

(1930) 05 PRI CK 0011

In the Privy Council

Case No : Privy Council Appeal No. 26 of 1929

Ahidhar Ghosh

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 01-05-1930

Acts Referred:

Citation : (1930) AIR(PC) 249(2)

Hon'ble Judges : Lords Tomlin, Thankerton and Russell of Killowen, JJ.

Advocate : L.De Gruyther and B. Dube, for Appellant; A.M. Dunne and W. Wallach, for Respondent. Solicitors for Appellant, Watkins and Hunter; Solicitors for Respondent, The Solicitor, India Office.

Judgement

Lord Tomlin -This is an appeal from a judgment and decree, dated 23rd May 1927, of the High Court of Judicature at Fort William in Bengal, by which a judgment and decree dated 18th March 1925, of the Special Land Acquisition Judge at Alipur was varied.

The nature of the case is this: The Municipality of Calcutta required certain land in Michael Dutt Street in Calcutta, and accordingly invoked the machinery of the Land Acquisition Act, 1894, for the purpose of securing the property. Under that Act anybody seeking to acquire land sets the Government Collector in motion by means of a number of declarations and notifications which need not be specifically referred to. Under S. 11 of the Act, on a day which the Collector fixes, the Collector proceeds to inquire into the objections, if any, raised by the persons interested. He inquires into the value of the land and the nature of the interests therein. It is his duty to make an award as to the true area of the land, the compensation which in his opinion should be allowed for the land, and the apportionment of the compensation among the persons interested. S. 18 provides:

"Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement

of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested."

Under sub-S. (2) of the same section the application must state the grounds on which objection to the award is taken. Then the matter goes to the Special Land Acquisition Judge, and under S. 23, sub-S. (1), in determining the amount of compensation to be awarded for the land acquired under the Act the Court has to take into consideration the market value of the land at the relevant date.

Section 25, sub-S. (1), provides:

"When the applicant has made a claim to compensation pursuant to any notice given under S. 9 the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under S. 11."

It is necessary also to refer to the Calcutta Municipal Act, 1899. S. 557 of that Act provides:

"Any land or buildings which any municipal authority is authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and for that purpose the said Act shall be subject to the following amendments."

The amendments include one sub-S. (d) to this effect-

"The market value of the land or building shall until the contrary is shown be presumed for the purposes of the said Cl. 1, sub-S. (1), S. 23 "(i.e., of the Land Acquisition Act, 1894)," to be 25 times the annual value of the property as entered in the assessment book prescribed by this Act."

Under the Calcutta Municipal Act provision is made for the maintenance of a book in which the assessments of lands and buildings are entered, and S. 151 of the Act defines how the annual value of the buildings and lands is to be ascertained.

What happened was this: The Collector in due course, made an award, and the amount of his award was Rs. 69,778 for the land. There was something else awarded in respect of the structures. The appellant, who was interested in the land, was dissatisfied with the award, and under S. 18 he claimed a reference to the Special Land Acquisition Judge. The matter accordingly came before that Judge, and evidence was called before him, and he ultimately awarded Rs. 81,773. In making that award he proceeded upon the footing of accepting the evidence of a Mr. Johnstone, a civil engineer, who was called as an expert by the persons interested in the land, and who gave evidence as to the value of the land. The Special Land Acquisition Judge accepted Mr. Johnstone's figures with one variation, namely, an increase in the amount of certain deductions by substituting for a 6 per cent, basis a 10 per cent basis.

An appeal was taken to the High Court, and the High Court reversed the judgment of the Special Land Acquisition Judge and affirmed the award of the Collector. In doing that they proceeded upon the footing: (1) that they were not

prepared to accept the evidence of Mr. Johnstone, and that the presumption which arises under S. 557, sub-S. (d), Calcutta Municipal Act, 1889, therefore operated; and (2) that though the amount awarded by the Collector exceeded the amount calculated in accordance with the presumption his award must stand having regard to S. 25, sub-S. (1), Land Acquisition Act, 1894.

The principles which govern their Lordships' Board in dealing with questions of this kind were stated by Lord Buckmaster in the case of Narsingh Das v. Secy. of State, AIR 1925 PC 91. In the judgment this passage occurs at p 135 (of 52 IA):

"The matter therefore must be considered and determined in the same manner as if it were a judgment from a decree in an ordinary suit, but it has been repeatedly laid down by the Board that in such, cases they will not interfere with judgments of Courts in India as to matters involving valuation of property and similar questions, where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached unless there is something to show not merely that on the balance of evidence it would be possible to reach a different conclusion but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied."

An examination of the judgments of the High Court shows that they had before them in regard to value the evidence of Mr. Johnstone and no other expert evidence at all, that they considered and criticized Mr. Johnstone's evidence, and that in the end they came to the conclusion that they could not accept his view as to value. Further, there being no evidence of value other than Mr. Johnstone's evidence, they took the view that in those circumstances the presumption must prevail.

Their Lordships are of opinion that it has not been made out that there was any wrong application of principle by the High Court in the rejection of Mr. Johnstone's evidence or that any important point in the evidence was overlooked or misapplied. In these circumstances their Lordships are of opinion that they are not in a position to disturb the conclusion at which the High Court arrived. The appeal must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.