

(1933) 05 CAL CK 0008
In the Calcutta High Court

Bijaya Kanta Lahiri Chaudhury

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 09-05-1933

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1934 Cal 97 : 150 Ind. Cas. 368

Hon'ble Judges : Mitter, J;Henderson, J

Bench : Full Bench

Judgement

Mitter, J.—This Appeal is directed against the judgment and award of the District Judge of Mymensingh, dated 16th May 1929, and arises out of a reference u/s 18, Land Acquisition Act (1 of 1894), made by the Collector at the instance of the claimant who was dissatisfied with the award made by the Land Acquisition Collector.

2. It appears that the Assam Bengal Railway required certain lands belonging to the claimant for a bazar siding out of an area of 1.394 acres. The original proposal was to acquire a portion of this land. The Assam Bengal Railway required early possession of the land and the appellant, through his agent expressed his willingness to give up early possession if the entire plot was acquired. These negotiations took place before 21st June 1926 and then followed certain correspondence between the District Engineer of the Assam Bengal Railway, the Collector and the present claimant. The details of the correspondence will be given later. The declaration was published on 17th March 1927 in the Calcutta Gazette. Formal possession was delivered on 3rd November 1927. The Land Acquisition Collector made his award by which he determined the amount of compensation to be Rs. 3,028-10-2. The claimant was dissatisfied with the award and asked for reference to the Court u/s 18 of the Act. The learned District Judge has increased the award to the sum of Rs 4,945. Against this award the present appeal has been brought by the claimant and the Collector has preferred cross-objections. The claimant asked for an award for the

sum of Rs. 14,000 and odd but before this Court he has limited his claim to compensation to the sum of Rs. 10,573. The secretary of State has also preferred a cross-objection and contends that the Court should not have granted compensation in excess of the sum awarded by the Deputy Collector. The appellant contends that there was a concluded agreement binding on the Secretary of State to the effect that the amount of compensation would be Rs. 10,573 and not less, and it was not open to the Collector or to the learned District Judge to award anything less than the sum agreed to, and in support of this contention reliance has been placed on his decision of their Lordships of the Judicial Committee of the Privy Council in the case of *Fort Press Go. Ltd v. Municipality of Bombay* AIR 1922 PC 365. The Land Acquisition Judge has come to the conclusion that there was no agreement between the Collector and the owner that the amount of compensation would not be less than Rs. 10,573 if early possession was given. This finding is attacked by the appellant on the ground that it is not justified by the oral and documentary evidence in the case. It becomes necessary therefore to examine the correspondence to see if this conclusion of the learned Judge is right. (After considering the correspondence, His Lordship proceeded.) It appears clear therefore that even if the letter of Mr. Gurner dated the 14th April stating that the amount of compensation has been practically agreed on indicated an offer of Rs. 10,573, that offer was not accepted by the claimant or his manager who were persisting throughout in their claim for a higher amount. In order to constitute a binding agreement the intention of the parties must be distinct and common to both ; an agreement does not admit of difference. Here there was a difference between the parties as to the value to be paid for compensation. The Collector might have offered to buy even (if the most favourable construction be put on the letter of Mr. Gurner, dated the 14th April) at Rs. 10,000 odd. In response to the offer the appellants' Manager agreed to sell for Rs. 14 000 odd. This really amounted to a refusal of the offer by the Collector to buy at Rs. 10,000 followed by a counter offer. On behalf of the appellant it has been strenuously argued that when the Assam Bengal Railway Company took possession they at any rate must have agreed to pay the value determined by the Collector as compensation. Looking at the whole of the correspondence which has already been referred to, it is clear that there was never a concluded agreement as to the value and the claimant's own petition (Ex. B.p. 49, part 2) makes it clear that the claimant never agreed to sell at Rs 10,000 and odd or to deliver possession on the understanding that the compensation was to be Rs. 10,000 odd. The evidence of Surendra, his Manager, also leads to the same view. He says:

I understood that the amount estimated in Mr. Twynum's letter was only an estimate and that the award might be more or loss,

and again:

I did not think it necessary to write any letter to the Collector or District Engineer accepting the offer of Rs. 10,000.

3. It seems to us therefore that the learned Judge below was right in reaching the conclusion that there was no concluded agreement as to the compensation. In this view the decision of their Lordships of the Judicial Committee in 49 Indian Appeals does not apply as that was a case of concluded contract between the parties. The next ground taken is that there has been no proper determination of the value seeing that the learned Land Acquisition Judge? has excluded certain evidence which was relevant on the question of valuation and reference is made to the orders made in this behalf on 26th and 29th April 1929. On the former date the claimant applied for permission to adduce evidence as to the profit of timber business which is carried on in the Gouripur bazar. In our opinion this evidence has been rightly excluded as the timber business is not carried on in the land compulsorily acquired by the claimant and this cannot affect him prejudicially so as to entitle him to compensation. On the 29th the claimant wanted to adduce evidence of the transfer of tenants' rights. The learned District Judge has pointed out that there are no tenants on the land and the value of the tenants' right is the selami which the landlord could get and that it was not open to the claimant to show that if the tenants have come forward and paid selami they would have acquired right worth more than the selami. It appears from the evidence of the Manager of the claimant that there has been no sale of land adjoining the approach road and even now the appellant has not produced before us any document to show that there has been any such sale. In these circumstances this ground taking exception to the exclusion of such evidence seems to be unsubstantial. It is next argued that in arriving at the valuation the learned District Judge has not taken into account certain deeds of sale of the lands in the vicinity of the land acquired which would have proved the market price of the lands in the neighbourhood and would have furnished a criterion as to the value of the acquired lands. Reference is made to two deeds of sale Exs. 13 and 14 which are proved by claimants' witnesses 6 and 7 respectively. In the case of the first deed of sale (Ex. 13) 14 acres of land were sold for Rs. 1,951 which shows that the land -was sold at Rs. 216 per bigha. It is to be observed however that in both these oases the lands are situate within the bazar and the bazar lands must fetch a higher value than lands situate outside the bazar. Reference however has been made to oral evidence showing that on account of the Railway the value of the land has increased. One witness Nripendra, witness 12 for the petitioner, says "the most valuable land is that nearest to the station." With regard to the land covered by Ex. 14 it is to be noticed further that 03 acres of land in Gouripur bazar with a hut was sold for Rs. 1,285. Witness 7 for the petitioner states that there was a hut on the land worth Rs. 200 or Rs. 300. He produces however no document for the price of the hut and states that there was a bainapatra showing the price of the land but he does not produce the same. Be that as it may the land was situate in the heart of the bazar near the junction of the Approach Road and can furnish no clue to the price of land which is still ill-developed.

4. The learned Judge has valued the land at Rs. 4,261 4-0 on relevant evidence

in the case. He has capitalised the value of the rent less 10 per cent for collection expenses at 25 years" purchase and has reached the figure of Rs. 1,556-4-0 on this head With regard to the tank land he has allowed Rs. 275 and he has taken Rs. 3,420 as the nazar. The total of these items is Rs. 5-261-4-0; from this he has deducted a sum of Rs. 1,000 for earthwork. This leaves a net value Rupees 4,261-4-0 and in round figures he has estimated the market value of the land at the date of the notification at Rupees 4,300; the additional compensation at Rs 15 on this amount is Rs. 645 He has awarded" the sum of Rs. 4,945 In the absence of evidence of the selling value of similar class of khas lands in the neighbourhood it seems to me that the only course of proceeding was to estimate the rent at which the whole plot might be leased and the purchase money might be properly calculated at 25 years" purchase plus the amount of nazar minus the collection expenses. There is evidence in this case on behalf of the claimant that the rate of rent varies from 4 annas to 6 annas per cubit of frontage. See the evidence of Mahesh Kanta, p. 34, line 25, of Jnanendra Nath Sanyal, p. 46 lines 27 to 30, of Mahendra Chandra Chowdhury, p. 44, line 16, and the learned District Judge has accepted the lower figure for the eastern and the western plots and 2 annas per cubit for the southern plot. The comment of the learned Senior Government Pleader therefore in support of the cross-objection filed on behalf of the Secretary of State to the effect that the valuation is based on assumptions for which there is no foundation in the evidence loses all force. It was further argued on behalf of the Government that the finding that the raising of the plot would cost about Rs 7,000 is based on pure assumption This comment is equally unsubstantial seeing that there is evidence on behalf of the Government to the extent that,

to raise the whole land minus the tank to the extent of 4 feet would cost Rs. 1,440 at the rate of Rs. 7 par thousand cubic feet: see the evidence of J.L. Biswas, p. 48, line 40.

5. So the learned Judge has the evidence before him on which he could come to the conclusion that the cost of raising the land would be about Rs. 1,000. There is abundant evidence with regard to the nazar and the learned Judge has taken into consideration that evidence and has discriminated between the rate of nazar with reference to the eastern, western and the southern plots into which according to the learned Judge the acquired land could be divided if the land is raised to a height of 3 or 4 feet. In support of the cross-objection it has been argued by the Senior Government Pleader that the position of the land was such that the landlord was not getting any profit and that it has not been shown that the potentialities of the land were such as would justify the District Judge in awarding a sum in excess of the Collector"s award. The principle on which the valuation of property compulsorily acquired, should, be measured has been repeatedly laid down by their Lordships of the Judicial Committee of the Privy Council and by the House of Lords. In a, very recent decision this principle was stated by Lord Buckmaster in the following words:

To use the words to be found in *Fraser v. City of Fraserville* (1917) AC 187, it is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired: see AIR 1925 91 (Privy Council) .

6. In my opinion this principle really enunciates two propositions: (1) the value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker (2) the value to the owner consists in all advantages which the land possesses, present or future: but it is the present value alone of such advantages that falls to be determined. I am of opinion that the learned District Judge has kept these principles in view for he points out that as regards rent all the land in the Approach Road except the timber yard pays rent 4 annas per cubit of frontage and he has taken this rate for the eastern and the western plots. For the southern plot he has taken half this rate. He has also considered the rate of nazar which is usual and has disregarded the exceptional rate given for the second plot taken by the Loan Office on the ground that it was needed for its extension and there was a competitor. The learned Judge was not unmindful of the circumstance that the land at the time of the acquisition was not yielding any income, that he considered the evidence at which similar lands in the vicinity after being raised to a height 3 or 4 feet was being let. Considering all these circumstances I am of opinion that the cross-objection should not prevail. The learned advocate for the appellant has finally referred to Ex. 1 dated 12th July 1927 in support of his higher claim of compensation but it appears that this document was executed after the declaration was published and must be disregarded. On these grounds I am of opinion that the District Judge has arrived at the right conclusion and the appeal and the cross-objection must both be dismissed. The Secretary of State is entitled to costs in this appeal and the cross-objection is also dismissed with costs. We assess the hearing-fee in the cross-objection at 3 gold mohurs.

Henderson, J.

7. I have had the advantage of reading the judgment which has just been delivered by my learned brother and I entirely agree with him that this appeal must be dismissed; but I desire to add something with regard to two of the points made by Dr. Pal on behalf of the appellant; (1) that there was an agreement as a result of which the Collector ought to have awarded the sum now claimed as compensation for the land; (2) that the learned Judge wrongly excluded certain evidence. The chief difficulty in dealing with the first point is that it is far from clear who is supposed to have made the agreement and what the agreement was. There are three parties concerned: the appellant, the Collector and the Railway. The appellant and the Collector might well have reached an agreement; this is frequently done, as a result of which the claimant endorses a note of acceptance on his claim and the proceedings terminate; the present case is clearly not of that kind. On the other hand there might be an

agreement between the claimant and the Railway Company. In such a case according to the authority on which Dr. Pal relies, the Collector would not be bound to award the sum agreed upon, though it would be unreasonable for him not to do so, if the Railway Company were to pay the compensation. We were informed by Mr. Kastgir that the compensation was to be paid by the Government: there is in fact no evidence to show by which party it was to be paid and it seems clear that, if in fact it was to be paid by Government, there is no reason why the Collector should award any sum which might have been agreed upon in negotiations to which he was not a party.

8. It is only necessary to read the petition praying for a reference to the Court in order to see that the appellant himself had no very clear case to make. But at the trial itself the case made was that the appellant was induced to deliver early possession by a promise that the sum now claimed would be awarded. The negotiations with regard to the delivery of possession were carried on between the appellant and the Railway Company. In his letter Ex F the Collector Mr. Twynnm made it perfectly clear that early possession could only be secured by mutual agreement between the Railway Company and the appellant; in fact the Collector was not interested in these negotiations for early delivery of possession. In the second place the alleged agreement is not an agreement about the market value of the land; it is a different kind of agreement; it is an agreement to pay for something else, early possession in addition to the market value of the land; and the irresistible inference to be drawn from such an agreement would be that the market value of the property must be less than the sum now claimed. While agreeing with the learned Judge that the appellant's case with regard to an agreement is quite untrue I am further of opinion that the kind of agreement which he attempted to set up would be of no avail to him on this reference.

9. I will now deal with the second point. Dr. Pal's first complaint is that the learned Judge refused to let in evidence to show the profits made by the appellant in a certain timber business. In my judgment the learned Judge was perfectly right when he ruled that such evidence was irrelevant. No doubt if large profits could be made from the sale of timber and convenient sites for such business were insufficient to meet the demand, rents would immediately rise and the profits of the business would be indirectly reflected in the profits derived from the land; but the actual profits made by the sale of timber do not throw any light on the market value of the land. Dr. Pal's second complaint is that evidence with regard to sales by tenants was improperly excluded. Now I am not prepared to say that such evidence must necessarily be of no value. A surveyor would be able to ascertain the value of the structures transferred, the incidents of the right sold, the amount paid as selami; the rent, etc., and from an examination of several such transactions in the locality he should be able to form a very good idea as to the value of the land as a cleared site. But the real answer to Dr. Pal is, as has been pointed out by Dr. Basak, that his grievance is only theoretical. In the grounds of appeal there is no specific case made that any particular evidence

was improperly rejected. Dr. Pal was unable to tell us whether these transfers took place with respect to land in the locality or not and I can only say that the transfers which were proved were of no practical use. I must therefore hold that it has not been shown that the evidence, which was excluded, would have been of any assistance in the present case.

10. For myself I would be disposed to allow the cross-objection and restore the award of the Collector; that award has been enhanced not on any definite case made by the appellant but on a development scheme propounded by the learned Judge himself. Such schemes are at best an unreliable guide to the market value of the land, even when they are prepared by an experienced and competent surveyor; they must be even more unsatisfactory when prepared by a learned Judge who has not seen the land and is entirely unfamiliar with the local conditions. It has also been assumed that a purchaser of undeveloped land will pay the equivalent of what is estimated to be its full value after development: this is clearly not so; such a purchaser would have to tie up his money during the stage of development and run the risk that the scheme might prove a failure. Even if this scheme were accepted as sound, I should find it difficult to say that the sum awarded by the Collector was not a fair price for the land in its undeveloped state. In the present case there is the further fact that the appellant himself started to develop this land but abandoned it as an unprofitable scheme. Even when he wanted to start a business himself, he preferred to do so on land leased from another zamindar, However out of deference to the opinion of my learned brother and in view of the small sum at stake I am not prepared to express disagreement. I therefore concur in his order dismissing the cross objection.