
(1918) 03 CAL CK 0036
In the Calcutta High Court

Shoshi Lal Das

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 23-03-1918

Acts Referred:

Calcutta Municipal Act, 1899 — Section 557(b)

Citation : 46 Ind. Cas. 138

Hon'ble Judges : N.R. Chatterjea, J; Greaves, J

Bench : Division Bench

Judgement

Greaves, J.—This appeal and a cross-objection arise in a land acquisition matter.

2. The appeal is by the owner of the land acquired and is an appeal against the amount of Rs. 3,500 per cottah which was allowed him by the Collector and affirmed by the Special Land Acquisition Judge. The appellant claims to be entitled to compensation for the acquisition of the land at the rate of Rs. 4,100 per cottah in lieu of the Rs. 3,500 given him by the award of the Collector.

3. The cross-objection is by the Secretary of State and deals with the sum of Rs. 1,900, being at the rate of Rs. 100 a month awarded to the owner of the land for loss of the use thereof for a period of nineteen months, namely, from the time the notification was made until the time the land was actually acquired.

4. I will deal with the appeal first.

5. The point really lies in a nutshell. It concerns the provisions of Sections 557(b) of the Calcutta Municipal Act (III of 1899). That sub-section provides that the market value of the land or building shall, until the contrary is shown, be presumed, for the purposes of the said clause of Sub-section (1) of Section 23, to be twenty-five times the annual value of the property, as entered in the assessment book prescribed by this Act. The appellant before us claims that the Corporation, by the way in which they have dealt with the matter, have deprived him of the benefit of Section 557(d). It will be necessary, before I deal with this point, to state a few facts.

6. The land was acquired for the purpose of widening Simla Street. It has a front, age to Maniktola Street, is bounded on the east by Simla Street and has a small frontage on the west to Mohendra Grossain Lane. The Corporation acquired, in respect of this widening, two plots which are shown on the plan at page 23 of the paper-book. These were originally one holding, that is holding No. 54. When the Corporation came to acquire them, they were still covered by one assessment. The plots had been partitioned some years prior to the acquisition; and in the year 1914, the present appellant applied to the Corporation for the separate assessment of his plot, that is to say, the plot on the east. From page 29 of the paper-book, it appears that some preliminary assessment was made, the plot with which we are dealing being assessed at Rs. 1,539 and the other plot at Rs. 936. But this separate assessment was never confirmed: and, in fact, it appears from page 30 of the paper-book that the separation was refused by the Corporation, for what reason is not apparent. This being so, it would have been expected that, although the plots had been partitioned, as the Corporation had elected to treat the plots for the purpose of assessment as one plot, there would have been one proceeding and not two land acquisition proceedings. The result of that would have been that Section 557(d) of the Calcutta Municipal Act would have applied and the owner of the land--in fact both the owners of the land would have been entitled to the benefit of that sub-section, unless the presumption had been rebutted by evidence. Again, if the Corporation had assented to the application of the owner of the plot which is the subject of this appeal, the appellant before us, unless the presumption had been rebutted, would have been entitled to the benefit of Section 557(d). The effect of the action of the Corporation, namely, in taking two proceedings--Nos. 45/2 and 45/1--to acquire this plot has been to deprive the appellant before us of the benefit of the presumption raised u/s 557(d). It certainly seems to us somewhat inequitable that the Corporation, having refused to separately assess the land and having elected to treat it as one holding, should have, for the purpose of acquisition, departed from this and acquired the two plots in separate proceedings with the result of ousting the appellant before us from the benefit of Section 557 of the Calcutta Municipal Act. But the only question we have to decide is whether there is any legal right in the Corporation to proceed in the way they have done. The appellant has not shown us that, having regard to the fact that the two plots are separately owned, the Corporation are estopped, by having assessed the plots as one, from proceeding to acquire the land in two separate proceedings. This being so, we do not think that we can interfere with the decision of the Special Land Acquisition Judge upholding the award of the Collector.

7. On behalf of the Secretary of State it was urged that, even apart from this, the presumption under the section had been rebutted. It is said that the lands were valued for partition at Rs. 3,250 a cottah and that the share of Bhuban on the partition was purchased in 1910 at the same figure, namely, Rs. 3,250; and the learned Government Pleader also prayed in aid the letting value of Rs. 150 as

given by the appellant in his evidence before the Special Land Acquisition Judge. But it appears to us that the figure of Rs. 3,250 being a figure of the value in 1910 it may well have been that the land in 1914, the date of the acquisition proceedings, had become enhanced in value. And as to the letting value of Rs. 150, it is not sufficiently shown what deductions fall to be made from this figure to enable us to put any reliance on this. We prefer to base our judgment on this, namely, that having regard to the fact that the plots were separately owned, it was within the power of the Corporation, for the purpose of acquisition, to have proceeded as they have done in two proceedings.

8. The result is that the appeal fails and must be dismissed. But we make no order as to costs.

9. The cross-objection, as already stated, deals with the award of the Special Land Acquisition Judge of the sum of Rs. 100 per month for a period of nineteen months. It is urged on behalf of the Secretary of State that from this sum there ought to have been made various deductions for rates and so forth, but having regard to the figure of the assessment of the 15 cottahs, namely, Rs. 2,475 and having regard to the size of the eastern plot, we think that the Land Acquisition Judge acted well within his rights in making the award he did of Rs. 100 a month.

10. The cross-objection by the Secretary of State also fails and is dismissed. We make no order as to costs.

N.R. Chatterjea, J.

11. I agree