

(1916) 11 AHC CK 0003
In the Allahabad High Court

Babu Ram Prasad

APPELLANT

Vs

The Collector of Aligarh and Another

RESPONDENT

Date of Decision : 15-11-1916

Acts Referred:

Land Acquisition Act, 1894 — Section 25, 9

Citation : AIR 1917 All 52 : 40 Ind. Cas. 274

Hon'ble Judges : Tudball, J; Rafique, J

Bench : Division Bench

Judgement

1. This appeal arises out of proceedings under the Land Acquisition Act. The present appellant was one of several claimants. Notice was duly issued to him u/s 9 of the Act. The Collector made an award and he asked for a reference to the District Court. The reference was made. The property which is in dispute before us consists of a plot of land on which there were certain buildings. Compensation was awarded by the Collector for the land at a certain rate per yard and for the building in a lump sum. The appellant claimed before the District Judge a much enhanced value both for the land and the buildings. In so far as the buildings are concerned, the District Judge held that as the appellant had not put in a claim before the Collector in accordance with Section 9 of the Act, he u/s 25 of the said Act was not empowered to grant any sum greater than that allowed by the Collector, In regard to land the District Judge increased the rate to Rs. 1-80 per yard and enhanced the amount of compensation accordingly. No order was passed as to interest by the District Judge even on the excess amount awarded to him. The Collector had omitted to award the Statutory allowance of 15 per cent, and this the District Judge has granted. There were two sets of interests, namely, (1) those of the appellant and (2) those of Raja Datta Prasad of Mursan. The appellant held a perpetual lease of the land from the Raja at an annual rent of Rs. 24. Out of the total amount of compensation for the land the Collector had awarded to the Raja a sum of Rs. 600. Both these parties were before the District Court and the District Judge on the Raja's objection increased the sum from Rs. 600 to Rs. 800. The appellant comes here and raises four points. In

regard to compensation for the building he contends that the Court below should have gone into his claim and decided it and that the Court was not barred by the terms of Section 25 of the Act from enhancing the amount awarded by the Collector. The decision on this point depends on the construction of the petition filed by the appellant in the Collector's Court on the 4th of May 1914. Section 9 of the Act orders a notice to issue to all persons interested inviting them to come forward on the date fixed and to state, first, the nature of their respective interests in the land and secondly, the amount and particulars of claim for compensation for such interests. In regard to the building the appellant in Clause (4) of the petition of the 4th of May 1914 stated that this building was occupied by certain tenants on certain rent, but failed, however, to state the amount which he claimed as compensation for this building. He placed no valuation upon the building. Section 25, Clause (1), lays down certain limits outside which the District Court upon a reference cannot go in making an award. The amount to be awarded by the District Court cannot exceed the amount claimed by the person interested in pursuance of the notice given to him u/s 9. Similarly the amount to be awarded by the Court can not be less than that awarded by the Collector. Clause (2) of Section 25 says that when the applicant has omitted to make such a claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector. The appellant put forward no claim, in fact he did not fix the amount of his claim for the building, and if the District Court acting u/s 25 had treated Clause (4) of his petition of the 4th of May 1914 as a claim within the meaning of Section 9, then that claim was an unlimited one and the Court could have awarded him any sum it pleased. It is quite clear that the appellant omitted to make a claim within the meaning of Section 9, and the Court below was justified in refusing to award anything more than the amount awarded by the Collector for the building. This portion of the appeal must, therefore, fail.

2. The next point taken is that the Court below failed to decide the question of the area of the land. According to the appellant, the area of the land was 1 bigha 6 biswas, whereas according to the Collector it is 1 bigha and 1 biswa. The point was raised in the Court below and an issue was actually framed on it; but there is no decision on the issue at all. The appellant claims that the correct area should be found as he is entitled to compensation at the rate of Rs. 1-8-0 per square yard for the correct area. We think that this plea is sound and we must send back the record to the Court below with directions to come to a finding on the issue as to what the correct area of the land in dispute is.

3. The next point relates to the question of interest. On appellant's behalf it is urged that possession was taken on the 15th of July and compensation was not deposited until the 29th of July, and that he is entitled to interest at six per cent, per annum on the sum allotted to him for that period. He also claims that the Court below should have granted him interest on the excess amount awarded by it over and above the amount awarded by the Collector at the same rate. The District Judge in its judgment makes no mention of the question of interest, and it seems that he did not exercise his discretion in the matter under the section.

We think that ordinarily interest should be allowed unless there is special reason to the contrary. The appeal will, therefore, be allowed on the question of interest.

4. There is a fourth matter which is one concerning the lessor and the lessee of the land. The appellant urges that the Court below had no right whatsoever to increase the sum of Rs. 600 awarded to the Raja by the Collector as the value of his interests without any reason. The Raja's interests may easily be valued at twenty five years' purchase of the annual rent which comes to him, that is Rs. 24. It is a fair valuation. The learned District Judge has given no reason for enhancing the sum of Rs. 600 to Rs. 800. No matter to what amount the total market-value of the property might increase, the lessor who has given a perpetual lease, at a fixil sum retains the stationary right, the value of which never increases if it does not decrease. The chance of re-entry by the lessor and the chance of the lessee dying without heirs are such that they may be well disregarded. In our opinion the valuation of the Raja's interests at Rs. 600 was a fair and proper one and should not have been increased. At the same time it must be remembered that the Collector omitted to award the statutory allowance of 15 per cent. The District Court has ordered that amount to be entered in the decree. The Raja is, therefore, entitled to Rs. 600 plus 15 per cent, thereon, that is, to a total sum of Rs. 690. On this point, therefore, the appeal must be allowed. Out of the total compensation awarded to the appellant for the land by the Court below, the Raja will get Rs. 690 including 15 per cent, statutory allowance. On return of the finding of the Court below on the issue remitted, ten days will be allowed for objections. The case will then be put up when the subject of costs will be dealt with.

5. The cross-objection filed on behalf of the Collector raises simply a point which arises between the appellant and the Raja. It is a matter with which the Government has no concern. The cross-objection is, therefore, disallowed.