
(1929) 04 MAD CK 0022
In the Madras High Court

Koppaka Brahmanandam

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 19-04-1929

Acts Referred:

Court Fees Act, 1870 — Section 8
Land Acquisition Act, 1894 — Section 23(1)

Citation : (1929) 30 LW 242 : (1929) 57 MLJ 357

Hon'ble Judges : Anantakrishna Aiyar, J

Bench : Division Bench

Judgement

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

Acquisition Act (I 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 of the 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) of the 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 of the 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) of Section 23,

Sub-section (1), but also the provisions of Sub-section (2) of that section. Sub-section (2) of 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."" 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) of Section 23, but also by Sub-section (2) of Section 23.

5. It seems to me to be clear that the extra amount of compensation claimed by the appellant in an appeal should u/s 8 of the Court Fees Act

include also the 15 per cent of the market value and that he should pay Court-fee 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 of the 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.

6. 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. Mahomed Ali Amjad

Khan v. Secretary of State for India. (1903) ILR 30 C. 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 of the

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.

7. No reported decision on the exact point that I have to decide now has 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 Mahabalipuram

Land Acquisition case reported in The Secretary of State for India in Council v. Shanmugaraya Mudaliar (1893) L.R. 20 LA. 80: 1893 ILR 16

M. 369 (P.C). The observations relied on are at pages 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 (X of 1870).

8. 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) of Section 23 of the present Act (I of 1894) does not find a place in Section 24 of Act X 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 II or Part III 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.

9. 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 has been held in S.R. No. 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.

10. For the above reasons, I have come to the conclusion that the appellant in the recent appeal, in case he wished 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.

11. 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.