
(1927) 06 CAL CK 0041
In the Calcutta High Court

Secretary of State

APPELLANT

Vs

Amulya Charan Banerjee and Others

RESPONDENT

Date of Decision : 17-06-1927

Acts Referred:

Calcutta Municipal Act, 1923 — Section 557(d)
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1927 Cal 874

Hon'ble Judges : Roy, J;B.B. Ghose, J

Bench : Full Bench

Judgement

Roy, J.—This appeal is by the Secretary of State for India and against the decision of the Special Land Acquisition Judge of the 24-Pergannas in reference made to him u/s 18, Land Acquisition Act, 1894, The land in question is a small plot of land 10 cattas 10 chataks and 16 square feet in area situate near the Kalighat Temple. It may be mentioned that though there was a controversy in the Court below as to the actual area, it is not now disputed that the area is as stated above. The acquisition was made at the instance of the Calcutta Corporation. The Collector awarded to the owners for the land and the structures on it a sum of Rs. 81,675. This was based on the annual assessment of Rs. 3,267 borne on the assessment register of the Corporation The claimants demanded Rs. 1,27,000 (Rs. 20,000 for the structures and the balance for the land, the value being estimated at Rs. 10,000 per catta). The learned Judge has made an award of Rs. 1,09,000. He valued the structures at Rs. 20,000 and the balance he allowed for the land. From this decision the Secretary of State for India has appealed and the claimant-respondents have filed cross-objections which they value at Rs. 18,000.

2. The land in suit has to its north the Kalighat Temple Road and on its west lies the main Kalighat Road. On the south is Kalighat 1st lane which leads to the main temple gate. It appears that for some time before there were schemes for improving the area surrounding the temple and this particular bit of land was also the subject of discussion in connexion with the scheme of improvement. The

structures were let out by the owners to tenants who catered to the large numbers of pilgrims visiting Kali's temple by providing them with food and shelter and the articles necessary for their devotional purposes. The Corporation decided first to widen the Kalighat 1st lane. The declaration was made on 9th February 1914, and by November 1914, the lane was actually widened and paved to the extent of 20 feet. For some reason or other a strip of land was left vacant between the land in dispute and the paved Kalighat 1st lane. It appears that the Corporation put up a fencing as well. On the 16th February 1914, there was a declaration for the acquisition of land east of this land in suit for constructing a new road. In August 1914, there was a proposal to acquire their disputed land as surplus land of the proposed road to the east. There were objections from various people and the proposal seems to have been given up. In February 1915, the Corporation proceeded to lease out the strip of land between Kalighat 1st lane and the land in suit now. The bids were taken by Messrs. Mackenzie Lyall & Co., in auction. It appears that the bids went up very high and as far as I can Judge suspicions were aroused and the matter was dropped. Thereafter in May 1915, it was decided to construct a colonnaded dharamsala on the site of the land in suit and this was followed up by a declaration of 9th September 1915. The acquisition in question has been made under this declaration. The delay in pushing on the scheme is due to the fact that the owners (the claimants here) tried unsuccessfully to restrain the Corporation from making the acquisition by a suit which they carried to the Privy Council. The acquisition proceedings were renewed after this litigation in 1924 leading up to this appeal.

3. Another fact which should be mentioned is that the assessment of 1915 on which the Collector's award is based was disputed at the time when it was made and we have the strange spectacle of the owners claiming that the assessment should be higher and the corporation holding that the rents had been pushed purposely in view of the proposed acquisition. The municipality decided that the correct assessment should be the figure on which the Collector has based his award.

4. The presumption arising out of Section 557(d), Calcutta Municipal Act cannot be said to be strong in the above circumstances of the case and has been, it might be said, rebutted by the claimants showing that the rents actually paid at the time when the assessment was made were really higher than what the corporation officials entered in their books. Evidence was given that the annual assessment should have been Rs. 4,584 being the annual rent, actually payable instead of Rs. 3,267. The learned Judge seems to have had his doubts whether the actual rent amounting to Rs. 4,584 was ever realized. The difference between the figures appearing in the books of the corporation and the figures given by the claimants may be said to be due mainly, to the increased rents realizable under their kabuliyats. Two of these kabuliyats were obtained in September 1914, and the third a little earlier. These kabuliyats were thus obtained at a time when the project for acquisition of this plot was already under

discussion. We are not satisfied that these rents were actually realized and we do not think, therefore, that this can be a very satisfactory basis for ascertaining the actual market value of the land. There is another difficulty, and it is this, that if the statutory basis afforded by Section 557(d), Calcutta Municipal Act, is given up, then the claimants cannot insist on taking 25 years' purchase of the annual value. The contention of the learned Government pleader, that the rental should be capitalized at 20 years' purchase seems to be of some weight. Questions of selami were raised and it was also asserted that the tenants paid taxes over and above their rents. Deductions, on the other hand, have to be made on account of the collection charges and also loss by vacancies and loss by the accidents of non-realization. The learned advocate appearing for the claimants urged that they are entitled to 25 years' purchase because of the position of the land and in this connexion, he has referred to the fact that this assessment of the corporation in 1921-1922 shows that the rents had increased by that time to Rs. 4,510. The evidence of the rents payable or paid shows, however, that they were rack rents and it is doubtful whether the claimants are entitled to 25 years' purchase. In Calcutta and its suburbs the number of years taken in capitalizing upon a rack rental is usually 20. The Judge's award works out at 25 years' purchase on a rental basis of Rs. 4,360.

5. The claimants examined an expert Mr. Shroobree, at one time the Chief Surveyor and Valuer of the Calcutta Improvement Trust. He divided the area into four belts:

One abutting on Kalighat Lane;

second, abutting on Kalighat Road;

third, abutting on Kalighat Temple Road;

the rest or the balance;

and gave different valuations for the different belts. The learned Judge seems to have accepted this method for valuing the land but was of opinion that Mr. Shroobree's estimate, was exaggerated. He has reduced Mr. Shroobree's figures with the result that his award is a reduction of Mr. Shroobree's valuation for the land by about 25 per cent. The learned Government pleader argues, therefore, that the learned Judge's decision is arbitrary.

6. The learned Judge has himself remarked that it is impossible to determine an exact valuation. Their Lordships of the Privy Council observed in *Secretary of State for Foreign Affairs v. Charlesworth, Petting & Co.* [1902] 26 Bom. 1, that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. The learned Judge's idea seems to have been that the valuation claimed by the owners on the rental basis was pitched too high and that Mr. Shroobree's valuation left a margin for reduction. The exact exposition of reasons for the conclusion arrived at by the

Judge are not forthcoming. We have to see if the valuation made by him is consonant with any reliable evidence.

7. The value of the structures on the land has been found to be Rs. 20,000. This is not disputed. The land falls conveniently into belts by reason of its situation and the case has been argued by both sides on that footing. The strip of land abutting on the Kalighat Road, 55 feet by 32 feet has to be considered first, for we have positive evidence here, which can lead us to make a fairly correct valuation. There is a sale-deed of 1907 which shows that 3 chattaks of land on the Kalighat Road was sold there at a rate which works out at Rs. 7,830 per catta. This bit of land lies 180 feet further north. For the claimant it is argued that the assessment book at the Corporation in 1915 shows that the rent realized from this property rose to Rs. 119 per annum, and on a calculation of area and giving 25 years purchase, it is contended that the valuation of Rs. 12,000 as deposed to by Mr. Shrosbree per catta, is not extravagant. It appears, however, that, even after the declaration, sales of lands in the neighbourhood (Exs. 21 and 22) fetched about Rs. 7,800 per catta. For the Secretary of State reliance is placed on the awards made when the Kalighat Lane was widened. They average from Rs. 5,000 to Rs. 8,000 per catta. The learned Judge rejected them. He was in error in thinking that the Collector cannot rely on his own admission in these awards. They are prices which were given to people whose lands were acquired and "who accepted them and, therefore, they are valuable evidence in ascertaining the market value of the property in suit. This was so held by this Court and the judgment of this Court was approved by their Lordships of the Privy Council in *Secy. of State v. India General Steam Navigation & Ry. Co.* [1909] 36 Cal. 967. Now, we have the fact that just across the lane the Collector awarded Rs. 8,000 per catta for a plot which also abutted on the lane as well as also on the Kalighat Road. The learned Government pleader asks us to rely on the award made for this corner plot. It is unquestioned, however, that the land in suit is better situated and, as the Judge has observed, it is unique with three main thoroughfares round it by which pilgrims may go to the temple. The learned Judge's award, therefore, for this strip, at Rs. 10,000 per catta, is not unreasonable.

8. Then comes the strip on the Kalighat Temple Road 82 feet by 23 feet. The Judge has awarded Rs. 8,000 per catta for this bit. This is not challenged by the learned Government pleader. Admittedly the situation of this strip is somewhat inferior and Rs. 8,000 a catta is consonant with the evidence referred to above. The award of the Judge for the fourth strip with an area of 2,445 square feet, at the rate of Rs. 5,000 a catta, (to be found on p. 82 of the printed paper book) has not been challenged by either party and may be accepted.

9. There remains the strip of land 105 feet by 15 feet situate on the side of the Kalighat 1st lane. The Judge allowed for this portion at the rate of Rs. 12,000 per catta. Mr. Shrosbree valued it at Rs. 20,000 per catta. The learned Judge, while holding that Mr. Shrosbree's valuation was based upon a future scheme of

development and not on the present disposition of the land, and while being of opinion that the land was cut off from the Kalighat Lane by the strip of land 5 to 7 feet wide, left vacant by the municipality, thought that Rs. 12,000 a catta, would be a fair market value for this portion. The contention of the learned Government pleader is that it is really the back land of the entire plot of 10 cattas odd. It appears that there were tin sheds on this portion which were used as kitchens for the pilgrims. The widening of the Kalighat 1st lane and the prospect of a new road on the east, however, placed it in a very good position. It is urged on behalf of the claimants that the corporation, having, acquired land on the south for widening the Kalighat 1st lane, are not entitled to use any portion for some other purpose. It is contended that the claimants have the right of abuttal on the Kalighat 1st lane and it is mainly on this ground that the cross-objections were pressed before us. It was said that they had a right of passage on to the lane before and they did not move any further in the matter because they expected that their land on the south would in the ordinary course of things abut on the widened Kalighat Lane which leads to the main entrance to the temple.

10. The English Law on the subject was referred to. That law seems to be that after acquisition the new owners have the ordinary rights of proprietors and may use their lands as they think fit for any purpose which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the statute under which the lands have been taken. There are, however, restrictions in the English law which do not find place in our law. The learned Government pleader has quoted the case of *Luchmeswar Singh v. Chairman, Darbhanga, Municipality* [1891] 18 Cal. 99. The point was hot raised in controversy, but there are observations in the judgment of this case that a municipality is justified in using the land for any purpose for which the statute authorized it to use land although not for which it was professedly taken. The land in the above case was acquired for a public ghat, but the municipality made a ghat upon a part and used the rest for a market. The difficulty in the present case has arisen because of the piecemeal acquisitions of bits of land in the neighbourhood. The portion in question here was back land, but suddenly occupied a prominent position by reason of acquisition round it. It was known that this land was going to be acquired. The claimants may say, however, that they are entitled to the advantage their land was placed by the acquisition round it. The municipality delayed in acquiring the land and there was the possibility that the Municipality might not have proceeded with the acquisition of the land in suit. The circumstances of the case might, again justify the proposition that the owners would get a right of passage to the land, but the municipality might, on the other hand, use the strip they left vacant for some public purpose. They might for instance use it for a stand for carriage or some such purpose. It cannot be paid by the owners that they would have the right of abuttal all along the lane. With a passage they might still be able to utilize this portion to good purpose, but the portion would not be in the excellent position they contemplated. I think, taking

into consideration all the circumstances of the case, it might be said that they would be in no worse position here than their position abutting on the Kalighat Temple Road. We think, therefore, that it would be fair to allow Rs. 8,000 a catta for this portion. This reduces the valuation of the learned Judge for this portion by Rs. 8,833-5-4. The total valuation for the land thus comes to Rs. 80,045-13-3. To this should be added Rs. 20,000 for the structures. The total award then will be Rs. 1,00,045-13-3. The award of the learned Judge will be modified accordingly and the appeal allowed in part with costs proportionate to success. The claimants are, of course, entitled to the statutory allowance and interest as provided for in the Act.

11. The cross-objections are dismissed.

B.B. Ghose, J.

12. I agree.