

(1937) 07 CAL CK 0025
In the Calcutta High Court

Ananta Ram Banerjee

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 09-07-1937

Acts Referred:

Calcutta Improvement Act, 1911 — Section 63(4)

Citation : AIR 1937 Cal 680

Hon'ble Judges : R.C. Mitter, J;Guha, J

Bench : Full Bench

Judgement

R.C. Mitter, J.—Premises No. 26, Durga Charan Mukherjee Road in the town of Calcutta which comprises an area of 4 Cottas 12 ch. 30 sq. feet, of which the appellant was the owner, fell within the road alignment of a "projected street" in Scheme No. 9 prepared by the Board of Trustees for the Improvement of Calcutta. The appellant desired to erect a building thereon and in accordance with the provisions of Section 63(4), Calcutta Improvement Act, applied to the said Board for permission to erect the same. The Board refused permission, whereupon he demanded acquisition by the Board of the said premises. Negotiations thereafter were started with a letter written by the appellant to the Board on 31st October 1930. This letter has not been produced but the reply has been (Ex. K). The said negotiations were carried on between Mr. Dutt, an advocate of this Court, acting on behalf of the appellant and Mr. Ganguly, the Assistant Valuer of the Board, from 14th November to 26th November 1930. At all these negotiations it appears that the appellant was also present. These negotiations terminated in an agreement for the acquisition of the whole of the said premises No. 26 Durga Charan Mukherjee Road. The appellant agreed to a price of Rs. 1,225 per cotta for the land plus statutory allowance of 15%. The terms of the agreement he put down in an application dated 26th November 1930 addressed to the Chairman, Calcutta Improvements Trust (Ex. A.2.16). Para. 5 of the said application runs as follows:

That your petitioner is willing to accept Rupees 1,225(one thousand two hundred

and twenty five) only per cotta as value of the land besides statutory allowance and other allowances and costs as provided under law and that the said entire premises may be acquired in the course of two months.

2. The prayer was as follows:

Under the circumstances your petitioner prays for acquisition of the said premises as soon as possible.

3. Mr. Dutt's evidence is that although his client, who was then in need of money, at first insisted on the acquisition within two months as a condition precedent-it was on this view the period of two months must have been mentioned in para. 5 of the said application, Ex. A-Mr. Ganguly pointed out that it would not be possible to acquire the same within the said period through the machinery of the Land Acquisition Act and would not have the said term as a condition. Finally it was agreed between his client and Mr. Ganguly that the term about the acquisition within two months was not to be a condition at all. The effect of the agreement between the appellant and Mr. Ganguly therefore was (1) that the whole of premises No. 26, Durga Charan Mukherjee Street was to be taken over by the Board; (2) that the property was to be acquired by the Board through the machinery of the Land Acquisition Act, and (3) that the appellant would get compensation for the land at the rate of Rs. 1,225 per cotta plus statutory allowance of 15%.

4. As the premises was to be acquired according to this agreement through the machinery of the Land Acquisition Act, the Chief Valuer of the Board of Trustees put himself in communication with the Land Acquisition Collector. By a letter written by him to the latter on 5th December 1930(Ex. O-II-18) he asked the latter to prepare a revised estimate for the acquisition of the whole premises No. 26 Durga Charan Mukherjee Road on the basis of the agreed price of Rs. 1,225 per cotta for the land. With this letter was enclosed a copy of the appellant's aforesaid petition dated 26th November 1930, i.e. a copy of Ex. A. The Land Acquisition Collector prepared an estimate and forwarded the same with his covering letter dated 23rd December 1930(Ex. G). His estimate was also marked as part of Ex. G but it has not been printed in the record. As it is a very important document, we have looked into the original estimate of the Collector. In this estimate he valued the land separately at Rs. 1,225 per cotta and expressly stated that he proceeded on that figure as it was the price agreed to by the owner and the Board. Thereafter by a final resolution passed at a meeting of the Board of Trustees held on 17th January 1931 the Collector's estimate was approved (Ex. H-II-20). The Board thereafter obtained the necessary sanction from the Local Government and proceeded with the acquisition through the Collector.

5. These facts lead us to the inevitable conclusion that the Board accepted the offer of the appellant as contained in Ex. A, with the term of the acquisition within two months being left out. We cannot accordingly accept the appellant's

contention that there was only an agreement on 26th November 1930 between the appellant and Mr. Ganguly and that there never was any agreement with the Board of Trustees about the price. This argument was presented before us by the appellant with the express purpose, as his advocate stated, of avoiding the said agreement relating to compensation for the land, the argument being that Mr. Ganguly had no authority to enter into any agreement on behalf of the Board and as the Board could have repudiated the said agreement concluded with Mr. Ganguly, there was no contract between his client and the Board. We hold that action of the Board culminating in its resolution dated 17th January 1931 was the ratification of the action of Mr. Ganguly and constituted acceptance of the appellant's offer as contained in his petition Ex. A, subject to the modification indicated above. There was therefore a contract between the appellant and the Board by which the appellant was bound to accept Rs. 1,225 per cotta plus statutory allowance of 15 per cent. as compensation for the land. The actual work of acquisition was however started by the Collector later on. He received the Local Government's order authorizing him to acquire the premises on 13th August 1931 and issued general notices and directed the Surveyor and Valuer, Romesh Babu, to submit his card. The Surveyor submitted his card on 24th August 1931, whereupon the Collector directed special notices to issue upon persons interested in the premises and fixed 16th September following for submission of claims. On 14th September 1931 the appellant filed his claim wherein he only disputed the area, and the tenants who were then on the land also filed their claims. All of them including the appellant were directed to file their respective title deeds. The appellant could not file title deeds but he filed municipal tax receipts and an affidavit. The Collector thereafter inspected the property on 4th January 1932 and passed an order on the same date as follows:

Inspected. Show offer to landlords and hut owners or representatives and put up on 13th January 1932.

6. The landlord mentioned in the said order is the appellant, and the hut owners, his tenants, who had preferred claims before, they having no interest in the land beyond that of thica tenants. The matter was adjourned to 25th January 1932 on which date the Collector having apparently forgotten that the appellant had already agreed with the Board to accept Rs. 1,225 per cotta offered to him Rs. 1,500 per cotta. This offer we hold was not accepted by the claimant or his pleader on that day and the matter was left over for further bargaining at a future date. On the next day fixed for further bargaining, Mr. Phani Kumar Nandi an assistant valuer of the Board drew the attention of the Collector to the fact that the appellant had previously entered into an agreement with the Board by which he bound himself to accept Rs. 1,225 per cotta and in support of his statement produced the appellant's petition Ex. A. The Collector thereupon made and signed his award on 3rd March 1932 by which he gave the appellant Rs. 1,225 per cotta for the land plus statutory allowance. The ground for fixing the compensation for the land at that figure was stated by the Collector in the following terms:

This was an alignment case in which acquisition proceedings were taken up at the instance of the claimant who demanded acquisition u/s 63, Calcutta Improvement Act and agreed with the Trust for land value Rs. 1,225 per cotta. Award was made accordingly.

7. On 8th April 1932 the appellant filed his petition, for reference. In the said petition, no express reference was made to the said agreement, nor was the same challenged. Neither did the appellant say that there was no agreement between him and the Board. Three grounds are given namely (1) that the award was too low, (2) that the Collector ought to have given the market value according to the provisions of the Land Acquisition Act, and (3) that the claimant claims Rs. 2,000 per cotta as the market value of the land. When the reference came to be heard before Calcutta Improvement Tribunal, the Secretary of State raised an issue in bar, the contention raised being that the said Tribunal could not go into the question of market value as there was a contract between the claimant and the Board by reason of which the claimant had agreed to take Rs. 1,225 per cotta. The appellant took up the position that there was no doubt a contract but there was a condition in it, which was an essential one, that the acquisition was to be completed within two months of the date of the said contract. The learned President with whom the assessors agreed held that there was no such term in it and decided the issue in bar in favour of the Secretary of State and refused to consider the evidence of market value.

8. The claimant has preferred the aforesaid appeal before us with the leave of the learned President. His learned advocate Mr. S.M. Mullick has raised the following points before us: (i) That there was no contract between his client and the Board relating to the compensation to be paid for the land, the agreement between him and Mr. Ganguly, the Assistant Valuer of the Board, having no legal effect; (ii) that even if there was a contract between the claimant and the Board, there was a term that the acquisition was to be within two months of 26th November 1930 and time was of the essence of the contract. The acquisition being about a year and half from that date, the contract with the Board has been discharged; (iii) in spite of the contract the Collector was bound to make his award on the basis of the market value, there being no contract between the claimant and the Collector, and (iv) on a reference made u/s 18, Land Acquisition Act, the learned President was bound to determine the market value on the evidence produced before him and to make his award in accordance therewith.

9. We have already dealt with the first two points in the earlier part of this judgment and for the reasons already given by us we hold that there was a contract between the appellant and the Board by which the appellant agreed to take compensation for the land at Rs. 1,225 per cotta, plus statutory allowance on the land being acquired through the machinery of the Land Acquisition Act and that there was no condition that it was to be acquired within two months from the date of the contract. We will now take up the third and fourth points raised before us.

10. The appellant's contention has been put forward by learned advocate Mr. S.M. Mullick in the following manner. He says that when land is acquired under the provisions of the Land Acquisition Act, there are three parties to reckon with. The first party is the owner, the second party is the Government represented by its agent the Collector, and the third party is the party for whom it is acquired. A contract between the first and the third party is not binding on the second party, the Government, on the ground that the latter is not a party to the contract. The Collector who is the agent of the second party and not of the third must therefore ignore the contract and proceed to discharge his statutory duties. It is said that these statutory duties are to issue the notices mentioned in Section 9 of the Act and to enquire into and determine the market value of the land in accordance with the directions of the Legislature as contained in Section 11. If the person for whose benefit and at whose instance the land is being acquired wants to take advantage of any contract between him and the owner, his remedy is to go to the Civil Court; he cannot have any advantage from the contract in the land acquisition proceedings, either in the proceedings before the Collector or before the Special Judge. These principles, he says, are deducible from Lord Buckmaster's judgment delivered in *Fort Press Co. Ltd. v. Municipal Corporation, Bombay* AIR 1922 P C 365.

11. We do think that the said judgment instead of helping the appellant, is against him. There the Municipality of Bombay, which had power to acquire land started negotiations in the year 1916 with the Fort Press Co. Ltd. for the purpose of purchasing the land by private treaty. These negotiations continued till 1917 and while they were still pending with no bright prospect of terminating in a contract, proceedings for compulsory acquisition under the Land Acquisition Act were started. The Local Government issued the Notification for acquisition under the Land Acquisition Act on 17th July 1917. Notices u/s 9 of the said Act were issued by the Deputy Collector on 22nd August 1917. While the Collector was holding enquiries for determining the market value, negotiations again started between the Fort Press Co. Ltd. and the Municipality and culminated in a contract on 12th September 1917, the former agreeing to take Rs. 1,45,517 for the land inclusive of statutory allowance. This contract was brought to the notice of the Collector, but later on the Fort Press Co. Ltd., took up the position before the Collector that there was no such contract. The Collector adjourned his proceedings and asked the parties to take steps to settle whether or not a bargain had been made between them. On that the Municipality brought a suit against the Company for a declaration that there was such a contract which was binding on the Company and for a declaration giving effect to the contract in the land acquisition proceedings. Both the Courts in India found the contract as pleaded established, and made a declaration that the Company was not entitled to claim in the proceedings before the Collector under the Land Acquisition Act any sum for compensation other than Rs. 1,45,517 or to proceed in those proceedings on any other footing. [AIR 1920 Bom 156 .]

12. The Company appealed to His Majesty in Council and the counsel appearing

for them contended that:

13. "(1) The Indian Act (Land Acquisition Act) gives an overriding power, vested in the Government, to settle the compensation by the procedure under the Act" and (2) No binding contract could be made by the parties after the proceedings under the Act had been instituted".

14. Both these contentions were overruled by Lord Buckmaster. The disagreement of Lord Buckmaster on the first of the aforesaid contentions, if that contention was intended to mean that in all cases the Collector must ignore the contract, cuts at the root of Mr. S.M. Mullick's argument to the effect that in spite of the contract pleaded and established, the Collector was bound to ignore it and determine the market value u/s 11 of the Act. In the course of his judgment, Lord Buckmaster pointed out that the Municipality of Bombay had under the Statute constituting it power to acquire land. The Board of Trustees for Improvement of Calcutta has also such power under the Calcutta Improvement Act (S. 68). Then he pointed out that such being the capacity of the Municipality, it has the power to enter into a contract for settling the price of the land with the owner before proceedings under the Land Acquisition Act had been started. On this foundation he held that the contract would be a valid one even if made after the initiation of the proceedings under the Land Acquisition Act. Then he made the following observation:

Their Lordships' opinion is not intended to interfere with the jurisdiction of the Collector. It may be a very unusual thing that he should proceed to determine what in his view the price should be after he had evidence of a complete contract on the point, but if he thought right to do so, their Lordships judgment will not affect his taking such a course.

15. This passage does not indicate that the Collector has no option but to disregard the contract and must proceed to determine the market value u/s 11 of the Act. It implies that he is under no such obligation, but if he likes he may disregard the contract, but he should rather respect the contract and proceed upon its basis. In fact in dismissing the appeal their Lordships of the Judicial Committee in effect directed the Collector to proceed upon the basis of the contract by preventing the Company from proceeding before the Collector on any other footing than that of the contract. The view we are taking is not opposed to the judgment of Henderson, J. in *Bijaya Kanta Lahiri Chaudhury Vs. Secy. of State*, . In the case before us the Collector has not brushed aside the contract but has made his award on its basis and in doing so he has followed the course approved of by the Judicial Committee in the *Fort Press Co. Ltd. v. Municipal Corporation, Bombay* AIR 1922 P C 365. The Collector having proceeded upon a correct course, we cannot see how the appellant before us could succeed on the reference, for to succeed on a reference he must show that the Collector had proceeded upon a wrong basis. It has been repeatedly held in this Court that though the proceedings before the Collector are not strictly judicial proceedings, the Court of the Special Judge on a reference made u/s 18 of the Act is in effect

(though not strictly in law) the Appellate Court and the claimant who has carried the matter on reference before it must show, the burden is on him, that the Collector is wrong.

16. The next contention of Mr. S.M. Mullick is that when the reference had in fact been made by the Collector u/s 18 of the Act, the Improvement Tribunal was bound to take evidence of market value and to award compensation on the basis of market value. For this contention, reference has been made to Sections 23 and 26, Land Acquisition Act. This broad proposition so enunciated that as soon as a reference is made u/s 18 of the Act, the Special Judge must in all cases proceed to take evidence of market value of the land or evidence on the other heads mentioned in Section 23 and make his award on such evidence, is in our judgment not a correct one. Mr. Mullick further contends that the learned President and the Assessors have in effect enforced the contract between the parties which they as a Court of limited and special jurisdiction had no power to do. To support this proposition reference has been made to *British India Steam Navigation Co., v. Secy. of State* (1910) 38 Cal 230. It is quite true that the Special Judge appointed u/s 3(d), Land Acquisition Act (the Improvement Tribunal is in the position of the Special Judge) has not all the powers of a Civil Court. It is quite true also that he cannot decree specific performance of a contract in a direct way, but within the scope of his jurisdiction as conferred on him he can and is required to act according to principles of law. His jurisdiction extends to and is confined to the determination of the compensation payable on an acquisition and he is directed to have in view the different heads mentioned in Section 23 of the Act. When a reference comes up for consideration he must decide, if the point is raised, (1) if the reference is competent and (2) if it is, he in determining the question of compensation payable must decide what evidence is admissible and what not and whether a party by reason of special circumstances and on established principles is precluded from leading any evidence on a particular point. These are fundamental principles to be kept in view in considering the exercise of jurisdiction of a Court.

17. When the jurisdiction of a Court is challenged, that Court has the power and it is its duty to decide it. The Special Judge derives his jurisdiction from the reference made u/s 18 by the Collector. If the reference made by the Collector is ultra vires, the Special Judge would have no jurisdiction to proceed further and must stop the reference in limine. If the question of power of the Collector to make the particular reference be raised before the Special Judge, he must decide it. It is on this principle that the Special Judge must decide the question, if raised, as to whether the Collector made the reference beyond time and if he finds it to be so, reject the reference without proceeding further: In the matter of *Government & Nanu N. Kothare* (1906) 30 Bom 275. If the question raised by the Secy. of State before the Special Judge is that the reference had been made by the Collector by mistake at the instance of a person who had accepted the award, and if the claimant's case be that he had not accepted the award, the question of fact as to whether the claimant had accepted the award must be

gone into by the Special Judge and if he decides that question in the affirmative, he must throw out the reference on that ground. The case before us does not come within the strict terms of Section 18, for there was no acceptance of the award by the appellant, but is within an inch of the bar imposed by that section and it would not be wrong for the learned President to say that the contract alleged in the case being established, the reference was not to be further proceeded with.

18. If the reference be in order, the Special Judge must decide all questions which legitimately come within the scope of the enquiry coming within his sphere. If he comes to the conclusion that by reason of the doctrine of estoppel the claimant is precluded from leading evidence on a particular point, he must shut out the evidence sought to be led on the point. This is the principle enunciated by D.N. Mitter and S.K. Ghosh, JJ. in F.A. No. Nalin Behary Bose v. Secy. of State, First Appeal No. 125 of 1934, decided on 27th July 1936. Whether in that case the evidence sought to be led could be excluded on the principle of estoppel or any other principle it is not for us to consider, but the case is an authority for the proposition that the whole of the evidence on the only point for consideration by the Special Judge could be excluded, if the facts justify such a course. In that case no compensation for injurious affection for severance was given by the Collector to the claimant who obtained the reference. It was held that by reason of some facts which in the opinion of the a learned Judges who decided that case attracted the operation of the doctrine of estoppel, the claimant was precluded from adducing any evidence in support of his claim and the reference was accordingly dismissed.

19. In the case before us the contract between the appellant and the Board, which according to Lord Buckmaster's judgment in Fort Press Co. Ltd. v. Municipal Corporation, Bombay AIR 1922 P C 365 a perfectly valid one and which could be enforced in a Civil Court, would prevent the appellant from leading any evidence relating to market value before the Improvement Tribunal or in proceeding upon any other footing than that of the contract. The learned President was right in treating the issue framed on the factum and substance of the contract as a preliminary issue and did not extend his jurisdiction by holding that the said contract prevented him from considering the evidence led on the question of market value. He did not grant a decree for specific performance in form or in substance but confined himself strictly to the matter over which he had jurisdiction, namely whether the award of the Collector was to be increased or confirmed. For these reasons we overrule all the contentions raised before us and dismiss the appeal but without costs.

Guha, J.

20. I agree.