

(1935) 04 AHC CK 0005
In the Allahabad High Court

Managing Committee, George High School	APPELLANT
Vs	
Abdul Karim Khan and Others	RESPONDENT

Date of Decision : 30-04-1935

Acts Referred:

Land Acquisition Act, 1894 — Section 16

Citation : AIR 1935 All 895 : 157 Ind. Cas. 111

Hon'ble Judges : Allsop, J

Bench : Division Bench

Judgement

Allsop, J.—The appellants are the Managing Committee of the George High School at Azamgarh. The respondents Abdul Karim Khan and others were the plaintiffs in the trial Court. It appears that some land was acquired for the appellant by the Government under the provisions of the Land Acquisition Act, over this land there used to be a drain through which water used to flow from the property of the plaintiffs. The appellants closed this drain and the plaintiffs then instituted the suit upon the allegation that the accumulation of water had caused them damage. They prayed for a perpetual injunction restraining the defendants-appellants from interfering with the flow of water through the drain. The trial Court dismissed the suit upon the ground, that any rights which the plaintiffs might have had over the land was destroyed under the provisions of Section 16, Land Acquisition Act. The section is as follows:

When the Collector has made an award u/s 11 he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances.

2. The plaintiffs went in appeal to the, lower appellate Court who has decreed the suit. He has made a distinction between easements and customary right and seems to hold that a customary right is not an encumbrance within the meaning of that word in Section Land Acquisition Act. It is difficult to see why a customary right of way or a similar right should not come within the meaning of the word "encumbrance." The whole object of the Land Acquisition Act is to enable the

Government acquiring land for public purposes and to use such land in any way which may be convenient or necessary for the public in general. If rights of way and other customary rights were not destroyed by acquisition, it would often be impossible for the Government to acquire and use land in such way as might be necessary. It has been suggested that these customary rights should not be destroyed by acquisition because there is no method of compensating the persons who might exercise the right. I do not think that there is any force in this objection. A member of the public would not get damages for a private encroachment on a public right of this nature unless he could show that in some way he was especially affected and similarly it seems to me that if he was especially affected, it might be possible for him to obtain compensation from the Collector under the provisions of the Land Acquisition Act. However that may be, there is not the slightest doubt in my mind that the word "encumbrance" is sufficiently wide to cover a customary right such as that to which the Judge of the lower appellate Court refers.

3. I may mention the case of *Bombay Corporation v. G.I.P. Ry.* 1916 P.C. 3. In that case it was conceded before their Lordships of the Privy Council that acquisition of land under the Land Acquisition Act would destroy a right of passage. The decision in that case was based partly upon the assumption that that would be so. There is no authority quoted by the Judge of the lower appellate Court or brought to my notice here by the respondents that a customary right as distinguished from an easement is not included within the meaning of the word "encumbrance" in Section 16, Land Acquisition Act. I may also mention that I am not at all satisfied that the Judge of the lower appellate Court was correct in assuming that this right of discharging water over the land in suit was a customary right and not an easement. The distinction, as I understand it, is that an easement pertains to a particular property and a customary right pertains to the public or a certain section of the public, but not to the owner of any property as such. In the present case it seems to me that the right consisted in discharging water from particular properties over the property in suit and I should think that the right in each case was a right of easement. It does not matter however whether it was a right of easement or a customary right. In either case the right is destroyed by acquisition. The judgment of the lower appellate Court cannot be upheld.

4. I allow the appeal, set aside the decree of the lower appellate Court and restore that of the trial Court. The appellants will get their costs throughout from the respondents.