
(1938) 09 AHC CK 0009
In the Allahabad High Court

Damodar Das

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 12-09-1938

Acts Referred:

Citation : AIR 1939 All 106

Hon'ble Judges : Bennet, Acting C.J.;Verma, J;Varma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Bennet, Ag. C.J.

1. This is a first appeal brought by R.S. Damodar Das, advocate, against a decree of the learned District Judge of Meerut in a land acquisition reference. The appeal is similar in some ways to F.A. No. 166 and F.A. No. 167 of 1935 decided at the same time by this Bench. But in the present case on page 7, line 44 appellant has stated:

I do not ask for compensation for the land. I do not know if the land belongs to the Government.

2. In the other appeals the appellants had claimed that the land belonged to them. The present appellant bought the bungalow No. 162 in Meerut Cantonments on 21st November 1920 by a sale deed from Mt. Lalan printed on page 25, where it is stated at lines 20-23 that the vendor has

sold the bungalow aforesaid together with the boundaries and rights and appurtenances relating thereto and rights and interests in electricity, etc., except the land belonging to Government.

3. In spite of these admissions the appellant has claimed in the lower Court on page 1 in addition to Rs. 38,000 for the bungalow, Rs. 2913 for trees, Rs. 10,000 for "cultivatory rights" and Rs. 12650 for lawns, garden, well, boundary walls, etc. He has also claimed that his house can be traced before 1836 and so

Regulation dated 12th September 1836 will not apply to him. We have fully considered the Regulation in question in P. As. Nos. 166 and 167 of the 1935 judgment, and we refer to it for details. Briefly, we set out that by General Order of the Governor-General in Council dated 28th September 1807

no bungalows or quarters at any of the cantonments shall be allowed to be sold to, or occupied by, any person who does not belong to the army. If individuals not officers shall purchase, they must remove the materials, as the grounds within the limit of cantonments is to be kept and appropriated exclusively to the use of the troops.

4. Meerut Cantonment was first occupied by the British between 1811 and 1813, so this Order in Council was then in force. It was replaced by the Regulation of 12th September 1836, which provided in 6 (1st):

The Government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorized to be erected.

5. This condition is still in force, being contained in the Army Regulations, India, 1887. Under the East India Company's Charter Act of 1833, 3 & 4 Wm. IV, Cap. 85, Section 43, it is provided that the Governor-General in Council shall have the power of making laws and regulations, which u/s 45 have the same legal force as an Act of Parliament. The Regulation of 1836 which has never been repealed has therefore the force of law. Moreover, the conditions in these Orders are conditions under which Government made the grants of land for building purposes. Therefore the Crown Grants Act, 15 of 1895 applies. For it is declaratory of the law and retrospective as Section 2 shows, as it refers to

any grant or other transfer of land or any interest therein heretofore made or hereafter to be made.

6. Section 3 provides:

All provisions, restrictions, conditions and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

7. These considerations dispose of the claim for "cultivatory rights" lawns, garden, trees, etc., as all these things go with the land which belongs to Government. All that could be transferred was the materials of the bungalow. As regards cultivation, as early as 1824 there was a General Order by the Governor-General in Council, No. 245 of 19th August 1824, that cultivation should not be allowed, and the objection to crops in cantonments has been frequently repeated in subsequent legislation. In AIR 1931 1 (Privy Council) there was a case where the owner of a bungalow in Barrackpore Cantonment claimed compensation for alleged rights in the land in a case of land acquisition. On page 861 their Lordships stated:

Their Lordships however have no doubt that, when Government are acquiring immovable property for a public purpose under Act 1 of 1894, it is for the person claiming compensation to establish his title to it affirmatively.

8. The burden of proof therefore lies on the appellant to show that he has any rights in the land which admittedly belongs to Government, and he has failed to show any such rights. The history of the bungalow is as follows : F.A. 389, page 21 has an extract from the Cantonment Register 1874 which shows that No. 162 was formerly 137. An old register, Ex. H, is produced which was begun on 1st October 1833. There were then only 11 bungalows in the Cavalry Lines. Later to these 11 entries in ink, were added Nos. 12 to 32 in pencil. The Dragoon Lines are entered in detail further on in the register, and the first entry on p. 21 of P.A. 389 appears. As noted in the other cases, the numbers in the Cavalry Lines were a sequence by themselves originally, as the bungalows were gradually increased from 11 to 33. At that stage, numbers were assigned for the whole cantonment in a series, and this bungalow which had been No. 31 Cavalry Lines became No. 137 Cantonments. The entry was:

No. 31 The Revd. S. Whiting, Sold to Capt. Boyd. No. 137 Sold to Trevor I.C. Plowden, Esq. Sold to Lallah Jotee Persad, 26th November 1847.

9. Mr. P.L. Banerji argued that this corresponded to an entry in the index "17 Mr. Whiting" in pencil. Even if it does, as it is in pencil and follows the original 11 numbers in ink entered in the same writing as the date 1st October 1833, the entry is clearly of later date. We note that in the British Infantry Lines there is an entry No. 29 that Mr. Whiting bought that number on 27th January 1837, so he probably bought it when he sold 162, which would make the sale of 162 in 1837. In any case the point is of no importance, as even if the house had been built before 1836, then the General Order by the Governor-General in Council of 28th September 1807 would apply, by which a purchaser only acquired the materials. Mr. Banerji was in error in arguing that that order was rescinded on 29th March 1808 by a Resolution of the Military Board, because (1) that body could not rescind an Order in Council, (2) it did not purport to do so but to explain it in regard to quarters only, and (3) the Regulation of 1836 did specifically rescind it. On p. 23 an application of 12th January 1920 by Mt. Lalan asks for permission to cut down two or three shisham trees which was granted. This shows that she did not own the trees. On pages 25 and 26 is her sale deed of the bungalow No. 162 to L. Damodar Das. The price is stated to be Rs. 20,000 but the detail shows that Rupees 1000 was earnest money, Rs. 15,000 cash paid before the sub-registrar, and an item of Rs. 4000

left in deposit with the vendee. Interest will be charged on this amount at the rate of Ks. 7 per cent, per annum and I shall go on taking therefrom according to my needs by granting receipts.

10. None of these receipts have been produced, though they would be in possession of the appellant, and he has not shown from his account books that

he ever made any such payments under this unusual provision. At the most therefore this sale deed shows that in 1920 appellant paid Rupees 16,000 for the bungalow, at a time when rents were high and house property commanded a higher price than it does to-day.

11. The applicant produced a Mr. F.B. Blomfield, a partner in a firm of architects in Delhi, who is also a surveyor. This witness gives evidence from page 5, and his valuation is at pp. 49 to 52. He states that this valuation is "based on Military Engineering Services quantities but at current rates." His rates differ greatly from those of Major Mathews, the Garrison Engineer, whose valuation is at pages 66 to 72. For example, Item 1 for the foundations burnt bricks in clay is taken by Mr. Blomfield at Rs. 17 per 100 cubic feet, with a result of Rs. 1742, but by the Garrison Engineer at 1 anna 3 pies per square feet, with a result of Rs. 1077. The next item has the same quantity, 39,217 cubic feet for walls, sun-dried and burnt bricks in clay (a poor kind of substitute for mortar), but Mr. Blomfield takes Rs. 16 per 100 cubic feet and gets Rs. 6275, whereas the Garrison Engineer takes Rs. 13 per cubic feet and gets Rupees 5098. The roofs are of poor material, country tiles, and in one portion single Allahabad tiles, but Mr. Blomfield takes Rs. 60 per 100 square feet and gets Rupees 7474 and only takes 25 per cent, reduction for depreciation though he admits the bungalow is 80 years old. The Garrison Engineer takes a rate of Rs. 41-11-0 per 100 square feet, and gets Rs. 5192 from which he deducts 40 per cent, for depreciation and gets Rs. 2787. The above items show how it is that the estimate of Mr. Blomfield arrives at Rs. 24,981 for the house, less 25 per cent, depreciation reducing it to Rs. 18,716, while the Garrison Engineer gets a total for the house of Rupees 16,850 less Rs. 4779 depreciation, net result Rs. 1,0,471. Mr. Blomfield puts down in his summary on page 47 an item of Rupees 15,000 for right of user of the land, which we have shown does not arise as the appellant has no such right. Another item is Rs. 5445 shown as "sundries" : page 52. This comprises two wells, summer house, roads and culverts, boundary walls, making garden. Most of these items were probably made by tenants, and go with the land. But the Garrison Engineer has included in his estimate on page 70 all of these items except No. 9 "making garden excluding trees Rs. 1500," and No. 10 "dhobi ghat Rs. 100". The garden must have been made by the tenants, and it is not alleged that the owner ever lived in this house. And the garden would go with the land which belongs to Government. No evidence was given as to what Mr. Blomfield meant by the dhobi ghat. These comparisons show that the estimate of the Garrison Engineer is much more reliable than that of Mr. Blomfield.

12. R.S. Damodar Das gave evidence on page 7 and stated the rent was Rs. 98 per mensem when he bought the house in 1920 for Rs. 16,000 (and a promise to pay Rs. 4000 more which it is not shown that he paid). He says that he spent Rs. 5000 more on it and refers to a list Ex. 8 on page 55. This is merely a list of 1934 and there are no receipts or books of account or evidence of contractors or workmen to support him. On p. 8, line 7 he said : "I have not kept any detailed accounts of my expenditure on the improvements." Item 1 he puts on p. 55 as

done in 1921 or 1922. Nearly all the items are really re-roofing or providing ceilings which would come under the head of special repairs. It is doubtful what amount he spent, but he has not given satisfactory evidence that he spent Rs. 5000. It has been argued by Mr. P.L. Banerji that the present case could not have been brought under the Land Acquisition Act because that Act deals only with the acquisition of land, and that here the Secretary of State claims the land as owned by him, and applies asking for compensation to be awarded for the buildings only. For this proposition he relies on the Full Bench ruling in *Makhan Lal and Others Vs. Secy. of State* it is set out that the reference to the Full Bench was made because of two earlier rulings, and the Full Bench overruled the dictum in the two earlier rulings on p. 665, under which the District Judge had held that he had no jurisdiction to decide the compensation to be awarded to the owners of buildings which stood on Nazul land, as the Nazul land belonged to Government. One earlier ruling was *Imdad Ali v. Collector of Farakhabad* (1885) 7 All. 817 where it was held that there was no jurisdiction for the District Judge under the Land Acquisition Act, where the Collector claimed the land as belonging to Government, because Section 15 contemplated a dispute between persons who appeared in response to a notice u/s 9, and the Collector himself was not such a person. This ruling was followed in *Crown Brewery, Mussoorie v. Collector of Dehra Dun* (1897) 19 All. 339. Mr. Banerji, thinks that though the ruling held that such cases do come under the Land Acquisition Act, where the Government claims, that the land belongs to it, some further distinction can be established from the words used in the Full Bench ruling on page 667:

If we look at Sections 4 and 6, Land Acquisition Act, we find that what is to be acquired is land, and nothing apart from the land.

13. But the passage continues:

It is always open to the Secretary of State to declare in the Notification that the Secretary of State claimed the land as Nazul, and this is what has been done in this case. Persons who are interested in disputing the title of the Government to the land would be entitled to raise objections before the Collector, and then before the District Judge, and to have a determination of the question of title on the evidence.

14. A precisely similar point was taken by Mr. P.L. Banerji recently in *Secretary of State v. Allahabad Bank, Ltd.* Cawnpore reported in AIR (1938) all. 34 decided on 5th August 1938 in which as the judgment of the District Judge shows on pp. 15 and 16 of the paper-book the land was cantonment and notice of resumption had been given under the Regulation of 1936, and then an application had been made under the Land Acquisition Act for assessment of compensation on the value of the bungalows only. The case was therefore similar to the present cases, in which the notice is printed on pp. 1 and 2 of the paper-book in F.A. No. 166 of 1935. In this appeal a Bench of this High Court, Hon''ble Harries J. and Hon''ble Misra, J. held that the District Judge was wrong in holding that he had no jurisdiction under the Land Acquisition Act, and remanded the case to him for

disposal on the merits.

15. We may point out that the Land Acquisition Act, Section 3(a) states that the expression "land" includes benefit to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

16. For the Act therefore a bungalow is included in the definition of "land" and the case lies for compensation to be awarded for a bungalow, where the Government claims title to the land and does not propose to pay compensation for the land, and states in the notice that the land has been resumed.

17. As in F.A. No. 166 of 1935, we follow the rule in Gajraj Singh and Another Vs. Muhammad Mushtaq Ali, :

Prima facie and in the absence of special circumstances to the contrary, the rate of 12 percent, per annum may be taken as a fair, proper and reasonable rate.

18. That dictum was applied to simple mortgages, but for the reasons given in that ruling we think it is a fair rate to take for the return to be expected from investing money in house property in cantonments. Now R.S. Damodar Das claims that he has increased the rent from Rs. 98 in 1920 by Rs. 102 on the expenditure of Rs. 5000 making the rent Rs. 200. We do not think that was a fair increase for such a small expenditure, even if made in full. If we take 12% of Rs. 5000 it would come to Rs. 600 per annum. The former rent Rs. 98 is Rs. 1176 per annum. The fair rent would be the total Rs. 148 per month or Rs. 1776. If we multiply this by $8\frac{1}{3}$, which corresponds to 12% per annum we get Rs. 14,716. This is slightly larger than the figure of the Garrison Engineer taken by the Court below, Rs. 13,650. We therefore allow the appeal to this extent that we take the value at Rs. 14,716 plus $\frac{15}{6}$ for compulsory acquisition, Rs. 2207, total Rs. 16,923. We thus allow Rs. 16,923 in place of the Rs. 15,967 allowed by the District Judge and Rs. 10,898-13-0 allowed by the Land Acquisition Officer. The latter amount and the increase of the District Judge have apparently already been paid. Our decree will therefore be that we allow a further sum of Rs. 1226 above what was decreed by the District Judge, and this Rs. 1226 will carry interest at Rs. 6% per annum simple from 7th May 1934 till the date of our decree. The parties will pay and receive costs proportionate to success and failure.

Verma, J.

19. I agree.

20. The appeal is allowed in part. The appellant is allowed a further sum of Rs. 1226 over and above what was decreed by the learned District Judge. This sum of Rs. 1226 will carry interest at 6 per cent, per annum simple from 7th May 1934 till the date of our decree. The parties in this appeal will pay and receive costs in proportion to success and failure.