
(1897) 08 CAL CK 0001
In the Calcutta High Court

Collector of Dinagepore

APPELLANT

Vs

Girja Nath Roy and Others

RESPONDENT

Date of Decision : 27-08-1897

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 6
Land Clauses Consolidation Act, 1845 — Section 63

Citation : (1898) ILR (Cal) 346

Hon'ble Judges : Wilkins, J; Macpherson, J

Bench : Division Bench

Judgement

Macpherson and Wilkins, JJ.—This is an appeal from an award made by the District Judge of Dinagepore under the Land Acquisition Act (I of 1894) upon a reference made to him u/s 18 of that Act.

2. It appears that the District Board of Dinagepore erected a bridge over the Tulai river on the road from Dinagepore to Krishnagunge. Near the place where that road strikes the river, and where the bridge now stands, there used to be a terry owned by the Maharajah of Dinagepore through whose estate the river Tulai flowed. That ferry ceased to exist when the bridge was erected and in consequence of its erection. Under these circumstances, the District Board proposed to offer to the Maharajah, upon whose land the bridge had been erected, the sum of Rs. 3,458-15-9 as compensation for the loss of his ferry, but the proposal was vetoed by the Commissioner of the Division, with the result that the land upon which the bridge stood was acquired under the Act, and that the Maharajah made a free gift of it to the public. He, however, claimed Rs. 6,000 as compensation for the injury sustained by him in the loss of his ferry. As this claim was opposed at the instance of Government and rejected by the Collector, the case was referred to the District Judge u/s 18 of the Act for the determination of the amount of the compensation, and the District Judge has, for reasons recorded in his judgment, awarded to the Maharajah the exact sum which the District Board originally proposed to offer to him as compensation for the loss of his ferry.

3. In this appeal the Collector under the Act is the appellant; and his contention is that the respondents, i.e., the Maharaja and the zemindars, are not entitled in law to any compensation by reason of the ferry having been injuriously affected.

4. Although the bridge was constructed before the land was acquired or any proceedings taken for its acquisition, we must take it that the Act was put in force for the purpose of testing the Maharajah's claim for compensation for the loss of his ferry, and we must regard the acquisition as relating back to the time when possession of the land was taken. The circumstance has not been referred to on either side as one (sic) should in any way affect the decision of the case.

5. In this appeal the question (sic) sue is one purely of law, the determination of which depends upon the (sic) construction of the Act, Section 23 sets out the matters which the Court is bound to take into consideration in determining the amount of compensation to be awarded for land acquired under the Act. The claim in this case is based upon Clause 4 of Sub-section (1) of that section, which is to the following effect: "The damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings."

6. It is contended for the appellant that the claim is unsustainable, because no action could have been maintained by the Maharaja in respect of the bridge if it had been opened without the authority of the Act, and because the damage, if any, sustained is attributable, not to the acquisition of the land, but to the user of it when the bridge had been constructed and opened. In support of these contentions certain English cases have, been cited, viz., *London and Brighton Railway Co. v. Truman* I L. R.(1885) AC. 45; *Hopkins v. Great Northern Railway Co.* (1877) 46M P L. J. (Q.B.) 265; L. R. 2 Q.B. 224 and *Rick. v. Metropolitan Ry. Co.* (1867) L. R. 2 E. I. A. 175.

7. It seems to us that no question of an actionable right here arises, and that it is unnecessary to consider the English cases in which there has been much discussion and some difference of opinion as to the rights of persons whose land had not been acquired but who claimed compensation under certain provisions of the Lind Clauses Consolidation Act and the Railway Clauses Consolidation Act in consequence of their lands or interests having been injuriously affected by the exercise of the powers conferred by those Acts. Many of them turned on the construction of the Acts, the language of which is different from that of the Act now under consideration. There is a difference between the claim of a person whose land had not been acquired for compensation for injury caused to his property or interests by the acquisition, and the claim of a person part of whose land had been acquired for compensation for injury caused by the acquisition to the remainder of his land, and this was pointed out by Lord Halsbury in *Cowper Essex v. Acton Local Board* (1889) L. R. 14 A. Cas. 153.

8. We are dealing now with the latter class of cases only. A piece of the

Maharajah's land was acquired for the construction of a bridge; a bridge has been constructed upon it and opened for traffic, and he claims compensation for the loss of the income derived from his ferry which was worked within a very short distance of the spot on which the bridge has been constructed and within the limits of his estate. The ferry which is his property has undoubtedly been injuriously affected, he has suffered loss in consequence, and the only question is whether his claim comes within the 4th Clause of the 23rd Section of the Act.

9. Mr. Hill for the respondent has also referred us to other English cases bearing upon the construction of a somewhat similar provision in the Land Clauses Consolidation Act. Section 63 of that Act provides that in estimating the purchase money or compensation to be paid regard shall be had, not only to the value of the land to be purchased or taken, "but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner or otherwise injuriously affecting such other lands by the exercise of the powers" of the Act. The only case to which we need refer is that of *Cowper Essex v. Acton Local Board* (1889) L. R. 14 A. C. 153 mentioned above. There a piece of the claimant's land had been acquired for sewage purposes, and the question was whether he was entitled to compensation for damage sustained by reason of the injuriously affecting his other lands by the exercise of the Statutory powers. It was argued that the damage, if any, would result only from the future use or abuse of the land, and that if the land had been acquired without statutory powers no action would have lain for the construction of the works.

10. Their Lordships held that the claimant was entitled to compensation, and the ground of their decision was that the contemplated or intended use of the land for the purpose for which it was taken caused a depreciation in the value of the claimant's other land, although the sewage works might be so conducted as to cause no nuisance. Lord Watson says: "A proprietor is entitled to compensation for depreciation of the value of his other lands in so far as such depreciation is due to the anticipated legal use of works to be constructed upon the land which has been taken from him under compulsory powers."

11. We have, however, to construe a section of the Indian Act, and in doing so cases bearing upon the construction of a somewhat similar provision of an English Act different in its language can be of little or no assistance. We have alluded to the *Cowper Essex* case as showing that the contemplated legal use of the (sic) for the purpose for which it was taken might be within the meaning of the English Act an "injuriously affecting" (these words being the same in the Indian Act) of the other land of the person, part of whose land had been compulsorily taken. It does not of course follow that it is so under the Indian Act. The damage which must be taken in to consideration under the 4th Clause of Section 23 is the damage sustained at the time of the Collector taking possession of the land by reason of the acquisition injuriously affecting the other property in any other manner, or the earnings of the person interested. There is no limit as to the

nature of the "injurious affecting" except in so far as this is provided for by the other clauses of the section; the difficulty is as to the time when the damage is sustained.

12. The words "at the time when the Collector takes possession of the land" cannot mean that compensation can only be given for the damage which had actually at that time been sustained without reference to a continuing damage caused by the acquisition. The damage must be by reason of the acquisition; but this is only complete when possession is taken, for till then the Government could withdraw from it u/s 48. The Collector could moreover take possession if he chose on the very day the award was made. The whole proceedings from the declaration u/s 6 to the taking of possession might be completed within a month, and on any such construction a person deprived of earnings or an annual income would get nothing or next to nothing.

13. The words must be taken to mean the time when the damage takes place, and the right to compensation arises, and it is, we think, sufficient to bring a case within this provision if, when possession is taken, there is other property or earnings injuriously affected so as to cause some damage to the person interested. Here the ferry was in existence. In the corresponding provision of the repealed Act (X of 1870) the words were "at the time of awarding compensation." That was open to abuse, as the award might have been, and very frequently was, made long after possession had been taken. Under the present Act the Collector makes his award whether the persons interested do or do not agree to take the compensation awarded, and the Collector can take possession immediately on making his award. The alteration in the law does not affect the construction of the section for the purpose of this case.

14. Then, was the damage sustained by reason of the acquisition, injuriously affecting the ferry? It is said that the word "acquisition" means the mere taking of the land without any regard to the purpose for which it was taken, and that the ferry was not in any way injuriously affected by the acquisition of the land, however much it may have been injured by the construction of the bridge when the bridge was constructed and opened to traffic. We think it is clear that the word "acquisition" as used in Section 23 includes the purpose for which the land is taken as well as the actual taking.

15. u/s 6 the declaration of the intended acquisition must state the purpose for which the land is needed; after it has been published the Collector is to take order for the acquisition. He is to measure, mark out and make a plan of the land, to give notice that the Government intends to take possession of it, that he will receive claims to compensation for all interests in it, and that all persons interested must attend at a specified time and state the nature of their respective interests and the amount and particulars of their claims to compensation. He is then to inquire into the respective interests and claims and to make his award, and in determining the amount of compensation he is to be guided by the provisions of Sections 23 and 24.

16. If he is not to take into consideration the purpose for which the land is taken, it is difficult to see how he is to determine the amount of the compensation with reference to many of the matters which he is bound to consider u/s 23.

17. It may be true that if the bridge had never been constructed, or if constructed never opened for traffic, the actual injury to the ferry might have been comparatively speaking small. But it is impossible to say that it was not injuriously affected by the acquisition in such a way as to cause some damage to the owner of it. The declaration of the Government that the land was-wanted for a purpose which would entirely destroy that ferry, the proceedings taken, and the actual acquisition of the land for that purpose, must have considerably affected the letting or selling value at the time of the acquisition.

18. The intention of the Legislature to be gathered from the Act seems to have been that persons, a part of whose land has been compulsorily taken from them, should, apart from its actual value, be compensated for injury done to their other property by the taking.

19. We must hold, therefore, that the Maharajah was entitled under the Act to compensation for the loss of the ferry, and that the decision of the District Judge is right. No question as to the amount of the compensation is raised in this appeal, and the appeal is dismissed with costs.