

(1926) 11 CAL CK 0028
In the Calcutta High Court

Suresh Chandra Banerji

APPELLANT

Vs

Secretary of State and Another

RESPONDENT

Date of Decision : 09-11-1926

Acts Referred:

Citation : AIR 1927 Cal 357

Hon'ble Judges : Panton, J;B.B. Ghose, J

Bench : Full Bench

Judgement

B.B. Ghose, J.—This is an appeal from the decision of the Special Land Acquisition Judge on a reference made at the instance of the present appellant and another who was described as Claimant No. 1, named Mohini Mohan Banerji, against an award made by the Collector. The land acquired was 21 bighas odd and was used as a brick-field. It was let out to two brothers named Bull from October 1910 for ten years. The land was acquired under the Land Acquisition Act in 1914 when five years of the lease still remained to run. The rent payable by the Bull brothers to the two claimants was Rs. 1,800 per year. The interest of the claimants was that of dar-mokarraridars. The Collector awarded compensation on the basis of the rent reserved by the lease and allowed 20 years' purchase-money to the claimants. The total amount was Rs. 30,836. In their application for reference to the Judge the two claimants wanted compensation to the extent of Rs. 1,18,000 odd. The learned Judge upheld the Collector's award on certain grounds which it is not necessary now to deal with. Of the two claimants only the Claimant No. 2 has appealed before us and he has valued his appeal at Rs. 15,000 in his one-half share, that is, "he alleges that the compensation to be awarded to the two claimants ought to have been Rs. 60,000 odd.

2. It has been contended before us that the Special Judge ought to have allowed compensation to the claimants with reference to one calculation something above Rs. 88,000 and according to a different calculation Rs. 77,000 odd. The contention with regard to the valuation according to the first method is that the

rent ought to have been taken at the rate of Rs. 110 per bigha and the Collector ought to have awarded 20 years' purchase value of that rent the amount being something over Rs. 46,000. To this it is contended that the value of the structures on the land should be added. The structures were a kiln and a building in which the office of the brick-makers was held. Rs. 3,000 is claimed for the kiln and Rs. 2,500 for the office building. The contention of the appellant further is that to this amount should be added damages for loss of earnings of the claimants as brick-makers and that is estimated at Rs. 37,000. This gives a total of Rs. 88,700 and if this calculation had any basis to support it the claimants might have claimed a sum of about Rs. 58,000 in addition to what has been awarded by the Collector. The appellant's share on this calculation would have been namely Rs. 29,000. But he has abandoned about one-half of his legitimate claim on that basis according to the contention of his learned vakil.

3. The second method in which compensation is claimed is that the valuation should have been made on the basis of the profits made by the business of brick-making. It is said that the profits according to the evidence would have been Rs. 3 per thousand bricks and as 15 lakhs of bricks would have been made every year the profits would have been Rs. 4,500. From this a deduction was made of 25 per cent, for risk in the manufacture and so forth. The actual profit is claimed at Rs. 3,385. To this is added the rent of Rs. 1,800 which the proprietor would not have to pay if he had himself prepared bricks on his own land. This gives a sum of Rs. 5,185. At 15 years' purchase on this basis the valuation is said to be something over Rs. 77,000.

4. We have to examine whether the appellant is entitled to a higher amount as compensation than what has been awarded by the Collector. The learned Judge below was of opinion that the Collector has actually awarded more than what the claimants were legitimately entitled to get as the market value of the property. It is not necessary for us as the appeal has been argued here to examine the evidence from that point of view of the learned Judge below. The only thing that I think we ought to see is whether the appellant before us has been able to prove by evidence that he is entitled to a higher sum than what has been awarded to him. In this case there is no evidence as to the selling value of lands in the vicinity for ascertaining the market value. The Collector took as the basis of his valuation the rent which was payable under the ten years' lease to the Bull brothers that lease was only for ten years as I have already stated. The Collector apparently took that amount to be the rent realizable if a permanent lease were granted by the claimants. There is no evidence on the record as to what rent this land would fetch after the expiry of the lease to the Bull brothers. (After dealing with evidence his Lordship proceeded.) It is contended that the building must have some value. It is, however, possible that the building was a thatched bungalow of no value to speak of. The argument, therefore, asking for adding the value of the structures to the value of the land must, fail.

5. The next question put forward on behalf of the appellant is that of damage by

reason of the acquisition injuriously affecting the earnings of the claimants. It is contended that in addition to the market value of the land as ascertained the claimants were entitled to damages for loss of any profits they might have made if they had engaged in the business of brick-making after the expiry of the lease in favour of the Bulls. In support of that contention the learned vakil cites the case of *Ripley v. Great Northern Railway Co.* [1875] 10 Ch. A. 435. It seems to me that the principle laid down in that case has no application to the circumstances of the present case. It is no doubt, well settled that in ascertaining the market value of the land the Court has to ascertain what is the market value of the property not according to its present disposition, but laid out in the "most lucrative and advantageous manner in which the owner can dispose of it. A familiar example is that of lands in or near a town which are agricultural, but capable of being used as building sites. But when once you assess the market value of the land by taking every circumstance into consideration, I do not think that the person interested may again ask for damages on the ground that he might have made profits by engaging in a certain trade or business on the land in question.

6. It seems to me that a person is entitled to claim damages for loss of earnings if he carries on some business in the acquired premises and by virtue of the acquisition he is deprived of his profits by reason of the fact that he cannot find any other place where he can carry on the business in which he was engaged on the acquired premises for example, in this case if the claimant had carried on the trade of brick-making and had proved that after the acquisition he was unable to find a suitable field for carrying on his business of brick-making and by that reason would lose his customers or suffer damage in any other way, he might have made a claim for such damage. In this case there is ample evidence that if the claimants had wished to carry on their trade of brick-making there were sufficient lands where they might have carried on the business if they chose to do so immediately after the acquisition or five years after the acquisition, that is after the lapse of the period when the lease granted by them was to expire. Moreover, as I shall state later on, there is no sufficient evidence to establish the amount of profits of the business. On these grounds I do not think that the appellant can claim anything as compensation for loss of his earnings.

7. With regard to the valuation that was suggested by the learned vakil for the appellant on the basis of profits, I do not think that there is any sufficient evidence on which the profits with regard to the business can at all be calculated. (After considering evidence on the point the judgment proceeded.) I do not think I should add anything further in order to dispose of the arguments advanced in the appeal. As a matter of fact, the appellant has not been able to satisfy us that the compensation that has been awarded was inadequate. The appeal must, therefore, be dismissed with costs.

8. The application was not pressed at the hearing. It is, therefore, rejected.

Panton, J.

9. I agree.