
(1945) 06 CAL CK 0003
In the Calcutta High Court

Case No : Appeals from Original Decrees Nos. 131, 132 & 133 of 1942

Hem Chandra Naskar and Another

APPELLANT

Vs

Rai Harendra Lal Roy Bahadur Estate Ltd.

RESPONDENT

Date of Decision : 07-06-1945

Acts Referred:

Citation : (1945) 06 CAL CK 0003

Final Decision : Allowed

Judgement

1. These three appeals arise out of land acquisition proceedings and there is only one question to be decided in all these appeals. Three plots of land were acquired under the Land Acquisition Act and the question to be decided relates to the distribution of the compensation between the Appellants who are tenants and the landlords. The landlords were two groups of persons who may be called the Roys and the Biswases. The land appertains to Touzi No. 145. The Roys held 12 annas 16 gandas share in the Touzi and the Biswases 3 annas 4 gandas share. On the 6th April, 1880, the Roys granted a permanent tenancy in respect of the land in respect of which these proceedings have arisen in favour of Gokulmoni. The patta is Ex. 1. On the 15th June of the same year, the Biswases granted a similar patta in favour of Gokulmoni in respect of their three annas share. In both these pattas it is said that the area of the land leased out was given approximately and there was a stipulation that there would be a further survey of the land and that additional rent would be charged for any additional area found on measurement. In the year 1884, the Roys had a survey and there was a fresh patta which is Ex. 1-A granted to Gokulmoni. The Biswases did not grant any fresh patta and the terms remained as before so far as the Biswases were concerned. Now in the patta Ex. 1 there was a stipulation which is as follows:

If embankment or bridge (sluice) or water, channel and road, etc., are constructed on land of this jama by Government, or any other company or society, then the value of the quantity of land that will be required for that purpose will be received by me. The land thus enclosed (taken) will be surveyed

and you will get proportionate abatement of rent according to the rate above-mentioned.

2. I give the Land Acquisition Judge's translation of this portion of the patta. The translation given in the paper-book is somewhat different. But in our opinion the translation given by the learned Judge is literal and correct. When the new patta Ex. 1-A was granted in 1884, there was an alteration in the wording regarding the subject-matter which is dealt with in the passage just reproduced. In the new patta this topic is dealt with as follows:

If embankment or bridge or channel or road, etc., will be constructed by Government on land of the jama, then the value of the land that will be required for that (purpose) will be received by me. The land that will fall will be surveyed and you will get proportionate abatement of rent at the rate aforesaid for the area of the land so surveyed.

3. This is also the translation of the passage by the learned Judge which we accept as being more accurate than the translation in the paper-book.

4. Now the question that arises for consideration is whether by virtue of this provision in the patta Ex. 1-A, the landlords, so far as the interest of the Roys is concerned, are entitled to the entire compensation awarded by the Land Acquisition Collector. So far as the interest of the Biswases is concerned, the landlord's rights will be determined by the patta Ex. 1. The Land Acquisition Judge has awarded the entire compensation to the landlords and the tenants have appealed.

5. Mr. Gupta appearing for the Appellants argues that if the provisions of the patta Ex. 1-A had been the same as those contained in Ex. 1, then he would have nothing to say and he concedes that the Land Acquisition Judge is right in so far as the interest of the Biswas landlords is concerned. But he argues that the terms of Ex. 1 are no longer in existence so far as the Roy zemindars' interest is concerned and that the rights of the landlords as regards this interest must be governed by the stipulations contained in the second patta Ex. 1-A. According to that patta, Mr. Gupta argues, the tenants give up their right to compensation only when the embankment or bridge or channel or road, etc., is made by Government and not by any other person or body on the land of the jama. In this case the land was acquired by Government for the Calcutta Corporation in connection with the main drainage outfall scheme. It was the Calcutta Corporation which was to make constructions on the land and not the Government; Government merely acquired the land for the Corporation. That being so, Mr. Gupta argues that the stipulation mentioned above does not come into operation and therefore, the tenants are entitled to get such compensation as would properly be awardable to them under the Land Acquisition Act.

6. Dr. Basak on behalf of the landlords contends that both the kabuliyats should be looked at and that if that is done, it would be quite clear that what was being contemplated by the parties was that if the land was acquired by Government,

then the entire compensation payable under the Land Acquisition Act would be payable to the landlords. In his view, the translation of these two pattas made in the paper-book is more correct than the translation made by the learned Judge. We have had the documents read over to us in Bengali and as we have said before we are of opinion that the translations given by the learned Judge are accurate and literal; the translations made for the purpose of the paper-book are not literal but introduce words which do not appear in the original. The learned Judge, however, acting on his own translation has arrived at the same result as that which Dr. Basak advocates and what has to be decided is whether the terms of the patta Ex. 1 (a) as translated by the learned Judge would permit of the interpretation which he has put upon it. In our opinion, the learned Judge's view is not sustainable. He says that the first patta Ex. 1 still binds the parties although there has been a fresh patta Ex. 1-A. We are unable to accept this view. The first patta, so far as the Roys are concerned, is no longer of any effect; it has been substituted by the second patta, Ex. 1-A, and the rights of the parties have to be decided with reference to the second patta. The wording of this patta is quite clear. It speaks of construction by Government on the land of the jama; it does not mention any other body but the Government, Why the earlier stipulation was changed it is not for us to enquire, The fact remains that, whereas in the first patta the stipulation mentions construction by Government or any other company or society, in the second patta the stipulation is restricted to a construction by Government alone. In interpreting clauses of this description, we must remember that the landlord is seeking to make out a case that the tenant has deprived himself of a statutory right, namely, the right to get compensation under the Land Acquisition Act. Any stipulation which is said to have the effect of depriving a person of his statutory right must be construed strictly and if there is any ambiguity in it, a construction in favour of maintaining the statutory right should be adopted. The burden is on the landlord to show that by this stipulation the tenants deprived themselves of their statutory right. If the stipulation does not clearly establish this, then the landlord has failed to discharge his burden. In our opinion, there is really no question of ambiguity. The stipulation is in clear terms and it says that the tenant will forgo his right to compensation "if embankment or bridge or channel or road, etc." are constructed by the Government on the land of the jama. In these circumstances, we hold that the tenants have not deprived themselves of their right to receive compensation under the Land Acquisition Act so far as the 12 annas 16 gandas share of the Roy zemindars is concerned. We are told by the learned Advocates that the entire zemindary interest has now been acquired by the Respondents. The result is that so far as the 4/5th share or 12 annas 16 gandas of the Roy zemindars is concerned, the appeals are allowed, the judgment and decrees of the lower Court are set aside and the cases are remanded to the Land Acquisition Judge for awarding compensation to the Appellant-tenants with respect to this share in accordance with the provisions of the Land Acquisition Act. The parties will bear their own costs in this Court.