

(1921) 12 AHC CK 0015

Allahabad High Court

Case No: None

Muhammad Hashim

APPELLANT

Vs

Misri

RESPONDENT

Date of Decision: Dec. 2, 1921**Acts Referred:**

- Contract Act, 1872 - Section 65

Citation: AIR 1922 All 6 : 65 Ind. Cas. 253**Hon'ble Judges:** S.P.C. Banerji, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

1. The applicant, Muhammad Hashim, owned a flower garden in the city of Cawnpore, which he let to the plaintiff for one year from March 1920 to the following March on a rent of Rs. 230. On the 15th of November 1920 the garden was acquired under the Land Acquisition Act for improvements in Cawnpore, and the plaintiff was deprived of possession. He brought the present suit in the Court of Small Causes to recover Rs. 65 which, he said, was, the loss incurred by him by reason of being deprived of possession of the garden in November 1920. He also claimed Rs. 26 as costs of repairs made by him. The claim has been decreed. This application for revision has been filed by the defendant in respect of both the items mentioned above.

2. As regards the sum of Rs. 65 claimed by the plaintiff, it is not disputed that if the plaintiff is entitled to recover it the amount would be unreasonable or excessive. But what is urged is that u/s 65 of the Contract Act, which the Court below has applied, the plaintiff is not entitled to recover compensation, I do not agree with this contention. u/s 65 if a contract has become void, any person who has derived benefit under the contract is liable to compensate the other party to the extent of the benefit so received. In view of the provisions of Section 56 the contract of having

become impossible of performance must be held to have become void. Therefore, according to the provisions of Section 65 the plaintiff would be entitled to compensation. The principle of the ruling of the Bombay High Court in *Dhuramsey Soonderdas v. Ahmedbhai Hubibbhoy* 23 B. 15 : 12 Ind. Dec. 10 applies to the present case, As by reason of the acquisition of the garden by Government under the Land Acquisition Act the plaintiff was deprived of the garden and the performance of the contract entered into with him by the defendant became impossible, he is entitled to be recompensed for the loss he has sustained.

3. As to the sum of Rs. 26, the Court below has believed the evidence of the plaintiff that he spent Rs. 26 in repairs to the garden under the authority of the defendant. The fact that the garden had been let to the plaintiff, for Rs. 230 and Rs. 200 only was realised from him, raises an inference in favour of the truth of the plaintiff's allegation that he had to incur some expenses for the repairs of the garden. Apparently Rs. 30 was withheld because the repairs had to be done. Reliance is placed upon the fact that before the Land Acquisition Officer mention of the repairs had not been made in the deposition recorded. In that deposition the total amount of the rent was put down as Rs. 250, whereas as a matter of fact the garden had been let for Rs. 230 only. There was no question as to what repairs the plaintiff had made and, therefore, the omission of the repairs in that deposition did not detract from the credibility of the plaintiff, whose deposition was accepted by the Court below. This application is without force. I accordingly dismiss it with costs.