[C. 11.]

ORDINARY, MS.

Public Department.
G.O., Dated 14 6 98
No. 459

INDEXED.

When given for copying.

[Despatch Abstract.]

Copy of the Stat. etc
dgo. of the High Court
ste Bonds of Fine
hich form the Judg
ote intimating that
ment has been pron
ence of the penalty
to in the Privy Coun
Consolidated Appeal
in which Shan-
garay a Mudaliyar
then were respondents

2.268
20-1-09
28-2-10
11-10-10
2-8-12
10/2/15

Indigenous

9310.

Pub Dept

Pub f.o. 429 dd 23-6-92
" " 343 dd 18-5-92
" " 291 dd 2-5-92 his
Dept & Sec of Sta to dd 3-3-91 &c

No 18.

Public Dept
Judicial
4th May 1893.

From

The Secretary of State
for India.

The Lords to Lt. Govr

No 4.

No 4.

Dated 4th May
Read 30th May } 1893
Enc. 5 (in a Sep. cover)
Subject

Intimating that Judgment has been given in favour of the Secy of State in Council consolidated appeal case.

Read in Registry 30 May.

H.M. Secretariat 13/6/93

Order. 14 June 1893 13 June
No 459

Communicated to the Hon: the Judges of the High Court and to the Board of Revl.

HD 9/6/93

PPP 7/6 The Hon the Chief Justice & the Judges of the High Ct SEPARATED Board of Rev &c

1 with enclosure

Proc

Back Paper, No. of 18

Further Paper, No. 1768 of 18

3-7-93

Read again Order of Government, dated 18 , No. ; Miscellaneous.

Enclosures.

Current No.

Statement with ditto.

Order of Government. A

Letter of Government.

Statement with ditto.

Papers not filed up, being meant for despatch in original (not paged).

Copy of Statement

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

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.

537.

INDIA OFFICE,

LONDON. 4th MAY 1893.

Judicial,

No. 4.

TO HIS EXCELLENCY THE RIGHT HONOURABLE THE GOVERNOR IN COUNCIL FORT ST. GEORGE.

My Lord,

With reference to your Public Letters dated the 3rd of March 1891 and the 18th of May 1892, Nos. 6 and 8, respectively, regarding the Privy Council Consolidated Appeal Case noted in the margin, I have to inform your Excellency in Council that Judgment has been given in favour of the Secretary of State, each party to bear its own costs.

2. I forward the following documents and Papers connected with this case.

(1) Original Order of Her Majesty in Council to be filed in the Madras High Court.

(2) Two copies of the said Order.

(3) Two copies of the Appellant's case

(4) Two copies of the Respondents' case

(5) Six copies of the Judgment of the Lords of the Judicial Committee of the Privy Council.

I have the honour to be,

My Lord,

Your Lordship's most obedient humble Servant,

Kimberley

* The Secretary of State for India in Council. Appellant.
and
Shanmugaraya Mudaliar and others. Respondents.

Dated 15th March 1893.

Dated 18th February 1893.

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 ems to them that the two learned Judges, hough differing in language, have in effect llowed the same principle. Each has included he earnings of the quarrymen, and the estimated ss 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

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.

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

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.

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

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 compensation. 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

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.

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

In the Privy Council.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT MADRAS.

BOARD OF REVENUE
20 JUN 93
MADRAS

BETWEEN

THE SECRETARY OF STATE FOR INDIA IN COUNCIL ... ... *Appellant,*

AND

SHANMUGARAYA MUDALIAR AND OTHERS ... ... *Respondents,*

AND BETWEEN

SHANMUGARAYA MUDALIAR AND OTHERS ... ... *Appellants,*

AND

THE SECRETARY OF STATE FOR INDIA IN COUNCIL ... ... *Respondent.*

No. 99 of 1888.

Case

Of SHANMUGARAYA MUDALIAR, THIRUVENGADA MUDALIAR, said to be insane, by his guardian, the said Shanmugaraya Mudaliar, and VEDACHELLA MUDALIAR.

R. T. TASKER,
77, GREAT QUEEN STREET,
LINCOLN'S INN FIELDS.

Printed at 74-75, Great Queen Street, Lincoln's Inn Fields, W.C.

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'

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the said *Decree or Judgment of the High Court of Judicature at Madras of the 3rd May 1889* be and the same is hereby varied by inserting therein the figures Rs. 5,124 : 15 : 0 instead of the figures Rs. 55,458 : 11 : 3 and affirmed in all other respects and the parties are to bear their own costs of these Appeals. Whereof the Judges of the High Court of Judicature at Madras for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

C. L. PEEL.

Printed by EYRE and SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1893.

"that the persons whom the said Sub-Collector named as those whom he had reason to think interested in the said land were—

"1. Ramasami the registered Zemindar of the said land.

"2 and 3. Shanmugaraya and Thiruvengada above named the nephews of the said Ramasami the latter of the said two being said to be insane and being represented by his brother and guardian the said Shanmugaraya.

"4. Vedachella above named the son of the said Ramasami.

"5. Forty-two Mirasidars claiming an interest in the said land.

"6. Srinivasa Raghavachari the Dhurmakarta or custodian of the Temple of Perumal:

that pending the said reference the said Ramasami died: that by his Order of Reference and by a reference supplemental thereto it appears that the amount which the Sub-Collector was willing to give to the persons interested in the said land was Rs. 190:13:11 and a deduction on account of peshcush: that by virtue of such reference the matter so referred came on for hearing before the said District Court and two Assessors one nominated by the Sub-Collector and the other by the persons interested in the said land and evidence oral and documentary was put in at the hearing: that it was agreed on both sides that the inquiry should then be confined to determining the value of the said land: that on the 12th March 1888 the District Judge differing from both the said Assessors made an Order declaring that Rs. 5,124:15:0 was the proper amount of compensation payable by the Appellant in respect of the said land and directing that the parties to the said reference should bear their own costs: that the Respondents being dissatisfied with the said Order filed their Memorandum of Appeal in the High Court making the Appellant the sole Respondent: that the Appellant filed his Memorandum of Cross-Objections in the said Court under the provisions of section 561 of the Civil Procedure Code: that the Appeal came on for hearing before a Divisional Bench of the High Court and on the 3rd May 1889 the said Court delivered Judgment and pronounced a Decree whereby they increased the amount of compensation awarded by the District Judge to a total amount of Rs. 55,458:11:3 and gave certain directions as to costs: that the Appellant feeling himself aggrieved by the last-mentioned Judgment and Decree presented a Petition to the High Court praying for the necessary certificate to enable him to appeal to Your Majesty in Council which certificate was subsequently granted and the Appeal was finally admitted by an Order of the High Court of the 29th July 1890 and humbly praying that Your Majesty in Council will be pleased to take his Appeal into consideration and that the Judgment and Decree of the High Court of the 3rd May 1889 may be reversed altered or varied or for other relief in the premises.

"And YOUR MAJESTY having been pleased by Your General Order in Council of the 24th November 1891 to refer unto this Committee the matter of an Appeal from the High Court of Judicature at Madras between Shanmugaraya Mudaliar Thiruvengada Mudaliar said to be insane by his

"Guardian the 1st Appellant and Vedachella Mudaliar Appellants and the Secretary of State for India in Council Respondent and likewise a humble Petition of the above-named Appellants setting forth that the Government of Madras having determined to take up certain land in the District of Chingleput for public purposes under Act X. of 1870 the Sub-Collector of Chingleput issued notices on the 19th June 1886 under sections 9 and 10 of the said Act to Nallathur Ramasami Mudaliar registered Zemindar of Mahabalipuram within which the said land was situated and to the Appellants of whom the first and second were the nephews and the third was the son of the said Zemindar: that as no agreement could be arrived at as to the compensation to be offered or as to the persons entitled thereto the Sub-Collector on the 16th August 1886 referred the matter to the District Court in the manner provided by section 18 of the said Act: that the District Judge with the assistance of Assessors nominated by the parties in pursuance of the Act having heard the parties and having received the evidence tendered by them made an Order whereby he declared that the sum of Rs. 5,124:15:0 was the proper compensation payable by Government subject also to a deduction on account of the peshcush of Rs. 12:8:10 and to liberty to the Appellants to remove the trees: that the Zemindar having died pending these proceedings the Appellants appealed against the said Order to the High Court and on the 3rd May 1889 the High Court delivered Judgment and pronounced a Decree declaring that the compensation due and payable to the Appellants was Rs. 55,458:11:3 and directing that they should receive their costs in the District Court and proportionate costs of the Appeal: that on the 2nd November 1889 the Appellants presented their Petition to the High Court whereby they prayed for leave to appeal to Your Majesty in Council against the said Judgment of the 3rd May 1889 and on the 8th February 1892 the said Court made a final Order admitting the Appeal and humbly praying that Your Majesty in Council will be pleased to take their said Appeal into consideration and that the Decree and Judgment of the High Court of the 3rd May 1889 may be reversed altered or varied or for other relief in the premises.

"And THE LORDS OF THE COMMITTEE having by their Order of the 23rd July 1892 directed the said Appeals to be consolidated.

"THE LORDS OF THE COMMITTEE in obedience to Your Majesty's said General Order of Reference have taken the said humble Petitions and Appeals into consideration and having heard Counsel for the parties on both sides their Lordships do this day agree humbly to report to Your Majesty as their opinion that the Decree or Judgment of the High Court of Judicature at Madras of the 3rd May 1889 ought to be varied by inserting therein the figures Rs. 5,124:15:0 instead of the figures Rs. 55,458:11:3 and affirmed in all other respects.

"And in case Your Majesty should be pleased to approve of this Report then their Lordships do direct that the parties do bear their own costs of these Appeals."

CURRENT Nos. 1766.

Pub Dept

Pub Sp. 459814-6-93 hm

20-2-08

28-7-10

1893.

Board of Revenue

(Land Revenue),

MADRAS.

CHIEF SECRETARY'S OFFICE
30 JUN 93
GOVERNMENT OF MADRAS

Read
Rep[d]
3-7-3

To

The Chief Secretary to Govt
Public Department.

Enc. 2.

Proceedings, dated 27th June 1893,
No. 3774 Mis/~~Revenue~~

Subject.

Forwarding 9 to the Collr of Chingleput for information and guidance
G. O. Pub: Dept dtd 15th March 1893
Decision of the Privy Council on
Seven Pagodas compensation appeal

Lodged.

P.S.
for C.S.
3/7

Forward the enclosures to the H.C. Madras
for who called for them.

Attached with Pub. 4437 30/6/93

At the Court at Windsor Castle

The 15th day of March 1893

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
LORD CHAMBERLAIN
MR. BRYCE

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 18th February 1893 in the words following viz.:

"YOUR MAJESTY having been pleased by Your General Order in Council of the 22nd November 1890 to refer unto this Committee the matter of an Appeal from the High Court of Judicature at Madras between the Secretary of State for India in Council Appellant and Shanmugaraya Mudaliar Thiruvengada Mudaliar said to be insane by his Guardian the 1st Respondent and Vedachella Mudaliar Respondents and likewise a humble Petition of the above named Appellant setting forth that on the 16th August 1880 the Acting Sub-Collector at Chingleput made a reference under the provisions of Act X. of 1870 to the District Court of Chingleput as to certain land at Mahabalipuram in the District of Chingleput which had been taken up by Government for public purposes;

[10] 1 J. O. 1547. A

As regards the Appeal of the Secretary of State, it is contended that the High Court was right in assessing the entire compensation due to every one who had any interest in the property, and that no question of title between parties with conflicting interests could arise on this inquiry. All disputes as to apportionment of the compensation must be dealt with in a subsequent proceeding under SS. 37–39 of Act X. of 1870. It is also contended that the assertion contained in that Appeal that the sculptures were public property was wholly without foundation.

The Appellants therefore submit that the amount of compensation awarded by the High Court should be increased from R55,458.11.3 to R159,764.0.0, as follows:—

In respect of the antiquities		R 25,800
In respect of the stone		R113,000
In respect of the remaining land ...		R 124.15.5
		R138,924.15.5
Add 15 per cent. on the above ...		R 20,839. 0.7
		R159,764. 0.0

For the following, amongst other,

REASONS.

I. Because the High Court was wrong in holding that no compensation could be allowed in respect of the antiquities.

II. Because the amount allowed in respect of the stone was wholly inadequate, and based upon an erroneous principle.

JOHN D. MAYNE.

p. 102. l. 6. On the inquiry before the Court it was agreed on both sides that the inquiry should for the present be confined towards determining the value of the property.

The evidence for the Collector consisted of the Deed of Gift and Statement
pp. 75-80. by the late Zemindar already referred to, and of some documents which showed that in 1881 the right of quarrying in some of the hills had been leased for about R150 per annum.

In the Statement put in by these Appellants they claimed R327,606 in respect of the antiquities, but offered no evidence upon the point. The District
p. 106, §38. Judge said in reference to them: "For the carving and temples I consider no "compensation is justly claimable, as these have never been, and would never "be likely to be, a source of any income."

p. 104, l. 22. The assessor for the Claimants was of opinion that R25,800 should be allowed under this head.

p. 104, l. 24. There was no dispute as to the amount fixed by the Collector for the land,
p. 106, l. 4. or as deduction from the peishcush. The great dispute was as to the value of the quarrying stone, for which no compensation had been offered. The evidence in respect to this was as follows:—

p. 94. The 16th witness, a private draughtsman, put in two plans of the hills
pp. 63, 64, J and K, and a measurement account L, in which he estimated the value of the
65. pagodas and carvings at R2 per square foot for carved stone, and R1 per cubic foot for cut stone. The unquarried contents he estimated at R1 per 100 cubic feet. The total amount arrived at was R356,011.

pp. 87, 89, 90. Evidence was also offered by several witnesses who had purchased stone from Mahabalipuram to the amount of from R8,000 to R10,000. Another
p. 95. witness, a Mirasidar of the district, stated that there were 46 stone cutters and quarriers in Mahabalipuram, and that he would in a year sell stone to the value of
pp. 95-96. R1,000 or R2,000, and others would do the same. Similar evidence was given
pp. 90-93. by stone cutters, one of whom said that he made a profit of R8 to R10 per month. The prices of dressed and undressed stone both at Mahabalipuram and the adjoining districts were also spoken to by practical witnesses. This evidence was uncontradicted, and so far as it supplies any basis for calculation
p. 84, l. 27. may be relied on as accurate. Both the Sub-Collector and the Surveyor agree
p 94, l. 4. in the Statement that the stone of these quarries is of a very superior quality. It is clear that there is a very considerable demand for it in Madras, which is only fifteen miles distant, with direct communication by sea and canal. The ground for calling in the interference of Government was that the Zemindar, if not interfered with, would continue his operations till the quarries were worked out.

p. 104, l. 24. Upon this evidence the Claimant's assessor thought that R113,000 should be given in respect of the unquarried stone.

p. 106, §37. The District Judge, while accepting the measurements and general evidence as correct, arrived at a very much smaller amount. He took R200 per annum as the probable amount at which the Zemindar would be able to lease out the quarries, and at 25 years' purchase arrived at R5,000, which he awarded on that head; he then deducted from the sum of R190.13.11 (fixed by the Collector for the whole extent) R65.14.6 allowed by him for the stony poramboke, and awarded the balance of R124.15.5 in respect of the

remaining land, thus making the total amount of his award R5,124.15.5; he also allowed the peishcush deduction of R12.8.10, and the liberty to remove the trees. Each party was directed to bear his own costs.

The Claimants appealed against this decree as insufficient. The Secretary p. 108.
of State filed objections to it as being excessive. He reiterated his former pp. 109-110.
contention that the sculptures were public property.

The High Court modified the award of the Lower Court by awarding to p. 112.
the Claimants R55,458.11.3, with costs in the Lower Court and in Appeal.

As regards the antiquities the High Court agreed with the District Judge. p. 114, l. 39.
They said: "These ancient remains have no market value, and their acquisition "by Government will in no way injuriously affect either the property or the "earnings of the Claimants, and therefore no compensation can be awarded "under this head of claim."

As to the quarries, the High Court raised the compensation from R5,000 to R48,100; there seems, however, to have been some difference of opinion between the two Judges as to the principle on which this calculation was based. Wilkinson J. said: "We are not here concerned only with the market p. 115, l. 8
"value of the land, but must also ascertain the damage, if any, sustained by "the persons interested in these stone quarries at the time of awarding "compensation by reason of the acquisition injuriously affecting their property "or earnings (see Section 24, Act X., of 1870)."

He took the annual rent which the Zemindar could make at R140, which at 15 years' purchase would be R2,100. He then took the annual profits of 46 stone cutters at R100 and allowed 10 times the amount, making up R46,000. These two sums of R2,100 and R46,000, with the undisputed item of R124.15.5 and 15 per cent. on the amount of compensation under S. 42, made up the decree amount of R55,458.11.3.

Shephard J. agreed as to the amount, but considered, and it is submitted p. 116, l. 12
rightly, that the profits of the stone cutters could only be taken into consideration as evidencing the market value of the property taken. No question of loss of profits in any other sense arising in the case.

Against this decision both parties have brought the Appeals which are now consolidated.

It is submitted on behalf of these Appellants that the decree of the High Court was wrong in refusing to allow any compensation on account of the antiquities. Even the Collector only based his claim to exclude them from compensation on the assumption that they were not the property of the Zemindar, which they undoubtedly were. It seems a contradiction in terms that the very objects whose special value induced the Government to purchase the land should be treated as of no value whatever in assessing the compensation due to their owner. It is submitted that the valuation put on them by the Appellant's assessor, namely, R25,800, was fair to both sides and should be affirmed.

It is further submitted that the valuation of the stone was inadequate; that the true principle was to estimate the market value of the stone available for use, that is, its selling price after deducting the cost of getting it. That after making all possible allowance for the nature of the demand, the sum arrived at would not be less than that fixed by the assessor, namely, R113,000.

antiquities of great interest which the Government of Madras resolved in 1886 to appropriate for archæological purposes. The District Court awarded R5,000 as the value of the property. Both parties appealed against this valuation, which the High Court increased to a sum of R55,458. The Secretary of State has appealed against this decree as excessive, while the claimants have preferred their cross-appeal against it as being insufficient in amount.

There is nothing in the record which gives any idea of the character or extent of the antiquities, whose existence led to the expropriation out of which these appeals arise. No doubt all the Judges who dealt with the case were personally familiar with the locality. They are fully described in Dr. Hunter's "Imperial Gazetteer of India" (vol. VI., pp. 190–196), under the head of Mahabalipur. He says: "This is one of the most interesting, and to archæo-"logists one of the most important, spots in Southern India." "The antiquities "of the place may be divided into three groups. (1). The five raths to the "south of the village, belonging probably to the latest Buddhist period; "(2) The cave temples, monolithic figures, carvings and sculptures west of the "village, probably of the sixth or seventh century A.D. (these contain some "marvellous *relievos* ranking with those of Ellora and Elephanta); (3) The "more modern temples of Vishnu and Siva, the latter being washed by the sea. "To these two and five others, buried (according to tradition) by the sea, the "place owes its English name, 'The Seven Pagodas.'" The raths are minutely described and figured by Mr. Fergusson in his "History of Architecture" (vol. II., pp. 502–4). One of the most important questions in these Appeals will be whether the Indian Courts are right in holding that no value can be given to these antiquities as such, and that they must be treated for the purpose of compensation as so much rough granite.

Rec. pp. 84-86. These proceedings appear to have originated from two letters written by the Acting Sub-Collector of the Chingleput District to the Collector and to the Government. Each of these letters is dated the 28th February, 1884, and calls attention to the fact that the Zemindar of Mahabalipuram is engaged in the wholesale destruction of the granite hills in which the "Seven Pagoda" caves are constructed, by blasting operations carried on for the purpose of quarrying. p. 84, l. 27. He states that "the granite of these hills is excellent and most useful," and that, "although at present the blasting is reported not to be going on near any "of the sculptures, we must look forward steadily to the time when the hill "will, if he is not stopped, be absolutely quarried away." He suggests that the p. 86, l. 19. hills should be considered the property of the nation, and inviolable.

The Government desired the Collector to suggest to the Zemindar that he should stay operations pending final orders. It does not appear what further orders were passed.

p. 73. On the 21st March, 1885, the then Zemindar of Mahabalipuram executed a document whereby he made an absolute gift of the land, comprised in nine plots, to the Secretary of State, together with all properties therein, such as the temples, stone cars, stone porches, stone images, and all kinds of objects exhibiting curious workmanship, which the said Secretary of State agreed to preserve permanently for the amusement of the public.

p. 81, l. 9. The donor was then about 88 years of age, the head of a joint family, consisting of himself, his son, and his two nephews, who are the present

Appellants in the cross-appeal, and of course no legal efficacy can be attributed to this document.

On the 7th December, 1885, the Zemindar made a statement in which he p. 79. expressed his willingness to hand over to Government the lands mentioned in the deed of gift at various prices ranging from R2 to R15 and R35 per cawny, with deduction of peishcush, and with liberty to cut down the trees and remove them, no demand being made for the images, pagodas, &c.

On the same day, and apparently as part of the same transaction, the Sub- pp. 2, 3, & 4. Collector recorded proceedings, in which he recited that the Government, in order to prevent any questions as to the validity of the gift, had resolved to take up the land under Act X. of 1870. He then recited the terms stated by the Zemindar, which he accepted, the sum total being R190.13.11 for compensation, and R12.8.10 for deduction from revenue charge, but he omitted to record the liberty to cut down and remove the trees. A note states that at 6.30 p.m. the Zemindar's son, the third Appellant, presented a petition requesting that another date should be fixed for the purpose of hearing himself and another. No order was made upon this application, except that the petition should be filed.

The Zemindar's nephew, first Appellant herein, says in reference to this p. 97, l. 17. proceeding: "When the statement (No. III.) was given at Nallathur the "Tahsildar said the Advocate General was against the place being handed over "as a gift, but it was better a nominal price should be taken. The Statement, "Exhibit III., is the one then given by the Zemindar. Later in the day, I and "my elder brother were also asked to sign the Statement, but we objected, as "Ramasami Mudali did not understand what was said to him. I signed the "Statement ultimately, not with the intention of agreeing to it, but to show "that Ramasami Mudali signed it. I put in an objection petition on the spot "to Mr. Mullaly. This Statement was cancelled, and a new notice was issued." "It is signed also by Vedachela Mudali (3rd Appellant), son of Ramasami. I "told him to sign it as the Sub-Collector was very angry, and I said we might "object afterwards."

The Original Court considered that no binding effect could be given to this p. 105, l. 20. Statement even as against the Zemindar, much less against the attesting witnesses. In this respect it is submitted it was clearly right, and no suggestion to the contrary was made on appeal.

On the 19th June, 1886, notices were issued under SS. 9 and 10 of the p. 5. Act, and on the 28th July Statements were filed by the 1st and 3rd Appellants herein claiming R951,730 as compensation, and by 26 Mirasidars p. 9. and 13 tenants claiming R31,640 in respect of their interest, and by the Durmakurtah of a pagoda, who claimed three structures as belonging to it, and pp. 10-11. R14,000 as compensation for them.

As these Statements disclosed a dispute as to title the Sub-Collector referred pp. 14-17. the matter to the District Judge under S. 18 on the 16th August, 1886; in a supplemental reference he refers to the liberty to cut the trees as a liberty that had apparently been conceded.

On the 26th November the Collector presented an application praying that p. 18. in estimating the compensation the pagodas and other antiquities should be excluded, on the ground that they are the property not of the Zemindar or Mirasidars but of the general Hindu public.

In the Privy Council.

On Appeal from the High Court of Judicature at Madras.

BETWEEN

THE SECRETARY OF STATE FOR INDIA IN COUNCIL . *Appellant,*

AND

SHANMUGARAYA MUDALIAR AND OTHERS . . . . *Respondents.*

CASE FOR THE APPELLANT.

SOLICITOR,
India Office.

In the Privy Council.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT MADRAS.

BETWEEN

THE SECRETARY OF STATE FOR INDIA IN COUNCIL } *Appellant.*

AND

SHANMUGARAYA MUDALIAR, THIRUVENGADA MUDALIAR, said to be insane, by his guardian, the first Respondent, and VEDACHELLA MUDALIAR } *Respondents.*

17.

AND BETWEEN

SHANMUGARAYA MUDALIAR, THIRUVENGADA MUDALIAR, said to be insane, by his guardian, the first Appellant, and VEDACHELLA MUDALIAR } *Appellants.*

AND

THE SECRETARY OF STATE FOR INDIA IN COUNCIL } *Respondent.*

No. 99 of 1888.

Case

Of the above-named SHANMUGARAYA MUDALIAR, THIRUVENGADA MUDALIAR, said to be insane, by his guardian, the said Shanmugaraya Mudaliar, and VEDACHELLA MUDALIAR.

These Appeals were consolidated by order of Her Majesty dated the 23rd July, 1892. Both appeals are preferred against the same decree of the High Court, which modified an order of the District Court of Chingleput in a compensation case referred to that Court by the Sub-Collector under Act X. of 1870. The subject-matter of these proceedings is some land of little value known as Mahabalipuram, on which are various granite hills containing

"value is to take the aggregate of the profits or earnings derived from the land "and capitalise it at so many years' purchase.

"The witnesses examined do not pretend to give any estimate of the price "which a purchaser would be prepared to give for the stone quarries as a whole, "nor do they suggest that the quarries might be worked more profitably than "they have hitherto been worked. The point, therefore, urged by Mr. Wedder- "burn on the authority of the cases cited really does not arise. Having regard to "the evidence adduced as to the profits derived from the land, which evidence is "really not contradicted, I think that the sum named by Wilkinson, J., will be "adequate, and not excessive, compensation to the Appellants and other persons "claiming an interest in the land. The Appellants are entitled to their costs in "the Court below and proportionate costs in this Court."

Record, p. 111.

Against the Decree which is founded upon this Judgment, and which is dated the said 3rd day of May, 1889, this Appellant has preferred this Appeal, and he submits that the said Judgment and Decree are erroneous, and ought to be set aside or varied, in so far as they increase the amount of compensation awarded by the Judge of Chingleput for, amongst other, the following

REASONS.

1. Because the said Ramasami having himself accepted and agreed to the compensation offered by the collector, his agreement is strong evidence to show that the said land was not of any great pecuniary value.
2. Because the High Court had no right on the Appeal of the Zemindar to go into the question of any one else's earnings, or to award compensation to any person not a party to the Appeal.
3. Because the High Court had no right to give compensation to the Respondents, on the ground that other parties not before the Court might have made profits had the Government not taken the land.
4. Because, as the Judgment of the District Judge and of the High Court now stand, the Appellant will have to pay compensation, under the Judgment of the District Judge, to the Mirasidars; and to the Respondents, under the Judgment of the High Court, in respect of the same subject matter of claim.
5. Because the only question between the Appellant and the Respondents that was before the High Court, was the market value of the said land.
6. Because the amount awarded by the High Court is excessive.
7. Because the compensation awarded by the High Court has not been calculated on the proper basis.

WILLIAM F. ROBINSON,
JAMES H. A. BRANSON.

" son of Ramasami. I told him to sign it, as the sub-collector was very angry;
" and I said we might object afterwards. Ramasami, before putting his seal,
" asked Sitarama Pillai if it related only to 4 cawnies. The Tahsildar said it re-
" lated only to what he spoke about in the morning. Ramasami Mudali and
" I were undivided, and he was the eldest."

The assessor for the collector was of opinion that Rs. 190:13:11, the amount offered by the collector, together with a remission of land tax, to the extent of Rs. 12:8 per annum, also offered by the collector, was the proper compensation, while the assessor for the persons interested assessed the compensation at Rs. 1,38,800, together with the remission of land tax which was offered.

The learned District Judge then proceeded to give his judgment, fixing the amount of compensation to be paid. He was of opinion that the statement of the said Ramasami already set out was not binding on any one but the said Ramasami, and he proceeded therefore to assess the compensation to be awarded independently of any agreement.

Record, p. 105, l. 24.

He found that the said Ramasami had in 1881 leased out the right to quarry stone in a certain portion of the said rocks at Rs. 140 per annum. He thought that for the right to quarry anywhere on the said hills the rental might fairly be raised to Rs. 200, and he was of opinion that twenty-five years' purchase would be a proper price to pay, so he assessed the compensation payable in respect of the said acquisition at Rs. 5,000, to which he added Rs. 124:15 as the value of the land not containing stone fit for quarrying; and he accordingly awarded Rs. 5,124:15 as the compensation to be paid, the tribute or revenue being reduced, as allowed by the collector, by Rs. 12:8:10 a year; and he further directed that each party should bear his or their own costs.

p. 105, l. 35.
p. 106, l. 28.
p. 106, l. 36.
p. 106, l. 39.

Against this award the Respondents, on the 4th day of July, 1888, filed their Appeal in the High Court of Madras, making this Appellant the only Respondent.

p. 108.

The said Appeal was valued at Rs. 2,95,000, and the grounds of appeal were the following:—

p. 108, l. 23.

" 1. Because the order as to costs is contrary to the provisions of the Land " Acquisition Act of 1870;

" 2. Because the compensation granted for the stone is not assessed on the " proper basis, and does not represent the market value thereof;

" 3. Because the refusal of compensation for the rock, sculptures or carvings " is wrong in law."

This Appellant also filed certain cross objections to the said award, under the provisions of Section 561 of the Code of Civil Procedure.

The said Appeal came on for hearing before a Division Bench of the said High Court, consisting of the Honourable Mr. Justice Wilkinson and the Honourable Mr. Justice Shepherd in due course; and on the 3rd day of May, 1889, the said learned Judges delivered their Judgment in the same; the first Judgment being delivered by Mr. Justice Wilkinson. After referring to the nature of the claim, and of the inquiry to the award made by the learned District Judge to the death of Ramasami, and to the fact that only his son and his nephews had appealed, the said learned Judge reversed the decision of the District Judge as to the costs in the Court of such District Judge.

p. 113, l. 1.
p. 113, l. 25.
p. 114, l. 4.
p. 114, l. 5.
p. 114, l. 10.

He held that the rock, temples, the carvings, and the sculptures had no market value, and that no compensation could be awarded in respect of these.

Record, p. 114, ll. 19-43.

As to compensation for the stone quarries, he held that the Court was concerned not only with the market value of the land, but had to ascertain the damage, if any, sustained by the persons interested in the stone quarries at the time of awarding compensation, by reason of the acquisition injuriously affecting their property or earnings.

p. 115, l 1.

He then proceeded upon this principle to consider the claim to compensation.

Firstly, of the Zemindar, the party represented by the present Respondents, and he held that as the Zemindar had been able to let the land on a lease for five years at Rs. 140 a year, that might be accepted as his rent, and that he ought to be awarded 15 years' purchase at this rate as compensation, making the award on this head Rs. 2,100.

He then proceeded as follows:—

p. 115, l. 20

" That the acquisition will injuriously affect the profits derived from working " the quarries cannot be denied. It is argued that the Judge has sufficiently taken " this into account. The Judge has altogether omitted to notice the evidence on " the record as to the actual profits earned by the persons who work the quarries."

He then found upon the evidence that a quarryman could quarry in a year stone of the value of Rs. 300, and that the quarryman's profit on that stone would be Rs. 100; and further, that on this property there were about 46 persons who earned their livelihood by quarrying, and he proceeded as follows:—" The amount " of profits of which the claimant would annually be deprived may, therefore, be " set down at Rs. 4,600. There is nothing in the record to show that the supply " of stone which commands a market value is unlimited, and the market must " always be a fluctuating one. Mahabalipuram is a long way from Madras, and " though there is a market, it does not appear to be a very lively one. Under " these circumstances I would allow ten times the annual loss, or Rs. 46,000, for " the damage sustained by the persons interested, by reason of the acquisition injuriously affecting their property or earnings.

p. 115, l. 41.

" In addition to this, there is the market value of the land, plus the 15 per " cent. which has to be added under Section 42, and which has been overlooked " by the Judge and the sub-collector. The amount fixed by the sub-collector is " Rs. 124:15:5. It is not disputed.

" The total amount of compensation to be awarded will, therefore, be " Rs. 48,224:15:5, plus 15 per cent., or Rs. 55,458:11:3. Appellants are entitled to their costs in the District Court, and to proportionate costs of this " Appeal."

The other learned Judge delivered a separate Judgment. He agreed with Mr. Justice Wilkinson that no value could be put upon the temples, and also as to the amount to be awarded, but he thought that the mode in which that amount had been arrived at was not right, and he proceeded as follows:—" In my opinion no " question arises with respect to loss of earnings for which compensation could be " awarded under Clause 3 of Section 24. It is the market value of the property " taken, which alone we are concerned to ascertain, and it is only for the purpose " of ascertaining it that the earnings have to be considered. Indeed, with such " materials as we have before us, the only way it seems to me of ascertaining that

p. 116, l. 12.

p. 116, l. 16.

REVENUE BOARD OFFICE
MADRAS.

Proceedings of the Board of Revenue,

(Land Revenue),

Dated 27th June 1893.

No. 3774. Mis. / ~~Routine~~.

Read Government order, Public Department, dated 14th June 1893
No. 459:—

Resolution

Communicated to the Collector of Chingleput.

True Extract

Asst Secretary

To

The Chief Secretary to Government P. D.
with the case for appellant and
the case for respondent.

In the Privy Council.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT MADRAS.

BETWEEN

THE SECRETARY OF STATE FOR INDIA IN COUNCIL . . . . . *Appellant,*

AND

SHANMUGARAYA MUDALIAR, THIRUVENGADA MUDALIAR (said to be insane, by his Guardian the 1st Respondent), and VEDACHELLA MUDALIAR *Respondents.*

CASE FOR THE APPELLANT.

This is an Appeal which is preferred against a Judgment and Decree, made and pronounced on the 3rd day of May, 1889, by a Division Bench of the High Court of Judicature at Fort St. George, in Madras, whereby an award of the District Judge of Chingleput, dated the 12th day of March, 1888, and made by him under the provisions of Act X. of 1870, of the Government of India, was varied in favour of the Respondents above named.

The facts out of which this Appeal has arisen are the following:—

One Nallathur Ramasami Mudaliar (hereinafter called Ramasami) was in December, 1885, and had been for some time before that, the registered Zemindar of the village of Mahabalipuram, lying in the district of Chingleput.

Within the ambit of this village stood certain small rocky hills, into and out of the stone of which had been carved pagodas mundapums (or temples), stone cars and images, known by the general name of the Seven Pagodas, and exhibiting stone carving of great artistic merit and of considerable archæological, historical and religious interest.

8

3
Exhibit 732/93.