

(1933) 12 PAT CK 0015
In the Patna High Court

Secy. of State

APPELLANT

Vs

Bara Lal Kandarp Nath Sah Deo and Others

RESPONDENT

Date of Decision : 01-12-1933

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46
Land Acquisition Act, 1894 — Section 18, 27(1)

Citation : AIR 1934 Patna 168

Hon'ble Judges : Wort, J;Fazl Ali, J

Bench : Full Bench

Judgement

Wort, J.—This is an appeal against the decision of the learned Judicial Commissioner of Chota Nagpur on a reference u/s 18, Land Acquisition Act. The land which was the subject-matter of the acquisition was 7.39 acres in its extent comprising a number of plots but in this appeal we are concerned only with a part of plots 231, 232 and 214. As regards plots 231 and 232 the claimants Nos. 1, 2, 3 and 4 are concerned and in regard to plot No. 214 the claimant No. 10 is concerned. There was a suggestion during the course of the argument that the claimant No. 1 had the landlord and tenant's rights regarding 35 of an acre in regard to plots 231 and 232, but that becomes irrelevant by reason of the fact that the acquisition of the landlord's rights took place after the notice under the Land Acquisition Act; so we have no concern with that matter.

2. The Collector in making the award under the Act had allowed compensation at the rate of Rs. 625 per acre for lands within 100 feet of the road and Rs. 500 for lands beyond that limit. I should have stated that the land is situate in the town of Ranchi and was required for the extension of a cattle market.

The matter as I have indicated, went up before the Judicial Commissioner by way of reference and so far as the plots in question are concerned the learned Judicial Commissioner raised the compensation to Rs. 50 per katha in regard to the portions of these three plots the value as fixed by the Collector being about Rs. 8 to a little over Rs. 10 per katha. The learned Government Pleader in supporting

the case for the Government has contended that the learned Judicial Commissioner was wrong in law in granting the compensation on the basis of these plots being building plots.

3. The substance of the contention is that as by reason of the fact that the claimants are tenants on the one hand and proprietor on the other, the tenants being prohibited from selling their land by reason of Section 46, Chota Nagpur Tenancy Act, and the landlord being equally precluded by reason of the fact of the tenancy rights, the learned Judicial Commissioner should have valued the land and given compensation on the basis of the agricultural interests involved, that is to say, given compensation so far as the tenant was concerned for the appropriation of his tenancy rights and compensation to the landlord on the basis of his rights to collect rent from the tenants.

4. In support of this argument several authorities were relied upon. One was the case of *Stebbing v. Metropolitan Board of Works* (1844) 6 QB 37. That was a case under the Lands Clauses Act for the acquisition of certain lands which at the time of the acquisition were being used as graveyards. The plaintiff claiming compensation was the rector of parishes. Sir Edward Cockburn, C.J., in the course of his judgment made these observations:

It never could have been intended that because a person has a freehold interest he shall be compensated in respect of that freehold interest in the land taken from him without reference to the character of the land. It cannot be said that, because a man has a freehold interest in a piece of waste land, he is to receive the same amount of compensation as if he were owner of an equal extent of rich alluvial soil. Owing to the nature of this land, the rector never could have alienated it.

Later on he says:

It was therefore in his hands practically valueless. He can have no claim to have a new value attached to that which was before valueless, merely because the legislature has said it shall be transferred from one public purpose to another.

Then he goes on to hold that the value to be placed on the land was the value of the interest of the rector of parishes and not what the value would be to the person acquiring it.

5. In relying upon this decision Karamat Husain, J., in the Allahabad High Court in the case of *Ujagar Lal v. Secretary of State* (1911) 33 All 733, declined to allow compensation on the basis of the land in dispute being a building land on the ground that although the claimant was the proprietor he was forbidden by the Municipal regulations to build on the land. In the course of his judgment he makes this statement:

In these circumstances it seems to me that the fact that the appellant would never have been allowed to build on the land must be taken into consideration in ascertaining the market value and that the land cannot be valued as a building

site,

and then refers to the case to which I have made a reference. On the other hand, the claimants by their advocate have relied on the decision in the case of *Lucas v. Chesterfield Gas and Water Board* (1909) 1 KB 16 in which it was held that in determining the value arising from such special adaptability the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose, and not to the value of the realised possibility arising from the fact of the promoters having obtained statutory powers for the construction of the reservoir.

6. Reliance is also placed upon a decision of Sir George Rankin and Mukerji, JJ., in the case of *Collector of Jalpaiguri Vs. Jalpaiguri Tea Company Ltd.*, . Before I deal with that case I propose to deal with two authorities upon which the learned Government Pleader has relied. It must be noted that both in the case of *Queen's Bench* and the case decided by Chamier, J., as he then was, the Government in acquiring the land were dealing with persons who either by law or as in the *Allahabad* case by Municipal regulations, were forbidden to use the land upon the basis of which they contended the valuation should be fixed.

7. Those cases, in my judgment, are to be differentiated from the present case having regard to the fact which exists in this case, namely, the Government were treating with the whole body of persons who if they were so minded could have disposed of the land for the purpose upon the basis of which they alleged a price should be fixed, namely, as building site. In my opinion, this makes a very material difference. As is pointed out in the case of *Collector of Jalpaiguri Vs. Jalpaiguri Tea Company Ltd.*, by Sir George Rankin it was not the separate interest which had to be valued but primarily the land u/s 27(1), Land Acquisition Act.

8. The effect of the notification is, in my opinion, that the parties are placed in the position in which they would have been had the landlord on the one hand, and the tenant on the other, agreed together to dispose of the land to a third party for building purposes. The only matter therefore that can strictly arise in relation to the several interests is the question of the division of the compensation allowed. The learned Judge in the Court below has gone into the evidence which consisted of a number of instances of the sale of land for building purposes, the lowest price of which was Rs. 110 a katha and has allowed, as I have already stated in this case for the plots in question compensation at the rate of Rs. 50 per katha.

9. In coming to this decision he appears to have taken into consideration the fact, which was quite clearly proved in evidence, that the plots with which we have to deal differed from those about which evidence was given by reason of their being much than the road which they adjoin. In the case of plot 214 there was a difference in level between 1? to 2," Plot No. 231 was lower than plot 214, and plot 232 was in parts as low as 6" feet below the adjoining road. He has also

considered the evidence which was given as regards cost of raising the land to the level of the road, thus making it fit for building purposes.

10. He has not been unmindful of the fact, which is also proved in evidence, that water during the rainy season flowed through the land in question into a nala and then into a lake in the vicinity. But it is rather difficult to appreciate the reasons which have affected the mind of the learned Judicial Commissioner in awarding compensation at the rate of Rs. 50 per katha for plots 231 and 232, being as they admittedly are much lower than plot 214 in relation to the adjoining road. He has, as I have already stated, come to the conclusion that the cost of Rs. 750 per acre for raising the land was an under-estimate. It seems necessarily to follow that if that was an under-estimate in regard to plot 214, which is admittedly only a foot or two below the level of the road, it is a much greater under-estimate as regards plots 231 and 232 and, in my judgment, therefore it seems that compensation for those plots, that is to say, 231 and 232, is too high.

11. It is difficult, as the learned Judicial Commissioner has pointed out, to make any exact calculation or to arrive at any exact conclusion as regards these figures and the best that can be done in the circumstances, must necessarily be somewhat speculative. But having regard to the difference in levels of these plots, I am of opinion that compensation at the rate of Rs. 2,000 per acre for plots 231 and 232 would be adequate. This works out a little over Rs. 33 per katha depending upon the number of bighas to the acre.

12. We shall therefore fix the compensation for plots 231 and 232 at Rs. 33 per katha in place of Rs. 50 per katha fixed by the learned Judicial Commissioner. The compensation awarded by the Judicial Commissioner for plot 214 will remain as fixed by him.

In the circumstances the appeal is allowed in part. The Crown will therefore be entitled to costs proportionate to its success. So far as the claimant No. 10 is concerned the appeal is dismissed but without costs.

Fazl Ali, J.

13. I agree.