(1937) 07 CAL CK 0009

In the Calcutta High Court

Secretary of State APPELLANT

Vs

Sm. Dulali Bala Debi and Others RESPONDENT

Date of Decision : 12-07-1937

Acts Referred:
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1938 Cal 75

Hon'ble Judges : Rankin, C.J;Mukherji, J

Bench : Division Bench

Judgement

1. This is an appeal from the decision of the learned President of the Calcutta Improvement Tribunal, dated 1st November 1936 to which the assessors composing the Tribunal concurred, in a case arising out of a reference u/s 18 of the Land Acquisition Act, The premises, "No. 107, Lake Road, western portion with interest in the common passage" were acquired under a project known as Scheme No. 33, Southern Avenue, 1st Section of the Calcutta Improvement Trust, The declaration for the acquisition aforesaid was published in the Calcutta Gazette of 10th March 1932. Under the same project and by the same declaration was acquired '' the common passage to premises No. 107 Lake Road" referred to above which is the subject matter of the case before us. The land acquired was described as "passage land," and the area of the same was 2 c. 3 oh. 20 sq. ft. The premises No. 107 Lake Road and the passage were owned by the same persons, and the award made by the Land Acquisition Collector on 16th August 1934 in respect of the "passage land" showed that the acquisition of the common passage completed the acquisition of the entire holding No. 107, Lake Road. The award made by the Collector further showed that inasmuch as the existence of the passage was considered at the time of valuing the premises served by it, no separate compensation was awarded for the land covered by the passage.

2. The owners of the land covered by the common passage applied for a reference u/s 18, Land Acquisition Act, on the ground that the Collector ought to

have awarded compensation for acquiring the land of the common passage according to their shares. Reference as contemplated by law was made by the Collector to the Tribunal. The Tribunal made an award in favour of the claimants determining the market value of the land, on the basis that the land covered by the common passage in question should be valued at one. fourth the rate given for the surrounding land. The Secretary of State appealed to this Court supporting the award by the Collector, according to which the claimants were entitled to no compensation for the land covered by the common passage.

3. It has to be noticed at the outset that in acquiring "premises No. 107, Lake Road, western portion, with interest in the common passage" as mentioned in the award Ex. B in this case, it could not possibly be intended that the entire proprietary interest of the owners of the land in the common passage, including all the rights in the sub-soil, were acquired. In point of fact it was not done. The existence of the passage was taken into consideration in valuing premises No. 107 Lake Road western portion; an increment in valuation was allowed for the reason of the existence of that passage as a means of access. The position that the adjacent land had received a higher valuation for the existence of the passage, could not lead to the conclusion that the land covered by the passage had lost its value to the owners. In the case before us "premises No. 107, Lake Road western portion" and he common passage in question were owned by the same persons; and apart from any question of policy involved and underlying the method adopted in the acquisition of the same, there was hardly any justification for separate acquisition of ''premises No. 107, Lake Road western portion, with interest in the common passage" and "common passage to premises No. 107, Lake Road." The passage was a private passage appertaining to premises No. 107, Lake Road, providing, as it did, access to all parts of the said premises; and as such the passage could very well be included in the acquisition of the whole site and taken into consideration for the purpose of the assessment of valuation of the same: see in this connexion Trustees for the Improvement of the City of Bombay v. Karson Das (1909) 33 Bom 28.

4. In our judgment, if the proper and reasonable course was followed by the authorities concerned, there would have been very little scope for elaborate discussion of more or less academical questions in the case before us, and no occasion for inviting this Court to lay down a rule of general application for guidance of acquiring authorities. We confine ourselves to the case before us and express the opinion as indicated above that if premises No. 107, Lake Road, with the land covered by the common passage in question included in the same were acquired as one plot with a common passage included in the same, the land abutting on the common passage, and served by it, was bound to receive a higher valuation, as it did, for the existence of the common passage. The land covered by the common passage itself, the ''passage land", on the other hand, would have received a lesser valuation for the reason of the application of the principle of valuation of land subject to restriction as to user: see the decision of Mookerjee J. in Chairman of the Howrah Municipality v. Khetra Kristo Mitter

(1906) 33 Cal 1290 in which some of the important decisions of the English Courts on the subject are discussed.

5. Judging from the above stand-point, the value of "the passage land," the subject matter of the acquisition in the case before us, could not however be nominal or negligible, but must be considered to be substantial, regard being had to all sorts of considerations, one of which was the existence of the possibility of the purchase of the same as a common passage for the beneficial enjoyment of the adjacent premises No. 106, Lake Road. On the materials before us, if the owner of No. 106, Lake Road had the same rights in the passage as the. owner of the premises No. 107, Lake Road, there would be increase in the value of No, 106 (see the evidence of Mr. C. K." Sarkar, examined as an expert by the claimants). The test of the valuation by this gentleman was that the owner of No, 106, Lake Road, would have paid for the common passage. We have it from the evidence led on the side of the Government that the common passage was between Nos. 106 and 107, Lake Road. The Senior Assistant Valuer of the Calcutta Improvement Trust, who supported the Collector''s award in his evidence, wanted to make out the case that the land covered by the common passage in question had no market value, because "all other interests" had been acquired. By "all interests" he meant "rights of way and rights of easement". This was not certainly the acquisition of the entire bundle of rights in the owner, in respect of property in land. There was restricted user of property, the ownership in which remained burdened no doubt with the right of way or of easement as mentioned. According to the Assistant Valuer, the owner of No. 106 would pay a nominal sum for acquiring rights over the common passage. What this witness calls a nominal sum has been determined in the case by the Tribunal, on materials before it, in conformity with the method followed in awarding compensation for land covered by a common passage or passage land as described in the award in the case before us.

6. The decision of the Tribunal assessing compensation in the manner indicated in the judgment of the President, against which the appeal was directed, appears to us to be correct, and we affirm the same. The appeal is dismissed with costs. The hearing fee in the appeal is assessed at three gold mohurs.