
(1910) 05 CAL CK 0039
In the Calcutta High Court

Raghu Nath Das and Others

APPELLANT

Vs

Collector of Dacca

RESPONDENT

Date of Decision : 03-05-1910

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 6(1)

Citation : 6 Ind. Cas. 457

Hon'ble Judges : Teunon, J; Mookerjee, J

Bench : Division Bench

Judgement

1. These appeals are directed against awards made under the Land Acquisition Act, in respect of lands acquired by the Government of Eastern Bengal and Assam, for extension of the compound of St. Gregory's School in the town of Dacca. The total area acquired measures four bighas three cottahs and 18 dhurs; for the major portion the Collector made his award at the rate of Rs. 1,200 per bigha, for part of the land, comprised in one of these cases, the Collector allowed Rs. 2,550 inclusive of buildings thereon. The claimants were dissatisfied with the award, and obtained references to the Special Judge, u/s 18 of the Land Acquisition Act. Before the Special Judge it appears to have been contended, first, that the acquisition-proceedings were illegal, and, secondly, that the amount awarded was too low. The Special Judge declined to entertain the first objection and overruled the second on the merits. In this view he substantially affirmed the award of the Collector. The claimants have now appealed to this Court, and on their behalf, the decision of the Land Acquisition Judge has been assailed on two grounds, namely, first, that the acquisition was illegal as it was made in nominal compliance with the Act, for purposes not contemplated by the law; and, secondly, that the valuation of the land and the buildings, has been made on erroneous principles and was contrary to the weight of the evidence on the record.

2. In support of the first of these contentions, it has been argued that u/s 6, Sub-section 1 of the Land Acquisition Act, the Local Government is not competent to

make a declaration that land is needed for a public purpose, unless the compensation to be awarded for such property, is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. With reference to this provision, it has been contended, that, as admitted by the manager of the School, the Mission will have to pay the amount of the award, and no part of the compensation is to be paid out of public revenues or of some fund controlled or managed by a local authority, and that consequently the declaration for acquisition of the land was ultra vires. In answer to this contention, it has been argued by the learned Counsel for the respondent, first, that the direction contained in Section 6, Sub-section 1, is merely for the guidance of the Local Government, and does not entitle the owner of the property, even if such direction is contravened, to call in question the validity of the acquisition in a Civil Court; and, secondly, that the question of the legality of the acquisition does not, at any rate, arise for consideration upon a reference made u/s 18 of the Land Acquisition Act. In so far as the first of the answers suggested by the learned Counsel for the respondents is concerned, it is, in our opinion, too broadly formulated. The contention is opposed to the elementary principle that when statutory rights of an exceptional character have been created, the conditions prescribed by the statute for the exercise of such rights must be strictly fulfilled, and if an attempt is made at merely nominal compliance with the provisions of the statute in the exercise of such rights, the Courts are not powerless to afford relief to a person who is aggrieved by the adoption of such a course. This doctrine has been recognised by the Judicial Committee in the cases of Luchmeswar Singh v. Chairman of Darbhanga Municipality 18 C. 99 : 17 I.A. 90, Saunby v. London Water Commissioners (1900) A.C. 110 : 75 L.J. P.C. 25 : 93 L.T. 64S : 22 T.L.R. 37, and Gaekwar of Baroda v. Gandhi 30 I.A. 60 : 27 B. 344, and in other cases reviewed by this Court in Rameswar Singh v. Secretary of State 34 C. 470 : 5 C.L.J. 669 : 11 C.W.N. 356. It is not necessary, however, to examine this point in further detail, because, in our opinion, the second argument advanced on behalf of the respondent furnishes a conclusive answer to the contention of the appellants. The scope of the reference made at the instance of a claimant u/s 18 of the Land Acquisition Act is of a limited character. It is clear from Section 18 and other Sections which follow it that the question of legality of the acquisition was never intended by the Legislature to form the subject of enquiry by the Land Acquisition Judge. The questions which may be determined by the Court upon the reference relate to valuation, to apportionment and to other matters of a like nature. It is not open to the Judge to go behind the reference as it were, and to hold that the acquisition has been ultra vires. Section 26 clearly contemplates that the award shall always specify the amount determined u/s 23. This, however, may clearly become impossible, if it is permissible to the Judge to examine the validity of the acquisition, and to refuse compensation on the ground that the land in dispute should never have been acquired. The view we take is supported, to some extent, by the decision of this Court in the case of Ezra v. Secretary of State 30 C. 36, which was subsequently affirmed by their Lordships of the judicial Committee in Ezra v.

Secretary of State 32 C. 605 : 2 A.L.J. 771 : 9 C.W.N. 454 : 1 C.L. 227 : 7 Bom. L.R. 422. The object of the reference u/s 16 of the Act, is to secure the judicial ascertainment of the value of the property acquired, and other matters strictly incidental thereto, and not to determine whether the whole proceeding before the Collector was bad, and the award was illusory as a fraud upon the Act and an evasion thereof, by merely nominal compliance with its provisions. But it has been argued by the learned Vakil for the appellants that this view is opposed to that taken in the cases of Shyam Chunder v. Secretary of State 35 C. 525 : 7 C.L.J. 445 : 12 C.W.N. 569 and Gajendra Sahu v. Secretary of State 8 C.L.J. 39. These cases, however, are clearly distinguishable, but we may add that if they were precisely in point, the question would require consideration whether the matter ought not to be referred to a Full Bench for decision. In the first of these cases, upon reference made u/s 18, this Court appears to have held that the property acquired, namely, fishery rights, was not land within the meaning of the Act, and that consequently the Civil Court might set aside the references by the Collector on the ground that it was contrary to the provisions of the Act. In the second case, it was ruled that when the land actually taken up by Government is different from that mentioned in the declaration issued under the Act, the proceedings of the Collector are void and there can be no valid reference to the Civil Court. It will be observed that in these cases, even if they are assumed to have been correctly decided, the property, which was nominally acquired under statutory provisions, either could never have been acquired at all, or was different from the property in respect of which proceedings had been taken. The cases, therefore, cannot be deemed as directly in point. Reference was also made to the case of Administrator General v. Land Acquisition Collector 12 C.W.N. 241, in which it was ruled that if a Collector rejects an application for a reference to the Civil Court u/s 18, Sub-section 1, he must be deemed to act judicially, and his order is subject to revision by this Court. This principle has obviously no bearing upon the matter now in controversy before us. The decision cannot be treated as an authority for the proposition that an investigation into the legality of the acquisition falls within the scope of an enquiry initiated by a reference u/s 18. We must consequently hold that the first ground urged on behalf of the appellants cannot be sustained, and that the Court below properly declined to determine whether the declaration u/s 6 was ultra vires or not.

3. In support of the second ground urged on behalf of the appellants, it has been contended that the learned Special Judge ought not to have determined the market-value of the lands acquired solely on the basis of the present income derived from them but he should have relied upon numerous instances of sales of adjoining lands similarly situated; and made some allowance for the prospective rise in value of the lands. It has further been argued that the structures on the acquired land have been valued at too low a figure. As already stated, the learned Special Judge has valued the major portion of the land acquired at the rate of Rs. 1,200 a biga, on the basis of the present rental, and in one case he has awarded Rs. 2,550, for the land and the buildings thereon. So

far as this particular case is concerned, as the learned Special Judge points out, if the valuation of the structures, as made by an Assistant Engineer of the Public Works Department, is accepted, the market-value of land works out at about Rs. 5,000 per bigha. It has been contended by the learned Vakil for the appellants that if the land in this particular case, is worth Rs. 5,000 a bigha, the remainder of the land is worth considerably more than Rs. 1,200 a bigha, though admittedly it is back-land. Before we examine the validity of these contentions, it is necessary to describe briefly the situation of the land. The total area acquired has been divided into four blocks, of which the third block has frontage on what is called the Lakshi Bazar Road or the Municipal Office Street. This block is of square shape, and each side measures approximately: 66 feet. Part of it is covered by structures, and one portion, it is suggested, is land formed by filling up a tank which existed about twenty years ago. The first block, which lies towards the south and south-east of the third block, is more or less oblong in shape. A good portion of it is filled-up tank, and part of the tank was in existence when the land was acquired. There is only one pucca structure on the land which was covered mainly with huts. The principal means of access to this block from the public thoroughfare, was by a very narrow lane to the west, running north and south and meeting the Municipal Office Street at the north-west corner of the third block. There was also access to Lakshi Bazar Lane, towards the east, by means of narrow lane on the south running east and west. The second and fourth blocks are further south, and lie mainly towards the south-west of the first block. This plot is divided by a lane into two portions in fact, this is the lane which runs south of the first block, and meets the Lakshi Bazar Lane. On the second block there was apparently no pucca structure, while on the fourth block there was a privy and a stable. From this description of the land acquired, it is obvious, that the third block has to be considered separately from the remainder of the land. It has a good frontage on the Municipal Office Street and the length of that frontage about equal to the depth of the plot, The three other blocks could be reached from the Municipal Office Street and Lakshi Bazar Lane, by means of very narrow passages and were apparently fit for use only as bustee land. It was suggested, however, on behalf of the appellants, that as towards the North and East of the first block, the claimants had other lands they might easily have opened out different roads across those lands so as to enable them to use the first block as a building site, and the land, should, therefore, be valued as such. In support of this proposition, reference has been made to the case of *In re Munji Khetsey* 15 B. 279 and the later decisions of the Bombay High Court *Government v. Dayal* 9 Bom. L.R. 99, *In re Sorabji* 10 Bom. L.R. 696, *In re Dorabji* 10 Bom. L.R. 675, *Trustees v. Karsandas* 33 B. 28 : 10 Bom. L.R. 688 : 1 Ind. Cas. 481, and *In re Dhanjibhai* 10 Bom. L.R. 701, in which it has been ruled that the market-value of the land acquired should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner could dispose of it. It is not necessary for us, however, to deal with this aspect of the case at any very great length, because the evidence to show the possible user of the land acquired as a building

site, is of the vaguest description. It is clear that the lands towards the north, and the east of the first block are used for other purposes and there are shops on those lands which would have to be disturbed if not removed altogether, if the first block is to be opened out for use as a building site. We are further not satisfied, having regard to the surroundings of the land acquired, and to the fact that part of the land, at any rate, is a filled-up tank, that it could be profitably used as a building-site. As observed in the case of *Bombay Improvement Trust v. Jalbhoy* 33 B. 483 : 11 Bom. L.R. 674 : 3 Ind. Cas. 757, to determine the market-value of the land, one has to find out the price which would be obtainable in the market for the concrete parcel of land with its particular advantages and its particular drawbacks, both advantages and drawbacks to be estimated rather with reference to commercial value than with reference to any abstract legal rights. In other words, as explained in the case of *Rajendra Nath v. Secretary of State* 32 C. 343, and *Fink v. Secretary of State* 34 C. 599, the future utility must be estimated by prudent business calculation, and not by mere speculation and impracticable, imagination. The evidence, in the case before us, is wholly insufficient to show that the lands acquired could have been used as building site; there is nothing to show that if any speculator had erected buildings on the site, there would have been any demand for such buildings in the locality; there is also no evidence to show what would have been the cost of erection of such buildings, and what profit might have been realised by any such hypothetical development. Indeed, as explained in the case of *Government of Bombay v. Merwanji Muncherji* 10 Bom. L.R. 907, which reversed the decision in *In re Nerwanji* 9 Bom. L.R. 1232, a hypothetical building-scheme, considered as the basis of market-value, affords generally evidence of a remote, speculative and conjectural character, and the learned Special Judge acted properly when on the inconclusive evidence before him, he declined to take into consideration the supposed possibility of user of the land acquired as a building-site. His judgment, however, is open to criticism from two points of view, namely, first, that he has not attached sufficient importance to the evidence of market-value of similar lands in the locality; and, secondly, that he has made no allowance for possible increase, in the immediate future, of the rental derived at present from the land acquired. We shall now proceed to examine the evidence from these two points of view.

4. In so far as the market-value of lands in the neighbourhood is concerned, the claimants rely upon instances of transfers as also upon awards made under the Land Acquisition Act. Evidence of this class has to be scrutinized with great care. No doubt, as observed in the case of *Trustees v. Karsandas* 33 B. 28 : 10 Bom. L.R. 688 : 1 Ind. Cas. 481, when evidence is adduced of prices realised at sales of neighbouring lands, it is not possible to obtain instances precisely parallel, in all their circumstances, to the particular land acquired; differences, small or great, exist in various conditions, and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast rule. At the same time the instances produced must relate to lands which, on the

whole, have the same conditions of quality and situation as the land acquired. Let us briefly examine the evidence from this point of view. The claimants rely upon a transfer effected on the 19th July 1882, (Exhibit 5) which gives a rate of Rs. 7,200, per bigha. The same land was transferred again on the 19th August 1901, for a price which works out a rate of Rs. 14,400, (Exhibit 6.). The land, however, was of very small area, and though about eighty feet distant from the acquired land, adjoined Lakshi Bazar Lane; but the instance is valuable as it affords some evidence that land in the locality increased in value in recent years, an inference which is supported by the oral evidence adduced on the side of the respondent. Reliance is next placed upon two transfers (Exhibit 4 and Exhibit 3), effected on the 28th May 1891 and 31st January 1892. The area in each case was very small, and the advantage due to road frontage was distinctly greater in each case. These transfers indicate a value in one case of Rs. 6,400, a bigha and in the other of Rs. 11,600. Three other transfers are also proved (Exhibits 2, 8 and 1.). These took place on the 7th February 1900, 26th February 1901, and 19th May 1902. The area in each case was comparatively small; the largest area, that in the second instance, was 8 cottahs; the rates deducible are Rs. 7,140, Rs. 9,200 and Rs. 5,760. The other instances of transfers proved are not of much value, as they relate to lands situated, in Kalka Bazar and Roy Sahib's Bazar, where entirely different conditions prevail. It has been argued/however, on behalf of the claimants, that even if the evidence is limited to instances of sales of land in the neighbourhood of the property acquired, they show conclusively that the rate of Rs. 5,000, accepted by the Special Judge in respect of the third block, is too low. In our opinion, there is some force in this connection, which is strengthened by an examination of the award, made under the Land Acquisition Act, for land acquired for the Municipal Office (Exhibit 16). That land was acquired towards the end of 1902, and covered an area of more than 2 bighas. For the major portion of the land, the market-value was assessed at from Rs. 7,000 -to Rs. 8,000, per bigha and for a very small portion, less than three cottahs, which was distinctly inferior to the remainder of the land acquired, a rate of Rs. 4,000, was allowed. The valuation was made, not merely upon the then existing rental, but also upon the market-value of lands in the neighbourhood as indicated by recent transfers. The Special Judge, on that occasion, increased the award of the Collector substantially, and though an appeal was preferred to this Court against the award of the Judge by the Secretary of State, the appeal was subsequently withdrawn. Reference may also be made to another parcel of land acquired towards the end of 1904, for the Telegraph Office, in the vicinity of the Municipal lands; for that land, the market-value was assessed at Rs. 7,000, a bigha. In our opinion, the evidence afforded by the transfers of land in the neighbourhood of the lands acquired, tends to the conclusion that the market-value ought to be assessed at Rs. 7,000 in respect of the third block which has a good frontage on the Municipal Office Street.

5. In so far as reliance is placed, on behalf of the Secretary of State, upon the present income derived from the land acquired as the basis for determination of

the market-value, the claimants contend that the judgment of the Special Judge is open to legitimate criticism on the ground that he has assumed that the rental has reached its maximum limit. Their contention in substance is that the present disposition of the land ought not to have been taken as conclusive, and some allowance ought to have been made for possible future utility not based on conjectural grounds, but estimated by prudent business calculation. There is, in our opinion, considerable force in this contention, which is supported by the case of *Alaul Huq v. Secretary of State* 11 C.L.J. 393 : 3 Ind. Cas. 277, where allowance was made for prospective rise in rental. The same view was taken in the case of *Harish Chancier v. Secretary of State* 11 C.W.N. 875, where it was pointed out that to arrive at fairly correct valuation, recourse should be had to two or more of the known methods of valuation, amongst which were mentioned, first, the price paid in recent bona fide transactions of transfers of portions of the property acquired or of adjoining lands possessing similar advantages, and, secondly, capitalization at a certain number of years' purchase of the actually or immediately prospective profit from the lands acquired. From the evidence as a whole, therefore, and bearing in mind the date of the declaration, we come to the conclusion that the third block should be valued at Rs. 7,000 a bigha. We may add that we are not unmindful that there is a suggestion in the evidence? that a very small portion towards the south-east corner of this block might, at one time, have formed the north-west corner of the tank which covered a good portion of the first block. The evidence on this point, however, is of a somewhat illusory character. If the third block is a square plot and each side of it measures about sixty-six feet, no part of it would cover the tank, because the evidence, as it stands, indicates that the western bank of the tank lay at a distance of seventy-five feet from the common western boundary of the third and first blocks. It would not be right, therefore, to assume that any portion of the third block was tank-filled-up land.

6. The question next arises as to the value of the other blocks which stand on an entirely different footing. The learned Vakil, for the claimants, has contended that the lands acquired should be divided into belts, and that the value of the second belt should be taken as half that of the first belt. But it was pointed out by this Court in the case of *Secretary of State v. Indian General Steam Navigation Co.* 36 C. 907 : 4 Ind. Cas. 448 : 10 C.L.J. 281 : 14 C.W.N. 134, that the mode of valuation by division into belts is artificial and does not always afford a reliable guide to the ascertainment of the market-value, and this view was subsequently affirmed by the Judicial Committee. It may further be observed that if the mode of valuation by division into belts was adopted, a great deal would depend upon the depth of the belts assumed more or less arbitrarily. We must, therefore, determine the value of the first block as that of back land in relation to the third block. No hard and fast rule can be laid down as to the proportion between the value of front-land and back-land, and it was pointed out in the case of *Government of Bombay v. Karim Tar Mahomed* 33 B. 325 : 10 Bom. L.R. 660 : 3 Ind. Cas. 273, that it can not be taken as an inflexible rule, that back-land is

worth half the front-land. In fact in the case of *Alaul Haq v. Secretary of State* 33 B. 325 : 10 Bom. L.R. 660 : 3 Ind. Cas. 273, where the front-land was valued at an exceptionally high rate, as land well fitted-for the erection of shops, the back portion was valued at only one-fifth, of that rate because it could be used only for an entirely-different and less profitable purpose. In the case before us, the first block treated as, back-land, has two narrow lanes on the west and south, one of which leads to the Municipal Office Street on the north, and the other to the Lakshi Bazar Lane towards the east. Against this, however, it must be remembered that a portion of the first block, approximately about one-fourth of its area, was a filled-up tank, in fact, part of such filled-up land was, at the time of acquisition, of much lower level than the surrounding lands. In our opinion, it would be fair to value the land in the first block, a portion of which as already remarked is filled-up tank, at an average rate of Rs. 2,000 a bigha. The second and fourth blocks lie further towards south, and as already stated, a lane runs through the land and forms its northern boundary. This lane leads to another lane towards the south, and to Lakshi Bazar Lane towards the east. So far, therefore, as access to the principal thorough fares is concerned, this portion of the property acquired is obviously in a less advantageous position than the first block, but it is land of a better character, so that its value also may, we think, be fairly assessed at Rs. 2,000, a bigha.

7. The only other point which requires consideration is the value of the structures. So far as the structures on land, other than the third block, are concerned, we are of opinion, that no ground has been made out for our interference. But so far as this particular block is concerned, the claimants valued the structures at Rs. 4,500, while an Assistant Engineer of the Public Works Department, valued them at Rs. 1,232. His examination of the buildings, however, was of a somewhat perfunctory character, and he made no allowance for the foundations of the Jhikatighar, which is described as a substantial pucca structure with a gabled roof, and a relic of a lost Article We assess the value of the structures on the third block at Rs. 1,500.

8. The result, therefore, is that these appeals must be allowed in part, and the awards of the Special Judge varied. As the claims were grossly exaggerated, there will be no order for costs in the Court of first instance. In this Court, the claimants will be entitled to their costs which will include only the Court-fees upon the additional amount in respect of which they have succeeded here, and the costs of the preparation of the paper book. No sum will be allowed in respect of hearing-fees. The claimants will, of course, be entitled to the usual statutory allowance on the excess amount now decreed.