

(1936) 03 CAL CK 0026
In the Calcutta High Court

Collector of Dacca

APPELLANT

Vs

Gholam Kuddus Choudhury and Others

RESPONDENT

Date of Decision : 31-03-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 111, 98
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1936 Cal 688

Judgement

1. These five appeals are u/s 15, Letters Patent, and have arisen out of proceedings under the Land Acquisition Act. In pursuance of a declaration, dated 17th December 1928, lands were acquired for a project named " Landing Grounds for Aeroplanes at Dacca, in the village of Dhanmandal, Zillah Dacca." The village is just outside the Municipal limits, and the lands acquired were near the other lands in the village purchased by private owners for residential purposes. The lands acquired had tenants on them, having rights of occupancy; their landlords had lakheraj right in the same. The Collector valued the tenants' interest in the lands acquired at Rs. 275 per bigha and the lakheraj right of the proprietors at twenty-five times the annual rent, and five years' purchase in addition for the loss of selami of the net annual profit for rent paid by the tenants to the proprietors; the total valuation of all interests in the lands acquired was about Rs. 450 per bigha. The tenants accepted the Collector's award; there were, however, references u/s 18, Land Acquisition Act, to the Special Land Acquisition Judge, on applications made by the proprietors claiming increment of the valuation of their interest in the lands acquired. The proprietors claimed that the lands acquired should have been valued by the Collector at Rs. 5,000 a bigha.

2. The learned Special Land Acquisition Judge, on consideration of the materials placed before the Court, increased the valuation of the lands acquired: that value of the lands was estimated by the Judge at Rs. 1,150 per bigha. The increase in the valuation was based on three transactions subsequent to the notification under which the lands in question were acquired. The two Mirash Pottas, Exs. 1 and 2 in the case, according to which the value of the lands covered by the

documents worked out at Rs. 1,350; a deduction was made from that valuation, for the reason that the lands acquired were at a greater distance from the town of Dacca, and therefore slightly less favourably situated. The third transaction relied upon by the Judge was an offer of which, as it appears from the Judge's judgment itself, the exact terms were not in evidence and in regard to which negotiations had not been completed. The evidence relating to this transaction was oral, coming from a witness examined on the side of the Government; from the particulars given by the witness in his deposition before the Court, the learned Judge came to the conclusion that the total value of the land, in regard to the granting of a permanent lease negotiations had not been completed, was Rs. 1,150 per bigha. This plot of land comprised an area of five bighas adjoining the lands acquired. It may be noticed also, while referring to the judgment of the Special Land Acquisition Judge, that according to the Judge, the landlords claimants before the Court were entitled to get the full value of the land less the value of the tenant's interest as valued by the Collector. The landlords were to get Rs. 875 per bigha as their share of the value of the lands acquired.

3. The Collector of Dacca preferred appeals to this Court directed against the decision of the Special Land Acquisition Judge to which reference has been made above. The appeals (Appeals from Original. Decrees Nos. 242 to 247 of 1930) directed against that decision, were heard by two learned Judges of this Court; one of the six appeals (No. 247) was dismissed by the learned Judges, while in the other five (Nos. 242 to 246), there was difference of opinion as between the Judges, and those appeals were also dismissed in view of the provision contained in Section 98, Civil P. C. The Collector of Dacca preferred these appeals u/s 15, Letters Patent, in those five cases in which the opinion of "the Senior Judge of the Division Bench prevailed.

4. It is necessary at this stage to give our decision on the question of competency of these appeals, raised by way of preliminary objection. It was urged on behalf of the respondents in these appeals that no appeal was permissible under the Letters Patent, inasmuch as the decision of the High Court in a land acquisition case was not a judgment within Section 15 of the Letters Patent, so as to enable a party to file a further appeal to the High Court under that provision of the law. In support of this position, reliance was placed on the decision of the Madras High Court given in the year 1918, in *Manavikraman Tirumalpad v. Collector of Nilgiris* 1919 Mad 626 based principally on the judgment of their Lordships of the Judicial Committee of the Privy Council, delivered in the year 1912, in *Rangoon Botatoung Co. v. Collector of Rangoon* (1912) 40 Cal 21 and on the observations of Lord Macnaughten in a case decided by the Judicial Committee in the year 1913, *The Special Officer Salsette Building Sites v. Dosabhai* (1913) 20 I C 763 The provisions in the Land Acquisition Act contained in Section 26 of the Act, were however amended in the year 1921, by the Amending Act 19 of 1921. Every award under the Land Acquisition Act was to be deemed to be a decree, and the statement of the grounds of every such

award, a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9) respectively of the Code of Civil Procedure, 1908, (Section 2, Amending Act); consequential changes were also introduced in Section 54, Land Acquisition Act, providing for appeal to His Majesty in Council, subject to the provisions contained in Section 110, Civil P. C., (Section 3, Amending Act).

5. The reason for the amendments referred to above, was to remove the anomaly created by the decision of the Judicial Committee in Rangoon Botatoung Co. v. Collector of Rangoon (1912) 40 Cal 21 and to meet the observations made in that case by their Lordships based on Lord Bramwell's dictum in Sand Bank Charity Trustees v. North Straffordshire Ry. Co. (1877) 3 Q B D 1 that an appeal did not exist in the nature of things; a right of appeal from any decision of any tribunal must be given by express enactment; such a right could not be implied. By the Amending Act of 1921 the awards of Courts made in land acquisition cases were placed in the same category as decrees, and awards are now, after the passing of the Amending Act, decrees and orders of Civil Courts; and the statements of the grounds of such awards are judgments within the meaning of the Code of Civil Procedure. The question for consideration now is whether a judgment in a land acquisition case is a judgment as mentioned in Clause 15 of the Letters Patent and the question in our judgment must be answered in the words used by Couch, C.J. in Justices of the Peace for Calcutta v. The Oriental Gas Co. (1872) 8 Beng L R 433

The judgment in Clause 15 means a decision which affects the merits of the question between the parties, by determining some right or liability.

6. The definition of "judgment" in Justices of the Peace for Calcutta v. The Oriental Gas Co. (1872) 8 Beng L R 433 must be taken to have received the approval of their Lordships of the Judicial Committee of the Privy Council by their decision in Hurrish Chunder v. Kali Sundari (1884) 9 Cal 482 which affirmed the decision of this Court in Kally Sundari v. Hurrish Chunder (1881) 6 Cal 594 in which the definition of the word "judgment" contained in Justices of the Peace for Calcutta v. The Oriental Gas Co. (1872) 8 Beng L R 433 was adopted. A judgment in a land acquisition case is now under the Code of Civil Procedure, and appealable as such, and we do not see any reason to give a limited meaning of the word as used in the Letters Patent. The view taken by the Lahore High Court in Har Dial Shaha v. Secy. of State 1923 Lah 275 was that the Land Acquisition Amendment Act (19 of 1921) did not in any way affect the right of appeal from the judgment of one Judge to a Division Bench under the Letters Patent; the scope of the amendment was to extend the right of appeal, and not to curtail any existing right. As it was pointed out by the learned Judges in the above case, Section 111, Civil P. C., prohibits an appeal to His Majesty in Council from the judgment of a single Judge of a High Court established by the Letters Patent, and the reason of the prohibition was that an appeal from such a judgment is provided for in the Letters Patent; that an aggrieved party should not be permitted to appeal to His Majesty in Council, but that he should not in the first

instance appeal under the Letters Patent, to the other Judges of the High Court. As indicated above, the word "judgment" as used in Section 15 of the Letters Patent, must, in our judgment, be held to include all judgments affecting the merits of the question between parties before the Court, by determining some right or liability; and by the express provision contained in the Amending Act of 1921, a judgment includes a judgment in a land acquisition case. The appeals preferred by the Collector of Dacca in the case before us are competent.

7. On the merits of the appeals it must be stated at the outset that one of the learned Judges of this Court was of opinion that the decision of the Special Land Acquisition Judge valuing the lands acquired in the cases before us, at Rupees 1,150 per bigha, should be accepted. In the opinion of the other Judge, it would be amply generous to the landlords claimants for compensation, if the market value of the lands was fixed at Rs. 960 per bigha. Regard being had to the position indicated above, the appellant before us cannot be allowed to challenge the valuation of the lands acquired at the rate of Rs. 960 per bigha. It must be conceded, as it has been conceded by the learned Senior Government Pleader that there was agreement as between the learned Judges of the Division Bench to this extent, that the Collector's valuation of the lands must be increased from Rs. 450 to Rs. 960 per bigha. The question arising for consideration in these appeals is whether on the materials on the record, any further increase in the valuation of lands as mentioned above, could be allowed. In our judgment, no such increase would be justifiable. In the first place there is no reason why the market value as indicated in the documents, Exs. A and B in the case of lands lying immediately to the north of the acquired lands, should be kept out of consideration and preference given to the value of lands deducible from the two other transactions evidenced by Exs. 1 and 2, and from an offer of a permanent lease of which the exact terms were not in evidence and relating to which there is no evidence other than the statement by a witness examined in Court, a transaction which admittedly was not complete even after more than a year after the date of the publication of the declaration for acquisition of lands. The transaction evidenced by Exs. 1 and 2 relates to a time more than a month after the publication of declaration under the Land Acquisition Act for the acquisition of lands in the case before us.

8. The law requires that the market value of lands acquired is to be determined as it was at the time of the publication of the notification u/s 4, Land Acquisition Act [Section 23 (1), Land Acquisition Act]; and in the case before us, there was no special reason for relying on transactions after the publication of the declaration for acquisition of lands, and giving them preference over Exs. A and B on which the Collector's valuation was based. It is however unnecessary to pursue the matter any further, as both the learned Judges constituting the Division Bench must be presumed to have relied upon the basis of valuation afforded by transactions to which reference has been made above, and the increase in valuation to the extent of Rs. 960 per bigha must be accepted by us, based presumably upon these transactions and the oral evidence in the cases

before us. In accepting the figure Rs. 960 as we are bound to do, we desire to express our opinion, in the words used by Lord Hobhouse in *Secy. of State for Foreign Affairs v. Charlesworth Pilling and Co* (1901) 26 Bom 1 that both the learned Judges of this Court appear to have admitted into their minds those very considerations which the law directs to exclude, namely speculation on the value likely to be conferred on the lands taken for a particular project, by the completion of the project itself.

9. The position however must be recognized, as was pointed out by their Lordships of the Judicial Committee of the Privy Council in the case mentioned above, that in all valuation, judicial or otherwise, there must be room for inference and inclinations of opinion which being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others; there is more than ordinary room for guess work; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at. On the materials before us, we fix the market value of the lands acquired in the cases before us, at the rate of Rs. 960 per bigha, as mentioned in the judgment of one of the learned Judges of this Court, as, in our opinion, no increase on that figure could be held to be justifiable. The valuation of Rs. 960 per bigha, as mentioned above, represents the value of the proprietor's interest in the lands acquired on the one hand, and that of the tenants on the lands on the other. The value of the lands being determined as a whole, the question of the apportionment of the compensation awarded had to be taken into consideration with reference to the interests of different degrees as amongst the claimants. The Collector's basis of calculation of the two different interests in the cases before us shows that the valuation of the tenants' share of the compensation money based on average price paid on lands in the immediate neighbourhood as represented by the transactions evidenced by Exs. A and B was Rs. 275 per bigha, out of the total valuation of about Rs. 450 per bigha as a whole, representing the value of the two different interests in the lands. The Special Land Acquisition Judge increased the valuation as a whole, from about Rs. 450 to Rs 1,150 per bigha; and as the tenant has not applied for any reference u/s 18, Land Acquisition Act, against the valuation of the Collector, the landlords were held by the Judge to be entitled to get the full value of the land, less the value of the tenants' interest, namely Rs. 275 per bigha, i.e. Rs. 875 per bigha, as their share of the compensation money for the lands acquired.

10. One of the learned Judges of this Court affirmed the decision of the learned Special Land Acquisition Judge mentioned above, while the other learned Judge of the Division Bench expressed the opinion that the view taken by the Judge in the Court below was not sound. In our judgment, the question arising for consideration on this part of the case must be decided in accordance with the rule laid down by their Lordships of the Judicial Committee of the Privy Council in *Prag Narain v. Collector of Agra* 1932 P C 102 that where in proceedings under the Land Acquisition Act, the owner of the land has objected u/s 18 to the amount awarded, but has not objected to the apportionment between them, the

owner is not entitled to an increased amount resulting from his objection less the compensation accepted by the tenants, but only to such proportion of the increased amount as accords with the apportionment awarded; the Government and not the owner is entitled to the benefit arising from the tenants having accepted compensation upon a lower value. The above rule is in consonance with what was held by the Judicial Committee in Rohan Lal v. Collector of Etah 1929 All 525 In the case before us, there was, in the words of Lord Russell of Killowen in Prag Narain v. Collector of Agra 1932 P C 102 no foundation for the landlords' claim to be entitled to extra amount which the tenants might have received if they had not accepted the lower valuation and the landlords were therefore only entitled to their share of the compensation money, so much of the value of the lands acquired, as represents their interest in the same. In the matter of determining the value of the two different interests, the landlords and the tenants, the position that the tenants on the lands acquired had right of occupancy in the same has to be taken into consideration.

11. There is no doubt that there is, and can be no rule of general application, applicable to apportionment between a landlord and a tenant with a permanent right of occupancy; and what is sometimes called a rough and ready method of settling the matter of apportionment has to be adopted. In view of all the circumstances that have to be taken into consideration in the matter of rights conferred with rights of occupancy, it is not, in our judgment, unreasonable to hold in the cases before us that the landlords claimants for compensation who applied for a reference u/s 18, Land Acquisition Act, for increased valuation, were entitled to get two-fifths of the value of the entire interest in the lands acquired, which is fixed at Rs. 960 per bigha. In the result, the appeals are allowed in the manner indicated above. The Collector's valuation of the lands acquired in the cases before us is increased to Rs. 960 per bigha, representing the valuation of the landlords' and tenants' interests in the same. The landlords claimants are held entitled to get two-fifths of the increased valuation of Rs. 960, the statutory compensation 15 per cent allowed by law being added to the same.

12. The appellant is entitled to get his costs in these appeals, and in the appeals heard by the Division Bench of this Court, as also in the reference cases before the Special Land Acquisition Judge, in proportion to his success.