

(1912) 03 CAL CK 0058
In the Calcutta High Court

The Collector of Dacca

APPELLANT

Vs

Hari Das Bysak and Others

RESPONDENT

Date of Decision : 05-03-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 1(3)

Citation : 14 Ind. Cas. 163

Hon'ble Judges : Carnduff, J; Brett, J

Bench : Division Bench

Judgement

1. This is an appaal against a judgment of the District Judge of Dacca in a reference made to him under the Land Acquisition Act. The land in respect of which the claimants claimed compensation consisted of 3 bighas, 4 kothas, 16 dhurs in area and was acquired by the Municipality of Naraingunj for the purpose of constructing a road in that Municipality leading from the Henderson Road to Khanpur. The declaration under the Act was issued on the 1st July 1904, and published in the Calcutta Gazette on the 6th July of the same year. The land acquired was admittedly land which was partly used for the purpose of agriculture and partly formed portion of a pathway over which the public had a right of way. The proprietors of the land who may be described as the Bysaks are 14 in number and, under them, there were tenants, 8 in number, who claimed to be tenants with rights of occupancy. The Collector treating the land as agricultural assessed the interest of the tenants, whom he held to be tenants with rights of occupancy, at Rs. 60 per bigha and the interest of the landlords at Rs. 21 per bigha, or 25 times the annual rental. Besides this, he allowed the statutory allowance to the claimants. For the land covered by the pathway in which the public had a right of way, he allowed a sum of Rs. 10 per bigha to the landlords. The tenants were satisfied with the Collector's assessment and withdrew the amounts awarded to them. The landlords refused to accept the assessment of the Collector. They valued the land at Rs. 1,500 per bigha on the ground that it was land within the limits of the Naraingunj Municipality in which the tenants had no right of occupancy, and they claimed to be entitled to the

whole of the compensation. The case was accordingly referred to the Civil Court for disposal.

2. The Land Acquisition Judge has fixed the value of the land acquired at Rs. 550 per bigha and has awarded the whole to the landlords without making any allowance whatever for the sums which have been taken away by the tenants. The present appeal has been preferred to this Court by the Collector against the decision of the Land Acquisition Judge.

3. It has been contended on behalf of the appellants, first, that the Judge was wrong in the principle which he adopted for the purpose of valuation; and secondly, that even if the valuation of Rs. 550 per bigha arrived at by the Judge be accepted as the proper valuation, he should have deducted from that amount the sums which were paid to the tenants and ordered the balance only to be paid to the landlords.

4. The learned Judge in his judgment does not appear to have taken into consideration at all the question whether or not the tenants had rights of occupancy in the land acquired. He seems to have accepted the finding that they had such rights of occupancy and, at the same time, to have calculated the interest of the landlords in the same land on the basis that the landlords were entitled to the full market-value of the land. This is obviously not the proper way of dealing with the reference made to him. The land in question, undoubtedly, is situated within the Manikgunj Municipality. That fact, however, in itself, would not be sufficient to deprive the land of its character of agricultural land, for the provisions of Section 1 of the Tenancy Act before its amendment would certainly have applied to the land which forms the subject of the present case, and even under the provisions of the amended Sub-clause (3) of Section 1 of the Bengal Tenancy Act, the rights of occupancy which the tenants had would have been saved by the provisions of Section 19 of the same Act.

5. The evidence, in our opinion, satisfactorily establishes that the tenants in the present case were tenants with rights of occupancy and were entitled to a share of the compensation in satisfaction of their rights in the land acquired. They have accepted the Collector's award of Rs. 60 per bigha. That award appears to us to be sufficient and the grounds on which the Collector has arrived at it are sound.

6. The Collector, in assessing the value of the land, calculated the interest of the landlords on the following principle: He held that they would be entitled to receive as the capitalised value of their interest 25 years' purchase of the yearly rent and he calculated that to be roughly Rs. 21 per bigha. The Judge, in dealing with the question of the landlords' interest, has held that the method adopted by the Collector in arriving at his conclusion is not an appropriate method to adopt in assessing the value of lands within Municipal limits; for he considers that with regard to such lands, undoubtedly there is, owing to their situation, a prospect of the value being very much increased and he is of opinion that the proprietors of the land are entitled to that increase. The method in which the learned Judge

appears to have, arrived at his valuation of the land is as follows: He has not taken into consideration at all the interest of the tenants in the land but he has ascertained the value of the land from four documents showing transfer of lands in the neighbourhood of the land in suit, and, finding that the lands, the subject of those four documents, were sold at about Rs. 600 per bigha, he has come to the conclusion that the proper valuation of the land in the present suit would be Rs. 550 per bigha as it is in a less advantageous position than the lands, the subject of these four transfers.

7. We think that the method to be adopted in a case like the present in order to ascertain the market-value of agricultural lands situated within a Municipal area, such lands being in the occupation of tenants with rights of occupancy, 13 in the first instance to leave out of consideration the value of the occupancy rights and to ascertain what would be the market-value of the land acquired if applied to the most lucrative use, having regard to its condition, local position and advantages. After wards, it is necessary to ascertain the value of the occupancy-rights of the tenants settled on the land. Then, after having ascertained these two values, the balance remaining over, after deducting the latter from the former, would represent the market-value of the landlords' interests. Following this method, we have first to see how far the documents on which the learned Judge has relied assist us in determining the entire market-value of the land acquired in the present case. We find that the lands sold under those documents are in the neighbourhood of the lands acquired and that those lands were sold at an average price of about Rs. 600 per bigha. In determining how far that price is a guide to the assessment of the compensation in the present case, we have first to consider the circumstances under which those lands were sold and the purposes for which they were purchased. We find that in three cases, the lands adjoined the premises of certain companies who purchased them for the purpose of extending their premises. In the fourth, the land was acquired by the Government for the purpose of building a Sub-Divisional Officer's house. There are certainly special circumstances which may be taken to have influenced the purchasers to pay a higher price than in other circumstances they would have been inclined to pay, and they must not be lost sight of in determining how far those prices can be accepted as a standard or guide for the assessment of the value of the lands which are the subject of the present case. Further, the lands which formed the subject of other transfers appear to have been lands of a high level on which it was possible to construct buildings.

8. In the present case, it is admitted and proved by the evidence of the witnesses for the landlords themselves that the land which forms the subject of the acquisition is land which was used for the purpose of growing rice and that its level is 10 feet below that of the Henderson Road. Clearly the land in its existing state was not suitable for building purposes.

9. Moreover, it was purchased for the purely public purpose of making a public road.

10. In these circumstances, it seems to us clear that the market-value of the land in the present case must be taken to be considerably lower than the value of the lands which formed the subject of transfer in the four documents on which the landlord relied, and that the sum of Rs. 50 which has been accepted by the Judge as fairly representing the difference in value is much too small.

11. There is evidence to the effect that, in order to raise the lands even for the purpose of making a garden, a sum of Rs. 1,000 per bigha would be required, and though that may be an exaggeration, there can be no doubt that considerable outlay would be required to render the land, the subject of the present case, suitable for the purposes for which the lands, the subject of transfer in the four documents relied on, were purchased. Taking into consideration the difference between the purposes for which the lands were purchased under those four conveyances and the lands were acquired in the present case and the difference in their level and position, we think that the land which forms the subject of the present case cannot possibly be valued at more than half the value paid for the lands, the subject of the four transfers on which the landlords relied, that is to say, that a sum of Rs. 300 per bigha is a fair sum to award as the market-value of the land in the present case. From this sum, Rs. 60 must be deducted which has been paid over to the tenants as the value of their rights of occupancy and the result is that the landlords who are the respondents in the present case are entitled to receive only Rs. 210 per bigha together with the additional compensation of 15 per cent. This conclusion relates to the agricultural lands.

12. As regards the land over which there is admittedly a public right of way, the learned Judge has awarded in favour of the claimants half the sum per bigha which he has allowed for the agricultural land. We think that this cannot be accepted as a fair valuation. The value of the landlords' interest in the land covered by the pathway is little more than nominal and we think that the value fixed by the Collector in respect of this portion of the land, namely Rs. 10 per bigha is fair and should be adopted.

13. We accordingly modify the judgment and decree of the District Judge and direct that, in lieu of the decree granted, a decree be given to the claimants, the present respondents, entitling them to receive compensation at the rate of Rs. 240 per bigha for the agricultural land acquired and at the rate of Rs. 10 per bigha for the land covered by the pathway with the statutory additional compensation of Rs. 15 per cent. and interest at 6 per cent. per annum from the date when possession was taken by Government up to the date of payment of the compensation.

14. The appellant is entitled to his costs of this appeal. We fix the hearing fee at 8 gold mohurs. We allow the appellant 3/4 ths of that fee, that is to say, 6 gold mohurs which is proportionate to his success in this appeal. The appellant is further entitled to recover from the respondents the costs of the paper-book and 3/4 ths of the Court-fees paid on the memorandum of appeal. The respondents

are allowed 1/4 th of the hearing fee that is to say 2 gold mohurs which is proportionate to their success in the appeal.

15. The costs in the Court of first instance will be modified, each party being awarded costs against the other in proportion to their success, and directed to pay costs to the other in proportion to their failures, in the reference as determined by the decision of this Court.