(1921) 06 CAL CK 0038

In the Calcutta High Court

Bejoy Kumar Addy and Others APPELLANT

Vs

Secretary of State for India in Council RESPONDENT

Date of Decision : 01-06-1921

Acts Referred:

Citation : AIR 1921 Cal 406 : 84 Ind. Cas. 727

Hon'ble Judges : George Woodroffe, J;Cumming, J

Bench : Division Bench

Judgement

George Woodroffe, J.—The point which really arises in this case seems to me to have been missed. The Government determined to acquire certain land under the provisions of the Land Acquisition Act for a public purpose which proceedings appear to be in-order. That land is held by the appellant under a document giving a permanent interest on payment of a revenue of Rs. 9-1-10 to Government. The document contains the following stipulation. "If any portion or the whole of this land be required for the Government we shall give up the same without any compensation." The land has been valued and no objection has now been taken on that ground. It is admitted by each side that each party, the claimant and the Government, has an interest in the compensation. The only question is what is that interest and its value. The Collector said as follows: "Objection is taken to valuation and apportionment by party No. 2 who claim compensation at the rate of Rs. 5,000 per cottah. They allege that the entire value of the land should have been awarded to them minus 20 years purchase of the annual rent though there is a condition in the kabuliat that in the event of the land being acquired by Government the holder must relinquish it without receiving any compensation." On the ground of this stipulation for relinquishment, the entire amount was awarded to Government. The learned Judge has done the same thing. The appellant has also misconceived this case as evidenced by some of his grounds of appeal. It has been argued that the stipulation is invalid as being repugnant. I do not think so. The land is given permanently subject to one condition that, if it or a part thereof is required for Government, it must be returned. We then must give some effect to these words which I think are binding. These words have no reference to the Land Acquisition proceedings, that is, the Government does not take the land under the stipulation contained in the document creating the tenancy but under the Land Acquisition Act. The confusion has arisen out of the fact that it is one and the same Government though in a different capacity in each case in one case as landlord and in the other as general administrator. The position then is this: The claimant is entitled to some compensation. The stipulation mentioned does not say otherwise. It does not say that, if the land is acquired for Land Acquisition purposes, no compensation is to be given. What it says is that, if the land or a portion thereof be required for the Government, it is to be given up without compensation, The issue theft is "What is the value of the claimants interest under a document which contains such a Clause 2" In my opinion, this stipulation does not make the tenancy one at will. The Government cannot say "go" without any reason. This would be repugnant to the grant. It can, only claim back the land if it is required for the Government. Is it now required for the Government within the meaning of the stipulation? I think not. The land is not required for the Government but for the Corporation and at the expense of the Corporation. The result is that the land has been acquired under the Land Acquisition Act and not taken back under the stipulation and, therefore, that stipulation has never yet been put in force. The lease is subject to the Land Acquisition proceedings subsisting. The question then is: What is the value of the tenancy containing this clause under which action might have been taken but was, in fact, not taken before the commencement, of the Land Acquisition proceedings? What again is the interest of the Government and the value of such interest? These questions have not been determined. We must, therefore, set aside the order of the Judge and remand the case to him to enquire into and determine the respective shares of the claimant and the Government in the sum awarded.

2. As regards costs, if before the hearing of the case on remand the Government make an offer to the claimant which is accepted, then in that case both parties will bear their own costs of this appeal; if such offer is made and not accepted, the Government will be entitled to the costs of this appeal, if the amount of the share of the money given to the claimant does not exceed the amount offered by the Government and not accepted. If no offer is made, the costs of this appeal will follow the result of the order on remand.

Cuming, J.

3. I agree.

