

(1933) 02 CAL CK 0021
In the Calcutta High Court

Jyoti Prosad Singha Deo Bahadur

APPELLANT

Vs

Kenareem Dubey and Others

RESPONDENT

Date of Decision : 08-02-1933

Acts Referred:

Citation : AIR 1933 Cal 767

Hon'ble Judges : S.K. Ghose, J;C.C. Ghose, J

Bench : Full Bench

Judgement

C.C. Ghose, J.—The facts giving rise to this appeal, shortly stated, are as follows: 73 bighas 3 cottas and 4 chhitaks of land in Mauza Dosra Napuria were acquired under the land Acquisition Act. It appears that the land in question was in the actual possession of Messrs. Apcar & Co. They were tenants under certain Kheraji Brahmottardars and these latter held the land under Raja Jyoti Prosad Singh Deo Bahadur, zamindar of Panchkote. Messrs. Apcar & Co., were awarded a sum of Rs. 18,507-11-0 as compensation and they were satisfied with the award. As regards the rest of the parties, namely, the zamindar and the Kheraji Brahmottardars a sum of Rs. 30259-11-9 was awarded. There is dispute between the two sets of persons viz., the zamindar and the Kheraji Brahmottardars as to the division of this last mentioned sum of money. The District Judge, on consideration of the evidence adduced in the case, came to the conclusion that no part of this said last mentioned sum should go to the zamindar but that the entirety of the sum should be divided among the Kheraji Brahmottardars. It is against this judgment that the present appeal has been preferred.

2. It appears that the minerals to which the zamindar would be entitled have not been acquired under the Land Acquisition proceedings. That has been made clear to us by the production of the original declaration under the Land Acquisition Act and the learned Advocate-General who appears on behalf of the appellant has not pressed any claim on account of minerals. We need not therefore take into our consideration the question as to whether or not the zamindar had been deprived for all time of all the minerals under the land which was acquired. That

being so, the only question is whether the zamindar had made good his claim to participate in the sum of Rs. 30259-11-9. Now it appears that there were three mouzas in respect of which satisfactory documentary evidence has been produced (see in this connexion, Ex. 19) from which it is clear that the rents payable in respect thereof have remained the same from the Bengali year 1197 corresponding to 1790 A.D. It is also clear from Ex. B printed in the paper-book in this case and from the record of rights that these rents which are set out in Ex. 19 have remained the same till, at any rate, 1924 and that one of the mouzas, namely Dosra Napuria is included in mouza Santa which again is included in mouza Narshingband. From these documents the conclusion may fairly be drawn that so far as Dosra Napuria is concerned, the rent has remained unaltered from 1790 A.D., and in that state of circumstance the further conclusion follows that the rent in question is mokarari rent and that save and except a sum of Rs. 2-8-0 the landlord is not entitled to anything else per year on account of rent.

3. The question therefore is whether the landlord, i.e., the appellant is entitled to anything else, except the capitalised value of the rent which he was getting. It is clear from what has been stated to us at the Bar that no abatement has been allowed and the respondents have informed us that no abatement of rent is intended to be claimed on behalf of the Brahmottardars on account of the area acquired. That being so, no question of the landlord being allowed the capitalised value of the said sum of Rs. 2-8-0 or any portion thereof need be taken into consideration. Now if therefore the landlord does not suffer any abatement or diminution of rent, then on the state of the authorities in this Court and also on the facts of this case, it is clear that he cannot get any portion of the compensation money awarded by the land acquisition Collector: See in this connexion, the cases reported in *Dinendra Narain v. Tituram* (1903) 30 Cal 801 *Bhupati Roy v. Secy of State* (1907) SCL J 662 *Bipradas v. Sarat Chandra* (1912) 17 I C 168 and *Gunpat Singh v. Motichand* AIR 1914 Cal 726. That being so, this appeal has no substance and must, accordingly, be dismissed with costs. We assess the hearing fee in this appeal at 15 gold mohurs.

S.K. Ghose, J.

4. I agree.