

**(1887) 02 CAL CK 0010**  
**In the Calcutta High Court**

E. Taylor and Another

APPELLANT

Vs

The Collector of Purnea

RESPONDENT

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**Date of Decision :** 15-02-1887

**Acts Referred:**

**Citation :** (1887) ILR (Cal) 424

**Hon'ble Judges :** Wilson, J; O'Kinealy, J

**Bench :** Division Bench

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### **Judgement**

1. This appeal arises out of an assessment of compensation made under Act X of 1870, the Land Acquisition Act, by the District Judge of Purnea.

2. It appears that, before the year 1884, the claimant Mr. Taylor was lessee of an indigo factory at Manihari. On the 15th February in that year, he or his wife purchased the property from those under whom he had previously held the leasehold, and thus became the owner of the property. The Government found it necessary for the purposes of a railway to acquire a portion of the land held by him as part of, or in connection with, the factory. We are here concerned with three plots, which are shown on the map and marked A, B and E. On the 4th March, 1884, the proper officer published the general notification required u/s 9, paragraph 1 of the Act. On the 20th March, acting under the powers given to them by Section 7 of the Act, the officers of Government took possession of these lands. At various dates between the month of October 1884 and January 1885, the personal notices, as we may call them, required by Section 9 were served upon the parties interested. After that the Deputy Collector appointed for this work proceeded, in the manner required by Section 11 and the following sections of the Act, to make the necessary enquiries into the value of the lands taken for the purposes of compensation.

3. On the 23rd June three references u/s 15 of the Act, because there were three plots, were made to the District Judge for the purpose of assessing compensation. On the 24th August the claimants put in their claim in writing. It is enough to say with regard to that claim that it raised three points or classes of

points. First, it alleged that the lands, which it was proposed to take, or some of them, formed part of the factory, within the meaning of Section 55 of the Act, and that, therefore, inasmuch as Mr. Taylor objected to a part being taken, the Government was not at liberty to take less than the whole. The second point or group of points raised was with regard to the amount of compensation properly payable for the lands actually taken supposing the contention u/s 55 was not to prevail. And the third class of points raised was as to the amount of compensation properly payable for the injury done to, or, to use the language of the Act, for "injurious affection" of, the remaining property not taken. On the 12th January 1886, a written statement on behalf of the Government was put in. It is enough to say as to it that practically it took issue with the claimant's claim upon all the various matters.

4. The case came on for hearing, and on the 16th January 1886, the two assessors delivered their opinions, in which they differed very widely on all the points. The learned Judge delivered his judgment on the 1st February following. In that judgment he has dealt with each of the questions or classes of question to which we have referred.

5. With regard to the first question he has held that Section 55 does not apply to the case. As to that it appears to us that the decision cannot stand, because in our judgment neither the Collector nor the Judge under the reference to him, nor we on appeal from those proceedings, have power to decide any such question. It must be borne in mind that this Act confers a special and limited jurisdiction upon various classes of people to decide certain questions, and they have only power to decide those questions with which the Act enables them to deal. We need not trouble ourselves with the sections dealing with the powers of the Collector. We have to do with these sections which affect the powers of the Judge. The act provides for two classes of reference to the Judge, and the Judge can decide only those things which arise out of those references. The first class of reference is to award compensation u/s 15; the second class of reference is for the apportionment of compensation u/s 38; and an appeal to this Court from those decisions is given in certain limited cases. The result is that the Court has power under proper references to decide what compensation shall be awarded, and to whom it shall be paid. And it must be taken now on the decisions that for those purposes the Judge has power to decide questions of title ; that can no longer be disputed since the decision of the Privy Council in *Raja Nilmoni Singh Deo Bahadur v. Rambandhu Rai* 7 C. 388. But none of those sections, to which we have referred, give any power to decide the question which arises u/s 55, whether the Government has a right to take what it proposes to take at all. There is no express power in any section given to decide that question, and it does not arise by any reasonable inference under a reference to award compensation or a reference to apportion compensation. It is not necessary for us to say how that question can properly be raised ; it may be, and very likely is, that the only way is by a suit brought for the purpose, as was certainly done in *Kharshedji Nasarvanji Cama v. The Secretary of State in Council* 5 B.O.C.J. 98

under the earlier Act. That part, therefore, of the Judge's decision is not reversed, because we have no power, as we have already said, to express any opinion, but it is set aside as being in excess of his jurisdiction.

6. Next comes the question of compensation for the lands taken. The mode in which the lands have been valued for this purpose is this. The land has been valued as if it were bare land; and the crops upon it have been valued separately. So far as the valuation of land is concerned, regarded in that light, we see no reason to differ from the view which the learned Judge has taken. As to the crops other than the bamboos there is no serious contention, as Mr. Advocate-General assents that Rs. 310 should be allowed. We think that a slight error has been committed with regard to the land on which the bamboos stood. The learned Judge has valued the bamboos, that is to say, the bamboo stems then on the land, at Rs. 1,400. We think that what he ought to have done was to value them, not as so many bamboo stems there, but as growing bamboos, which would produce cut able bamboos in future, as they have done in the past. Taking (what we think is the fair result of the evidence) the production of bamboos at 500 per annum, and taking the price, which has been assessed by the learned Judge, Rs. 20 per hundred, and taking the number of years purchase which he has taken, namely, 20 years, we arrive at Rs. 2,000. To that extent the compensation should be increased.

7. But it is obvious that the really important question in the case is the proper measure of compensation for injurious affection of the property which has been left in Mr. Taylor's hands. To appreciate that we must see what the position of the property was. It consisted of an upper factory situated on high land at a considerable distance from the river, and of a lower factory close to the river. The land between these two parts belonged to other persons, but there was a roadway connecting those two parts of the factory. That roadway was in a part of its length a public road, as for the rest it is clear on the evidence that it was a private road belonging to the factory.

8. The next thing which it is necessary to notice is that there was a water-channel running from the river through the lower factory, and through the intervening land into the upper factory and into a tank there. And in portions of the year that channel had the effect of filling the tank in the upper factory from the river. The third thing which it is necessary to notice is this, that on the evidence of all parties it is absolutely essential to the working of the lower factory that the foul water which runs to waste after the manufacture of indigo should have some means of escape other than into the river, because all the witnesses agree that if discharged into the river it would, in an important part of the year, have the effect of deteriorating the manufacture of the indigo, for which water is taken from the river. Before the railway was made, there was such an escape in a north-easterly direction from the lower factory. There is one other thing which it is necessary to notice, that indigo is manufactured at the lower factory and then carried to the upper factory, where it is stored and kept. These

are the principal matters for which compensation is demandable on the ground of injurious affection. There is one other very important matter, which will be considered later on.

9. It appears to us that in the Court below there has been some misapprehension as to the legal position of the parties in this case. It is clear under the express terms of the Act that, whether land is taken in a summary way u/s 17, or in the more deliberate method contemplated in the earlier sections, whatever land the Government takes under the Act, it takes it as its absolute property free from all incumbrances. Therefore, when the Government took the plot E, they so took it ; and it is plain that the right to the water channel to fill the tank in the upper factory, the right of drawing away the foul water from the lower factory on to other people's lands to the northeast, through the land now taken by the railway, and the right of way, were all incumbrances within the meaning of the Act. The result is that the moment the Government took possession of the lands these incumbrances as a matter of right instantly ceased to exist. That was the position of the parties in point of law. It appears to us that those who acted for the Government fully understood that that was so, because the letters of the engineers repeatedly told Mr. Taylor that he had no right at all. And this appears more strongly from what passed when Mr. Taylor memorialised the Government of Bengal with regard to the matter. He enumerated all these particular things among others as causing special inconvenience, and he asked that his case might be specially dealt with. The answer to that was one which embodied a perfectly correct view of the law. Colonel Trevor, in his letter, discussed the points which Mr. Taylor had raised, and gave his reasons for thinking that the injury was not so great as it seemed to Mr. Taylor. At the close of his letter, paragraph 9, the legal position is defined clearly and correctly. It says : "After full consideration of all that you have urged, and of what is stated in the engineer's report, His Honor has come to the conclusion that there is no ground for his interference with the ordinary course of law. Section 24 of the Land Acquisition Act provides for compensation being paid for all damage to property of the kind you complain of." After that, no doubt, the engineers appear to have been desirous of mitigating these evils as far as they could ; and Mr. Taylor seems to have been willing to accept if he could any effective substitute for those rights Accordingly it was at one time proposed that there should be a culvert under the railway to carry the water into the upper factory. It was also proposed that there should be a passage under the railway for the escape of foul water. It was at one time proposed (and this was partially carried out) that there should be a subway for the private road. But the engineers, presumably on engineering grounds, thought that these arrangements could not be safely continued or carried out, and accordingly they closed the culverts and they closed the subway. The result is that not only is there no legal right to any of these things, but as a matter of fact there is no longer a water-channel, and as a matter of fact there is no longer any means of carrying off the foul water in the way in which it was formerly carried. As to the road there is no way on the level of the old road. We do not know what

roadway has been made ; but we know that at the time when Mr. Baxter, the engineer, gave his evidence, he intended that there should be a roadway or passage over the railway. If that roadway continues Mr. Taylor has no right to it ; all that he can do is to use it, so far as the railway authorities find it convenient to allow him to do so, consistently with the proper working of the railway. That is how the matter stands as to the roadway. Now let us see what Mr. Taylor has got with regard to the carrying off of the foul water. He has not got anything as of right. All that appears on the evidence is that on one occasion, when Mr. Taylor found himself in a position of extreme difficulty from the accumulation of foul water in the lower factory, the engineer cut a channel by which he was allowed to drain off that water into an open pit situated somewhere near the line. So far as the evidence goes this was done on one occasion ; Mr. Taylor certainly cannot claim it as of right, and there is nothing on the evidence to enable us to say whether, as a matter of fact, he has been or is allowed to continue this practice of drainage.

10. Now all we have to see with regard to these matters is on what principle compensation for damages ought to be assessed. Mr. Taylor asserted that the practical result would be that his factory was no longer capable of being profitably worked ; and one of the assessors was clearly of that opinion. With regard to one of these matters, namely, the means of escape for foul water, the Judge was of opinion that, unless there was a right to means of draining off the foul water, it would prove fatal to the working of the factory. The evidence shows that that would be so ; and inasmuch as we hold that Mr. Taylor has not now any such right, we think this circumstance practically fatal to the successful working of the factory hereafter. The objection as to the loss of roadway is nearly as fatal, because it is clear on the evidence that during the busy season there was a great deal of traffic on this road. It has been shown that about 300 carts have to pass from the lower factory to the upper factory in the day. It must make a great difference in the working of the factory if, instead of having his own road on the level by which to send his carts when he pleases, the proprietor can only take them over a railway, and only when the railway authorities find it consistent with their duty to allow him to do so. And applying one's common sense to the matter it is clear that it must greatly diminish the value of the factory. The loss of the water-channel for filling the tank appears to us of comparatively minor importance, because from Mr. Reilly's evidence it appears that the upper factory cannot be worked by itself.

11. The result appears to us to be that the lower factory cannot, after the railway has been made, be profitably worked ; and Mr. Reilly's evidence makes it clear that the upper factory without the lower factory cannot be worked. All these considerations taken together seem to us to show what amount of mischief has been done to the factory, and that this factory, which was formerly a factory capable of being, worked at a profit, has now become incapable of being so worked.

12. And the matter becomes more serious when we look at another great danger to which the lower factory has been exposed by the railway embankment. It stands very close to the river Kosi. We have it in evidence that, at the period when the river is fullest, the water of the Ganges dams back the water of the Kosi, and either leaves it stagnant or actually causes it to flow back. The result of course is that there was always a liability to damage to the factory buildings : and we only require to look at the map to see that this liability has been greatly increased by the railway embankment. It has been carried along behind this factory and partly over it, so that the flood water from the overflow of the river which used to flow off the factory on to the lower land behind cannot do so now. The result of thus damming up the flood water must be to increase the depth and the duration of every flood on the factory as is evident from looking at the physical character of the place. But further we have specific evidence of what has happened. The evidence shows that, during the period when the factory was under Mr. Reily, there was a flood in 1871 in 1879. After the railway embankment was made there was another flood in 1884. We have it on the evidence of Mr. Baxter" that the flood of 1879 was the highest flood ever known, and the flood of 1884 a foot lower. Whereas, if we look at the evidence of what happened at the factory, we find that the flood of 1884 rose among the factory buildings two or three feet at least higher than the flood of 1879. The result is that the lower factory is now far more liable to danger from flood than before.

13. There is one other trifling matter of compensation which it is necessary to notice. Compensation has been given in respect of the upper factory for the increase of expenditure in future years upon bamboos by reason of their having to be fetched from a distance instead of from an adjoining bamboo clump. Rs. 500 has been allowed for that. Taking the view we take of the principle on which compensation should be assessed, to allow this sum would be giving compensation twice over.

14. The result is that the case must go back to the District Judge to try two issues, first, what was the value of the lands and buildings, excluding of course the lands taken by Government, before the railway was made and when they were capable of being profitably used for factory purposes ; and, secondly, what is the value of the same lands and buildings now, taking them as lands and buildings which cannot be profitably used for the purposes of a factory. The District Judge is asked to return his findings within two months from the time when the record reaches his Court.

15. We think that 15 per cent, should be allowed on the value of the lands plus the crops, including the bamboos.