ANDHRA PRADESH HIGH COURT

Kompalli Nageswara Rao

Vs.

Special Deputy Collector

Appeal No. 140 of 1952, C. M. P. No. 2723 of 1957, in O.P. No 53 of 1950

(Umamaheswaram and Krishna Rao, JJ.)

13.11.1957

JUDGMENT

Umamaheswaram J.

1. I have perused the judgment prepared by my learned brother and I agree with his conclusion of fact. But, in regard to the question of the admissibility of the judgments of the High Court filed along with C. M. P. No. 2723 of 1957 and marked as additional evidence by this Court, I am inclined to take a different view.

2. Under Section 23(1) of the Land Acquisition Act, the Court has to determine the market value of the land as on the date of the publication of the notification under Section 4 Sub-Section (1). Dealing with this expression "the market value", Lord Romer observed in the well-known Lova Garden Case, *Narayana Gajapatiraju v. Revenue Divisional Officer Vizagapatam*[1], as follows :

> "There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by 'the market value' in Section 23."

There is no doubt that sale deeds of neighboring lands of similar quality are relevant and admissible in evidence for determining the value of thy land sought to be acquired. The question as to how far the judgments relating to the acquisition of neighbouring lands is admissible in evidence came up for decision in *Secy. of State for India v. India General Steam Navigation and Ry. Co. Ltd*[2]*.,* It appears from page 970 that the claimant relied upon two judgments of the High Court dated 13th August 1903 and 18th August 1903, for awarding compensation. The learned Judges of the High Court of Calcutta, Mr. Justice Rampini and Mr. Justice Ashutosh Mookerjee,

[1] ILR 1939 Mad 532 at p. 543 : (AIR 1939 PC 98 at p. 102)

[2] ILR 36 Cal 967 (PC)

adopted the rates given by the learned Chief Justice and Mr. Justice Geidt for the lands acquired at the corner of the Watganj and Garden Reach Roads. The relevant observations at page 971 are as follows :

> "But basing our valuation on the evidence given in this case on both sides and taking into consideration such evidence, as to rates of rent, sales and awards, we are inclined to value the land at very much the rates given by the learned Chief Justice and Mr. Justice Geidt for the and taken up at the corner of the Watganj and Garden Reach Roads. This land is very near, if it is not the nearest land, to the subject of this reference, of the value of which we have evidence.

This land is no doubt to the north of the docks and nearer Calcutta than the lands now the subject of enquiry : but on the other hand Nos. 6, 7 and 8, Garden Reach, have greater advantages in the way of river frontage. The learned Chief Justice and Mr. Justice Geidt gave Rs. 950/- per cottah to the front and Rs. 550/- per cottah for the back land, i.e., Rs. 750/- per cottah on an average. We consider we should give this average rate for the firm hind of the premises Nos. 6, 7 and 8, Garden Reach irrespectively of its situation..." It is clear from these observations that the High Court of Calcutta awarded compensation on the basis of the earlier judgment of the High Court dated 13th August 1903. On appeal before the Judicial Committee, the counsel for the appellant contended that the High Court proceeded on an erroneous principle in adopting as the basis of valuation of the land the value put in previous land acquisition proceedings between different parties, in connection with an entirely different plot of land, and irrespective of and without regard to essential elements of dissimilarity in regard to area, locality and special and peculiar advantages. They argued further that the judgment in the previous case relied upon by the High Court was not evidence in the present case of the value of the land in dispute. At page 974, Lord Collins, confirming the judgment of the High Court, stated as follows :

> "That Court, in a very careful judgment reviewing the earlier awards and comparing the prices realised on sales of land in the neighborhood, having regard to the special advantages of, or drawbacks to, their respective situations, and having heard the evidence of experts on both sides, came to the conclusion that the total compensation due to the claimants ought to be increased to the sum of Rs. 10,13,591-7-0".

I am inclined to take the view that in repelling the arguments addressed on behalf of the appellant and in confirming the judgment of the High Court, their Lordships of the Privy Council agreed with the view of the High Court that the earlier judgment of the Chief Justice and Mr. Justice Geidt was admissible in evidence for determining the compensation payable in respect of the acquired property. No distinction was drawn by the Privy Council between the judgments of the High Court and other awards. It is clear from the terms of Section 26 read with Section 54 of the Land Acquisition Act that the judgments of civil Courts fixing compensation are regarded as awards. When Lord Collins referred to "the earlier awards" at page 974, he must have been necessarily referring also to the judgment or award of the High Court dated 13th August 1903, on which the judgment of the Calcutta High Court was based.

3. In *Madan Mohan v. Secy. of State*[3], a similar contention was raised. The learned Judges followed the decision in ILR 36 Cal 967 (PC), and observed :

> "There cannot be a clear authority that previous decisions in Land Acquisition cases are relevant in a subsequent case where the market value of lands in the same neighborhood is in issue."

I am inclined to follow the aforesaid two decisions and hold that judgments or awards in the Land Acquisition cases relating to neighboring lands similarly situated and of the same quality are relevant and admissible in evidence. I am unable to agree with my learned brother that only awards passed under Section 11 of the Land Acquisition Act are admissible but not the awards or judgments passed by the Civil Courts oil reference under Section 18 of the Act or on appeal therefrom.

4. There is no doubt that the compensation payable under the provisions of Land Acquisition Act should be determined in accordance with Sections 23 and 24 of the Act and that the price which a willing vendor might reasonably expect to obtain from a willing purchaser should be the basis. When once the Court determines the compensation payable in respect of a particular land, it must be assumed that the Court fixed the price which a willing purchaser is willing to pay to a willing seller as a result of a friendly negotiation. In this view, it must be held that the compensation fixed under a judgment represents the market value of the land forming the subject-matter of the land acquisition proceedings. If the sale deeds between third parties in respect of neighboring lands are relevant under Section 9 of the Evidence Act, I fail to see how the judgments are not relevant for the limited purpose of evidencing the compensation determined under the provisions of the Land Acquisition Act in respect of those neighboring lands. I am unable to share the view of my learned brother that when the adjudication of the market value is made by the Court under the Act, the compensation should be regarded as having been arrived at between an unwilling buyer and seller. The law presumes that the compensation fixed by the civil Courts under the Act represents the price reached as a result of "friendly negotiation."

5. As pointed out by my learned brother, Section 43 of the Evidence Act enacts that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Act. I am inclined to hold that the judgments of civil Courts determining compensation under the provisions of the Land Acquisition Act in respect of neighboring lands are admissible under the provisions of Sections 9, 11 and 13 of the Evidence Act. Under Section 11(2), facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. In dealing with Section 11, Sarkar in his Commentary on the Evidence Act, 9th edition, at page 99 cited the two decisions referred to supra viz., AIR 1925 Calcutta 481, and ILR 36 Cal 967 (PC), and stated as follows :

[3] AIR 1925 Cal 481

> "In assessing the market value of a land, the price paid in other transactions relating to land in the neighborhood is admissible, e.g., previous decisions under Land Acquisition Act are relevant in a subsequent case where the market value of lands in the same

neighborhood is in issue."

The judgments may also be admissible as evidencing the transactions by which the right to compensation in respect of the neighboring lands was recognized, asserted or denied within the meaning of Section 13 of the Evidence Act. In *Srinivas v. Narayan*[4], and *Gobinda Narayan v. Sham Lal*[5], referred to by my learned brother, the Supreme Court and the Privy Council have pointed out that judgments not inter partes might still be admissible under Section 13 of the Evidence Act. Applying the observations of the Judicial Committee in *Gobinda Narayan v. Sham Lal, (supra),* I hold that the reasons upon which the judgments are : founded are no part of the transaction but that the judgments are only relevant for, the purpose of proving the transactions i.e., the amount of compensation determined in respect of' those particular lands.

6. On the facts of this particular case, however, I am inclined to agree with inv learned brother that the claimants are not entitled to compensation at the rates fixed in those judgments or at the rate of Rs. 1,000 per acre as claimed by them in appeal but only at the rate of Rs. 750 per acre. As only a sum of Rs. 1,000 per acre is fixed by us as compensation in respect of 10 acres and 13 cents which are fit for raising tobacco seedling, I agree that the sum of Rs. 750 per acre fixed for 46 acres and 71 cents (sandy soil lands) is quite reasonable. In regard to the compensation payable for other acquired lands, I agree with my learned brother.

Krishna Rao, J.

7. The dispute in this appeal relates to the amount of compensation to be awarded to the appellants for their land, S. No. 686/3 of Bapatla East Village, which has been acquired by the Government under the provisions of the Land Acquisition Act, for providing land for the permanent farm of the Agricultural College, Bapatla. The land is ryotwari dry, measuring Ac. 62-90 cents and three portions of it covering a total extent of Ac. 3-56 cents were gardens containing fruit-bearing and other trees. The remaining extent of Ac. 59-34 cents is mainly sandy soil, but parts of it are claimed to be more valuable pati soil. The land also contained scattered trees, an old Mangalore tiled building, an irrigation well and a five fencing of palmyrah and chilla kampa plants. Besides, there was a derelict house and a brick cistern, but these need not detain us any longer as the compensation of Rs. 67 and Rs. 60 respectively awarded for them is not assailed by the appellants. The controversy is confined to the market value of the other items, which is payable under Section 23(1) of the Land Acquisition Act. The market value has to be determined as on 23-8-1949, the date on which the notification under Section 4, Sub-Section (1) was published.

8. The Land Acquisition Officer made his award on 14-12-1949. He valued the Ac. 59-34 cents of non-garden land at the rate of Rs. 600 per acre, with the aid of the

[4] AIR 1954 SC 379
[5] AIR 1931 PC 89

extract of registration statistics Ex. B-11. He based his valuation on item 1 in Ex. B-11. The corresponding sale deed copy is Ex. B-12 dated 30-9-1946, by which S. No. 707/4 was sold for Rs. 770 working out to a rate of Rs. 502 per acre. He distinguished the other six items in Ex. B-11, three of which were at higher and three others at lower rates, as having been either nominal or

influenced by special considerations or of inferior lands. As regards the pati soil in the land, which he found to exist over an area of only 4 or 5 acres, he was of opinion that it was not in any way more valuable than the soil in the rest of the land. For the three gardens, he awarded Rs. 3,853-4-0 in all, capitalizing the value of the annual yields of such of the trees as were found to be capable of bearing fruit and assessing the fuel value of the other trees. He awarded Rs. 1816-8-0 for the scattered trees outside the gardens, Rs. 1,400 for the entire fencing. Upon a reference at the instance of the appellants under Section 18 of the Act, in O. P. No. 53 of 1950 the learned Subordinate Judge confirmed the award except with regard to the plots of pad soil which he found to cover an area of Ac. 10-66 cents. He accepted the case of the claimants in so far as they valued the pati soil area at 25 per cent more than the sandy oil area and accordingly awarded an additional amount of Rs. 1600 for the pati soil plots, at the rate of Rs. 150 per acre. The claimants have come up in appeal on the ground that the sandy soil area ought to have been valued at Rs. 1000 per acre and the pati soil area consequently at Rs. 1250 per acre. They have asked for Rs. 7921-12-0 in respect of the gardens, Rs. 5,000 for the Mangalore tiled house, Rs. 750 for the well, Rs. 663-6-0 for the palmyra plants in the fencing and Rs. 420 for the chilla kampa plants. For the scattered trees, they have demanded enhancement of the compensation by Rs. 448-12-0, but this claim was given up at the hearing before us. The Government have filed a memorandum of cross-objections in respect of the enhancement of Rs. 1600 decreed by the learned Subordinate Judge.

9. We shall now proceed to deal with several items in dispute seriatim. The main item is the Ac. 59-34 cents of non-garden land. There is no dispute regarding its area, but according to the appellants, Ac. 10-66 cents thereof is pati soil while according to the Government there is pati soil only in 4 or 5 acres out of it. The controversy as to whether the particular pati soil in the land is more valuable at all may be considered later. The initial question is the proper valuation of the sandy soil land.

10. Sri K. Kotayya for the appellants contends that the Land Acquisition Officer and the learned Subordinate Judge erred in relying on Ex. B-12 for this purpose. In support of his claim that the value is not less than Rs. 1000 per acre, he relies on (1) the sale deed Ex. A-7 dated 26-1-1948, the price in which works out to a rate of Rs. 6288 per acre; (2) a sale dated 24-2-1947 mentioned as item 4 in Ex. B-11, the price in which works out to a rate of Rs. 2017 per acre; (3) the evidence of the appellants' witnesses relating to the income from the land; (4) the same Subordinate Judge's award under Ex. A-8 dated 20-9-1950, of Rs. 1000 per acre for other lands in the vicinity acquired by the Government in pursuance of the same notification under Section 4(1) which was enhanced by the, High Court in the appeals disposed of in 1956 to Rs. 2000 per acre for some of the lands and to Rs. 1300 per acre for most of the other lands; (5) the same Subordinate Judge's subsequent award dated 5-11-1951 in the batch of O. P. Nos. 105 etc. of 1950 determining Rs. 1000 per awe as the compensation for similar lands, including the land covered by Ex. B-12 which formed the subject-matter of O. P. 117/1950.

11. Ex. B-12 shows that one Boyina Nagaiah sold S. No. 707/4, measuring Ac. 1-30 cents and containing ground-nut crop to one Guggilam Rattamma for a consideration of Rs. 770 which works out to a rate of Rs. 592 per acre. It is seen from the plan Ex. A-13 that both S. Nos. 707/4 and 688/3 are situated on the west of the Guntur-Bapatla Road and are in close proximity to each other, being separated only by three plots of land bearing S. Nos. 704 to 700. This probabilises the lands being similar. Sri K. Kotayya's main criticism is that the sale was not one by a willing vendor and has therefore no relation to the market value. The legal conception, of market value

in relation to lands is that it is the price, which an owner who is willing but not obliged to sell, might reasonably expect to obtain from a willing and prudent purchaser. The learned counsel says that in the case of Ex. B-13, the owner was obliged to sell owing to the pressure of his creditors and was not really willing to part with the land for the price. In a reference under Section 18 of the Act, the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant hut the weight of the burden depends upon the thoroughness of the enquiry held by the Collector : See *Padniaji v. Dy. Collector of Adeni*[6], *Arunachala Aiyar v. Collector of Tanjore,*[7] and *Asst. Development Officer v. Tayaballi*[8],

In the present case, it does not appear that the Land Acquisition Officer made any enquiry as to the circumstances in which the sale under Ex. B-12 took place. Neither the vendor nor the purchaser under Ex. B-12 was called as a witness before the learned Subordinate Judge. The vendor Nagaiah was not available, as he appears to have died in 1949. As regards the non-examination of the purchaser Rattatnma, the explanation on behalf of the Government was that she was an adverse party, because the very land S. No. 707/4 is one of the lands acquired in pursuance of the same notification under Section 4(1) and she claimed enhancement of the compensation of Rs. 600 per acre awarded to her. There is no explanation on behalf of the appellants for their omission to examine Rattamma. However, this would obviously be no reason for refusing to give effect to the other evidence supporting their attack on Ex. B-12. Sri K. Kotayya relies for his contention on the recitals in Ex. B-12 and on the subsequent events relating to the transaction. The recitals in Ex. B-12 are that for the purpose of discharging debts the vendor had sold the land to the vendee even before the execution of the document and that he had received Rs. 100 as advance at the time and the balance of Rs. 670 by the vendee's payments to two creditors towards the vendor's mortgage debt and khata debt. Possession is recited as having been delivered on the date of Ex. B-12. It is elicited from R.W. 5, the Land Acquisition Officer, that the vendor refused to register the sale deed and the document was compulsorily registered in April 1947. The vendor did not also deliver possession of the land and the vendee had to file a suit. O. S. No. 224 of 1947 in the court of the District Munsif of Bapatla for the purpose. The suit was decreed on 29-10-1948 for possession and mesne profits as seen from Ex. A-5. Thereafter the vendee got a decree on 3-2-1950 for past and future profits at Rs. 100 per year by making an application under Order 20 Rule 12 as seen from Ex. A-6. The learned Subordinate Judge noticed these facts

[6] 27 Mad LJ 106 [8] AIR 1933 Bom 361
[7] AIR 1926 Mad 961

relating to the transaction under Ex. B-12 and also the contention on the side of the Government that the vendor might have tried to back out of the transaction having got scent of the acquisition. But he held that the Land Acquisition Officer was correct in relying on Ex. B-13 inasmuch as no other sales of similar lands were available for comparison. This conclusion is assailed by Sri K. Kotayya as being unfair to the appellants because the same Subordinate Judge, on the identical facts refused to accept Ex. B-12 as the index of the real market value in respect of the other lands in the vicinity, simultaneously acquired by the Government, as would appear from the judgment Ex. A-8. The learned counsel points out that the reasons for rejecting Ex. B-12 were approved by the High Court in the appeals against the award under Ex. A-8. He points out further that for S. No. 707/4 itself, the same Subordinate Judge assessed the market value as on 23-8-1949 at Rs. 1000 and not at Rs. 600 per acre, in O. P. No. 117 of 1950 which is pending in appeal before the High Court. We shall deal later with the question of the admissibility of the

judgments of the High Court on the appeals from the judgment in Ex. A-8 and of the judgment of the learned Subordinate Judge in O. P. No. 117 of 1950, which are sought to be marked as additional evidence on the side of the appellants. It is sufficient at present to observe that the reasoning against Ex. 13-12 in these judgments is clearly irrelevant as evidence for the purpose of the present appeal. Sri K. Kotayya does not dispute this position, but urges that the facts in evidence already set out above are sufficient to substantiate his criticism against Ex. B-12. It has not been suggested on the side of the Government that Rattamma's suit O. S. No. 224 of 1947 against Nagaiah which culminated in the decree Ex. A-5 was collusive. All that has been suggested is that the subsequent proceedings under Order 20 Rule 12, Civil Procedure Code, which culminated in Ex. A-6 might have been collusive, because Nagaiah's legal representative remained ex parte and that the rate of past and future profits might have been exaggerated in order to suit Rattamma's claims in the acquisition proceedings. As the idea of acquisition by the Government is said to have been bruited even in 1945. it is difficult to accede to the theory that the vender got scent of the acquisition, only after executing Ex. B-12 on 30-9-1946 and therefore, tried to back out of the transaction. It is possible that his subsequent conduct was due to his being of a troublesome nature nod that he was therefore disinclined to fulfill his obligations in respect of the sale. It is equally possible that he originally agreed to the sale for an inadequate price as he was pressed by his creditors and therefore tried his best subsequently to back out of the bad bargain. In the circumstances, it would not be safe to rely on Ex. B-12 as a true index of the market value. The contention of Sri E. Venkatesam on behalf of the Government is that in spite of its infirmities, Ex. B-12 should be accepted in the absence of better evidence.

12. Turning to the sales relied upon by the appellants, it is true that the price paid under the sale deed Ex. A-7 dated 26-1-1948 works out to Rs. 6288 per acre. Cut it relates to S. No. 666/4 which is about 2 furlongs off from S. No. 686/3 on the other side of the road and abuts the road on its west. No evidence was adduced to show that there is any similarity in the quality and position of the two lands. The extent sold under Ex. A-7 is only 28 1/2 cents, but the extent of S. No. 686/3 under consideration is Ac. 59-34 cents. It is well settled that the price fetched for small plots of land is not a the indication of the proper price of large plots. See *Rathnamnasari v. Secy. of State*[9], and *Chettiammal v. Collector of Coimbatore*[10], The same criticism applies with even greater force 10 the sale mentioned as item 4 in Ex. B-11, which was only of 240 sq. yards in S. No. 775/3 though at a rate which works out to Rs. 201.7 per acre. The Land Acquisition Officer in his award condemned this sale as having been nominally got up for the purpose of inflating the values of lands at the acquisition. Nevertheless, the appellants did not adduce any evidence to show that it was a genuine and *bona fide* transaction. But it has to be observed at the same time that the Land Acquisition Officer's conclusion was based on a casual enquiry he made from a neighbouring ryot named Seshayya, who was not prepared to give a statement and was not called as a witness.

13. Sri K. Kotayya contended that the appellants' land is suitable for house sites and that its potential value for use as house sites is indicated by Ex. A-7 and item 4 of Ex. B-11. The small extent sole under Ex. A-7 adjoins the road. The extent sold as per item 4 of Ex. B-11 is described in square yards and is within S. No. 775/3 close to the road. These facts support the view that the purchasers intended to use the plots as house sites. In this connection, Sri K. Kotayya also referred to item 6 of Ex. B-11, which relates to the purchase dated 5-10-1948 by one Samudrahi, of 24 cents in S. No. 711/4 situated close to the road at a rate which works out to Rs. 800 per acre. The award of the Land Acquisition Officer says that P.W. 3 told him that Samudralu made

the purchase at the inflated price, with the object of claiming a high compensation in the acquisition proceedings. P.W. 3 who was the appellants' gardener from 1942, to 1946 denied having made such a statement. He also said that he asked the appellants to sell some plots to him for house sites and that they refused. He alleged further that he purchased land himself near Samudralu's land at the rate of Rs. 10 per cent. But when he was cross-examined about the sale deed he admitted that he took only a contract of the sale in 1950. It cannot, therefore, be said that P.W. 3's evidence could be relief upon to show that there was a genuine demand for the appellants' land as house sites. The evidence of another witness P.W. 4, who was a lessee of the appellants, stands on the same footing because he vaguely says that he unsuccessfully asked for house sites from the appellants' predecessor-in-title, Kotilingam, who admittedly died prior to 1937. Further P.W. 4 wanted a house site in the appellants' land in order to live on the land for the purpose of cultivating it on lease. The demand from persons like P.W. 4 would have been limited to a very small extent out of the appellants' land. It would not lead to an inference that the entire extent of about 60 acres had potentially as house sites. No doubt houses could be built on the entire land, but the real question is whether there was any demand or likelihood of a demand for such a purpose round about the period of the acquisition. On this question, apart from the evidence of R.W. 5 the Land Acquisition Officer who says that the locality is sparsely inhabited and that Bapatla town was not extending in that direction, we have the evidence of the Commissioner who was appointed in the O. P. and who was examined as P.W. 8. P.W. 8 states in his report Ex. A-3 :

> "Very near to the petition locality on the other side of the road there are a few thatched houses of poor people and I am asked to state whether the petition lands cannot be sold for house sites and get good price. The question whether

[9]44 Mad of 132 at p. 135 : (AIR 1923 Mad 332 at p. 304) (1)

[10] AIR 1927 Mad 867

> these lands could be told as the house sites depends on the possibility of laying out a town extension scheme as far as that rather than on its nearness to those small thatched houses. I think that according to present indications, there seems to be no such possibility."

It is clear that the appellants' land had no potentiality of demand for house sites, except by their tenants who would have naturally asked for in-considerable extents at favorable prices. Taking the evidence as a whole, it appears that items 4 and 6 in Ex. B-11 represent genuine and *bona fide* transactions and that they along with Ex. A-7 reflect the values of lands in the locality as house sites. But they would only be of help to indicate the values of small problematic extents in the appellants' land and would afford no basis for valuing the entire extent. This does not mean that they ought to be ignored altogether. When instances of precisely parallel sales are not available, the question is one of what allowance should be made for the differences in the conditions. See *Raghu Nath Das v. Collector of Dacca*[11]*,*

14. It is next contended that in the absence of parallel sales the value of the appellants' land ought to be assessed by the method of capitalising the net annual from the land. In their earlier statements Exs. B-1 and B-2 made in October and November, 1949, the 1st appellant and his paternal uncle the 7th appellant claimed that they were each getting an average income of Rs. 1500 per year from the property inclusive of the garden, as the half share of their respective

branches. Subsequently, in response to the notice under Section 9(3) of the Act, they alleged in their statements Exs. B-18 and B-19 that they were getting lease amounts at Rs. 130 per acre by giving the land for raising tobacco seedlings and chilly seed beds and in addition Rs. 2,000 per year from the garden. But they conveniently kept no accounts. The 1st appellant who gave evidence as P.W. 9 added that he did not know whether his father and grand-father were keeping any accounts. No accounts were produced; although the gardeners P.Ws. 3 and 7, the lessee P.W. 4 and the engine driver P.W. 5 mentioned that accounts were kept. In the circumstances, it is difficult to accent the story that large sums to the tune of over Rs. 2,000 for each half share were being realised as the annual income.

15. However, the 1st appellant has produced the unregistered leases Exs. A-1, A-2 and A-9 relating to the shore of the land of his branch. P.W. 1 is the lessee who executed Ex. A-1 dated 24-7-1946 for the period up to 31-12-1946 for raising tobacco-seedlings in an extent of 4 acres out of the land paying a rent of Rs. 140 per acre. Similarly, P.W. 2 executed Ex. A-2 dated 27-6-1947 for the period upto 31-12-1947 for raiding tobacco seedlings in an extent of Ac. 4-63 cents out of the land, paying a rent of Rs. 160 per acre. Although their description in Exs. A-1 and A-2 is inadequate, the two plots seem to be different, because P.W. 1 says that his plot contained 1 acre of pati land, while P.W. 2 speaks of pati land only to the north of his plot and considers pati land unsuitable for raising seedlings. Moreover, it appears from P.W. 3's evidence and from Ex. B-2 that tobacco seedlings were raised on the same land only in alternative years.

16. According to P.W. 2, the usual rate of rent in the locality was Rs. 70 or Rs. 80 per
[11]6 Ind Cas 457 at p. 461 (Cal)
acre, but he agreed to the higher rent in Ex. A-2 because the plot was particularly good for seed beds and was on a higher level with the advantage that the seedlings were not damaged by rain. P.Ws. 1 and 2 are respectable kammas of different villages in Guntur taluk and are not shown to be interested in the appellants in any way.
The lessee under Ex. A-9 dated 12-8-1947 was not called as a witness, but the document was proved by the scribe P.W. 11. He was the clerk of the appellants' pleader and 1st appellant's uncle, who was managing the property and was also the scribe of Exs. A-1 and A-2. Under Ex. A-9, one Subbaiah of another village in Guntur taluk took an extent of Ac. 1-50 cents on the north west of the plot leaded to P.W. 2 for the period upto 31-12-1947- for raising, tobacco seedlings paying a rent of Rs. 160 per acre. Thus Exs. A-1, A-2 and A-9 show that a total extent of Ac. 10-13 cents of the land was leased for raising tobacco seedlings.

17. Sri E. Venkaresam contended that Exs. A-1, A-2 and A-9 ought not to be relied upon as genuine, because they are only unregistered leased But it is in evidence that these lenses were produced even before R.W. 5, the Land Acquisition Officer. R.W. 5 says that he was not impressed by the unregistered leases filed before him and that the appellants did not offer to lead any evidence regarding them. The appellants' suggestion is that in his anxiety to pass the award, he did not give them proper opportunity to lead evidence. It is seen from his letter Ex. B-13 dated 9-12-1949 that he promised to the agricultural Department that he would pass the award on 12-12-1949 and deliver the land on 14-12-1949 or 15-12-1949. On 10-12-1949, the date on which his award enquiry stood posted, he inspected the appellants' gardens along with R.Ws. 4 and 6 and obtained materials from them for valuing the gardens. He was able to pass the award only on 14-12-1949, so as to keep his promise to deliver the land on the next day. Thus the suggestion of the appellants is not without considerable force. The lease deeds were produced at the very

earliest, opportunity and as the law does not require them, to be registered, we are not prepared to suspect them on the mere ground of non-registration.

18. Another contention not forward by Sri E. Venkatesam for discrediting Ex. A-1, A-2 and A-9 is that the entries in the adangal extracts Ex. B-21 (f) for fasli 1357 and Ex. B-21 (g) for fasli 1358 do not mention that any portion of the land was cultivated with tobacco seedlings. It is argued that if the leases were genuine, the cultivation of tobacco seedlings by the lessees would have been noted in the adangal. But the adangal extracts Ex. B-21 series were merely produced into Court by R.W. 5 the Land Acquisition Officer. He was not responsible for the entries in them and spoke to only having looked into them. The karnam who wrote the adangals was not called as a witness. The Land Acquisition Officers award itself states in describing the land that "ground-nut, bobbara and tobacco seedlings flourish in the seasons." This clearly shows that tobacco seedlings used to be raised on the land. As the periods of their cultivation were short, it is possible that the karnam omitted to note them in the adangals. The learned Subordinate Judge did not reject Exs. A-1, A-2 and A-9 as being spurious but merely dismissed them on the ground that they related to small extents out of the entire urea of 60 acres and odd and were insufficient to show that the entire area would have fetched that rent. But the establish that a total extent of Ac. 10-13 cents was fit for raising tobacco seedlings and was leased for that purpose.
No doubt P.W. 3 the appellant's gardener from 1942 to 1946, says that such seedlings could be raised on the entire sandy portion of the land. As against this R.W. 2 the senior lecturer in the Agricultural College says "Chillies and tobacco cannot be grown in sandy soil. But with manuring and irrigation they can be grown." In view of Exs. A-1, A-2 and A-9 and the fact that there was a big well in the land for irrigation, we see no reason to doubt that an extent of Ac. 10-13 cents was used for raising tobacco seedlings.

19. With regard to the income from such leases, the 1st appellant himself put it in Ex. B-2 as Rs. 500 per year on an average. In Ex. B-2, he stated that leasing out for tobacco seedlings was effected in alternative years. Even in his subsequent statement Ex. B-19, he alleged that only some acres were let out for growing tobacco seedlings. Although the lease, under Ex. A-1 was at the rate of Rs. 140 per acre and the leases under Exs. A-2 and A-9 were at the rate of Rs. 160 per acre, these cannot therefore be taken to represent the steady annual income from the extent of Ac. 10-13 cents covered by them. The average annual income derived from the entire Ac. 10-13 cents seems to have been only about Rs. 500 as unequivocally alleged in Ex. B-2. owing to the fact that only some portions were leased in alternative years or at longer intervals. This works out roughly to an average annual income of Rs. 50 per acre. The kist was only Re. 0-8-0 per acre and as the figures are approximate no deduction on account of kist from the annual income is necessary. Capitalizing the annual income of Rs. 50 at 20 years' purchase, we are of opinion that the extent of Ac. 10-13 cents has to be valued at Rs. 1000 per acre.

20. P.W. 4 says that in 1949, he took a lease of 2 1/2 acres out of the land for raising chillies on a rent of Rs. 125 per acre. Nothing material affecting his veracity was elicited in his cross-examination. The adangal extracts Ex. B-21 series show that chillies were cultivated on the land in faslis 1355 and 1357. In Ex. B-2, the 1st appellant has stated that an extent of 4 acres was being leased out at Rs. 130 per acre. But P.W. 4's evidence supports this claim only in respect of 2-1/2 acres at the rate of Rs. 125 per acre. There was a well in the land giving a copious supply of water. It is therefore quite likely that a small extent of 2-1/2 acres was being used for raising chillies and was yielding a net annual income of Rs. 125 per acre either through leases of by

direct cultivation. Capitalising at 20 years' purchase, we consider that the proper market value of the extent of 2-1/2 acres out of the land is Rs. 2500 per acre.

21. With regard to the remaining extent of Ac 46-71 cents, there is no reliable evidence to show that the appellants were raising various' other crops as alleged by them and were deriving regular income therefrom. Sri K. Kotayya's contention is that it is suitable for raising casuarina topes and if valued as such is worth at least Rs. 1000 per acre. Admittedly the appellants raised no casuarina topes on the land. But it is urged that this was due to the fact that all the appellants were absentee owners who were living at Guntur and did not properly exploit the land. The learned Subordinate Judge was of the view that although casuarina trees were raised on certain neighboring lands, the appellants' land was higher in level and contained less moisture in its soil and if casuarina topes could have been raised on it the appellants would have leased the entire extent for the purpose and derived a good income instead of leasing small portions for chillies and for tobacco seedlings.
But the Land Acquisition Officer treated the soil of the appellants' land as similar to the neighboring lands on which casuarina topes were raised, giouped all of them as block 'A' and uniformly valued them at Rs. 600 per acre. P.W. 8 the Commissioner, stated in his report Ex. A-3 that casuarina trees can be grown on the land. No doubt R.W. 2, the senior lecturer of the Agricultural College has said "No casuarina can be grown in this land. It has not been grown on this land." But it was elicited in his cross-examination, "Sandy soil is more favourable for casuarina. There, is sandy soil in this land also. But it was not grown in this land." In a previous deposition Ex. A-10 he had said, "No special soil is required for raising casuarina topes. The nature of the soil does not make any difference to the tope. Loose sandy soil is much better for casuarina." Sri K. Kotayya urges that R.Ws. 2 and 4 have expressed themselves against the suitability of the land for raising casuarina topes merely because they did not find casuarina trees grown on it, that all that is required for the purpose is sandy soil and that the appellants' land is as suitable for raising casuarina topes as other lands grouped in the same block 'A' by the Land Acquisition Officer. This contention is not without considerable force. Even if the soil of the appellants' lane contains less moisture is observed by the learned Subordinate Judge, the defect is capable of being remedied by artificially irrigating the tender casuarina plants. This would only mean some additional expenditure and less income from raising casuarina topes. If as broadly appears from the evidence, the appellants' land is more or less similar to the neighboring lands on which casuarina trees have been grown and good income derived, this has to be taken into account and valued at least as one of the potentialities of the appellants' land.

22. The real difficulty in this connection is that the appellants have led absolutely no evidence as to the income from raising casuarina topes. In order to get over this difficulty, Sri K. Kotayya calls in aid the Judgment Ex. A-8 dated 20-9-3950 of the learned Subordinate Judge in the batch O. P. Nos. 5/50 etc., under Section 18 of the Land Acquisition Act relating to neighboring lands situated in block 'A' by which he enhanced the compensation, fixing the market value at Rs. 1000/- per acre on the basis of the income realised from casuarina topes. Another batch of O. P Nos. 105/50 etc. concerned with some more lands in block 'A', including O. P. No. 117/50 relating to S. NT No. 707/4 the subject-matter of Ex. B-I2, was disposed of by the learned Subordinate Judge on 5-11-51 with the same result. The appellants have filed C. M. P. No. 55247/56 for admitting the judgment dated 5-11-1951 us additional evidence although appeals therefrom are pending in this High Court. The appeals preferred against Ex. A-8 were disposed of by this High Court and judgments were delivered in 1950 whereby the compensation was

further enhanced to Rs. 2,000/- per acre for some of the lands and Rs. 1300/- for some other on the same basis for the determination of the market value. Sri E. Venkatesara conceded that these judgments of the High Court have become final and that no appeals are being preferred to the Supreme Court. The appellants have filed C. M. P. No. 2724 oi 1957 asking for the admission of these two judgments of the High Court as additional evidence. The date of the notification under Section 4 Sub-Section (1) in respect of all the lands is 23-8-1949. Sri K. Kotayya urges that when the High Court has determined the market value of a number of other lands in block 'A' on the basis of the income from raising casuarina topes to be as much as Rs. 2000/- and Rs. 1300/- per acre, the appellants' land with its potentiality for raiding casuarina topes is surely worth Rs. 1000/- per acre claimed by them.

23. Both the applications for additional evidence are opposed on behalf of the Government on the ground that the quality and the position of the lands and the evidence adduced in those cases were different. We have already indicated above that those cases dealt with more or less similar lands in the neighborhood. The real question is, whether as contended by Sri K. Kotayya, the judgments are admissible as evidence of the market value of the land concerned in them. If they are so admissible, the market value of the appellants' land may be determined with their assistance after making allowance for any difference in quality and situation. Their relevancy is governed by Section 43 of the Evidence Act, which declares such judgments to be irrelevant unless their existence is a fact in issue or is relevant under some other provision of the Act.

24. It has been authoritatively held in a number of sections that judgments in previous litigation to which one of the parties is also a party in the subsequent litigation are admissible under Section 13 as proof of transactions or instances mentioned in the section. In the case of AIR 1954 Supreme Court 379 judgments in two suits for maintenance instituted by the plaintiffs adoptive mother and in appeals therefrom were tendered as evidence in a subsequent suit for partition, in connection with the dispute as to whether certain properties belonged to the joint family or were self acquisitions. The extent of the joint family properties was in issue in the suits for maintenance and the prayer to charge the maintenance on the joint family properties in them was also granted. Their Lordships of the Supreme Court held that the judgments were admissible under Section 13 of the Evidence Act as assertions by the plaintiff's adoptive mother that the properties in issue in the partition suit belonged to the joint family. In the case of AIR 1931 PC 39 the controversy was whether one Thakur Sib Singh, the third son of a former Raja of Pandara Estate and the predecessor in title of the respondents, had got the Achra villages in the 17th century in partition of the estate as contended by the respondents. The appellants who represented the Pandara Raj asserted that the estate was impartible and that the Achra villages were given merely as a maintenance grant. The respondents attempted to establish partition by reference to a judgment in a suit instituted in 1793, to which the then Raja and his nephews were parties and in which the claim for partition was successful. The Judicial Committee said :

> "They think that the judgment in question is only admissible under the provisions of Sections 13 and 43, Evidence Act, as establishing a particular transaction in which the partibility of the Pandara estate was asserted and recognized, viz., partition resulting from the 1793 suit. The reasons upon which the judgment is founded are no part of the transaction and cannot be so regarded, nor can any finding of fact there come to, other than the transaction itself, be relevant in the present case. The judgment therefore is no

> evidence that Thakur Sib Singh got the Achra villages by partition. It is at most evidence that he might have done so, and this is plainly not sufficient."

It will be noticed that in the case before the Supreme Court the existence of a right was in dispute viz., the title of the joint family properties. Similarly, in the case before the Judicial Committee, the dispute was whether the Pandara Estate was impartible by custom. The opening clause of Section 13 mentions clearly that the section can be invoked only when the existence of any right or custom is in question. In the present case, the dispute is as to the quantum of the market value of the lands acquired. It would, in my opinion, be straining the language too much to say that such dispute raises a question as to the existence of a right in the Government to the lands acquired. I therefore find it difficult to hold that the judgments sought to be filed by the appellant are relevant under Section 13 of the Evidence Act.

25. Sri K. Kotayya strongly relies on the decisions in ILR 36 Cal 967 (PC) and AIR 1925 Calcutta 481. The case in *Secy. of State for India v. India General Steam Navigation and Ry. Co. Ltd. (supra)* arose out of a reference under Section 18 of the Land Acquisition Act. The Division Bench of the Calcutta High Court adopted the market price fixed for neighboring land in a previous judgment of the Chief Justice and justice Geidt and determined the compensation on that basis. The appeal from the decision of the High Court was dismissed by the Judicial Committee on the ground that no question of principle was involved. But it does not appear from the report of the judgment of the Division Bench that the previous judgment was actually treated as evidence of market value. The relevant sentence reads :

> "But basing our valuation on the evidence given in this case on both sides and taking into consideration such evidence, as to rates of rent, sales and awards, we are: inclined to value the land at very much the rates given by the learned Chief Justice and Mr. Justice Geidt for the land taken up at the corner of the Watganj and Garden Reach Roads."

Thus, the evidence that was taken into consideration and on which the valuation was based related to the rates of rent, sales and awards. The awards mentioned were those of the Collector for similarly situated lands and were dealt throughout the judgment separately from the previous judgment of the High Court. The award of a Collector is undoubtedly relevant as evidence of the market value, because he is regarded in connection with the proceeding more or less as an agent of the Government and his award stands on the same footing as an offer by an intending, purchaser. See *Gangadhara Sastri v. Dy. Collector of Madras*[12], It is true that under Section 26(1) of the Land Acquisition Act the term "award" includes the decision of the Court to which a reference is made. But it is clear to my mind from a perusal of ILR 36 Cal 967 (PC) that, the Division Bench used the term only with reference to the awards of the Collector. Therefore it cannot he said that the previous judgment of the Chief Justice and Justice Geidt was treated as evidence of the market values, although the conclusions therein were adopted by the later Bench on a consideration of the other evidence before them. The decision of the Judicial Committee on appeal is consistent with the view that the High Court did not, as a matter of fact, treat the judgment as such evidence. But the effect of the decision seems to have been construed differently in AIR 1925 Calcutta 481 where the learned Judges said :

[12]22 Mad LJ 379 and AIR 1933 Bom 361

> "In assessing the market value of a piece of land the price paid in other transactions relating to land in the neighbourhood must be of some value. What its value is, it is for the Court of fact to determine; but we hold that it cannot be rejected as inadmissible on the ground given in the judgment of the learned President.

For the view we take we have the authority of the Judicial Committee of the Privy Council in the case of *Secretary of State v. India General Steam Navigation and Rly. Co. (supra)*. In that case certain judgments of the High Court in other proceedings were relied on by the claimant. It was argued on behalf of the appellant to the Judicial Committee that these judgments were not evidence of the value of the land in dispute.
Their Lordships, after stating in their judgment that the High Court in a very careful judgment had revised the earlier awards, dismissed the appeal, holding that no question of principle was involved in it. There cannot be a clearer authority that previous decisions in Land Acquisition cases are relevant in a subsequent case where the market value of lands in the same neighborhood is in issue." With all respect, if the learned Judges meant to say that the findings of market value in previous judgments can be used in subsequent cases as evidence of the market value of the lands concerned, I have to express my dissent. The market value is the price that a willing seller may reasonably expect to obtain from a willing buyer. The prices that have been obtained from willing buyers of similar lands are relevant under Section 9 of the Evidence Act as facts which support or rebut an inference suggested by the issue raised as to what a willing buyer would have paid for the lands acquired. But adjudication of the market value is made by the Court under the Act, only where the price offered by the Government is not accepted by the owners and the parties are therefore unwilling buyers and sellers. The foundation of what is expressed by the Judicial Committee in ILR (1939) Mad 532), as a "friendly negotiation" between the parties is absent.

26. The general rule is that "as regards the truth of the matter decided, a judgment is not admissible evidence against one who is a stranger to the suit" - *Kesho Prasad Singh v. Mt. Bhagjogna Kuer*[13]. The principle is explained in Phipson on 'The Law of Evidence' (9th Edition, 1952) at pages 444 to 446 thus :

> "A judgment in personam is no evidence of the truth either of the decision or of its grounds, between strangers, or a party and a stranger, except (I) upon questions of public and general interest; (2) in bankruptcy, or (3); when so operating by contract, admission, or acquiescence. It must be remembered, however, that a judgment in personam is in all cases evidence between strangers of its existence and legal effect as distinct from its truth ....
> Though the above rule is well settled, the reasons for the rule are by no means so clear. Such judgments, when tendered against strangers, are sometimes said to be excluded as opinion evidence; sometimes as hearsay; but more commonly on the ground of res inter alios acta (or judicata) alteri nocere non debet. It being considered unjust that a man should be affected, and still more be bound, by proceedings in which he could not make defence, cross-examine, or appeal.

[13]41 Cal WN 577 at p. 585 : (AIR 1937 PC 69 at p. 74)

> This however, though a legitimate ground for refusing conclusiveness to such judgments, seems no satisfactory reason for denying them admissibility, since it is to be remembered that the objection of res inter alios acta will not suffice to exclude other and less solemn acts of strangers if relevant to the issue.
>
> It is sometimes said if a man is not to be bound by the acts of strangers neither should they be given in evidence against him; but there is no necessary connection between the two, ...
>
> For strangers against parties. Judgments in personam are said not to be evidence for a stranger even against a party, because their operation would thus not be mutual.
>
> * * * *
>
> A stranger to a judgment may also be bound by it if he has expressly so contracted .....
>
> A record is also sometimes received in favor of a stranger against one of the parties, as an admission by such party in a judicial proceeding, with respect to a certain fact.

This is no real exception, however, to the rule requiring mutuality, since the record is not received as a judgment conclusively establishing the fact, but merely as a declaration by the party which is prima facie evidence thereof; it belongs therefore to the subject of admissions rather than judgments. So, not appealing against an adverse judgment may operate as an admission by the party of its correctness." Under Section 26 of the Land Acquisition Act judgments awarding compensation have to specify the amount awarded as the market value of the land and the grounds thereof. When they have been implemented, their existence would be evidence of the price paid by the Government. As Sri E. Venkatesam says that the judgments of this High Court sought to be filed in C. M. P. No. 2723 of 1957 have become final and will be implemented, we allow them to be marked as additional evidence and the question will be whether they operate as admissions by the Government. So far as the judgment sought to be filed in C. M. P. No. 5524 of 1956 is concerned, it is pending in appeal and cannot possibly amount to an admission.

27. Under Section 48(1) of the Land Acquisition Act, the Government is at liberty to withdraw from the acquisition of only lands of which possession has not been taken. It appears that the Government have taken possession of the lands covered by the two judgments of this High Court soon after the awards were made by the Land Acquisition Officer. They are not at liberty to withdraw from the acquisition of those lands. It cannot therefore be said that the payment of the price awarded as the market value amounts, to an admission by the Government that the prices correctly represent the market value. In these circumstances, I am of opinion that the judgments can be of no assistance to the appellants.

28. However, it does not follow that the market value of Rs. 600/- per acre assessed on the basis of Ex. B-12 is correct. Apart from the infirmities of Ex. B-12 which we have already noticed, it is clear that the land sold under that transaction about 3 years or more prior to the acquisition was treated merely as land on which groundnut crop could be raised. The appellants are shown that casuarina can be raised on their kind.

It is not disputed that cultivation of casuarina fetches a higher income than cultivation of groundnuts. Portions of the appellants' land have been adapted for raising even more valuable crops like chillies, tobacco seedlings and fruit trees and are worth up to Rs. 2,500/- per acre.

There is considerable force in the appellants' contention that their lands have potentialities which have not been realized, mainly because they are absentee owners. We cannot also ignore the fact that even poor persons were prepared to pay for lands in the vicinity not less than Rs. 800/- per acre though for small extents for vise as house sites. As observed in the case of *Harish Churtder Neogy v. Secy. of State for India in Council*[14], exact valuation is generally impossible and assessment of approximate market value is all that could be aimed at. On an anxious consideration of the entire evidence and the circumstances, we are of opinion that the proper market value of the uncultivated sandy soil area is Rs. 750A per acre.

29. With regard to the pati soil, the appellants' claim for Rs. 1,250/- per acre is only consequential on their claim for Rs. 1,000/- per acre for the sandy soil. So far as the total area of the scattered plots of the pati soil is concerned, the learned Subordinate Judge accepted the report of the Commissioner who found them on measurement to be Ac. 10-66 cents. According to the Government it is only 4 or 5 acres. But it is conceded by Sri K. Venkatesam that there is no definite evidence to show that the Commissioner's measurement is incorrect. The more important point raised in the memorandum of Cross-objections is that the pati soil is not in any way superior to the rest of the soil in the appellants land. R.W. 3 conducted an analysis of the soil claimed to be pati soil and made a report of the results in Ex. B. 7. According to him, it is not typical pati soil, as the potash content was low. R.W. 5 the Land Acquisition Officer said that the land which was claimed to be pati soil was merely of a different colour from the rest of the soil and not real pati soil. R.Ws. 2 and 4, lecturers in the Agricultural College also said that there was really no pati soil in the appellants' land. The evidence of these witnesses, out of whom R. Ws. 2 to 4 have to be classed as experts, establishes that the land alleged to be pati soil in the appellants' land was only different in appearance from the rest of the soil and was not superior in quality.
It was not the pati soil as commonly understood. Nevertheless, the learned Subordinate Judge relied on the evidence of the appellants' witnesses on this question and held that the alleged pati soil must be better in quality. We find it difficult to agree with this conclusion.

30. P.W. 1 said that one acre of pati was included in the land leased under Ex. A-1 and he did not pay more rent on that ground. P.W. 2 the other lessee said that seedlings are not raised on pati land as they grow up quickly. P.W. 3, the appellants' gardener said that he did not see any pati earth taken from the appellants' land and that lie did not know the difference in income between pati and sandy soil. P.W. 5, the appellants' engine driver, stated that the fruit garden was raised on the pati earth area, which means that the pati soil does not have been valued separately from the garden. P.W. 7 the earlier gardener of the appellants said that the pati earth was not being sold or used for anything, The 1st appellant as P.W. 9 said that the pati earth area was being used for raising bobbara and joima. Taken as a whole, the evidence of the appellant's witnesses does not show that the alleged pati soil area was yielding or was capable of yielding better income than the rest of the land. The Commissioner appears

[14]11 Cal WN 875

to have merely measured the areas containing soil of different colour, which was shown to him by the claimants as pati soil. Holding that the alleged pati soil must be superior, the learned Subordinate Judge awarded 25 per cent more for it than the rest of the soil, simply because the appellants claimed Rs. 1,500/- per acre for pati soil as compared with Rs. 1,200/- per acre for the sandy area. In our opinion, the weight of evidence is in favour of the contention on behalf of the Government that the alleged pati soil was only different in appearance and not in quality. There is no basis for awarding a higher compensation for it.

31. The result will be that only Ac. 10-13 cents will be valued at Rs. 1000/- per acre. Ac. 2-50 cents at Rs. 2,500/- per acre and the entire remaining Ac. 46-71 cents at Rs. 750/- per acre.

32. The next item in dispute is the Ac. 3-56 cents of garden land. The gardens were in three plots and are conveniently designated is the guava garden measuring Ac. 0-78 cents, coconut garden measuring Ac. 1-46 cents and the cashewnut garden measuring Ac. 1-32 cents. As we have already mentioned above, Sri K. Kotayya does not dispute the valuation of the cashewnut garden at Rs. 804/-. He has confined his arguments to the compensation in respect of the guava garden and the coconut garden. He does not also raise any objection to the method of valuation adopted by the Land Acquisition Officer, viz., of capitalizing the estimated value of the annual net income from the fruit bearing trees by multiplying it with the estimated number of years they are expected to bear fruit and adding the fuel value of the trees which do not yield any annual income. The approved method for valuing orchards is to capitalise their net income at the number of years purchase which has to be fixed with reference to the nature of the trees and other circumstances. In the case of *Rajammal v. Headquarters Deputy Collector Vellore*[15], 20 years' purchase was allowed for mango trees and in *Shunmuga Velayuda v. Collector of Tanjore*[16], 10 years' purchase which was claimed was allowed for coconut trees. In *Elias M. Cohen v. Secy. of State*[17], the net income from an orchard was capitalized at 15 years' purchase. The Land Acquisition Officer based his valuation, on the figures of the net income and of the probable life of the trees in Ex. B-16 (a). This was the report of the R.W. 6, the junior lecturer in Agriculture who inspected the gardens on 10-12-1944 along with the Land Acquisition Officer and R.W. 4 the Assistant Lecturer in Agriculture.

33. Sri K. Kotayya's objection is that the number of years' purchase has been fixed too low in respect of the sapota trees in the guava garden and in respect of the citrus, lime and mango trees in the coconut garden. A further objection is that the coconut trees had yielding capacity and ought not to have been awarded only their fuel value. He relies for his contention mainly on the evidence of R.W. 4. Taking up the sapota trees first, which were 29 in number, they were valued at five years' purchase of the annual net income of Rs. 5/- per tree. The reason noted in Ex. B-16(a) is that they were planted rather close and in poor soil. The ages of the sapota and the other trees were not given in Ex. B-16(a), although R.W. 6 admitted that it was possible to estimate them. This omission lends support to Sri K. Kotayya's contention that the number of years for which the trees were likely to yield was not carefully estimated. R.W. 4 said

[15]25 Ind Cas 393: (AIR 1915 Mad 356 (2))
[16] AIR 1926 Mad 945 (2)
[17]43 Ind Cas 17 (2) : (AIR 1918 Pat 625 (2))

that each sapota tree in the appellants' garden would have yielded 500 to 1000 fruits in a year. It was elicited from R.W. 6 that the price of sapota fruits ranges from the 0-8-0 to Re. 1-8-0 nor hundred. Taking the mean yield to fee 750 fruits and the mean price in be Re. 1/- per hundred, the income from each tree works to Rs. 7-8-0 per year. The income is put at Rs. 5/- per tree in Ex. B-16 (a) which indicates that allowance was made for expenses of tending the trees and renewing them. Sri K. Kotayya does not assail this estimate of the income at Rs. 5/- per tree, but contends that the numbers of years' purchase should have been estimated, not at 5 years but at 15 years. This contention is well founded because R.W. 4 says that the trees were capable of yielding for another 15 years, if they were looked after well. Similarly, with regard to the 28 citrus trees other than the lime trees, they were valued by the Land Acquisition Officer consistently with the estimate in Ex. B-16 (a) at 5 years' purchase of the annual income of Rs. 5/-

per tree. R.W. 4 said that these trees were 10 to 12 years old and some 15 to 20 years old and that their life is 25 to 30 years. The 32 lime trees were valued at 10 years' purchase of the annual income of Rs. 3/- per tree. R.W. 4 said that they were 12 to 15 years old and some were 8 to 10 years and that the life of lime trees is 25 years or so. Thus Sri K. Kotayya's contention that the citrus and lime trees should also be valued at 15 years' purchase appears quite reasonable. Substituting 15 years purchase for the sapota, citrus and lime trees, the appellants are entitled to enhancement of compensation in respect of them by Rs. 1450/-, Rs. 1400/- and Rs. 480/- respectively.

34. With regard to the 4 mango trees in the coconut garden, the learned Subordinate judge has observed in paragraph 10 of his judgment that the claimants conceded that they were correctly valued at Rs. 200/-. We are therefore not prepared to accept Sri K. Kotayya's contention that the compensation for them has to be enhanced to Rs. 300/-. There remains the dispute with regard to the valuation of the 43 big coconut trees and 25 small coconut trees in the coconut garden. They were awarded only their fuel value of Rs. 2/- per big tree and Re. 1/- per small tree. The ground was that they were planted too close and were not at all yielding. But the evidence establishes that they were yielding coconuts. R.W. 2, the senior lecturer said :

> "Some of the coconut trees were yielding. Hereafter we want to pluck some coconuts. But some of the trees will have to be cut. Some of the trees were very close. Only after noting their yield can we estimate their real value. I do not think we have cut any of these trees till now. They are in a better condition after we took possession." R.W. 4 said :
> "The coconut trees are neglected ..... we have not cut any of those trees till now. Now the trees appear to be more green due to heavy manuring. We propose to cut from some of those trees. . . .. .They live for 50 to 60 years and have yielding capacity ..... These trees may be 30 or 35 years old" –

According to the report of the Commissioner who inspected them in August 1950, their condition was far from satisfactory and their yield must be much below the mark. Thus it appears that the coconut trees have been actually giving some yield and are intended to be preserved after the acquisition, as they are capable of giving better yield although same of them are proposed to be cut because they were planted too close.
They did not come up to the standard very properly expected for such trees by the experts R.Ws. 2, 4 and 6. But their neglected condition was probably due to the fact that the appellants were absentee owners. In the circumstances, Sri K. Kotayya's contention that they ought to have been valued as fruit-bearing trees and not at their fuel value is well founded. As R.W. 4's evidence shows that they had yielding capacity for another 15 to 25 years, their value has to be assessed at 15 to 25 years purchase of their annual income. But there is no reliable evidence as to the annual income from them. Sri K. Kotayya seeks to treat their fuel value fixed by the Land Acquisition Officer as their net annual income. Obviously, this cannot be done. The 1st appellant in his evidence estimated the income at Rs. 5/- per tree. Although this is consistent with his claim in Ex. B-19, it is probably an exaggeration and cannot be relied upon. The other witnesses have not given any evidence about the value of the yield, that could be expected. However, both the parties have not asked for additional evidence in this respect and have invited us to arrive at a valuation on the material available. In the case of AIR 1926 Madras 945 (2), the coconut trees

were capitalized at 10 years' purchase of the annual yield of Rs. 3/- per tree. That was a case of 1921, when the prices of coconuts were probably much lower than 1949. But there was definite evidence in that case as to the annual yield. We observe from paragraph 11 of the appeal memorandum that the appellants have claimed compensation for the four scattered coconut trees outside the garden at Rs. 16/- per tree, but have calculated at Rs. 15/- per tree in the valuation of the appeal. Making every allowance for the exaggeration in the 1st appellants' evidence and having regard to the fact that the trees are capable of yielding for another 15 to 25 years, we think that the value of Rs. 15/- per tree for all the 68 coconut trees is reasonable. On this basis, the enhancement of compensation in respect of the coconut trees comes to Rs. 909/-. Adding the enhancement of the compensation in respect of the sapota, citrus and lime trees, it would take the total value of the three plots of the garden beyond Rs. 7921-12-0 claimed in the appeal. We may also observe that the 32 guava trees in the guava garden, which were valued by the Land Acquisition Officer at 5 years' purchase of Rs. 2/- per tree may be properly valued at 15 years' purchase, because R.W. 4 said that they were 15 to 20 years old and that their life is 35 to 40 years. This would entitle the appellants to an enhancement of the compensation by Rs. 640/- and would take the total value of the gardens very near the figure Rs. 7923-12-0, even if the Land Acquisition Officer's valuation of the coconut trees is retained. Sri K. Kotayya did not press for the enhancement of the valuation of guava trees because he considered it unnecessary for his purpose and as Sri E. Venkatcsam did not seriously object to the total valuation of the gardens at Rs. 7921-12-0. On a careful consideration, we are of the opinion that the appellants are entitled to Rs. 7921-12-0 claimed by them in respect of Ac. 3-56 cents of garden land.

35. Before leaving this item, we would observe that we have not omitted to take note of the fact that the appellants claimed before the Collector only at the rate of Rs. 40/- per tree for the sapota, guava, citrus and lime trees. But no point under Section 25 arises nor has been taken on behalf of the Government. The reason is that the words "the amount so claimed" in Section 25 mean the total amount claimed before the Collector and not any claim under any particular item or head comprised in the total amount. 22 Mad LJ 379 (L); *Secy. of State v. F.E. Dinshaw,*[18] The total amount of

[18] AIR 1933 Sind 21

compensation claimed by the appellants before the Collector far exceeds the amount allowed by us.

36. The next two items in dispute relate to the Mangalore tiled house and the well. The Land Acquisition Officer's award of Rs. 1400/- and Rs. 170/- respectively for them is based on their valuation by R.W. 1, who was the Assistant Engineer, Buildings Division (Special), Bapatla. Sri K. Kotayya's criticism is that the house was locked when R.W. 1 inspected it and that R.W. 1 saw the material inside only by peeping through the windows. We do not consider that this would have disabled R.W. 1 from making a proper valuation. He has given the detailed particulars on which his estimate is based in his report Ex. B-3. Sri K. Kotayya relies for his claim of Rs. 5000/- for the house and Rs. 750/- for the well on the evidence of P.W. 6, a mason of Bapatla, whom the 1st appellant took for the purpose of valuing them. According to P.W. 6, it would cost about Rs. 9,000/- to construct the house and Rs. 3000/- to construct the well in 1951. He did not give adequate particulars in support of his estimate nor the allowance that has to be made for depreciation, as the house and well were constructed several years earlier. We see no reason to differ from the learned Subordinate Judge, who declined to accept his evidence in preference to that of R.W. 1. Sri K. Kotayya also relies on the evidence of P.W. 8, the Commissioner, who

valued the house at Rs. 2,500/- and well at Rs. 750/-. But P.W. 8 is a pleader and an expert witness, as compared with H.W. 1. His lump sum valuations without the particulars on which they are based do not carry conviction. We agree with the learned Subordinate Judge that the amounts of compensation awarded for the house and the well were correct.

37. The only remaining item in controversy is the fencing of palmyrah and chillakampa plants. The Land Acquisition Officer awarded a compensation of Rs. 50/- as the cost of labour for raising the fence. Sri K. Kotayya contends that the Commissioner counted 3538 plants in the fencing and each plant has, to be valued at Re. 0-3-0. With regard to the chillakampa plants, he similarly relies on P.W. 8's estimate that they would have given 84 cart loads of fuel, each cart load being worth of Rs. 5/-. But P.W. 8 admitted that he did not fix the boundaries between the land acquired and the neighboring lands. Thus there is considerable force in the contention on behalf of the Government that the palmyrah plants counted by him might not have belonged to the appellant at all. The price claimed. Re. 0-3-0 per plant, is based on an answer by R.W. 5 in cross-examination that Re. 0-3-0 is allowed for a plant in the Collector's , Standing Order. But this has reference only to cases of assignment of lands by the Government and has no bearing on the market value of the plants. The evidence of the appellants' gardener P.W. 7, shows that the fence was raised by merely planting palmyrah nuts and watering them a couple of summers. Having regard to the uncertainty of the ownership of the plants, compensation has to be assessed only with reference to the expenditure incurred on the labour for raising the fence. With regard to the chillakampa plants, the appellants' own gardener P.W. 7 said that chillakampa was not used as fuel. As observed by the learned Subordinate Judge the cost of the labour the trouble involved in cutting the thorny chiliakampa plants would not have made it worth-while, in that place to sell it as fuel. In our opinion, the evidence as a whole does not warrant any interference with the award of Rs. 50/- for the fencing.

38. The appeal is allowed to the extent of enhancing compensation under Section 23(1) for Ac. 10-13 cents at Rs. 400/- per acre, (2) for Ac. 2-50 cents at Rs. 1900/- per acre, (3) for Ac. 46-71 cents at Rs. 150/- per acre and (4) for Ac. 3-56 cents of garden land by Rs. 4068-8-0. Of course the appellants will also be entitled to the statutory solatium of 15 per cent under Section 23(2) of the Act. The parties will pay and receive proportionate costs throughout. The memorandum of cross-objections is dismissed with costs.

Order accordingly.