

(1921) 01 CAL CK 0025
In the Calcutta High Court

R.C. Sen

APPELLANT

Vs

Trustees for the Improvement of Calcutta and Another

RESPONDENT

Date of Decision : 21-01-1921

Acts Referred:

Land Acquisition Act, 1894 — Section 9

Citation : AIR 1921 Cal 340 : 64 Ind. Cas. 577

Hon'ble Judges : Walmsley, J; John Woodroffe, J

Bench : Division Bench

Judgement

John Woodroffe, J.—The plaintiff seeks for a declaration that the defendants are not entitled to acquire the land in suit and for an injunction. By a notification of the 16th February 1915 the Government declared that a portion of the premises No. 147, Russa Road, amounting to 1 bigha 16 cottahs and 3 chattaks was required for public purposes, namely, a street scheme framed by the defendants as Trustees for the Improvement of Calcutta. No notice was given u/s 9 of the Land Acquisition Act for two years. Meanwhile a question arose in two other cases whether the compulsory acquisition of surplus land for the purpose of recoupment was authorised by the Calcutta Improvement Act. In a case decided in July 1916 before Greaves, J., the question was answered in the affirmative. In the following month the High Court (Mookerjee and Cuming, JJ.) held to the contrary, namely, that recoupment was not one of the purposes of the Act, This decision, until reversed, was, binding on the Collector. It became obviously necessary that the work of the Trust, so far as it might conflict with this ruling should be kept in abeyance pending the recognition of the legality of the principle of recoupment. Accordingly on the 20th March 1917 the Government ordered that unless an owner wished the whole of his premises to be acquired, the portion outside the roadway which was being formed should be excluded from acquisition until the question of recoupment was settled. It is obvious that no question of abandonment arises on the facts, nor is this alleged before us. In pursuance of this policy which was the only reasonable one under the circumstances, notice was issued on the 30th March 1917 for the acquirement of

14 cottahs 10 chittaks and 27 sq. feet only in lieu of 1 bigha 16 cottahs and 3 sq. feet as set out in the original declaration. It was then ascertained that the portion of the premises intended to be taken and actually required for the execution of the scheme consisted mostly of a tank which existed in the premises and measured 8 cottahs 4 chittaks and 34 sq. feet. The plaintiff objected to the acquisition of any portion of the premises other than the area last mentioned. The plaint alleges an assurance by the Collector that the acquisition would be confined to this area. But this is denied and it is not argued before us either that there was any abandonment of right or agreement restricting acquisition. The argument for the appellant is confined to the point that the Act does not allow what has been called piecemeal acquisition. An award was made on the 29th May 1917 in respect of this eight cottahs odd.

2. Meanwhile an appeal was filed to the High Court in its Appellate Jurisdiction; against the decision of Greaves, J. (of 17th July 1916) and was heard by Sanderson, C.J., Woodroffe and Chitty, JJ, This Bench [see *Mani Lall Singh v. Trustees for the Improvement of Calcutta* 44 Ind. Cas. 770 : 45 C. 843 : 27 C.L.J. 1 : 22 C.W.N. 1 (F.B.)], being in disagreement with the decision of Mookerjee and Cuming, JJ., in *Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh* 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 above mentioned, referred the question of recoupment to a Full Bench, which held on August 14th 1917 (Chatterji, J., dissenting) that the Calcutta Improvement Act does authorize the Board of Trustees to acquire land compulsorily for purposes of recoupment, that is, by selling or otherwise dealing with the land u/s 81 or by abandoning the land on consideration of the payment of a sum u/s 78. Subsequently the decision of Mookerjee and Cuming, JJ., was reversed by the Privy Council [*Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh* 56 Ind. Cas. 32 : 47 C.500 : 32 C.L.J. 65 : 11 L.W. 566 : 38 M.L.J. 511 : 18 A.L.J. 521 : 22 Bom. L.R. 586 : 24 C.W.N. 881 : 2 U.P.L.R. (P.C.) 98 : 47 I.A. 45 (P.C.)], who adopted the view as to recoupment taken by the Full Bench, There being after the decision of the Full Bench an authoritative decision on the question of recoupment, the Collector on the 7th November 1917 gave notice that he would acquire the balance of the land mentioned in the declaration of 16th February 1915. To this objection is taken, the argument being that the Land Acquisition Act contemplates one declaration, one notice, one proceeding and one award and as there was already one proceeding and award in respect of the 8 cottahs odd, it is contended that the power to take action under the Act was exhausted and the subsequent acquisition was without jurisdiction. We must distinguish between two cases of what has been called piecemeal acquisition. A declaration may be issued for a quantity of land consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land covered by a single declaration (See Executive Instructions, Government of Bengal, Ch. V, 554), There is no objection to separate proceedings being taken in respect of separate holdings. It is, however, different matter where (as here) there is one

holding. In such a case it does not seem reasonable to hold that there can be a piecemeal acquisition. Had it, therefore, not been for the judicial decisions to which I have referred, I should have been disposed to hold that the proceedings were not valid as the Act refers only to one notice, one proceeding and one award to be given, taken and made regarding (in my opinion) one holding and one ownership. But in the present case the Collector was prevented from following this course by the decision of the High Court [Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8] If in this particular case an injunction had been granted and proceedings held up regarding portion of the land declared for acquisition and proceedings had gone on as regards the rest, it could not have been contended that further proceedings were barred if and when the injunction was removed. This is not the case here, but the principle applies. There was a decision, though in another suit which the Collector was bound to respect, even though it had been passed in relation to other premises. He could not have gone on to acquire the whole land in the teeth of the High Court decision against recoupment. When, however, the Full Bench affirmed the principle of recoupment, the Collector was free to proceed with the acquisition and did so. It would be anomalous and unfair to hold that because the Collector, in obedience to the decision of a Court to which he was subject, desisted, pending an appeal from that decision, from proceeding with the acquisition of the portion of the premises affected by that decision, he was thereby debarred from further proceeding with the acquisition when a Court superior to that which gave the decision declared the latter to be erroneous, I am of opinion, therefore, that the proceedings complained of were valid and dismiss the appeal with costs.

Walmsley, J.

3. I agree.