

(1916) 08 CAL CK 0039
In the Calcutta High Court

Bijoy Kumar Addy

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 16-08-1916

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : 39 Ind. Cas. 889

Hon'ble Judges : Cuming, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against what purports to be an award u/s 26 of the Land Acquisition Act. The claimant, who is the appellant in this Court, was at the time of the declaration u/s 6 of the Land Acquisition Act, lessee of the land under Government. On the 26th February 1890, his predecessor had executed a kabuliyat in favour of the Collector and had agreed to pay annually Rs. 176 2-2 in respect of the land granted to him. The rent was payable into the treasury on the 28th March each year, and, the kabuliyat provided that on default to pay the rent, "the arrears would be realised by the Sarkar in accordance with law." On the 25th November 1891, the lessee made an addition to the kabuliyat in the following terms: "In accordance with the order of the Collector, dated the 10th August 1891, I undertake to give up the land without compensation if the Sarkar requires it" Since, then, the lessee and his representatives-in-interest have been in occupation of the land. On the 5th May 1914, a declaration was made, which was published in the Calcutta Gazette on the day following, that the land was to be acquired for the purposes of a road in continuation of Kali Temple Road westward to the Tally's Nullah. On the 28th July 1914, an amended declaration was made that the land was required for the purposes of the road, a dispensary and a garden. The Collector, when he made his award in due course, did not, however, assess compensation for the land. The reason he assigned in support of the course adopted is best stated in his own words: "The present holders of the land have permanent interest in it, but there is a condition in the kabuliyat that in the event of the land being required by Government, the holder must

relinquish it without receiving any compensation. As the land is now required by the Government for a public purpose, no compensation is awarded for the land." At the instance of the claimant a reference was then made to the Civil Court u/s 18. The Special Judge has accepted the view of the Collector that no compensation need be awarded for the land and has framed his award accordingly. Before the Special Judge the contention appears to have been advanced that the land was required, not by Government for its own purpose but to be made over to the Calcutta Municipal Corporation who intended to establish thereon a charitable dispensary with funds placed at their disposal by a public-spirited citizen. The Special Judge came to the conclusion that even if these facts were established, it made no difference in the position of the claimant and that the land could be compulsorily acquired under the Land Acquisition Act without the assessment of any compensation therefor. 2. On the present appeal the claimant has contended that this view is erroneous, and that it is obligatory upon the Collector as also upon the Special Judge to provide for compensation for all lands acquired under the Land Acquisition Act. In connection with this question our attention has been drawn to the divergence of judicial opinion on the question of the extent of the interest in the land which can be acquired under the Land Acquisition Act. It was held by this Court in *Babujan v. Secretary of State* 4 C.L.J. 256 and *Shyam Chunder Mardraj v. Secretary of State* 35 C. 525 ; 7 C.L.J. 445 ; 12 C.W.N. 569 that when land is acquired under the Land Acquisition Act, the entire aggregate of rights inherent therein must be acquired. On the other hand, it was held by the Bombay High Court in *Government of Bombay v. Esufali Salebhai* 5 Ind. Cas. 621 ; 34 B. 618 ; 12 Bom. L.R. 34 that the entire aggregate of rights in the land need not be acquired and that if land is held under the Crown by tenants, their subordinate interest alone may be acquired under the Land Acquisition Act: [See also *Imdad Ali Khan v. Collector of Farakhabad* 7 A. 817 ; A.W.N. (1885) 242 ; 4 Ind. Dec. (N.S.) 892; *Crown Brewery v. Collector of Dehra Dun* 19 A. 339 ; A.W.N. (1897) 78 ; 9 Ind. Dec. (N.S.) 223; It is necessary for our present purpose to determine which of these conflicting views gives effect to the true intention of the Legislature, because in the case before us, proceedings have been taken for the acquisition of the entire interest in the land in conformity with exposition of the law on the subject, uniformly adopted in this Court. The real question in controversy is, whether land can be acquired compulsorily under the Land Acquisition Act without the assessment of compensation therefor.

3. It is perfectly plain upon the provisions of the Land Acquisition Act when that land is acquired thereunder, compensation must be awarded. Section 9 provides that the Collector, when he makes his award, shall state the amount of compensation for the land acquired. When a reference is made at the instance of the claimant to the Civil Court, Section 18 lays down that reference may be demanded because the claimant objects to the amount of compensation assessed by the Collector. Section 23 provides that the Civil Court, when it hears a reference, shall determine the amount of compensation to be awarded for the

land and amongst other matters provides that the Court shall take into consideration the market-value of the land at the date of the publication u/s 6. Finally Section 16 provides that every award made by the Judge shall specify the amount awarded under Clause (c) of Sub-section (1) of Section 23. These sections make it plain beyond controversy that if land is acquired under the provisions of the Land Acquisition Act, compensation must be awarded in respect thereof. The acquisition is made on the assumption that there is an interest to be acquired and paid for; it is beyond the competence of the Collector and the Special Judge to hold that there is no interest which can be acquired or for which compensation is payable: *Raghu Nath Das v. Collector of Dacca* 6 Ind. Cas. 457 ; 11 C.L.J. 612 where the decisions in *Shyam Chunder Mardraj v. Secretary of State* 35 C. 525 ; 7 C.L.J. 445 ; 12 C.W.N. 569 and *Gajendra Sahu v. Secretary of State* 8 C.L.J. 39 are explained. This is in accordance with what is well understood to be the fundamental principle when lands are compulsorily acquired, namely, that although the sovereign power of every State is competent to appropriate, for purposes of public utility, lands situate within the limits of its jurisdiction, yet it is not deemed politic to exercise this authority so as to interfere with security in the enjoyment of private property or to confiscate private property for public purposes without paying the owner its fair value. This doctrine was applied by the House of Lords in *River Wear Commissioners v. Adamson* (1877) 2 App. Cas. 743 ; 47 L.J.Q.B. 193 ; 37 L.T. 543 ; 26 W.R. 217 and by the Judicial Committee in *Western Counties Railway Co. v. Windsor and Annapolis Railway Co.* (1882) 7 App. Cas. 178 ; 51 L.J.P.C. 43 ; 46 L.T. 351 and *Commissioner of Public Works (Cape Colony) v. Logan* (1903) A.C. 355 ; 72 L.J.P.C. 91 ; 88 L.T. 779 ; 19 T.L.R. 545.

4. In the case before us, there is thus no valid award either by the Judge or by the Collector. Whatever the rights of the claimant may be, his land must be assessed and Compensation must be awarded under the provisions of Section 23 read with Section 26. When such compensation has been assessed and awarded, a question of apportionment may arise and will in the present case necessarily arise between the Government on the one hand and the claimant on the other. Whatever may be the true measure of the rights of the claimant as a tenant under the Government at the date of the declaration; the Government was undoubtedly in the position of landlord and would be entitled to a share at least of the compensation money awarded for the aggregate of the right in the land. It is not necessary at this stage to determine; on what basis the apportionment should be effected; that question will arise only after compensation has been assessed.

5. The result is that this appeal is allowed, the decree of the Special Judge set aside and the case remitted to the Collector in order that he may make a proper award after determining the compensation payable in respect of the land acquired. The appellant is entitled to his costs both here and in the Court below.

6. u/s 13 of the Court Fees Act we direct that the amount of Court-fees paid by

the appellant upon the memorandum of appeal be returned to him.