
(1929) 04 MAD CK 0042
In the Madras High Court

(Koppaka) Brahmanandam

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 19-04-1929

Acts Referred:

Citation : AIR 1930 Mad 45

Hon'ble Judges : Anantakrishna Aiyar, J;Anantakirshna Ayyar, J

Bench : Division Bench

Judgement

Anantakirshna Ayyar, J.—The question that has been referred to me is whether an appellant whose lands were acquired under the Land

Acquisition Act (1 of 1894), but who, being dissatisfied with the amount of compensation awarded to him by the Court on a reference made to it

u/s 18 of the Act, appeals to the High Court, is bound to include in the valuation of his appeal the amount of 15 per cent of the excess market

value, and pay court-fee thereon, or whether he is entitled to value his appeal only at the excess market value claimed by him and pay court-fee on

that amount only, while insisting in case of success in the appeal that he should be decreed not only the excess market value claimed by him but

also 15 per cent on the same.

2. The answer to this question turns on the proper construction to be placed on Section 8, Court-fees Act. Section 8 runs in these terms:

The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being

in force for the acquisition of land for public purposes shall be computed according to the difference-between the amount awarded and the amount

claimed by the appellant.

3. It was argued on behalf of the appellant that u/s 23, Sub-section (1), Land Acquisition Act, the amount of compensation to be awarded is

determined by the considerations mentioned in Clauses 1 to 11 of the section and that in construing Section 8, Court-fees Act, the expression ""the

amount awarded"" should be taken to cover only the amount awarded having regard to the considerations mentioned in Clauses 1 to 6 only of

Section 23 and that the expression, amount claimed"" in Section 8 should also receive a similar construction, I am unable to accede to that

contention. Under the Land Acquisition Act, it is the amount of compensation that should be allowed for the land that has to be determined; and in

determining the amount of compensation the Court has to take into consideration not only the provisions of Clauses 1 to 6, Section 23, Sub-

section 1, but also the provisions of Sub-section 2 of that section. Sub-section 2, Section 23 expressly enacts:

In addition to the market value of the land as above provided, the Court shall in every case award a sum of 15 per centum on such market value in

consideration of the compulsory nature of the acquisition,

4. As I understand the Act, the amount of compensation to be awarded includes not only the market value but also the 15 per cent on such market

value. A reference to the other sections of the Land Acquisition Act, in my opinion, makes this clear. u/s 11, the Collector shall make an award of

the compensation which in his opinion should be allowed for the land, and also ""the apportionment of the said compensation among the claimants.

Again u/s 31:

the Collector shall tender payment of the compensation awarded by him to the persons interested; and if they did not consent to receive it, the

Collector shall deposit the amount of compensation in the Court to which a reference u/s 18 would be submitted.

5. It is clear that the expression ""amount of compensation awarded by the Collector,"" in Section 31 includes not only the market value but also the

15 per cent thereon, since it is clear that the Collector is bound to tender to the claimants the said 15 per cent also and to deposit the same in

Court if the claimants did not consent to receive the same. Again Section 15 of the Act enacts that:

in determining the amount of compensation, the Collector shall be guided by the

provisions contained in Sections 23 and 24,

that is, not only by the provisions of Sub-section 1, Clauses 1 to 6, Section 23, but also by Sub-section 2, Section 23.

6. It seems to me to be clear that the extra amount of compensation claimed by the appellant in an appeal should u/s 8, Court-fees Act, include

also the 15 per cent of the market value and that he should pay court-fees on the total amount including the 15 per cent. He cannot, it seems to me,

value his appeal only at the excess market value claimed by him in the appeal, and at the same time in case of success, not only claim to have that

excess market value decreed to him but also claim that the appellate decree should automatically give him an additional 15 per cent of the said

excess market value. An appeal is different from the claim put forward by him before the Collector. When once the Court, on a reference to it u/s

18, Land Acquisition Act, determines the amount of compensation to be awarded for the land acquired, the claimant, if dissatisfied with the amount

of compensation so awarded by the Court, should, in case he prefers an appeal value his appeal at the figure which represents the difference

between the amount of compensation awarded to him and the amount of compensation that he claims in the appeal. The amount of compensation

awarded to him includes, in my view, the 15 per cent also of the market value, and the extra amount of compensation that he claims in the appeal

should also include the 15 per cent of the excess market value which he claims in the appeal.

7. Of course, it is open to an appellant in a land acquisition appeal, as in any other appeal, in which he claims a sum of money from the other side,

to give up a portion of his claim and confine his claim to any particular amount to which he may restrict his claim in appeal. In such cases he is of

course bound to pay court-fee only on the amount to which he has so confined his claim in the appeal; but in such a case, in the event of success in

his appeal the decree of the appellate Court should award only the amount claimed by him in the appeal, and not more: Muhomed Ali Ajmad Khan

v. Secy, of State [1903] 30 Cal. 501. In the case before me, the appellant, while valuing his appeal at the extra market value only, claims in the

event of success an extra 15 per cent also. To entitle him to do so I think, on a proper construction of Section 8, Court-fees Act, that he is bound

to include in the valuation of his appeal the extra 15 per cent also and pay the court-fee due on the total amount.

8. No reported decision on the exact point that I have to decide now had been brought to my notice either by the learned advocate for the

appellant or by the learned Government Pleader. The appellant, however, relied on the observations of the Privy Council in the Mahabhalipuram

Land Acquisition case reported in the Secy. of State v. Shanmugaraya Mudaliar [1893] 16 Mad. 369. The observations relied on are at pp. 376,

377 and 379. I am of opinion that the observations relied on by the appellant do not really help me in the decision of the present question. The

Privy Council had not to decide any question as to the proper amount of court-fee payable in a land acquisition appeal. The decision itself was

passed under the provisions of the Land Acquisition Act (10 of 1870).

9. The learned Government Pleader drew my attention to Sections 11, 13 and 24 of the old Act of 1870 and also to Sections 11, 15 and 23 of the

present Act. Sub-section 2, Section 23 of the present Act (1 of 1894), does not find a place in Section 24 of Act (10 of 1870). On the other hand

Section 42 of the old Act provided as follows:

In addition to the amount of any compensation awarded under part 2 or part 3 of this Act, the Collector shall in consideration of the compulsory

nature of the acquisition pay 15 per centum on the market value mentioned in Section 24.

10. The observations of the Privy Council relied on by the learned advocate for the appellant were made with reference to the provisions of

Section 42 of the old Act, and as already mentioned, do not help me in deciding the question of court-fee now referred to me. I may note that in

cases of appeals by the Government in land acquisition cases, it had been held in S.R. 9324 of 1923, that the Government should pay ad valorem

court-fee on the amount of compensation decreed to the claimant to which objection is taken in appeal.

11. For the above reasons, I have come to the conclusion that the appellant in the in the present appeal, in case he wishes to have the 15 per cent

also included in the appellate decree in case of his success, is bound to include the said 15 per cent also in the valuation of his appeal and pay

court-fee on the total amount.

12. I answer the question referred to me accordingly, and give leave to the appellant to amend the valuation given in the appeal memorandum, should he elect to do so, and pay court-fee thereon within one week after re-opening of the High Court in July. 1929.