
(1922) 05 CAL CK 0031
In the Calcutta High Court

Jagadishwar Sanyal

APPELLANT

Vs

Collector of Goalpara and Another

RESPONDENT

Date of Decision : 05-05-1922

Acts Referred:

Citation : AIR 1925 Cal 197

Hon'ble Judges : Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—This is an appeal against an award made under the Land Acquisition Act in affirmance of an award made by the Collector. The land is held by a tenant under the Mechpara Wards Estate and the appellant is described as a sub-tenant under the tenant. His subtenancy was created on the 5th July, 1916. The document recites that the sub-tenant applied for land to construct a permanent house for himself with the result that 15 cottahs of land were granted to him at a rent of Rs. 15 to be paid from year to year. It was expressly stated that the landlord, his heirs and legal representatives would not be entitled to eject the sub-tenant from his land during the time that he might have his house thereon. It was finally added that the sub-tenant would not be entitled to make a gift of, to sell or in any way to transfer the land to any one without the permission of his immediate landlord.

2. A portion of the land has been acquired under the Land Acquisition Act and an award has been made to the sub-tenant, only in respect of the house. The award also allowed compensation to the tenant, whose interest is valued at Rs. 200 a bigha; this has been paid to him together with the value of the trees. Thereupon an application for reference to the Special Judge was made by the sub-tenant. The Special Judge has held that the subtenant has no locus standi to take exception to the award on the ground of inadequacy of the compensation assessed. This view is based on the ground that the subtenant had got a lease of the land for a specific purpose and was not allowed to sell or transfer his interest without the consent of the landlord, in other words, as he had no saleable

interest he was not entitled to compensation for the land. The Special Judge, no doubt, adds that the evidence adduced by the petitioner does not indicate that the land had been under-valued. On the present appeal it has been argued by the sub-tenant that he was interested in the land and his interest was capable of valuation. He was consequently a person entitled to have an adjudication upon the question of the inadequacy or otherwise of the compensation awarded. This proposition is supported by a long line of authorities and cannot be seriously controverted; *Sharma v. Brakoda* 1901 28 Cal. 146, *Narain v. Secretary of State* 1901 28 Cal. 152, *Dunns v. Nabo* 1890 17 Cal. 144, *Jogendra v. Bajendra* 1911 13 C.L.J. 262, *Khetar v. Dinendra* 1898 3 C.W.N. 202. It has further been held in this Court that a tenant or sub-tenant, even though his interest is not transferable except with the sanction of the superior landlord, has an interest which entitles him to be heard upon the question of adequacy of compensation: *Godadhar Dass v. Dhunput Singh* 1881 7 Cal. 585, *Jagat Chandra Dat v. Collector of Chittagong* 1913 40 Cal. 64. In a later case *Sadhu Charan Roy Chowdhury v. Secretary of State* (1920) 31 C.L.J. 63, it was pointed out that even a tenant with a precarious interest in land was entitled to compensation. Besides this the Judicial Committee in *Perry v. Clissold* 1907) A.C. 73 held, confirming the decision of the High Court of Australia in *Clissold v. Perry* 1 Com. L.R. 363, that compensation was payable to every person deprived of the land resumed for public purposes even though his title was merely permissive and had not been perfected by adverse possession for the statutory period. In the present case, the appellant was undoubtedly a tenant of the land. It is not necessary to consider whether his tenancy was heritable or permanent or for life. Nor it is necessary to discuss whether the insertion, of the covenant against alienation, without a clause for re-entry, would entitle the grantor to terminate the lease and to re-enter on the ground of forfeiture. Whatever view is taken of the nature of the tenancy, it is plain that the appellant was entitled to some compensation in respect of his interest which was destroyed by reason of the acquisition of the land. He was accordingly entitled to be heard upon the question of the adequacy of the award. We are unable to accept the contention that the Special Judge has really held upon the evidence that the appellant was not entitled to more than what has been awarded. The substance of the matter is that by the award of the Collector, nothing has been awarded to him in respect of his interest in the land. Upon a plain construction of the award of the Collector, what has been valued is the interest of the tenant, that is, the superior landlord of the present appellant, and the interest of the sub-tenant has not been valued at all.

3. The result is that this appeal is allowed, the decree of the Special Judge, set aside, and the case remanded to him in order that all the questions which arise on the petition of reference may be considered in accordance with law and upon such evidence as may be adduced on both sides. The appellant is entitled to his costs in this Court. We assess the hearing fee at one gold mohur.