointed the Sub-Collector of the Chingleput district to take order for the acquisition of the lands and perform the functions of a Collector under the Act, on 19th June 1886, notice was issued by J. P. Fiddian, Esq., the Acting Sub-Collector, under sections 9 and 10 of Act X of 1870, calling upon all persons interested in the said lands to appear before him for the purposes mentioned in the above sections. The notice was also published in the village by beat of tom-tom, and a copy of the same being also affixed in a conspicuous place on the 28th June 1886 (pages 5 to 7 of printed book).

8. In July 1886, in compliance with the above notice, three statements were presented to the Sub-Collector:—

(i) One by N. Vedachella Mudaliar, son of Ramasami Mudaliar, the registered Zemindar (then deceased), and N. Shunmuga Mudaliar, a son of the younger brother of the said Zemindar.
(ii) One by the Mirasidars and tenants of the village of Mahabalipuram, and
(iii) One by the Dharmakarta of Sthalasayana Perumal temple of the Mahabalipuram village (page 9 of printed book).

9. The claimants first mentioned, the Zemindars, set forth they are the only persons entitled to the hills, &c., required by the Government, and claimed a compensation amounting in all to Rs. 9,51,730-15-5.

10. Whereas the second set of claimants, namely, the Mirasidars, set forth that they, as a community, had the exclusive right of quarrying stones in the hills now required by Government, selling them and enjoying their profits, &c., and that such tenants as were cutting stones were each paying at the rate of 1 rupee a year to the community of Mirasidars, that the Zemindar had no right whatsoever to the same, and claimed a compensation of Rs. 31,640-10-0.

11. The Dharmakarta of the temple also claimed a compensation of Rs. 14,000 for certain *mandapams* (small roofed spaces) which he alleged were constructed for the use of the temple deity and were all along in the temple enjoyment.

12. Further, from the depositions given by these three sets of claimants, the right to quarry stones in certain parts of the hills, which was asserted by the Zemindar as belonging to him, was directly denied to be his by the Mirasidars, Narasimha Chariar, one of them, deposing to the fact that that right always belonged to the community until quarrying work was stopped under the orders of Government, and that he himself used to get an income of Rs. 50 per year, whereas the Dharmakarta, while denying the existence of any such right of the Mirasidar, he himself being one, persisted in his right to the said *mandapams* comprised in the said lands on behalf of the temple (pages 10 to 13 of printed book).

13. As therefore in this inquiry held under section 11 of the Act, relative to the rights of the various claimants *inter se* the Mirasidars disputed the right of the Zemindar to the land and stones and claimed the power of levying a yearly fee of 1 rupee a head from stone-cutters, and as the Dharmakarta also claimed the right to use three *mandapams* included in the land in question, the Sub-Collector, by his memorandum dated the 29th July 1886, resolved to refer the matter to the court under section 18 of Act X of 1870 (page 13 of printed book).

14. In this reference to the District Court, dated 16th August 1886, the Sub-Collector, agreeably to the provisions of section 18 of the Act, set forth, among other things, that claimants Nos. 1, 2, 3 and 4, being the Zemindar, his two nephews and his son claim exclusive right to the lands in question and demand Rs. 9 lakhs and odd as compensation; that claimants No. 5, who are the Mirasidars and tenants of the village, assert their right to some of those lands to the exclusion of the Zemindar and claim Rs. 31 thousand and odd as compensation, and that claimant No. 6, who is the Dharmakarta of Sthalasayana Perumal temple, claims a right to use three *mandapams* and fixes the amount of his compensation at Rs. 14,000; the Sub-Collector further encloses a schedule giving a description of the lands required by Government for archæological purposes, their survey and their extent. In his supplemental reference, dated 11th August 1886, the Sub-Collector furnishes, in accordance with clauses *c* and *d* of section 18 of the Act, information regarding the amount of compensation which he is prepared to give for the whole lands and the grounds on which the amount is determined (pages 14 and 15 of printed book).

15. In the statement of the grounds on which the amount of compensation of Rs. 190-13-11, &c., has been fixed, the Sub-Collector attaches importance—

(i) To the fact that the Zemindar, Ramasami Mudaliar, in his statement before the Sub-Collector, dated 7th December 1885, agreed to hand over the lands to Government at the following rates, viz.:—
Rs. 2 per *cawnie* for the stone *puramboke*,
Rs. 35 per *cawnie* for Ramanuja Jeer's garden and certain tope,
Rs. 15 per *cawnie* for the three pieces of sandy tracts on the sea-shore,
according to which calculation, the total comes up to the amount of Rs. 190 and odd, which the Sub-Collector awards.
(ii) The stony puramboke would be of no value whatever except for quarrying, which will destroy the valuable archæological remains.
(iii) As for the archæological remains themselves, it being the interest of the Government and the Zemindar and others to preserve them as they stand, and they being of no use except as they stand, no market value could be fixed on them (page 17 of printed book).

16. The reference thus made was filed in the District Court of Chingleput, as "Compensation Reference No. 3 of 1886" and came on for hearing before Mr. S. T. MacCarthy, District Judge, on the 12th day of March 1888.
The claimants were—

(i) Nallathur Ramasami Mudaliar, registered Zemindar of Mahabalipuram (since died).
(ii) Shunmugaraya Mudaliar, nephew of No. i.
(iii) Thiruvengada Mudaliar, brother of No. ii (said to be insane), by a guardian.
(iv) Vedachella Mudaliar, son of No. i.
(v) Narasimha Chariar and other Mirasidars of the village, 38 in number.
(vi) Srinivasa Raghava Chari, the Dharmakarta of Sthalasayana Perumal Coil, Mahabalipuram.

17. The claimants 1 to 4 claiming as before exclusive right to all the lands and compensation Rs. 9,51,730-15-5; No. 5 claimant denying the former's right to the stone quarries and claiming Rs. 31,640-10-0 as compensation; claimant No. 6 demanding on behalf of the temple Rs. 14,000 as compensation for the *mandapams*.

18. Notice having been duly served under section 19 of the Act, the Court proceeded to make the inquiry. *It was agreed on both sides that the inquiry should for the present be confined towards determining the value of the property.*

19. The claimants filed several exhibits and examined some 20 witnesses on their behalf.

20. The claimants' exhibits range in date from May 1874 to November 1887 and consist of the following kinds of documents (pages 20 to 74 of printed book).

(i) Deeds of agreements executed in favor of various persons by the residents of Mahabalipuram undertaking to supply granite stones for construction of buildings (A to C).
(ii) Extracts from the file book of licenses of the office of the Manager and Receiver of Narayanavaram Taluk (Forest Department), showing the rates at which the stones were sold in the forests attached to that taluk (exhibits D to E).
(iii) Extracts from the day-book of the office of the usufructuary mortgagees of the Narayanavaram Taluk, showing the rates at which the burnt and unburnt stones of the quarry were selling at those periods (exhibits D to H).
(iv) Survey showing the site of the big hill at Mahabalipuram, abstract statement giving the cubic contents and the estimated value of the hills, &c., statement giving the description, the lineal measurement and the estimated value of the several hills, &c. (exhibits J to L).

APPENDIX.

Concise Statement of Facts in Seven Pagodas Compensation Case, prepared by the Govt. Pleader, Madras.

This appeal to Her Majesty in Council is preferred against the decree of the High Court of Judicature at Madras in Appeal No. 99 of 1888, being an appeal under section 35 of Act X of 1870 (The Land Acquisition Act) relating to the compensation to be awarded to the persons interested in certain lands in the village of Mahabalipuram declared by Government, under the above Act, to be required for a public purpose.

The facts of the case are as follows:—

1. Mahabalipuram, more popularly known as the Seven Pagodas, is a village in the district of Chingleput and is famous for its rock-cut caves and temples containing sculptures of great archæological importance and interest.

2. The village forms part of the Zemindari of Arambakam Mutta, owned by Nallathur Ramasami Mudaliar (claimant No. 1 in compensation reference No. 3 of 1888 before the District Court of Chingleput), and stones used to be quarried from the neighbourhood of the carvings for a long time. Mr. Adam, the late Governor of the Presidency, found, on his visit in 1884, that the quarrying operations might, if continued without limit, endanger the safety of the pagodas, &c., and thought it necessary to rescue a place of such value as national property from the dangers to which it may become liable if left at the hands of a mere private proprietor (Collector's exhibit viii, pages 84 and 85 printed book).

3. The earliest official paper on record in the case connected with the subject (Collector's exhibit viii in the case) dates 28th February 1884, being a letter from R. Sewell, Esq., Acting Collector of Chingleput District, to the Collector of that district, bringing to his notice the condition of the quarrying operations at the Seven Pagodas and the necessity of preventing the quarrying away of the valuable sculptures therein, and requesting him to lay the matter before the Government, which correspondence resulted in the Proceedings of the Madras Government, Public Department (Collector's exhibit ix in the case), dated 8th March 1884, No. 484, Mis., whereby the Government, in the interest of the State as also of the Archæological Survey, directed the Collector to report on the matter and to suggest to the Zemindar that he should stay the quarrying operations pending the final orders of Government (Collector's exhibit viii, page 84 of the printed book).

4. It would appear that, in reference to the above Government Order, the Zemindar was asked to discontinue his quarrying operations within certain limits of the Seven Pagodas marked by fixed stones in view to the images carved in the hills and the sites therein being preserved from damage (Collector's exhibit v in the case and page 81 of the printed book).

5. From the summary of facts prepared by the Sub-Collector of Chingleput on 7th December 1885 it appears that, on Government declaring the lands already referred to necessary for public purpose, namely, archæological research, the registered Zemindar, Nallathur Ramasami Mudaliar, in about March 1885, made a free gift of those lands to Government, who, however, in order to prevent any subsequent disputes as to the validity of the gift, resolved to take them up under Act X of 1870, and that the Zemindar then agreed to accept the total compensation of Rs. 190-13-11 and the total beriz deduction Rs. 12-8-10 in return to his making over the lands in question to Government (pages 2 and 3 of the printed book).

6. Accordingly, under section 14 of Act X of 1870, an award was passed by the then Sub-Collector of the district, Mr. C. M. Mullaly, allowing the Zemindar the compensation of Rs. 190-13-11 as demanded by him and the beriz deduction of Rs. 12-8-10 for the said lands (pages 3 and 4 of the printed book).