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**(1949) 09 CAL CK 0044**  
**In the Calcutta High Court**  
**Case No : A.F.O.D. No. 9 of 1948**

Province of Bengal

APPELLANT

Vs

Amulya Dhon Addy and Others

RESPONDENT

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**Date of Decision :** 02-09-1949

**Acts Referred:**

Calcutta Improvement (Appeals) Act, 1911 — Section 3  
Calcutta Improvement Act, 1911 — Section 12, 71  
Land Acquisition Act, 1894 — Section 23  
Limitation (Amendment) Act, 1922 — Section 29, 3  
Limitation Act, 1908 — Section 10, 12, 14, 16, 18

**Citation :** AIR 1950 Cal 356 : 54 CWN 297 : (1951) 1 ILR (Cal) 45

**Hon'ble Judges :** R.C. Mitter, J;P.N. Mitra, J

**Bench :** Division Bench

**Advocate :** Lalit Mohan Baksi and Biswanath Naskar, for the Appellant;Satyendra Nath Mitra, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.C. Mitter, J.—Premises No. 19, Surah Third Lane, was acquired for the purpose of Improvement Scheme No. IV (Maniktolla) made by the Board of Trustees for the Improvement of Calcutta and sanctioned by the Local Government under the provisions of the Calcutta Improvement Act, v [5] of 1911 B. C. The said premises was at all material times an open piece of land comprising an area of 10 bighas 12 cottas 36 square ft. There were two tanks within it. It abutted on the Sura third Lane which was to its East. It had a vista on a blind lane which stopped at a point of its Southern boundary. There was no roadway on the acquired premises in continuation of that blind lane. The said blind lane is a public one. The plot is shown in the Key plan, EX. 1. On 27th August 1943 the Collector made his award. He gave Rs. 61548-14-0 for the land, Rs. 725 for the trees and Rs. 9311-1.0 as statutory allowance--total Rs. 71614-15 odd.

2. The claimants, who are the respondents before us, were dissatisfied with the Collector's award. At their instance the Collector made a reference under the

provisions of Section 18, Land Acquisition Act, to the Tribunal constituted under the provisions of chap. IV, Calcutta Improvement Act (V [5] of 1911 B. C.). The Tribunal enhanced the compensation by Rs. 18913-1-0. The judgment of the Tribunal was delivered and signed on 30th January 1947, and the schedule of costs, which is to be taken as equivalent to a decree, was signed by the President of the Tribunal on 7th May 1948. The Province of Ben-gal after obtaining a certificate from the President of the Tribunal to the effect that the case was a fit case for appeal filed the Memorandum of Appeal in this Court on 28th August 1947 and the appeal was duly registered after the Stamp Reporter had reported on the day of the presentation of the Memorandum of Appeal that it was properly stamped, was in form and had been presented in time. At the time of the presentation of the Memorandum of Appeal, the appellant had doubts as to whether the appeal was still in time. So on the same day an application was filed with an officer of this Court u/s 5, Limitation Act for extending the time for filing the appeal. As, however, the Stamp Reporter reported that the appeal had been filed in time the appellant's advocate took back the said application.

3. When the appeal was opened before us the respondent's advocate took a preliminary objection to the competency of the appeal on the ground that at the date of the presentation of the Memorandum of Appeal it was already barred by time. In these circumstances we allowed the appellant to move with due notice to the respondent's advocate the application which had been filed u/s 5, Limitation Act on the date when the Memorandum of Appeal was presented in this Court but which had been taken back by the appellant's advocate in the circumstances stated above.

4. The questions are : (1) whether the appeal was in time on 26th August 1947, and if not (2) whether Section 5, Limitation Act can in law be invoked and (3) that if that section could be invoked whether sufficient cause has been made out for extending the period of limitation. The article in the schedule to the Limitation Act which has been made applicable to appeals against the decision of the Tribunal is Article 156 of Schedule I, Limitation Act. According to that article, the period of limitation is 90 days from the date of the decree or order appealed from. Having regard to the fact that the decree is to bear the same date as the judgment bears the starting point of limitation would be the date when the judgment was delivered. This is admitted before us. The relevant dates for deciding the question as to whether, the appeal had been presented in time are as follows :

30-1-1947 ... Date of the judgment. 7-5-1947 ... Decree (schedule of costs) made and signed. 27-2-1947 ... Application by the appellant for certified copy of judgment. 29-3-1947 ... Court-fee payable for that copy assessed and notified. 3-4-1947 ... The said court-fee paid. 15-5-1947 ... Copy of the judgment ready for delivery. 13-5-1947 ... Application by the appellant for certified copy of the schedule for costs (decree). 16-5-1947 ... Court-fee payable for the same assessed and notified. 22-5-1947 ... Court-fee paid.

26-5-1947 ... Copy ready for delivery. 30-7-1947 ... Application by the appellant filed before the President of the Tribunal praying for a certificate under Section 3 (b) (i), Calcutta Improvement (Appeals) Act, XVIII [18] of 1911 I. C., that the case was a fit one for appeal, 23-8-1947 ... Certificate as prayed for given by the President. 26-8-1947 ... Memorandum of Appeal presented in this Court.

5. The appellant is entitled to the following deductions under the provisions of Section 12, Limitation Act. That section would be applicable in any view of the matter either by reason of Section 29 (2), Limitation Act or otherwise : (a) the period between the date of the judgment and the date when the schedule of coats (decree) was signed (*Beni Madhub v. Matangini Dassi* 13 Cal. 104 ), (b) the period of time requisite for obtaining copies of the judgment and decree. In this case these periods overlapped each other to some extent. This was apparently overlooked by the Stamp Reporter when he made his report that the appeal had been presented in time. The periods of time which overlapped and which the Stamp Reporter apparently counted twice over are (a) the period between 27th February and 7th May 1947 ; (b) the period between 13th and 15th May. Bearing in mind these overlappings, the last date, for filing the appeal would be 19th August 1947, after excluding the period of time allowable by Section 12, Limitation Act. The time during which the application for the certificate, asked for u/s 3 (b) (i), Calcutta Improvement (Appeals) Act was pending before the President cannot automatically be excluded in computing limitation under the provisions of Section 12 or any other section of the Limitation Act and there is no provision in the Calcutta Improvement (Appeals) Act for excluding this period of time in making the computation. This period of time, however, can only be excluded by the Court under the provisions of Section 5, Limitation Act, if that section is applicable to such appeals, namely, appeals allowed under the provisions of the Calcutta Improvement (Appeals) Act, XVIII [18] of 1911 I. C. This is the second and the more important question which we will not take up. The question is not free from difficulty.

6. The Calcutta Improvement Act, V [5] of 1911 B. C., has to be classed as special and local law within the meaning of Section 29, Limitation Act. It was passed by the local Legislature and is to have operation in a portion of the Province, namely the municipal limits of Calcutta and its vicinity to which the Act may be extended by a notification of the Local Government. It is, also special law having for its purpose a special object to be accomplished through a special machinery provided for in the Act. There is, however, in this statute (Act V [5] of 1911 B. C.) no provision giving the right of appeal against the decision of the President or of the Tribunal, as the case may be. That right is given by Act XVIII [18] of 1911 passed by the Governor-General-in-Council -- the Central Legislature, In a case concerning the Bombay Improvement Trust Act, IV [4] of 1898, on which the Calcutta Improvement Act, Act V [5] of 1911, B. C., is modelled, the Bombay High Court had decided in *Hari Pandurang v. Secretary of State* 27 Bom. 424 : (5 Bom. L. R. 431) that a Provincial Legislature is

incompetent to confer a right of appeal to the High Court against an order passed under the provisions of that special or local law, as a Provincial Legislature has no power to modify or add to the Letters Patent of the Chartered High Courts. It is only by reason of Article 44 of the relevant Letters Patent that the Central Indian Legislature has that power delegated to it by Parliament. It is for this reason that the Central Indian Legislature had to pass the Calcutta Improvement (Appeals) Act XVIII [18] of 1911, which came into force on the same date as Act v [5] of 1911 B. C. So in substance this Central Act supplements the said Bengal Act and the Central Act must therefore be considered also to be local and special law.

7. In 1911, when Act XVIII [18] of 1911 (I. C.) came into force the relevant part of Section 29 (1) (b), Limitation Act stood thus :

"Nothing in this Act.... shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India."

The section stood in that form up to 1922, when it was amended by Act X [10] of 1922.

8. Section 29 (1) (b), Limitation Act as it stood then would have made inapplicable the provisions of Sections 4 to 25, Limitation Act, where the special or local law had specially prescribed a period of limitation for a suit, appeal or application permitted or authorised by that special or local law. If that was not done by the special or local law but such a suit, appeal or application came within the purview of any of the Articles of Schedule 1, Limitation Act, Section 29 (1) (b), Limitation Act would have been out of the way, on the ground that the special or local law had not specially prescribed a period of limitation. In such a case the general provisions of the Limitation Act would have been applicable. In the light of these observations the provisions of Act (XVIII [18] of 1911 I. C.) have to be examined.

9. Section 3 of that Act gave the right of appeal to the High Court against the decision of the President of Tribunal established under the Bengal Act (V [5] of 1911) when sitting singly without any qualification, and against the decision of the Tribunal (the President sitting with the Assessors) with certain qualifications and on grounds of appeal similar to the grounds of Second Appeals provided for by the Code of Civil Procedure. Section 4 then enacts that

"subject to the provisions of Section 3, the provisions of the Civil Procedure Code, 1908, with respect to appeals from original decree shall, so far as may be apply to appeals Hinder this Act."

10. If this section stood without the qualifying words underlined (here italicised) above then there would not have been any doubt that Article 156 of Schedule 1, Limitation Act would have applied *proprio vigore* to appeals given by Section 8 of the Act, for it has been held that the opening words of that Article--"Under the

Code of Civil Procedure, 1903"--mean an appeal governed by the CPC as regards procedure.

Consequently, where the procedure prescribed for an appeal given or authorised by the special or local law is the procedure provided by the CPC that Article would be applicable (*Aga Mohamed v. Cohen* 13 Cal. 221 ; *Ramaswami v. Deputy Collector of Madura* 43 Mad. 51: (A. I. R. 1920 Mad. 407). In that case it could not have been said that the Special Act, namely Act XVIII [18] of 1911 had specially prescribed a period of limitation for appeals permitted by Section 3 of that Act. Section 6 then proceeds on to state that:

"In appeal u/s 3 shall be deemed to be an appeal under the CPC 1908, within the meaning of Article 156 of Schedule 1, Limitation Act."

11. This provision in our opinion did away for the purpose of limitation the effect which the phrase in Section 4 which we have underlined, (here italicised) might have had otherwise. Besides, this section namely 6, may be looked at from another point of view that in substance it added by way of amendment an explanation to Article 156 of Schedule I, Limitation Act, and so did not specially prescribe a period of limitation within the meaning of Section 29 (1) (b), Limitation Act, as it stood at the time of the passing of Act XVIII [18] of 1911 and up to 1932 when it was amended by Act X [10] of 1922. The result is that up to the time of the aforesaid amendment of Section 29 (1) (b), appeals preferred to this Court by virtue of Section 3 of Act XVIII [18] of 1911 would have come within the purview of Section 3, Limitation Act, and could not have been dismissed as being filed out of the time limit prescribed by Article 156 by ignoring and in disregard of any one of the provisions of Sections 4 to 25, Limitation Act. During that period between 1911 and 1922 Section 5, Limitation Act, could in law be in a fit case invoked to his aid by an appellant to save his appeal filed out of time from being dismissed.

12. The next point is whether the amendment of Section 29 (1) (b), Limitation Act, by the Act X [10] of 1922 has affected or altered this position.

13. The weight of decisions of this Court before the amendment of Section 29 (1) (b) in 1922 was that if the special or local law had specially prescribed a period of limitation none of the general provisions of the Limitation Act --namely Sections 4 to 25--could be applied to a suit, appeal or application contemplated or authorised by the special or local law, unless the local or special law itself had made any or all of those general provisions of the Limitation Act applicable, though on a few occasions a different view had been expressed. In 1920 a Full Bench of this Court resolved the conflict by holding that in the face of the words of Section 29 (1) (b), Limitation Act, as it stood then Section 14, Limitation Act, and--necessarily all the other general provisions of the Limitation Act,--Section 5 could not be applied to a suit filed under the provisions of Section 77, Registration Act, *Kalimuddin v. Shahibuddin* 47 Cal. 300: 24 C. W. N. 4: (A. I. R. 1920 Cal. 14). Shortly after this decision, the matter of amendment of Section

29 (1) (b) was taken up by the Legislature and the section was eventually amended in 1922. The Legislature thought fit to mitigate to some extent what it considered to be a hardship to the plaintiff, appellant or applicant caused by the rigorous interpretation of the original section. Generally speaking it did so by making Section 3 as also Sections 4, 9 to 18 and 22, Limitation Act, applicable unless especial or local law had excluded those or any one of those provisions, and the rest of the general provisions inapplicable, unless the special or local law had made them applicable, *Nil Ratan Ganguli Vs. Emperor*, . In some of the cases decided after the amendment the view has been expressed that the amended section is applicable only when the special or local law had prescribed a period of limitation different from that prescribed in Schedule 1, Limitation Act. The case of *Mutyala Venkatramayya Vs. Tanguturi Venkatasubbayya and Others*, has given expression to that view, as the following observations made therein would indicate:

"In Section 25A newly introduced into the Act (Madras Act IV [4] of 1938) though a right of appeal is given, no period of limitation different from the period prescribed by Schedule 1, Limitation Act, is indicated. Therefore the provisions of Section 29 (2) have no application so as to exclude the provisions of Section 5, Limitation Act, from being applied to appeals under the Special Act."

14. Some of the decisions have also proceeded on the assumption that where none of the Arts. of Schedule 1, Limitation Act covers an appeal or application allowed by the special or local law and the local or special law prescribes the period of limitation, the case is to be considered to be a case where the special or local Act had prescribed a period of limitation different from that prescribed in Schedule 1, Limitation Act. On this basis, it has been laid down that the effect of Section 29 (2), Limitation Act (the amended section) attracts proprio vigore only the last part of Section 3, Limitation Act, which empowers the Court to dismiss suo motu a suit, appeal or application filed beyond time, and also Sections 4, 9 to 18 and 22 but not the other sections of the Limitation Act mentioned in the first part of Section 3 unless the local or special law by its own provisions make any of those excluded sections applicable. The case of *Nil Ratan Ganguli Vs. Emperor*, expounds this view. Strictly speaking although it is not necessary for us in this case to consider the correctness of these views, we may state that as at present advised we are not prepared to fully endorse them for the following reasons.

15. Cases calling for decision would necessarily fall into four types, namely, (1) Where the local or special law is silent on the matter of limitation in respect of suits, appeals or applications contemplated or authorised by it, and some Article of Schedule I, Limitation Act, would cover them ; (2) Where some article of that schedule would have covered such suits, appeals or applications, but the local or special law had prescribed a period of limitation different from that prescribed in the relevant Article of Schedule I, either by altering the period of time mentioned in Col. 2 of the relevant Article of Schedule I or by prescribing a starting point

different from that indicated in Col. 3 thereof; (3) Where none of the Articles of Schedule I would have covered such appeals or applications and the local or special law itself prescribed limitation. In this head and the next we are omitting a reference to suit for the reason that the residuary Article, namely 120 of Schedule I would in any event cover any class and every class of suits contemplated or authorised by the local or special Act, and we would fall either within type (1) or (2). We are however including applications, because of the view taken in some cases that Article 181 of schedule I, has a restricted application. (4) Where none of the Articles of Schedule I, would have covered such appeals or applications and the special or local law prescribed none. It is not necessary to consider this case for the purpose of our discussion.

16. In the first type what is contained in Section 3, Limitation Act--the whole of it--would be applicable as before. The amendment of 1922 does not touch that case. The case we are considering would in substance fall within this type.

17. In our view, Section 29 (2), deals with the second and third types and that in a distinctive manner. The first part of that section contemplates the second and the last part the third type. The language employed in the opening paragraph would suggest that--the use of conjunctive particle "and" and the repetition of the phrase "prescribed for appeal or application by any special or local law" in the second part. The result is that for the second type the whole of Section 3, Limitation Act is made applicable, unless that section had been excluded by the special or local law, with the result that in that type of cases it would be legitimate for the plaintiff, appellant or applicant to invoke the aid of Sections 4 to 25, Limitation Act to save his suit, appeal or application from being dismissed for having been filed beyond the period of time prescribed. It seems to us that what has been overlooked in previous cases is that Section 3 does not provide simpliciter for dismissal of suit etc ... filed out of time, but itself subjects that power to certain qualifications.

18. In cases falling within the third type Sections 4, 9 to 18 and 22 are made applicable unless the special or local law excluded them or any of them, and the remaining sections, namely, 5 to 8, 19 to 21 and 23 to 25 are not to apply, unless they or any of them are made applicable by the special or local law. The very fact that a period of limitation had been prescribed by the local or special law would carry with it the power to dismiss the suit, appeal or application contemplated or authorised by the local or special law, if presented out of the time prescribed, provided that the suit, appeal or application had not been filed in circumstances which would have attracted any of the Sections 4, 9 to 18 and 22, Limitation Act. Our view is that the amendment of Section 29 by Act X [10] of 1922 has liberalised the law as laid down before the amendment to the utmost extent in regard to the second type of cases and to a lesser extent with regard to the third type. We need not pursue the matter further, for, as we have already stated the case before us falls in substance within the first type.

19. These being the results of amendment of Section 29 of 1922, the effect

which Section 6 of Act XVIII [18] of 1911 (I. C.), had upon the question of limitation at the time when Section 29 (1) (b), Limitation Act stood in its original form, and which we have indicated in the earlier part of our judgment, has not therefore been in any way modified or affected by the amendment. In *Mutyala Venkatramayya Vs. Tanguturi Venkatasubbayya and Others*, referred to above, the position was the same as in the case before us, for the relevant provisions of the amending Act under consideration in that case was that an order made under Madras Act, IV [4] of 1938, refusing relief to a judgment-debtor was to be subject to appeal ""as if it was an order falling u/s 47, Civil P. C." That brought the appeal within the purview of Article 152 of Schedule I, Limitation Act. So it could be said that the Special Act had not prescribed a period of limitations at all, but an substance had the effect of adding an explanation to Article 152 of Schedule I, Limitation Act.

20. We accordingly hold that Section 5, Limitation Act is applicable to an appeal against the decision of the President or the Tribunal, as the case may be, established under the Calcutta Improvement Act, V [5] of 1911 B. C.

21. The next question is whether the appellant has shown sufficient cause for extension of time. [After discussing the facts his Lordship proceeded:] On these facts, we hold sufficient cause has been shown by the appellant and we extend time to 26th August. Certainly the appellant should have the period of time during which his application for certificate was kept pending through no fault of his, namely from 30th July to 23rd August. That is enough for the appellant.

22. We will now proceed to determine the merits of the appeal.

23. For the purpose of determining fair market price of the land, the Province of Bengal examined a valuation expert, Atul Chandra Bose and the claimants another expert, Hirendra Kumar Sarkar. In view of the depth of the plot, both the experts agreed that the market price has to be determined by adopting the belting method. The land had one road frontage. It abutted on a public street, namely Sura 3rd Lane. Bose started his belting from this lane. He took as his first belt a depth of 100 feet from the existing lane. The second belt was taken by him to be the next strip of 150 feet. The rest of the back land be put in his 3rd belt. He took the market value of the two tanks at half the value of the firm land. On this basis he reduced the whole area to 105.6582 solid first belt units. He added 5% for the vista on the blind lane and deducted 15% on account of the shape and size of the land. The net result was that he valued the land on the basis of 94.3 net solid first belt units. He took the price of an unit of first solid belt to be Rs. 650.

24. Sarkar on the other hand took an imaginary roadway right across the land in continuation of the blind lane on the south on which the land had a vista. By this division the land was divided in three blocks A, B & C. block A abutted on Sura 3rd Lane as it actually did, and blocks B & C abutted on the two sides of the imaginary roadway. These three blocks have been marked in the key plan, Ex. I.



Thus by this disposition of the land, which it did not actually have, he conceived the land to be divided in such a fashion as to have three blocks, each of such blocks having a road frontage, whereas in fact the land was a compact block which had only one road frontage. He then proposed to apply the belting method to each of these three blocks A, B & C. He appraised the value of the tank at 2/3rds of the value of the firm land. He estimated the value for the solid front belt unit of block A at Rs. 750 and of the solid first unit of blocks B & C at Rs. 650. The Tribunal accepted this method on which Sarkar proceeded for valuing the property, namely, by imagining a roadway and so making three blocks with road frontages. This method means that the land could have been developed to its best advantage by driving that roadway. The Tribunal, however, held that the tank was to be valued at half the rate of the firm land, that only 5 per cent. deduction ought to be allowed for the shape and size of the land, and the market value of the solid front belt unit of block A ought to be Rs. 675 and of that of blocks B & C Rs. 575.

25. If the valuation had to be made in accordance with the provisions of Section 23(1), Land Acquisition Act as it stands in the Land Acquisition Act, there cannot be any question that the method of valuation on which Sarkar proceeded by imagining a road right across the acquired land could have been adopted. Market value is what an owner not obliged to sell would have got from a free buyer. Certainly a free buyer in estimating the price would have taken into consideration the fact that he would be able to develop the land,--to have the best user,--by dividing it into three blocks by constructing a road across the land at the place suggested by Sarkar, but the question is whether such a method is allowable in view of provisions of the Calcutta Improvement Act, v [5] of 1911 (hereafter called the Act). The Board of Trustees for the Improvement of Calcutta can acquire land for carrying out the purposes of the Act either through private treaty or by compulsory acquisition through machinery of the Land Acquisition Act, 1894 (Sections 68 and 69). But in case of compulsory acquisition, some of the provisions of the Land Acquisition Act, 1894, are to be applied with the modifications indicated in the schedule to the Act (in Section 71 (b) of the Act). By reason of Article 9 of that schedule "the market value of the land acquired for the "Board of Trustees" shall be deemed to be the market value according to the disposition of the land at the date of the publication of the declaration relating thereto u/s 6" of the Land Acquisition Act, 1894. Bearing this in mind, a Division Bench of this Court observed in cases of compulsory acquisition of land for the Board of Trustees for the Improvement of Calcutta that the ""development method" is not permissible : Hindusthan Co-operative Insurance Society Ltd. Vs. Secy. of State, . The land has to be valued according to its disposition at the date of the declaration. It cannot be imagined to be in a different state than what it actually was at that point of time, nor can it be valued with reference to its possible future user by proposing a physical change.

26. The question which we are considering was considered in detail in at least three cases : (i) Harish Chunder Neogy, Claimant Vs. The Secretary of State for

India in Council , (ii) Manindra Chandra Nandi v. Secy. of State 41 Cal. 967 : (A.I.R. 1914 Cal. 198) and (iii) Shrosbree v. Secy. of State, F. A. No. 192 of 1933--not reported--decided by Mitter & Patterson JJ. on 30th April 1986. These cases no doubt were not cases of compulsory acquisition under the Calcutta Improvement Act, but the point under consideration, was dealt with in them. The first two were cases of compulsory acquisition under the provisions of the Calcutta Municipal Act of 1899 (Bengal Act III [3] of 1899) and the third was a case under the Calcutta Municipal Act of 1923 (III [3] of 1923 B. C.). Section 557 (c) of the first mentioned Municipal Act and Section 475 of the second mentioned Act on the construction of which the decisions were given are expressed in the same language which runs as follows : We are quoting Section 475 of the Act III [3] of 1923 B.C. "Any land or buildings which the Corporation are authorised by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and for that purpose the said Act shall be subject to the amendment that the market value of any land or building to be acquired shall be deemed, for the purpose of clause first of Sub-section (1) of Section 23 of the said Land Acquisition Act, to be the market value according to the disposition of such land or building at the date of the publication of the declaration relating thereto u/s 6 of the said Land Acquisition Act."

27. This is exactly the manner in which the Calcutta Improvement Act by its schedule has modified Section 23(1) first of the Land Acquisition Act, 1894.

28. In Harish Chunder Neogy, Claimant Vs. The Secretary of State for India in Council Mitra and Casperz JJ. observed as follows : "Section 557 of the Calcutta Municipal Act precludes any valuation based on the most advantageous disposition of the land." This passage directly and squarely hits the method adopted by Sarkar. There was no road running right across the land at the time of the declaration u/s 6 and none at any material time. The whole of the acquired premises was one compact block, abutting on one land, namely, the Sura third Lane, and so had only one road frontage. The attempt on the part of Sarkar was an attempt to create a more advantageous disposition of the land. 29. This passage in Harish Chunder Neogy, Claimant Vs. The Secretary of State for India in Council together with the passage immediately following, which was an illustration, was expressly approved by a Division Bench in Manindra Chandra Nandy's case : ( 41 Cal. 967 : A. I. R. 1914 Cal. 198). In the unreported judgment, Mitter and Patterson JJ. noticed Manindra Chandra Nandy's case : (41 Cal. 967: A. I. R. 1914 Cal 198) and said that Section 475 of Act III [3] of 1923 which corresponded to Section 557 (c) of Act III [3] of 1899 and which had modified the Land Acquisition Act, 1894, in that manner meant that where land is compulsorily acquired under the provisions of Section 475, Calcutta Municipal Act, in assessing its market value any user to which it could be put in future should not be taken into consideration. The last part of the judgment where the learned Senior Government Pleader's extreme contention was overruled does not mean that in compulsory acquisitions u/s 475, Calcutta Municipal Act, a claimant can value the acquired land by the adoption of the "development

method." That part means that where the acquired land is an undeveloped area its value can still be determined by a reference to the value of developed land in a nearby area, e.g., value of building sites--by deducting a reasonable estimated percentage.

29. We accordingly hold that the tribunal has committed an error of law by ignoring, and by not giving proper effect to, the provisions of Clause 9 of the schedule of the Calcutta Improvement Act by which Section 23(1) first of the Land Acquisition Act, 1894, was modified in the manner indicated above. It is not necessary for us to consider whether there was any legal difficulty under the Calcutta Municipal Act in having such a road across the land as Sarkar had imagined. We generally agree with what has been said in the decision under appeal on this point.

30. The belting method adopted by Bose has, therefore, to be adopted. The respondent's advocate admits that in that event depth of the first belt is to be 100 feet from the road frontage on Sura 3rd lane, of the second 150 feet and the rest of the land is to be in the third belt as has been done by Bose. The Tribunal has given a deduction of 5 per cent. for size and shape, have taken the value of tank at half of the first land and valued the first solid belt abutting on Sura 3rd lane at Rs. 675 per unit. These are all findings of fact and so cannot be reviewed by us. The respondent can at most press for a remand on one point only, namely, what should be percentage of increase by reason of the vista on the blind lane. We have however, the power to review the evidence on the record and come to a finding ourselves. On the evidence we find 5 per cent. increase on this head to be sufficient. The land acquired is of considerable size, and the blind lane touches a very insignificant portion of the land. The vista is not a wide one. 31. We accordingly allow the appeal, set aside the award of the Tribunal and remand the case in order that the amount of the compensation may be assessed in accordance with our findings and conclusions after checking the figures. This would only involve the determination of the number of net solid first belt units, according to the belting method adopted by Bose, the price for each solid first belt unit being Rs. 675. The respondents must pay to the appellant the costs of this appeal.

P.N. Mitra J.

I agree.