(1931) 11 PAT CK 0003

In the Patna High Court

Abdul Haque and Others APPELLANT

Vs

Secy. of State and Others RESPONDENT

Date of Decision : 17-11-1931

Acts Referred:
Bengal Tenancy Act, 1885 — Section 87
Land Acquisition Act, 1894 — Section 54

Citation : AIR 1932 Patna 120

Hon'ble Judges : Jwala Prasad, J;James, J

Bench : Full Bench

Judgement

James, J.—This is an appeal u/s 54, Land Acquisition Act. The land in question, which was in possession of occupancy raiyats at the time of acquisition, consists of 1 bigha 5 kathas of bhit land adjoining the compound of the Munsif''s Court at Siwan. On a reference to Court the District Judge valued the land at Rs. 700, allowing Rs. 100 to the proprietors and Rs. 600 to the tenants. The proprietors have appealed from his decision, claiming that the market value of the land is Rs. 3,000 a bigha and that they are entitled to a one-fourth share in the apportionment.

2. The land adjoins the compound of the Munsif''s Court; and in the immediate vicinity are the local Magistrate''s Court, the Dak Bungalow, Post Office, Land Registration Office and other public buildings. It was at the time of acquisition under cultivation with crops standing on it, and the learned District Judge valued it on the assumption that it was agricultural land and not a prospective building site. Mr. Abani Bhusan Mukharji on behalf of the appellants argues in the first place that this land ought to have been treated rather as an eligible building site than as merely agricultural land, lying as it does between the Munsif''s Court and the road, and in the immediate neighbourhood of all the principal public offices of the Siwan Subdivision. The learned District Judge has remarked that the land in its existing condition could not be used as a building site, but this apparently means no more than that the land had not been prepared for building, since he has also observed that the land is upland and indeed, if the land were unsuitable

for building purposes, it would not be acquired by Government for the purpose of erecting on it houses for Government officials.

3. The learned District Judge says that a considerable outlay would be required to render the land suitable for the purposes of a building site; but however smooth a maidan may be, one does not proceed to build a pucca house merely by laying bricks on the top of the soil; and considerable outlay always is required to convert a site, on which buildings have not hitherto been erected, into the foundations of a proper house. It appears to be clear that in estimating the market value of this land we ought to take into consideration the prices paid for building land or sites of houses in the vicinity in recent years.

4. Regarding sales of this kind of land or indeed any kind of land in the vicinity, the evidence is meagre. The earliest sale proved on behalf of the appellants is of January 1913, in which one and half kathas of land were sold for Rs. 200: Ex. 1-b. A house was standing on this land which was also valued at Rs. 200; and the learned Government Pleader suggests that the existence of a standing house may be taken to have enhanced the value of the land and that since Rs. 400 was the price of the whole little reliance is to be placed on the apportionment of Rs. 200 as the price of the land. In 1919 6 kathas of land in Siwan town was sold to Sheikh Abdul Huq for Rs. 1,000: Ex. 1-c. This land also had a house standing on it; but it was separately valued at Rs. 500. In 1920 Sheikh Muhammad Kasim purchased 1 katha 15 dhurs of land in Siwan town, on which a house was standing, for Rs. 600 of which half is stated as the value of the land and the rest as the value of the house Ex. 1. In 1922 Abdul Huq purchased a house lying on 1 katha 18 dhurs of land in Siwan town for Rs. 1,999-15-0, assigning in the deed Rs. 1,499-15-0 as the price of the house and Rs. 500 as the price of the land. On the other hand sales at lower rates were proved on behalf of the Secretary of State. In 1899 Abdul Rahman purchased 11 bighas 11 kathas of land in Siwan for Rs. 500 (Ex. B) and again in 1916 he purchasad 15 kathas 9 dhurs of land for Rs. 700 (Ex. B-4). In 1920 he executed a deed transferring 3 kathas of the land with which we are here concerned to Hafiz and Amanatullah for Rs. 300 (Ex. C). In 1922 Abdul Rahman sold 9 kathas 9 dhurs for Rs. 400 Ex. B-3. In 1925, after the date of the notification in the present case, Mt. Murti sold 5 kathas and 7 dhurs of land close to the land with which we are here concerned for Rs. 400: Ex. B-5.

5. It appears from the evidence of Abdul Majid, who is the appellants'' manager, that about ten years ago 10 kathas of land close to the land in suit were sold for Rs. 600 for the Bar Library. From these sales which show such varying rates it is not easy to deduce what should be the proper market value. The learned District Judge, treating the land as agricultural or horticultural land, remarks that it is unfortunate that the only instance of the sale of land of this description is the sale of 24th October 1925 made by Mt. Murti (Ex. B-5); and he observes that the purchaser in that instance was compelled to pay a high price because he was badly in need of the land. But there does not appear to be any special

justification for the assessment by the learned District Judge of the value of this land at Rs. 30 a katha which is lower than the rate paid in any of the private sales which have been proved except one which took place in 1910. The Bar Library paid Rs. 600 for the acquisition of 10 kathas of land close to this plot. They would probably pay a fair price, but not an extortionate one; and on the whole it appears to us that Rs. 60 a katha should be taken as representing the market value of this land.

6. We come now to the question of apportionment. Mr. Abani Bhusan Mukharji suggests that as the landlords are by local custom entitled to a share of one-fourth of the purchase-money on the transfer of an occupancy holding, that proportion of the market value should be treated in this case as the landlords'' share. It is suggested by the learned Government Pleader that the landlords failed to prove that they were entitled to such a share of the purchase-money as nazarana on transfers; but evidence of the custom was given by the landlords'' Manager Abdul Majid, which has not been rebutted by any evidence to the contrary; and indeed there is nothing surprising or improbable in the evidence on this point which should lead us to regard it with suspicion. We find that this custom has been proved. The occupancy holding was not transferable without the consent of the landlord; but the position described by the manager may be as adequately expressed by saying that the tenants have a right of transfer to an approved vendee, and that the landlord has a right to one-fourth of the consideration for the transfer.

7. The learned Government Pleader has drawn our attention to the fact that in the executive instructions contained in the Land Acquisition Manual at p. 100 it is remarked that the acquisition of an occupancy holding is not a transaction which requires the landlord''s consent, and a landlord is not therefore entitled to receive as compensation one-fourth (or whatever the customary proportion may be) of the amount awarded to the raiyat as compensation for his interest. The instruction there given is that the value of the landlord''s reversion, including a prospective transfer fee, is to be assessed on the materials before the officer. It appears to us that this right to receive as premium an exact proportion of the market value of the property is one which ought not to be ignored, when, as in the present case, the custom is found to be reasonable.

8. The whole estate in land of which the market value is ascertained consists, first, of the occupancy right of the tenant, and secondly of the rights of the landlord. The rights of the landlord, as the learned Government Pleader points out, consist of the rent charge and the reversion, included in which is his right to nazarana on transfers. The right of the tenant is to occupy the land subject to payment of rent with a limited right of transfer by which he is entitled only to three-fourths of the market value of the right to possession of the land. If the value of the tenant''s property is limited by a reasonable local custom to three-fourths of what would be paid in the open market for the right to possession, it is difficult to see why in an acquisition under the Land Acquisition Act the value of

the right should be placed higher, or why the landlord should not receive his customary fee on this transfer, merely because he has not the power of with holding his approval. No particular reason has been assigned by the learned District Judge for the manner in which he has apportioned the compensation in the present case, and it would appear to be difficult to find any logical basis for his apportionment. Indeed, if the landlord or tenant is to receive less or more than the amount which he would ordinarily receive in the event of a private sale, conducted in complete good faith on all sides, we are driven to a speculative valuation of the various rights involved in the reversion, which would almost certainly result in the end in an arbitrary apportionment of the value. I consider therefore that as I have said the occupancy right should be held to be worth to the tenant three-fourths of the price which is ordinarily paid for the right to enter into possession of the land, because those are the terms on which he is entitled to transfer.

9. The rate adopted for the market value in the present case is assumed to be the rate payable for land which after purchase is free of any rent charge. The value of the tenant''s interest is therefore to be reduced by the capitalized value of the landlord''s rent charge. The capital value of the rent charge, after making allowance for the abatement of Government revenue, may be taken at thirty rupees.

10. The result is that the award of the learned District Judge must be modified to the following extent:

11. The landlords will be entitled to Rs. 375 plus a sum of Rs. 30 which represents the value of their rent charge with the usual compensation at 15 per cent. As the tenants have not appealed so much of the award of the District Judge as concerns the compensation to be granted to them stands unaffected by this order.

12. The appellants have partially succeeded, but their claim was exaggerated and they may bear their own cost in this Court.

Jwala Prasad, J.

13. I entirely agree both as to the market value of the land and as to the apportionment of the same between the landlord and the tenant.

14. The latter question is of some importance and I would therefore say a few words in that connexion. The fact that the acquisition is compulsory to my mind has no bearing on the question of apportionment. The market value is ascertained under the statutory provision in the Land Acquisition Act by finding out what a willing purchaser will pay to a willing seller in respect of the land acquired. The apportionment of the value thus ascertained is to be made according to the value of the interests of the several persons in the land acquired. The holding in question is nontransferable and any transfer there of without the consent of the landlord would entail an abandonment of the holding

u/s 87, Ben. Ten. Act. So the tenant has no right to transfer it without the consent of the landlord, and as such if he chooses to do so without such consent, his interest would fetch no value at all. The landlord has right to receive rent of the land from the tenant and to prevent its transfer by the tenant, and thus he has a right to fix a value for his consent given for any transfer. If there has been no fixed value for consent of the landlord to the transfer it would have to be ascertained by inquiry as to what he would have expected to have gained in the shape of nazarana for giving his consent; but if there is, as in this case, evidence of the fact that the landlord charges 25 per cent, on the consideration money, there is no difficulty in ascertaining the value of his interest in the land and his share in the market value there of. In the present case it has been established by exparte evidence which has not been rebutted that the landlord''s fee for giving consent has always been 25 per cent of the market value and the Land Acquisition Deputy Collector, in his order of reference has referred to this fact as well established in the locality.

15. The learned Government Pleader objects to the landlord getting 25 per cent of the consideration merely upon the ground that the transfer of the holding was compulsory. It is compulsory in the sense that it does not depend upon the will either of the landlord or the tenant, and as it is compulsory additional compensation of 15 per cent on the market value is paid under the Act; but otherwise the fact that the acquisition is compulsory does not affect either the market value of the land or the apportionment there of among the interests owned by different persons. The rent of each holding is 15 annas a year and certainly the value of that, at the rate of 20 year''s purchase or so, does not truly represent the value of the landlord''s interest there in.

16. Apart from his having certain rights in reversion, he has in this case (the holding being non-transferable) a definite right of taking nazarana on a transfer made by the tenant. Interests of the landlord in non-occupancy holdings have never been considered to be only a certain per cent of the rent received by him. The principles upon which the landlord''s interest in such cases is based, though under different rent laws, are to be found in F. G. Natesa Ayyar v. Kaja Maruf Sahib AIR 1927 Mad. 489, Rohan Lal Vs. Collector of Etah, and Secy. of State v. Chuni Lal AIR 1931 Lah. 207. Two cases of the Calcutta High Court under the Bengal Tenancy Act may also be usefully cited: Godadhar Das v. Dhunput Singh [1881] 7 Cal. 585 and Nibas Chandra v. Bipin Behary AIR 1926 Cal. 846. I therefore agree entirely with my learned brother.

