

(1926) 01 CAL CK 0051
In the Calcutta High Court

Secretary of State

APPELLANT

Vs

K.S. Bannerjee

RESPONDENT

Date of Decision : 15-01-1926

Acts Referred:

Court Fees Act, 1870 — Section 8

Citation : AIR 1927 Cal 45 : 97 Ind. Cas. 140

Hon'ble Judges : Walmsley, J;Chakravarti, J

Bench : Full Bench

Judgement

Walmsley, J.—This appeal is preferred by the Secretary of State against the decision of the Land Acquisition Judge on a reference under the provisions, of the Land Acquisition Act.

2. Some land was acquired for the extension of the Medical College Hospital, and the plot under consideration lies immediately to the east of the plot to which Appeal No. 158 relates. Before the Collector the claimant asked for compensation at the rate of Rs. 10,000 per katta and Rs. 20,000 for what was called severance. In the reference the claim per katta was reduced to Rs. 6,000 nothing was said about severance, but in the Judge's Court the sum demanded on that account was Rs. 4,500. The Collector awarded Rs. 4,000 per katta and gave nothing for severance. The Judge has enhanced the rate per katta to Rs. 5,000 and has added Rs. 2,500 for severance.

3. A preliminary objection has been taken on the ground that the appeal has been filed on a stamp of fifteen rupees only. It is said that full Court-fees on the value of the relief claimed should have been paid. It is conceded that the old practice was to pay ad valorem Court fees but the appellant has the authority of the Punjab and the Madras Courts for paying the smaller sum. The Court fees Act makes it clear that a claimant must pay ad valorem fees, but the wording of the section that makes that provision suggests that when the Secretary of State appeals for a reduction of the sum awarded some other rule applies; and if the Court-fees payable by a claimant are not governed by the ordinary rules affecting

decrees it seems that they cannot be applicable in the case of an appeal by the Secretary of State. If that is so, the only article in the Court Fees Act under which such an appeal can be classed though not very appropriately is Article 17(4), an appeal to set aside. I think, however, that the position has been changed by the recent amendment of the Land Acquisition Act. For a purpose unconnected with the matter of Court-fees the decision of the Judge has been made a decree, and the result is that the Secretary of State is appealing against a decree. Where a claimant demands an enhancement of the Judge's award he also is appealing against a decree, and the special provision of Section 8 of the Court Fees Act may now, probably, be regarded as redundant. At any rate the inference drawn from the discrimination made between the claimant and the Secretary of State is no longer warranted. I think, therefore, that ad valorem fees should be paid. As the smaller sum was paid on the authority of decisions by other High Courts, time will be given to the Secretary of State to put in the deficit.

4. Now I turn to the merits of the case. The learned Judge has referred to the situation of the land, and has shown that four of the sales and awards adduced for comparison cannot be accepted as showing the value of the plot under consideration. Other awards show that land with a frontage on Bowbazar Street may be valued at about Rs. 10,000 per katta. This plot is not on the street, but it differs from the plots on each side of it in this that access to the street is not completely cut off. The Collector considered that this gave the plot a greater value than the plots on each side of it, and the only question is how much greater is that value. The learned Judge thinks that compensation should be at the rate of Rs. 5,000 per katta. I think that is a generous estimate, but I am not satisfied that it is excessive.

5. The next question is whether the Judge is right in awarding compensation for what is called "severance." The term is not appropriate. The effect of the acquisition is to leave the owner in possession of a narrow strip of land at the south end of the plot acquired, which by its situation is awkwardly attached to the plot further south. It is said that shape and situation make it impossible to derive the fullest advantage from this narrow strip. In this case also, I think that the claimant is inconsistent; he bases his demands on proximity to Bowbazar Street, and the acquisition does not interfere with that. All that can be said is that the plots left to him are irregular in shape, but I do not think that that fact has any real effect on their value. I think, therefore, that compensation on this account should not be given.

5. In the result, I think, that the appeal should be allowed in part, the Judge's award being affirmed in regard to the compensation for the land and reversed in regard to compensation of the remainder. The appellant will recover proportionate costs.

Chakravarti, J.

6. I agree.