

(1908) 01 BOM CK 0007
In the Bombay High Court
Case No : First Appeal No. 151 of 1906

Collector of Belgaum

APPELLANT

Vs

Bhimrao V. Patel

RESPONDENT

Date of Decision : 16-01-1908

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1908) 10 BOMLR 657

Hon'ble Judges : K.C.I.E., C.J.;Lawrence Jenkins, J;Batchelor, J

Bench : Full Bench

Judgement

Lawrence Jenkins, C.J.—This appeal arises out of proceedings under the Land Acquisition Act. The District Judge treated the case as though a reference had been made to him in regard to Survey-No. 1360 as well as Survey No. 1361. That was an error, and this is admitted by all. The reference was only made in respect of Survey No. 1361; and so far as the determination of the Judge relates to No. 1360, it clearly must be varied.

2. Now we proceed to deal with his decision in regard to Survey No. 1361. The learned Judge has found that the market-value of the land is Rs. 7,372-8-0, that the value of the house, well and enclosure on the land is Rs. 2,100; the sum of Rs. 2,100, held by him to be the value of the house, well and enclosure, is accepted by all parties concerned as correct, so that the, only question is as to the propriety of his award of Rs. 7,372-8-0,

3. Now the learned Judge has arrived at that figure on the evidence before him. The Government adduced no evidence in the case, and except by way of criticism in no way assisted the Court to arrive at the market-value of the land in the Court below.

4. Before us the case has been ably argued on behalf of the Government by the Government Pleader but he has been hampered by the absence of evidence in favour of the view he has endeavoured to support.

5. The Rs. 300,. per acre which is the basis of the District Judge's award is based on oral evidence which appeared to the learned " Judge to be practically unanimous in establishing that the value of the land was about Rs. 300 per acre, or a little more or less. That evidence has been read to us, and so far as it goes, it shows that the land in the neighborhood may be taken to be of that value.

6. But two criticisms have been directed against this evidence. First of all it is said that it relates to building land, and secondly that it does not relate to watan land.

7. We see no reason for saying that this is not building land within the meaning of that expression as ordinarily used in connection with the ascertainment of the market-value of land. The proceedings before the District Judge were on that assumption. There is nothing that displaces it, and even the award of the Collector appears to contemplate that something should be allowed for the possible adoptibility of the land in the future. So that we think that the first criticism ought not to induce us to interfere with the finding of the District Judge.

8. Then the next criticism is, that the evidence does not relate to watan land.

9. Now, what is it that has to be ascertained in determining the compensation to be awarded on an acquisition under the Land Acquisition Act? Section 23 says that "the Court shall take into consideration, first the market-value of the land at the date of the publication of the declaration relating thereto u/s 6." What is the land? Section 4 of the Act says that "Whenever it appears to the Local Government that land in any locality is likely to be needed for public purposes, a notification to that effect shall be published in the official Gazette....

10. Section 3, Sub-clause (a), provides that "in this Act, unless there is something repugnant in the subject or context, the expression "land " includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. "

11. We think, therefore, it is fair to say that where the market-value of the land has to be ascertained for purposes of Section 23, the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it. This, we think, is brought out by sub-s. (3) of Section 31, which makes special provision for a person having Section. limited interest in land; for, it provides that" notwithstanding anything in this section, the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land.... If that be so it appears to me that the criticism, with which we are now dealing loses its force. If the land is to be acquired (and by that is meant all the interests in the land) then it cannot matter whether it be held on the tenure described as raitwari or watan. It appear to us that the objection of the Government should rather have been as to the mode in which the compensation money should be distributed between the parties. But admittedly no objection has been taken on that score. The

Government have made no claim to any part of the compensation. They have adduced no evidence with a view to showing what is attributable to their interest in the land, nor has it been possible on the materials on the record to suggest what would be the sum that could fairly be appropriated as the value of the Government's interests in the land.

12. Under these circumstances it is impossible for us to fix on any definite sum as being payable to the Government but we can in fact secure to the Government, an advantage more or less corresponding with their rights in the land before the sale by providing for the investment of so much of the compensation money as would go to the watandar.

13. The learned District Judge has apportioned the amount of compensation between the watandars and what he calls the mortgagees-lessees.

14. Neither the watandars nor the mortgagees-lessees, make any complaint as to this and the Government takes no exception to the apportionment.

15. We, therefore, do not disturb the apportionment except that the figures will require such alteration as will be necessitated by excluding from the computation so much as has been awarded in respect of Survey No. 1360, either by way of market-value or of percentage. Parties will work out those figures.

16. With that variation we confirm the decree of the District Judge.

17. The money payable in respect of the watandars' interests will not be paid over to them, but will be deposited in Court and invested in accordance with the provisions of Section 32 of the Land Acquisition Act.

18. With these variations the decree of the District Judge will be confirmed.

19. The appellant will pay one set of costs, and to that respondents 3, 4 and 6 will be entitled. Our reason for not giving the other respondents (i.e., Mr. Rele's clients) their costs is, that an order was passed in their favour which necessitated this appeal so far as it was requisite to get a direction that the money payable to the watandars should be invested.

20. It has been said in the course of the argument before us that proceedings may be taken against Mr. Kelkar's client by way of suit, but with that we have nothing to do in the present litigation, nor can we see that anything that we have said here can, in any way, affect the result of those proceedings.