

(1923) 11 CAL CK 0012
In the Calcutta High Court

Secretary of State

APPELLANT

Vs

Bejoy Kumar Adya and Others

RESPONDENT

Date of Decision : 15-11-1923

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 6

Citation : AIR 1925 Cal 224

Hon'ble Judges : Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—This is an appeal by the Secretary of State for India in Council in an apportionment case under the Land Acquisition Act.

2. The respondents held the property acquired, under a grant made in their favour on the 1st February, 1861, by the Collector of the 24-Parganahs. The settlement was permanent, but a clause was added at the end of the lease in following terms: "If any portion or the whole of this land be required for the Government we shall give up the same without any compensation." The Government, as landlord, has never exercised its power to resume the land by virtue of this clause. On the other hand, on the 5th May, 1914, a declaration was made u/s 6 of the Land Acquisition Act that the land was to be acquired for the purposes of a road in continuation of the Kali Temple Road, westward to Tolly's Nallah. This declaration was published at the instance of the Calcutta Corporation which required the land for public purposes. The Collector refused to make an award on the ground that the land belonged to the Government and that it was not necessary to make an award under the provisions of the Land Acquisition Act in respect of property owned by the Government itself. This view was negatived by this Court: *Bijoy Kumar Addya v. Secy. of State* (1916) 25 C.L.J. 476 and an award was subsequently made. Nothing however was allotted to the respondents on the ground that they were tenants-at-will; it was evidently overlooked that even where the tenancy is so precarious as that of a tenant-at-will, his interest in the land may have appreciable market value within the meaning of Section 23 of

the Land Acquisition Act: *Sadhu Charan v. Secy. of State* (1919) 24 C.W.N. 184. There was a further appeal to this Court and on the 1st June, 1921, Woodroffe and Cuming, JJ., held that the stipulation mentioned in the lease did not make the grantees tenants-at-will: *Bejoy Kumar Addy and Others Vs. Secretary of State for India in Council*, . An award has now been made and the amount has been distributed between the tenants and the Government as the landlord. The Land Acquisition Judge has held that the Government should have, besides the capitalised value of the revenue, one-eighth of the amount awarded as compensation. We are not concerned with the accuracy of the calculations made by the Judge in order to determine the present value of a perpetual lease which is resumable at the option of the landlord but has not been resumed during a period of 53 years. We are of opinion that the distribution made by the Judge is prima facie fair. The Government did not put into operation the resumption clause for a period of 53 years. The Government did not move when approached by the Corporation with the request that the land should be acquired for public purposes. In such circumstances we are not prepared to say that the share of the compensation money which has been awarded to the Government is inadequate. As Lord Buckmaster observed in *Fakrunissa v. Izarus Sadik* AIR 1921 P.C. 55, and *Nabakishore v. Upendrakishore* AIR 1922 P.C. 39, it is the duty of the appellant to satisfy the Court of appeal that the decision of the trial Court is erroneous: the appellant here has not discharged that burden.

3. The result is that the award made by the Court below is affirmed and this appeal is dismissed with costs. We assess the hearing fee at three gold mohurs.