

(1923) 02 BOM CK 0032
In the Bombay High Court

Gajanan Vinayak

APPELLANT

Vs

Assistant Collector and Another

RESPONDENT

Date of Decision : 05-02-1923

Acts Referred:

Citation : 85 Ind. Cas. 11

Hon'ble Judges : Norman Macleod, C.J;Crump, J

Bench : Division Bench

Judgement

1. This is an appeal from an order made by the Joint Judge of Thana in a land acquisition reference. The land to be acquired was notified for acquisition on the 24th January 1919. At page 108 will be found a plan showing the property coloured pink which was acquired out of a much larger area which belonged to the claimant Gajanan Vinayak. The Collector awarded Rs. 2-8-0 a square yard for all interests in the land. The joint Judge increased that to Rs. 3, and divided the amount between Gajanan Vinayak, the occupant, and the khot of Kaneri, in the proportion of 2 to 1. The claimant Gajanan contends that the land was worth Rs. 4 a square yard in January 1919, but that contention is based on sales dating from May, June and July in 1919, several months after the land under reference was notified. It is a matter of common knowledge that as conditions began to improve after the Armistice had been signed, prices for land went up rapidly. But there is no evidence that they began to rise before May or June 1919. Therefore, the rates which were obtained in these months could not possibly bear any comparison with the rates which prevailed in January. It seems to us that the amount awarded by the Judge was ample, considering the evidence. The Judge, however, agreed with the Collector in awarding no compensation for 226 square yards on the northern boundary occupied by a rough road which was used by the public and by the tenants of the adjoining land, holding that as a small portion was allotted for the purposes of the road on the northern boundary of the claimant stand, there was no necessity to award compensation for the 226 square yards. We think that decision was wrong. The land acquired was 1627 square yards in all, and on acquisition the ownership would pass from the

claimant to Government. Although there may have been a public right of way over the 226 square yards, it did not follow that the claimant was entitled to, no compensation at all for his rights as a proprietor. At the same time, the fact that there was a road used by the public at one end of the claimant's land would depreciate that land, and we doubt very much whether we could possibly allow more than a few annas a square yard for these 226 square yards which were not reckoned in the Collector's award. We think the small amount that might be awarded can very well be set off against the very generous amount which has been awarded by the Joint Judge for the balance of the land so that there is no necessity to increase the total to be awarded for the whole 1627 yards.

2. Then the claimant asks us to assess damages for severance. That is a wrong word to use. Really this is a claim u/s 23(1)(4). It has been contended that by reason of the Government acquiring a part of the frontage of the land belonging to the claimant, the land behind the plot acquired would, by reason of such acquisition, be injuriously affected. That may be the case. The Judge has taken that into consideration in the amount that he has awarded, by adding 5 per cent, and we do not think there is any thing unfair in that excess.

3. Then the claimant asks us to award him Rs. 2,000 by reason of his premises being injuriously affected by the proximity of the Police lines which were going to be built on the land acquired. It may be, as held in *Collector of Dinagepore v. Girja Nath Roy* 25 C. 346 : 13 Ind. Dec. 231, that the words in Section 23(1)(4) "at the time of the Collector's taking possession of the land" cannot mean that the claimant can only prove that the property remaining with him is injuriously affected at the moment of the Collector's taking possession of the land. Such a construction would probably result in a claimant never getting anything under that clause. But it is very difficult to assess any possible damage which might be caused to the land still remaining with him, when the Government carry out the object which they have in view in acquiring his land; and it is difficult to say that because there will be some building occupied by the Police on that piece of land, a purchaser wishing to buy the rest of the claimant's land would consider that the Police lines was a draw-back, which would reduce its value. We doubt, considering the situation of this land, whether as a matter of fact the value of the claimant's remaining land would then in any way be reduced by the mere fact that the plot nearest to it was occupied by the Police.

4. Then there is one error which the Collector and the lower Court have made. It is very likely that the mistake was not pointed out to either of them, but the land has been valued on instances of sales of what we may call the tenant's rights, and in order to value the freehold, that is to say the value of all interests in the land, something in addition would have to be awarded because the purchaser of the tenant's rights, to acquire the freehold, would have to redeem the rights of the khot. Instead of adding, something on to the valuation of the tenant's rights as the value of the Idiot's interest, both the Collector and the Judge have deducted out of the tenant's interests the value of the khot's, interest. In this

case it is a very small amount. The rent paid to the khot is only 14 annas, and we may say that for a payment of Rs. 25, the tenant could have redeemed all outstanding interests of the khot and so obtained the free-hold. The amount may seem trivial but an important principle is involved which to our knowledge has been consistently ignored in arriving at the market value of all interests in land to be acquired. The value of the interest of the superior holder must be included in the award and not deducted from the value of the occupant's interest. So we increase, the award by Rs. 25.

5. Then we have got to consider whether the award by the Trial Judge of one-third of the compensation payable for the tenant's rights to the khot was correct. Undoubtedly in the case of warkas or bhati land in Salsette, it has been a recognised custom to divide the compensation between what we may call the occupant and the khot in the proportion of two to one. But that has been due to the fact that in the case of such lands it is extremely difficult to define and ascertain the value of the respective interests of the Idiots and the occupants, with the result that a rough and ready method of division has been adopted for want of a better. In many cases the claimants against the khots can hardly be called occupants. The claims are based on the fact that they are occupants of certain defined plots of land for the purpose of cultivating them, so that by reason of such rights as occupants, they are entitled to other rights over the adjacent lands either for the purposes of grazing or of gathering rob materials. It is not generally shown that in such cases the occupants of cultivated lands have any defined area of warkas or bhati lands allotted to them, and so in order to divide the compensation between the khot and the persons who have the right of user, owing to their position as cultivators, it has been found a convenient compromise to divide the compensation between them in that proportion. But it is entirely different when you find a tenant in occupation of a defined area of land, and paying assessment for it. Then undoubtedly he has a right to possession of all that area. Although this village has never been officially surveyed, it was surveyed in a rough sort of fashion in anticipation of an official survey, and. we have it in evidence that in the khot's, register there was a khata of Govind Bapuji which contained the names of various Survey Numbers (including the Survey Numbers in reference), the purpose for which the lands were used, and the assessment paid for them, that Govind Bapuji had sold a portion of the land appearing in his khata to the present claimant, and also that there had been proceedings with regard to this, land with the result that the claimant was held entitled to possession. The result must be that the claimant was the occupant of the whole land acquired, and. entitled to remain as occupant, provided he paid the assessment; while the only right which the khot had was to be paid the assessment. He could, not possibly with any chance of success have filed; a suit for possession as long as the assessment was paid. Therefore,, this case has no resemblance whatever to those other cases in which the compensation money, has been divided between the khot and the occupants in the proportion of two to one; and if it is suggested that in every case of khoti

land in Salsette, that is the proper way of apportioning condensation, then we must very decidedly dissent from such; a proposition. It certainly could only be made applicable in the case of warkas or bhati lands which are not surveyed, and which cannot be considered to be in. the exact occupation of any particular tenant.

6. Therefore, the result of the decision is that an extra amount. of Rs. 25 plus 15 per cent, must be awarded and that will go to the claimant khot, while the entire compensation awarded by the Collector and the Joint Judge will be paid to the claimant Gajanan Vinayak.

7. The claimant Gajanan Vinayak must pay the costs of the appeal of Government respondent No. 1. Respondent No. 2 must pay whatever costs the appellant has incurred with regard to that part of the appeal on which he has succeeded against respondent No. 2.