

(1925) 07 BOM CK 0017

In the Bombay High Court

Case No : O.C.J. Appeal No. 113 of 1924

N.H. Moos

APPELLANT

Vs

The Government of Bombay

RESPONDENT

Date of Decision : 14-07-1925

Acts Referred:

Citation : AIR 1926 Bom 47 : (1925) 27 BOMLR 1237

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—In this case there had been a consent award deciding that the value of the land to be acquired was Rs. 2,60,000. The only question then left was the apportionment of that sum between Government and the claimants who were in occupation of the land as toka tenants. An issue was raised whether Government were entitled to acquire their own interest in the toka land. In *The Government of Bombay v. Esufali* (1909) 12 Bom. L. R. 34 it was held that to acquire a piece of land under the Land Acquisition Act was not necessarily the same thing as to purchase the right of fee simple to it, but means the purchase of such interest as clogs the right of Government to use it for any purpose they like. Accordingly, if Government had no proprietary interest in the land to be acquired, but had only a right to levy assessment, with perhaps the additional right to increase the assessment according to certain conditions, still the land could be notified for acquisition, and the market value of free-hold ascertained under the Act, when the value of the tenant's rights could be ascertained, and the balance of the compensation money handed back to Government. That decision was followed in *Magaldas v. Assistant Collector, Ahmedabad* (1920) 23 Bom. L. R. 148 . We see no reason for disturbing the decision of this Court on this particular point by referring the matter to a Full Bench. The only ground relied upon for such a reference was the fact that other High Courts have taken a different view from that taken by this High Court. That, in our opinion, is not a sufficient ground to make a reference to a Full Bench, unless we are of opinion that in the interests of the public, the decisions of this

Court should be reconsidered.

2. The next question was what proportion of the compensation money should be awarded to Government as the value of their rights to reassess the land in 1929. That question has been frequently before this Court, and particularly in what is known as Pasta's case (Madhavdas Gokuldas Pasta v. The Government of Bombay [1912] F. A. 147 of 1911) The Government of Bombay Vs. N.H. Moos, and, lastly, The Government of Bombay Vs. Khanderao Ramchandra Talpade, .

3. Really the only question in dispute is what proportion of the rack rent of land would be taken by Government in 1929. That, as we have always pointed out, is a matter of speculation, but we are entitled to presume that Government will deal fairly with the tenant in occupation paying up to that time a comparatively insignificant rent, since Government have declined to make any announcement what their policy will be in re-assessing toka land in 1920 The learned Judge seemed to consider that in The Government of Bombay Vs. Khanderao Ramchandra Talpade, we laid down a universal rule that the increased rate of assessment in 1929 would be four per cent for the purposes of calculating the tenant's interest at the time of acquisition We had no intention to lay down any universal rule, we merely stated that we considered that for the purposes of that particular case the prospective rate of assessment should not be higher than four per cent. In other cases it might be equitable to fix it at a lower rate. As a matter of fact the decision in Khanderao's case was extremely favourable to Government.

4. In this case we are entitled to consider the area of the land, its position, the nature of its user, and all other circumstances which would relate to the possibility of Government fixing the assessment in 1929 at a particular figure. There was no necessity, as far as we can see, for all the evidence which was taken on a purely hypothetical question in the lower Court, the only question being what would be a fair division of the rack rent between the Government and the tenant. In this case, we think three per cent, would be the proper rate. Accordingly on that basis, according to the table provided for us by Mr. Velinker, we alter the deduction from the value of the freehold to a sum of Rs. 66,809. That is the money that will go to Government, while the balance of the money will go to the claimants. The claimants to get six per cent, interest on the difference between Rs. 78,371 and Rs. 66,809 from the date they handed over possession. Each party to bear its own costs in both Courts.