
(1920) 06 BOM CK 0019
In the Bombay High Court

Seth Mangaldas Girdhardas

APPELLANT

Vs

The Assistant Collector of Prantij Prant

RESPONDENT

Date of Decision : 14-06-1920

Acts Referred:

Land Acquisition Act, 1894 — Section 3(b)

Citation : 64 Ind. Cas. 584

Hon'ble Judges : Shah, J;Crump, J

Bench : Division Bench

Judgement

Shah, J.—This is an appeal under the Land Acquisition Act from the award made by the District Judge of Ahmedabad, to whom a reference was made at the instance of the claimant, who is the appellant before us.

2. The property with which we are concerned is bungalow No. 33 with the compound and outhouses which formed part of the Andheri Bagh. The property in question was acquired under the Land Acquisition Act and a declaration u/s 6 was made on the 29th of April 1913. Under that declaration three bungalows Nos. 33, 34 and 35 with the lands appurtenant to these bungalows and outhouses were acquired. It was declared that for residences of Government Officers in the Ahmedabad Cantonment, the superstructures on the land specified together with all such rights, if any, over the sides thereof were required Within the limits of the Ahmedabad Cantonment. The total area of the land with reference to the bungalow No. 33 is stated in the declaration to be 36,137 square yards, 7 square feet. The present appellant appeared before the Collector and contended that he was owner of the superstructure as well as of the land and of the outhouses and trees. The Collector came to the conclusion that the present appellant was owner of the superstructure and that the Government was the owner of the land. Accordingly he awarded Rs. 4,500 in respect of the bungalow with outhouses and Rs. 150 as compensation for the garden with the statutory 15 per cent. on the total sum, making a total of Rs. 5,347-8-0. He valued, the land at RS. 18,631 and the old buildings thereon at Rs. 160 and the

trees at Rs. 400 and awarded all these sums with the statutory 15 per cent, to the Government. The claimant objected to this award and claimed that the superstructure was undervalued and that he was entitled to the full compensation in respect of the land, the old buildings and the trees, which was awarded by the Collector to the Government. The learned District Judge, on a consideration of the evidence in the case, came to the conclusion that the claimant before him was entitled only to the value of the superstructure and the garden, and not to the value of the land. He was satisfied on the evidence that the Government, and not the claimant, was the owner of the land and he made an award under which the sum determined by the Collector and accepted by him as representing the market value of the land was awarded to the Government, and the value of the bungalow and the outhouses which was fixed by him at RS. 4,896 with the value of the garden fixed at Rs. 150 was awarded to the claimant. The total sum awarded to the claimant was Rs. 5,802-14 5 inclusive of the statutory 15 per cent. From this award the present appeal is preferred to this Court.

3. It may be mentioned that along with the reference relating to bungalow No. 33 there were two other references relating to bungalows Nos. 34 and 35. Different sums were awarded to the claimants in respect of the superstructures. Those claimants have not appealed to this Court. The judgment of the District Court relates not only to the property known as bungalow No. 33 but to all the three bungalows with the land constituting the whole of the Andheri Bagh : but in the appeal we are concerned only with bungalow No. 33 and the land appurtenant to that bungalow.

4. In support of the appeal two questions have been raised. The first is a question of law relating to the jurisdiction of the Court, and the second is a question of fact relating to the merits of the dispute between the claimant and the Government as to the title to the land.

5. The question of law with which I shall deal first apparently was not raised in the lower Court and there is no reference to it in the judgment of that Court. The question, however, is one of jurisdiction and we have heard full arguments on that question. That question, as stated on behalf of the appellant, is that under the Land Acquisition Act it is not open to the Court to consider and determine any question of title to the land acquired as between the claimant and the Government, It is urged that the Government is not a person interested in the land within the meaning of the expression person interested as defined in Clause (b) of Section 3 of the Land Acquisition Act, and that the question of title relating to the land and relating to the different interests of the claimants can arise under the scheme of the Land Acquisition Act only as between private claimants and that the Government is not contemplated by the Act and cannot be under the Act a claimant within the meaning of the Act to claim part of the compensation. Further it is urged that u/s 23 the Court has to determine the market value of land and it is urged that the whole of the compensation for the property acquired

must be awarded to the claimant and that the question of apportionment as between the Government and the private claimant cannot be determined in proceedings under the Land Acquisition Act.

6. That is broadly the argument urged on behalf of the appellant, and in support of this argument reliance is placed upon *Imdad Ali Khan v. Collector of Farakhabad* 7 A. 817 : 4 Ind. Dec. (N.S.) 892, *Crown Brewery, Mussoorie v. Collector of Dehra Dun* 19 A. 339 :(1897) A.W.N. 78 : 9 I.D. 223 and *Shyam Chunder Mardraj v. Secretary of State for India* 85 C. 525 : 7 C.L.J. 445 : 12 C.W.N. 569. The judgment of the Trial Court in *Esufali Salebhai, In re* 10 Bom. L.R. 994, which was ultimately reversed in appeal and which is reported in 10 Bom. L.R. 994 [*Esufali Salebhai, In re* 10 Bom. L.R. 994, is also relied Upon in support of this argument. On the other hand it is urged that there is nothing either in the provisions or in the scheme of the Land, Acquisition Act to prevent the Government from acquiring land with the building thereon in which they may be interested and there is nothing in requiring them to pay the claimant anything more than the value of his interest in the property. In other words, it is urged that where the Government have admittedly any interest in the land, the claimant would be entitled under the Act to claim only the value of his interest in the land and that it makes no difference whether the interest of the Government in the land is admitted by the claimant or whether it is a matter of dispute between the Government and the claimant, as in the present case. It is urged that if it is a matter of dispute, it can be determined and ought to be determined in the present proceedings and that the claimant cannot claim anything more than the value of his interest in the property. In support of this contention the respondent relies upon the judgment of the Appellate Court in *Government of Bombay v. Esufali* 5 Ind. Cas. 621: 34 B. 618 : 12 Bom. L.R. 34 and reference is also made to several unreported cases, in which this Court has considered and determined the question of title as between the Government and the private claimant in proceedings under the Land Acquisition Act. It is quite true and it is conceded by the Counsel for the respondent that "in those cases the point was not expressly raised and considered. But it is urged that the view taken by the Appellate Court in *Esufali's* case 5 Ind. Cas. 621 : 34 B. 618 : 12 Bom. L.R. 34 has been followed by this Court without challenge in all these cases.

7. We have considered the arguments on both sides and the decided cases bearing on the question ; and after a careful consideration of the provisions and the scheme of the Land Acquisition Act in the light of the arguments urged on both sides, I do not see any reason to doubt the correctness of the view taken by the Appellate Court in *Esufali's* case 5 Ind. Cas. 621 : 34 B. 618 : 12 Bom. L.R. 34, nor do I see any reason to refer the matter to a Full Bench as suggested by Mr. Campbell in his argument. The view taken by the Appellate Court has been followed in this Presidency, as would appear from the several unreported cases to which Mr. Coyaji has referred in the course of the argument, it is quite true that under the Land Acquisition Act what is acquired is the land, which includes all that is stated in Clause (a) of Section 3 of the Land Acquisition Act. But in the

case of any land with superstructure thereon, in which either the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it seems to me that it is open to the Government to acquire that property under the Act. When it comes to a question of determining the market value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property, it is open to the Court to determine what sum is really payable to the limited owner. The determination of that amount might involve the determination of the value of the interest of the Government in the land; and in determining that value it would be necessary to determine the extent of the interest of the Government. But ultimately the question that the Court has to decide is as to what is the amount of compensation payable to the claimant. The question of title in such proceedings is really incidental to the question of the determination of the market value of the interest of the claimant in the land acquired.

8. I think, therefore, that apart from the form in which the award in such a case may be made, substantially the question is as to the market value of the land and as to the part of that value to be paid to the claimant as representing the value of his interest in the land. That was the question raised before the awarding officer and before the District Court, and that really is the question on the merits before us. I think that the District Court had jurisdiction to decide the question and that we can and ought to decide the question in appeal.

9. As pointed out by Mr. Campbell, there is a difference of opinion on this point. The Calcutta and Allahabad High Courts have taken a different view of the question. It is desirable that on a question of such practical importance relating to the interpretation of an Act applicable to the whole of India such diversity of opinion should be avoided as far as possible. But it seems to me that this diversity can be properly avoided now either by a decision of the Privy Council on the point or by the Legislature making its intention clear in favour of one view or the other. It may be that the question as to whether the Court has power to determine the dispute as to title between the Government and a private claimant under the Land Acquisition Act assumes greater practical importance in view of the decision of their Lordships of the Privy Council in *Rangoon Botatoung Company Limited v. Collector of Rangoon* 16 Ind. Cas. 188 : 39 I.A. 197 : 16 C.W.N. 961: 14 Bom. L.R. 833 : 10 A.L.J. 271 : 5 Bur. L.T. 205 : 40 C. 21 : 6 L.B.R. 150, where it is held that an appeal from the High Court to the Privy Council was incompetent under the Land Acquisition Act. But after all questions of title between private claimants have to be determined under the Land Acquisition Act without the parties having the right to appeal to the Privy Council; and I do not see any particular anomaly or hardship in the Courts having to decide similar questions between the Government and a claimant without either party having the right of appeal to the Privy Council.

10. The next question in appeal relates to the merits and is purely one of fact.

The history of this land may be briefly stated. Originally the whole of this land, known as the Andheri Bagh, was outside the limits of the Ahmedabad Cantonment, which was constituted for the first time in the year 1831, The correspondence on the point shows that the limits of the Cantonment on that side clearly excluded the Andheri Bagh. In the year 1833, however, the limits were extended and as a result of that extension the land known as the Andheri Bagh was included within the Cantonment limits. The map, Exhibit 86 in the case which was prepared in the year 1833, and Exhibit 81 show that the whole of the Andheri Bagh was included within the Cantonment limits. In the year 1843 we find another map, Exhibit 89 in the case, which shows that the whole of this land, Andheri Bagh, was marked as Staff Officers quarters and a third map prepared in the year 1856, Exhibit 93, marks out the bungalows Nos. 33, 34 and 35 as assigned to the Staff Officers. It is common ground that in the year 1841 the bungalow No. 33 was occupied by a Captain Dalhousie, who has been described in the register to which I shall refer again later on as an Assistant Quarter Master General, Northern Division, Ahmedabad. The property apparently passed from this Captain to one Raojibhai Chhotalal in the year 1845 and from him to Raojibhai Himatlal in 1851 and then to Raojibhai Chhaganlal in 1881, whose right, title and interest the present claimant purchased at a Court sale in the year 1894. It is common ground that at least since 1905 the appellant has been claiming to be the owner of the land. But it is claimed for the appellant that during all these years the private parties have been in occupation of the land as owners and that he is the owner of the land. On the other hand, the respondent claims that ever since the inclusion of the Andheri Bagh within the Cantonment limits the land has been held by the occupants on the Cantonment tenure and that the occupant is only the owner of the superstructure, liable to be evicted by the Cantonment Authorities at any time. In other words, it is claimed that the land without the superstructure belongs to Government.

11. It may be mentioned here that prior to the acquisition of this property under the Land Acquisition Act the Collector had given notice to the present claimant on the 25th of May 1912. He was informed by the Collector that in the event of default being made in compliance with the terms of the notice, an action in ejectment would be filed against him in the District Court of Ahmedabad, in which the plaintiff would be the Secretary of State for India in Council, for the purpose of recovering possession of the said plot of ground. It was after this notice that the acquisition proceedings under the Act were taken. It is urged on behalf of the appellant that, if the ordinary procedure mentioned in the notice had been followed, the Secretary of State for India in Council would have been in the position of the plaintiff and would have been put to the proof of his title, and that by resorting to proceedings under the Land Acquisition Act the Government have placed themselves in a better position. I do not think that this argument is sound. It relates only to a question of the burden of proof ; and in the present proceedings, where we have a claimant who is admittedly in possession of the property for a number of years and who is also admitted to be the owner of the

superstructure, it seems to me that the burden of proof to start with would lie upon the party asserting that he is not the owner of the whole interest in the land but only the owner of a part, Besides when we have evidence recorded on both sides on the question of title, I do not think that the point as to the burden of proof can prejudice the claimant in any way.

12. The claimant has naturally relied upon the presumption which he says ought to be raised in his favour u/s 110 of the Indian Evidence Act. The respondent, on the other hand, contends that in view of certain proved facts that presumption is entirely rebutted and that there is clear presumption in favour of thin land having been held by the occupants of this bungalow No. 33 from time to time on the ordinary Cantonment tenure. It is also urged that according to the scheme of the Regulations then in force and the rules regulating the constitution of Military Cantonments, it was considered essential that there should be no private property -within the Cantonment limits and that when the limits of the Cantonment were marked out, steps were taken to pay compensation to all the owners and to put an end to all the private interests in the land within the limits of the Cantonment, In the present case there is evidence of many private owners having been paid compensation in respect of the lands acquired or having been given lands elsewhere instead of compensation. It is an admitted fact that there is no evidence as to any compensation having been paid to anybody in respect of the Andheri Bagh which was included within the limits in 1833. There is no evidence on the record to show as to whether the Andheri Bagh was in part or in whole owned by any private individual at the time. It was either Government property in which case no expropriation would be necessary, or it was owned by some private individual in which case undoubtedly some compensation would have to be paid to them. The absence of evidence on this point is relied upon by the claimant as telling in his favour and is interpreted by the respondent as not indicating any inference in favour of the claimant. It is common ground that barring a certain land surrounding a Hindu temple within the Cantonment limits, most of the lands acquired by the Cantonment Authorities were expropriated and all private interests were determined and even as regards the land surrounding the temple, it was acquired in the year 1869, Under the circumstances it seems to me that there is a strong presumption in favour of the view that the Andheri Bagh was acquired by the Cantonment Authorities in the year 1833 and that either there were no private interests in existence or they were bought put. The absence of any specific evidence on this point does not, in my opinion; afford any sufficient answer to this presumption which undoubtedly arises in consequence of the land having been included within the Contonment limits in the year 1833 and in view of the provisions of the Regulations then in force relating to the Cantonments. The fact that in the year 1843 the land was marked out for Staff Officers quarters lends support to that inference, and there is nothing in the case to suggest that the land was held on any tenure other than the Cantonment tenure, except the entry in the register Exhibit 194. which has been relied upon by the claimant. This entry is to be found in a register which was prepared after

the year 1899 u/s 266 of the Cantonment Code of 1899. The column (g) of the register is headed as follows: If the site was occupied before the commencement of the Cantonment Code of 1899, the date of permission to occupy the site, or (2) if the site was occupied after the commencement of this Code, the date of the lease executed by the lessee u/s 259. The entry in that column is as follows :--Same as for bungalow No. 1; however, Dv. A. G's correspondence file of 1845 shows Capt. E.P. Dalhousie, Assistant Q.M.G., N. Dv., A. was the original owner in 1841. It is urged that this entry shows that in the year 1841 Capt. Dalhousie was the owner of the property, The entry is consistent with the view that he was the owner of the bungalow only and not necessarily of the land. It is not necessary to determine for the purposes of this case whether he was accurately described as owner of the bungalow in that file. The correspondence referred to in the entry is not before the Court, and the register is comparatively recent. But the fact that this land was described in the map as "Staff Officer" Quarters, coupled with the fact that Capt. Dalhousie who was an Assistant Quarter Master General and a Staff Officer was described as the owner, goes to show that the bungalow was an ordinary bungalow built on land held on Cantonment tenure within the limits of the Cantonment. I am unable to draw any inference in favour of the claimant from this entry, which is relied upon by Kim as showing that the land was owned by that officer. It is a significant fact that from 1841 upto the year 1834 there is nothing on the record to show that any of the occupants claimed to be the owner of the land in question. In 1884 we find that the present claimant purchased the bungalow and the land at a Court sale for Rs. 600; and in 1896 we find that he made an application to the Cantonment Magistrate asking for leave to build another bungalow in that compound. While I do not desire to lay undue emphasis upon this application against the claimant, it seems to me that the whole tone of the application is consistent with the land having been held on the Cantonment tenure and does not support the contention that he is the owner of the land. In November 1902 it was proposed to declare that Act II of 1902 should be operative in the Cantonment of Ahmedabad as far as the area covered by bungalows NOS. 1 to 44, both inclusive, was concerned. Several owners of the bungalows made an application to the Cantonment Authorities and among them we find the present claimant. That application is intelligible on the basis that the owners of the bungalows within the Cantonment limits hold the lands on the ordinary Cantonment tenure, and it is difficult to understand why the present claimant should have joined in making that application if. his position then was that he was the absolute owner of the land and not liable to be evicted from that land by the Cantonment Authorities. Undoubtedly the owners of the bungalows owned the superstructures, and it seems to me that the fact that the present claimant joined in making the application at the time indicates that the land was held on the Cantonment tenure. For the first time in 1905 he refused to sign the lease which it was proposed by the Cantonment Authorities he should sign if he wanted leave to make additions to his bungalow. But the record makes it clear, in my opinion, that before that date he not only never unequivocally took up the position that

he was the absolute owner of the land, but acquiesced in the position which would be consistent with the respondent's case and not so clearly consistent with his own case as made at present.

13. It may be added that no point of limitation on the ground of adverse possession has been made before us, though apparently it was made in the lower Court. It was based on the allegation in the written statement that so far back as 1834 the then occupant of the property in question refused to sign the usual kabuliyat in favour of the Cantonment Authorities. It appears that this allegation was apparently based not upon any evidence, but upon what was believed to be a statement contained in the report made by an officer specially appointed by the Government to investigate the history of the Cantonment lands. I refer to this allegation, as there has been some argument before us as regards the admissibility of the report and the order made by the lower Court as regards that report, Mr. Coyaji for the respondent has fairly conceded that he is willing to allow the part of the report relating to bungalow No. 33 to be put in evidence. It is not necessary, therefore, to consider the merits of the argument urged by Mr. Campbell as regards the propriety of the order made by the lower Court, I may add that if the position now taken up on behalf of the respondent had been taken up in the lower Court, it would have saved time and argument. We have allowed the relevant part of that report to be admitted in evidence with the consent of both the parties. That document does not in the least support the allegation that there was any repudiation of the title of the Cantonment Authorities to the lands in the year 1834, On the contrary, it appears that in 1834 the predecessor-in-title of the present claimant refused to sign a certain form relating to the tenure of the land required by the then Cantonment Authorities. This statement is apparently based upon Exhibit 122. It is clear, therefore, that the allegation as to repudiation of the title by the occupant of this bungalow in 1834 is not based upon any evidence. Indeed it is not clear from the record that there was any occupant of the property in question other than a Cantonment Officer at the time. The earliest indication that we have on the record of any particular individual being in occupation of the bungalow is to be found in the register, to which I have already referred and which shows that in 1881 Captain Dalhousie was in occupation of the bungalow in question.

14. I have examined the history of the land in the light of the evidence in some detail.

15. But taking a broad general view of the case, it seems to me that for all practical purposes the case is really not distinguishable from the case of *Kaikhusrus Aderji Ghaswala v. Secretary of State for India* in Council 12 Ind. Cas. 117 : 36 B. 1 : 15 C.W.N. 909 : 10 M.L.T. 97 : (1911) 2 M.W.N. 23 : 14 C.L.J. 268 : 13 Bom. L.R. 788 : 8 A.L.J. 1219 : 21 M.L.J. 1100 As pointed out in that case by their Lordships of the Privy Council, there is a strong presumption, in virtue of the land having been included within the Cantonment limits, in favour of all private interests in the land having been determined at the time, and this

presumption is strengthened by the history of the land in this particular case.

16. I am satisfied on the evidence that this land was held throughout on Cantonment tenure after its inclusion within the Cantonment limits and that the present claimant had no interest in the land but was owner only of the superstructure.

17. It was urged on behalf of the claimant that there were several acquisitions under the Land Acquisition Act at different times, in respect of the lands within the Cantonment limits. It was urged that this would show that there were private lands within the Cantonment, But when this argument was tested with reference to the evidence in the case, the learned Counsel for the appellant was unable to establish even in a single case that the land sought to be acquired was at the date of the acquisition included within the Cantonment limits. The case of the acquisition of the land surrounding the temple was altogether a special one. That land was kept as private property as an exception to the general rule on special grounds, and even in the case of that land the best part of it was acquired in 1869.

18. I am, therefore, of opinion that the award made by the District Judge, directing payment in respect of the superstructure and refusing payment in respect of the land to the claimant, is right. The amount of compensation awarded for the superstructure is not disputed before us.

19. We are not concerned in the appeal with the correctness of the form in which the award was made under which compensation was awarded to the Government. All that we are concerned with is as to whether the amount awarded to the claimant is correct or whether he is entitled to anything more than what has been awarded by the lower Court, I express no opinion as to that part of the award under which compensation with the statutory 15 per cent, has been awarded to the Governments

20. The result is that the appeal is dismissed and the award, so far as it relates to the amount payable to the appellant, is affirmed with costs.

Crump, J.

21. I agree.