

(1959) 02 CAL CK 0022

In the Calcutta High Court

Case No : A.F.O.D. No's. 124 and 125 of 1955

Jivandas Khimji and Another

APPELLANT

Vs

Rashid Allidina and Another

RESPONDENT

Date of Decision : 11-02-1959

Acts Referred:

Land Acquisition Act, 1894 — Section 11

Citation : AIR 1959 Cal 532

Hon'ble Judges : K.C. Das Gupta, C.J.;R.S. Bachawat, J

Bench : Division Bench

Advocate : Niren De and H.N. Ghosh, for the Appellant;B.N. Datta Roy and S. Das for Respondent 1 and B.K. Chakravarty and Sisir K. Mukherjia for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.C. Das Gupta, C.J.—These two appeals are against decree made by Mitter, J., in favour of the respondent, Rashid Allidina, who had brought a suit for a declaration that he is entitled to a right of easement of light and air through certain windows on his premises No. 17 Ezra Street; and for an injunction restraining the two defendants from interfering with the right of easement. The two defendants were the Trustees for the Improvement of Calcutta and Jivandas Khimji. Trustees for the Improvement of Calcutta have preferred the appeal which has been numbered 125 of 1955. The other appeal which is No. 124 of 1955 was by the other defendant. 16 Ezra Street which was acquired in accordance with the provisions of Section 16 of the Land Acquisition Act lies to the east and south of the plaintiff's premises. The real question in this case is the question of law which we have had to consider in the other appeal decided this day, namely Appeal No. 80 of 1954. That question is whether the omission by the Land Acquisition Collector to award any amount as compensation in respect of easement claimed by the plaintiff, Rashid Allidina, after he had considered the matter and come to the conclusion that no such compensation

should be allowed, makes the award a nullity. For the reasons we have discussed in detail in that case, I am of opinion that such omission does not amount to a violation of the statutory requirement of Section 11 and consequently the award is not a nullity because of such omission. The numerous orders which were passed by the Land Acquisition Collector clearly show that he did hold an enquiry into the matter and rightly or wrongly came to the conclusion that no compensation was payable. Assuming that that conclusion was wrong, he had the right in law to make a mistake and the fact that his decision was erroneous does not make the award a nullity.

2. I am also of opinion, in disagreement with the learned Judge, that the Collector has not kept the easements alive. The argument that the Collector has kept the easement alive was based on the language : "No compensation is allowed for easement of premises No. 17 Ezra Street and 161 and 162 to 164, Lower Chitpur Road, as the existing windows which open on a strip of land in between, will be allowed to open as before." Remembering as we must that the Collector knew of the legal position that the easements would be extinguished u/s 16 of the Act, very clear and unequivocal language is necessary to justify a conclusion that he kept the easement alive. The words used by the Collector do not, in my judgment, show that he intended to keep the easement alive. On a reasonable interpretation these words mean nothing more than this that though compensation in respect of a right of easement is being claimed, no compensation is payable, it being possible for the owner of 17 Ezra Street to open the windows as they used to open before on the "strip of land in between," so that construction on the acquired land would not result in such obstruction to the access of light and air to the ancient windows as would entitle him to damages for nuisance. The question is not whether the conclusion was right or wrong; nor are we concerned with the question whether on the evidence given in the present case the strip of land belongs to the plaintiff. What we have to consider is what the Collector had in mind. It seems clear that the Collector was not decided as to the ownership of this strip of land which he refers to as "in between" and that he has come to the conclusion that as it will be possible for the windows to open on this strip of land, no compensation should be allowed. No reference to what Mr. Parks may have thought or Sri Dinesh Chandra Chakravarty may have thought, as was sought to be shown, can, in my opinion, be legally made to ascertain what the Collector had in mind in using these words.

3. My conclusion is that neither of the reasons given by the learned Judge for his view that the award is a nullity can be sustained and that the plaintiff has failed to prove his case that the award is a nullity.

4. It is hardly necessary, therefore, to refer to the other defence raised that the suit is bad for non-joinder of the Government of West Bengal. I am not satisfied that the Government of West Bengal is a necessary party, as I see no reason to think that no effective remedy could be given in their absence.

5. I would, therefore, allow these appeals, set aside the decree made by the

learned Judge and order that the suit be dismissed. Parties will bear their own costs in the Court below. The two appellants in the two appeals will get one set of costs from the plaintiff respondent, Rashid Allidina.

6. Certified for two Counsel.

R.S. Bachawat, J.

7. I agree.