
(1911) 12 AHC CK 0019
In the Allahabad High Court

Hardey Narain and Another

APPELLANT

Vs

Mrs. Powell and Others

RESPONDENT

Date of Decision : 21-12-1911

Acts Referred:

Citation : 13 Ind. Cas. 420

Hon'ble Judges : Karamat Husain, J;Chamier, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an appeal against an order or decree of the District Judge of Saharanpur awarding to the appellants 22/40 and to the respondent Mrs. Powell 28/40 of the sum of Rs. 7,768-8 awarded by the Superintendent of Dehra Dun as compensation for certain land taken up under the Land Acquisition Act for public purposes. It is not now disputed that Rs. 7,768-8 represent the fair value of the property taken up, and the only question for decision now is how this sum should be divided between the appellants and the respondent Mrs. Powell. The Superintendent proposed to award to the appellants the whole of the above sum except Rs. 144 which he considered to be the value of Mrs. Powell's interests in the land. She objected to this and the Superintendent referred the matter to the District Judge. Mrs. Powell's case was that she was virtually the zemindir of the land and that the appellants were only nominally zemindars and were entitled at best to compensation calculated on the amount of rent paid by her to them. That rent was Rs. 12 per annum, and her suggestion was that the zemindars should be awarded Rs. 144 only. The reference by the Superintendent was made to the District Judge early in 1910. A date was fixed for the hearing of she case in Jane 1910 and it was decided that the case should be taken up at Dshra Dun. On same day in June, the exact date is not clear, it seems to have occurred to some one that the appellants were interested in the case as, of course, they were, and on June the 13fch notice was issued to the appellant Hirdey Narain that the case would be taken up on the following day. Notice was served upon Hirdey Narain

on the 13th of June at 9 P.M. He appeared before the Court on the following day and as the Judge observes, very reasonably asked for time. On that day two witnesses only were examined for Mrs. Powell, and the case was adjourned to June the 22nd to be heard at Mussoorie. It was taken up on June the 25th. Witnesses were examined on that day and on the 26th, one witness only being produced by Hirdey Narain. Here we may mention that although Maharaj Narain seems to have a share in the property no notice was issued to him. But this is not made a ground of complaint here and for present purposes Maharaj Narain may be disregarded. The object of Mrs. Powell seems to have been to prove that occupancy tenants like herself were entitled to build upon their land and also to transfer it to whomsoever they pleased. An extract from the Wajib-ul-arz of the village was put in and several witnesses were called and questioned as to the rights of occupancy-tenants in the village in question and in the adjoining villages. It is unnecessary for us to examine this evidence in detail. The wajib-ul-arz does not lay down that occupancy-tenants can transfer their rights. It says only that certain kashtakars can build houses without the permission of the Landlord. The oral evidence on the point is quite worthless. The District Judge has arrived at the conclusion, as we understand his judgment that occupancy-tenants in the suburbs of the town of Dehra Dun which include the village in question are practically sub-proprietors who are entitled to transfer their rights and need only pay a quit-rent to the zemindars. In arriving at this conclusion he made use of some remarks made by Mr. Dampier in a Rent Rate Report for the Dehra suburb circle. It is not contended here that these remarks are admissible in evidence. They ought to have been excluded, and even if they are admitted, we consider that they are not sufficient to show that Mrs. Powell is entitled to transfer her rights in the land. She is recorded, or rather the person through whom she claims is recorded, as occupancy-tenant of the land.

2. According to the present law, she is not entitled to transfer her rights. No issues were fixed in the case. The point which the District Judge had to decide was how the sum awarded by the Collector as compensation for the land was to be divided between the claimants, and a definite issue should have been struck on this question. The sum awarded by the Collector should be apportioned between the appellants and "Mrs. Powell in proportion to their interests in the land. On the one hand, we have the zemindars entitled to receive Rs. 12 per annum as rent; on the other hand, we have Mrs. Powell an occupancy-tenant of the land, receiving according to the evidence Rs. 40 from her sub-tenants, so that at first sight it would appear that the values of the interests of the zemindars and Mrs. Powell are in the proportion of 12 to 28, and it is in this proportion that the sum awarded by the Collector has been divided between them by the District Judge. The appellants take objection to this on the ground that the learned Judge has not taken into consideration the fact that whereas the rents received by Mrs. Powell were fixed quite recently the rent payable by Mrs. Powell to the appellants was fixed as long ago as 1890. They point out that; a landholder may sue an occupancy-tenant for enhancement of the rent on the

grounds stated in Section of the Tenancy Act and they contend that inquiry should be made as to whether Mrs. Powell was not at the date of the acquisition of the land paying rent at a rate below the prevailing rate paid by occupancy-tenants for lands similar in quality and with similar advantages, and also that there has been a rise in the average local prices of staple food crops during the currency of the present rent. Owing to the fact that no issue was struck in this case the necessity for making a proper inquiry into the respective values of the interests of the parties has been overlooked. It has been held in more than one case in the Calcutta High Court that where a sum is to be apportioned between a landholder and a subordinate tenure holder, the respective values of the interest of the two should be ascertained, and, if possible, something should be awarded to the landholder on account of the possibility that he may be able to have the rent of the subordinate tenure-holder enhanced *mutatis mutandis*, what was said in these cases applies to the present case. If it can be shown that the landholder was, at the time of the acquisition of the land, entitled to have the rent enhanced, there would be no difficulty in ascertaining to what extent the rent might have been enhanced had the land not been acquired by the Government. There is some evidence that the landholder took steps to have the rent enhanced but abandoned them. Considering that notice of the case was given at the last moment to the appellant, and considering that no attempt has been made to ascertain the respective values of the interests of the parties in the land, we think that a further inquiry should be held: under Order XLI, Rule 25, we refer to the Court of the District Judge the following issue: What are the respective values of the interest of the appellants and Mrs. Powell in the land in question? Further evidence may be admitted on both sides. On return of the finding ten days will be allowed for filing objections.