
(1903) 03 CAL CK 0022

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 799 of 1900

Ganga Ram Marwari

APPELLANT

Vs

Secretary of State For India

RESPONDENT

Date of Decision : 20-03-1903

Acts Referred:

Citation : (1903) 03 CAL CK 0022

Final Decision : Dismissed

Judgement

Banerjee and Hendersohn, JJ.—In this appeal, which arises out of a suit brought by the Plaintiff-Respondent, the Secretary of State for India in Council, against the Defendant-Appellant, for possession of a plot of land, which had been acquired by the Plaintiff under the Land Acquisition Act (X of 1870), the only question raised on behalf of the Appellant is, whether the Court of Appeal below was right in holding that, u/s 16 of Act X of 1870, the land vested absolutely in the Government, free from all encumbrances, when no special notice, such as is required by Section 9 of the Act to be served on all persons, known or believed to be interested, had been served on the Appellant.

2. The learned vakil for the Appellant contends that this question should be answered in the negative, because the service of special notice on all persons known or believed to be interested is a condition precedent to the making of an award or of a reference to the Civil Court by the Collector and to his taking possession, after which alone can the land vest in the Government u/s 16 of the Act and that as the Lower Appellate Court has found that no such notice was served on the Appellant, who was known to be interested in the land acquired, the subsequent proceedings in the land acquisition case must be deemed to have been ultra vires and inoperative in affecting the rights of the Appellant. It is urged that, in a matter like this, the requirements of the Act should be strictly complied with and that the objection as to the non-service of special notice is not a mere technical objection, as it is only after such notice that a person can become aware of the land acquisition proceedings and appear and see that the

compensation is properly assessed. And in support of this contention the cases of *Herron v. Rathmines and Rathgar Improvement Commissioners* (1892) A.C. 498, 532 and *North Shore Railway Company v. Pion* (1889) L.R. 14 A.C. 612, Maxwell on the Interpretation of Statutes, p. 419 and Cripps on the Law of Compensation (3rd edition), p. 78, are relied upon.

3. On the other hand, the learned Senior Government Pleader argues that the scheme of the Land Acquisition Act is to make the land acquired vest absolutely in Government where possession has been taken after a bona-fide award or reference by the Collector, even though all persons interested have not had notice, the remedy of a person in the position of the Defendant being one u/s 40 of the Act; and as the bona fides of the Collector's proceedings, having regard to the facts found, cannot be called in question, the suit has been properly decreed.

4. After considering the facts found by the Lower Appellate Court and the arguments on both sides, we are of opinion that the question raised in this appeal, as stated above, must be answered in the affirmative.

5. The facts found by the Lower Appellate Court are that all the preliminary steps, including the taking of possession, had been duly taken, with only this exception, that by some mistake the name of the Defendant was omitted from the report of the Sub-Deputy Collector and no special notice was issued to him, but that he had knowledge of the proceedings under the Act, though he did not appear, because he said, on being warned by a friend, that no notice had been served on him. The bona fides of the proceedings under the Act have not been and cannot be, questioned in this case.

6. These being the facts found, let us see what the bearing of the law is upon them. The Land Acquisition Act (X of 1870) evidently contemplates the valid acquisition of land and its absolute vesting in Government after a bona fide award or reference by the Collector has been made and possession has been taken, notwithstanding that persons interested may not have had notice. This is clear, not only from Section 40 of the Act, which provides the proper remedy for persons interested who have not had proper notice and also from Section 9 itself, which is relied upon by the other side : for the very provision that persons known or believed to be interested are to have notice shows that persons interested who are not known or believed to be interested may not have notice and yet the proceedings may go on validly Where it is known or believed that a person is interested and yet the Collector wilfully and perversely refuses to give him notice, there his proceedings cannot be considered bona-fide and should be held to be colourable and therefore inoperative in vesting the land in the Government, as was held in the somewhat analogous case of *Luchmeswar Singh v. Chairman of the Darbhanga Municipality* ILR (1890) Cal. 99 : L.R. 17 IndAp 90. But where through mere inadvertence or mistake a person interested has not had notice served upon him, the reason for the non-service is rather allied to ignorance of the fact of his being interested than to any wilful perversity; and that was the case here. If there was any wilful negligence on any side in this case, one might

well say it was on the side of the Defendant.

7. Although he was aware of the proceedings and was warned by a friend that he ought to appear, he refused to do so and took his stand on the ground that no notice had been served upon him. We are of opinion that so far as the provisions of the Act go, there has been a substantial compliance with them and that there is no sufficient reason for holding that the vesting of the land in the Government u/s 16 has not taken place.

8. As for the authorities cited, they are, in our opinion, inapplicable to this case. They relate to cases of privileges of an exceptional character to interfere with the property and rights of others being vested in private persons, or bodies of persons by statute law and in such cases the strictest compliance with the requirements of the statute has been rightly held to be a necessary condition precedent to the exercise of the powers and privileges conferred. In cases under the Land Acquisition Act (X of 1870) the proceedings are required to be conducted and the powers and privileges conferred are required to be exercised, not by any private or even public body of persons, but by a responsible officer of Government of the rank of a Collector and the chances of neglect to observe rules from interested motives are reduced to the narrowest limits. That being so, the principle of law underlying the authorities cited could not apply, at least in its entirety, to the case before us. A distinction such as we have adverted to is observed by the English Courts, as will appear from the observations of Vice-Chancellor Wood in the case of North London Railway Company v. Metropolitan Board of Works (1859) 28 L.J. Ch. 909 and the observations of Lord Cranworth in the case of Galloway v. Mayor and Commonality of London (1866) L.R. 1 H.L. 34 and we may also refer in this connexion to Maxwell on the Interpretation of Statutes, pp. 421, 422 and Cripps on the Law of Compensation, p. 21.

9. For all these reasons, we are of opinion that the decree appealed against is correct and should be affirmed and that this appeal must be dismissed with costs.