

(1931) 08 CAL CK 0005
In the Calcutta High Court

Collector of Dacca

APPELLANT

Vs

Ashraf Ali and Others

RESPONDENT

Date of Decision : 05-08-1931

Acts Referred:

Evidence Act, 1872 — Section 74

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1933 Cal 312

Judgement

1. These are eight appeals by the Collector of Dacca and arise out of eight references u/s 18, Land Acquisition Act, at the instance of the proprietors of the land which have been compulsorily acquired for the purposes of certain sewerage works in the town of Dacca. The Collector valued the interest of the proprietors on a certain basis. He first of all determined the average rate of rent per bigha which the tenants were liable to pay to the proprietors and he ascertained the same at the rate of Rs. 2 per bigha. After ascertaining it the Collector was of opinion that the proprietors will get 25 years purchase of this after deduction of the collection charges and the Government revenue. To this the Collector added in favour of the proprietors a further sum equal to 1/4th share of the compensation assessed for tenancy interest on account of the loss of selami. This was the method adopted with reference to lands in the occupation of tenants. With regard to the lands in the khas possession of the proprietor he valued his interest for garden and tank at Rs. 500, for raised bhati at Rs. 400, for ordinary bhati at Rs. 375, for raised nal at Rs. 325, for ordinary nal at Rs. 300, for kacha road at Rs. 125 and for nala at Rs. 50 per bigha.

2. Eight references were made before the Land Acquisition Judge of Dacca and it was contended before him that the Land Acquisition Deputy Collector has adopted a wrong method for ascertaining the compensation of the tenanted lands. It was argued that the proper method which the Collector should have adopted was to ascertain the market value of the lands and then to deduct the value of the occupancy right for awarding compensation to the proprietors. Adopting this as the basis on which compensation should be allowed the Land

Acquisition Judge proceeded to determine the market value of the lands in these eight references, and after considering several documents, in particular two which were deeds of sale prior to the date of the declaration, he has increased the amount of compensation to a much larger sum than that awarded by the Deputy Collector. In these eight cases, it is to be noticed no evidence was given on behalf of the Collector of Dacca as will appear from the order made in the order sheet, namely, order No. 26, dated 22nd July 1927. The Land Acquisition Judge has increased the compensation and the increase is shown at p. 48 of the printed paper book in part 1 of Appeal No. 192 of 1928. It is not therefore necessary to state in detail the amounts by which the compensation has been increased by the Land Acquisition Judge.

3. Against this order of the Land Acquisition Judge increasing the amount of compensation awarded by the Collector these eight appeals have been preferred by the Collector of Dacca, and the main argument which has been advanced for the appellant by the learned Senior Government Pleader has been that the Land Acquisition Judge has adopted a wrong method in awarding compensation to the proprietors and he contends that the method adopted by the Land Acquisition Collector was the right method. The respondents have however pointed out that this contention put forward on behalf of the Collector is opposed to the principle laid down in the Land Acquisition Act and is opposed to a series of authorities both of this Court and of the other High Courts in India. The true test for determining the amount of compensation which ought to be awarded to the proprietors is to ascertain the market value of the land. As was pointed out by Sir John Wallis, Chief Justice of Madras as he then was, in the case of *Raja Pittapuram v. Revenue Divisional Officer, Coconada* AIR 1919 Mad 222 the correct rule in all cases of this class is that the land to be acquired is to be valued in the first instance including all interests in it and the amount so ascertained has then to be apportioned amongst the parties, interested according to their interests. This is also the view which has been recently adopted by the learned Chief Justice and Mukerji, J., in an unreported decision in F.A., 6 of 1929 which was decided on 19th February 1931 and the precise argument which has now been advanced on behalf of the Collector of Dacca was advanced in that case on behalf of the Collector of Jalpaiguri and was negatived. Having regard to these authorities the contention of the Collector regarding the principle on which compensation should be awarded must be negatived.

4. An argument has next been addressed with reference to the paucity of the evidence furnished on behalf of the proprietors with reference to the market value of lands near about the disputed lands, and it is said that the Land Acquisition Judge was not justified in proceeding to determine the market value of the lands practically on two documents one of which is Ex. 1 which is a lease which was taken by the witness who was examined on behalf of the claimants (one Mahammad) of some nal land in mourasi right on payment of selami of Rs. 1,050 per bigha on 21st July 1921. It is said that the sum which is mentioned in this deed as selami for the lease was really excessive and did not really represent

the value of the land in or about the locality. Considerable stress has been laid on the circumstance that whatever may be the value as indicated in the document of 31st July 1921 there has been considerable depreciation of that value by reason of the construction of the sewerage works prior to the date of the acquisition, of the land now in question, and it is said that the value in documents with reference to lands which were situated in the same locality prior to the opening of the sewerage works cannot furnish a true criterion of the value of lands after these works have been started, and reference has been made to the evidence of some of the witnesses examined on behalf of the claimants to show that the locality has become uninhabitable by reason of the bad smell which issues out of the outfall works.

5. Reference in particular has been made to the evidence of witness 1 for the claimant Mahammad who stated at p. 35 that he had not purchased any land after the construction of the dumping ground. But the same witness states that the price of lands in the locality has increased notwithstanding the construction of the dumping ground, and we have been asked by the learned Senior Government Pleader to discredit his evidence in view of the statement made by some of the witnesses that bad smell issues from the outfall works. In support of this contention a document Ex. E has been sought to be relied on on behalf of the appellant. This was a letter to the Collector of Dacca forwarding the proceedings of a public meeting which was held in the town of Dacca. It seems to us difficult to understand how this document can be admitted in evidence. It is surely not a public document within the meaning of Section 74, Evidence Act. All that is proved is that a letter was sent by one Rebati Mohan Das who happened to be the president of that meeting. This evidence again had not been given in the cases in which these eight appeals arise and Mr. Brojo Lal Chakravarty, who appears for the respondents in some of the cases, rightly contends that this should not in any event be admitted in evidence against his clients.

6. It has next been argued with reference to the situation of the land covered by Ex. 1 as appears from the map No. 2 of the big book of maps in Appeals Nos. 191 to 198 of 1928 that the document Ex. 1 refers to one particular plot which is just outside the Municipal limits of the town of Dacca and that the other plots acquired are at a considerable distance from it, and it is said that the valuation with reference to a plot which is very close to the acquired land cannot form the basis of the valuation with regard to other lands which are far apart. It has however been pointed out on behalf of the respondents that the distance at any rate as regards some of these lands is only about 7½ yards and we do not think that it makes any difference when valuing a land on the locality if the valuation is based on a document with reference to one plot in the locality which is of the same description with similar advantages as the other plots. The learned Senior Government Pleader saw the force of this argument and tried to point out that with reference to this plot there was considerable road frontage which advantage was not enjoyed by the other plots acquired, and he refers in particular to the situation of this land covered by Ex. 1 and to the road which was intended to be

connected with the public road. Special reference was made to the recital at p. 20 of the paper book Part 2 of Appeal No. 120 of 1928 which is to the following effect:

Towards the western side of the aforesaid land there will be a road 15 feet in width extending towards the north where it meets another road coming from the west at a point forming the south-east corner of Hrishi Kesh Babu's garden from which road it will lead one to this land; you shall be entitled to use this road.

7. This recital however does not show that the land which formed the subject of Ex. 1 was in a better situation than other lands by reason of there having been an extensive road frontage. Then it was argued that the Land Acquisition Judge has been unmindful of the circumstance that land outside the Municipality is not to be valued in the same way as land which is in close proximity to the Municipal area. We do not see any force in this contention and we are not prepared to accept it. On all these grounds we are of opinion that the conclusion arrived at by the Land Acquisition Judge regarding the amounts of compensation awarded by him seems to be right. The result is that all these eight appeals must be dismissed with costs. We assess the hearing fee at two gold mohurs in each of these appeals. There are cross-objections in F.A. Nos. 191, 192, 194 and 196, and they have not been pressed. They are dismissed without costs. (Then their Lordships took appeals Nos. 62 to 93 of 1928 and dismissed them with costs).