

Debi Din Vs The Secretary of State for India in Council and others

Court: Allahabad High Court

Date of Decision: Nov. 6, 1941

Hon'ble Judges: Yorke, J; Verma, J

Bench: Division Bench

Advocate: Shiva Prasad Sinha, Shankar Sahai Verma and Bankey Behari, for the Appellant; N.P. Asthana for Respondents, for the Respondent

Final Decision: Allowed

Judgement

Verma and Yorke, JJ.

This is a first appeal u/s 3(1)(b)(1) of the United Provinces Town Improvement (Appeals Act, Act No. III of

1920) from the decision of the Improvement Trust Tribunal of Cawnpore. The Appellant Debi Din, who was also the Applicant to the Tribunal,

was the owner of a compound or ahata situated in mohalla Anwarganj, Cawnpore. It is said that in the year 1920 there was a notice in the Gazette

u/s 36 of the United Provinces Town Improvement Act, VIII of 1919, with reference to this area and to a neighbouring area described as

Ghosiana. We do not think it has been established that that notification had any reference to this area, but it looks as if there had been a threat of a

scheme in regard to this area at that time. The Ghosiana scheme at any rate proceeded and it resulted in an application to the Tribunal in 1927. A

copy of the judgment of the Tribunal in that case has been put before us, but we doubt whether it is relevant in the present case.

2. In the year 1922 it is said that the Appellant told the Government that he himself would like to build a model settlement at that time we are told

that the Improvement Trust stated that in that case it would only acquire a strip 60 feet wide touching this proposed settlement or a portion of it.

The Appellant at any rate made very little progress with the construction of his model settlement. In the year 1930 that is, on October 10, 1930, a

fresh notice was issued u/s 36 of the Act with reference to what was called the Pench-Bagh Dalelpurwa Scheme No. 20. That notice covered the

whole area now in suit and omitted only from its scope a portion of land which was occupied by a house which the Appellant himself had built

inside the area denominated by him for the purpose of his model scheme. The matter proceeded according to the usual methods in land acquisition

proceedings as governed by the Land Acquisition Act subject to the modifications of that Act contained in the United Provinces Town

Improvement Act and on March 25, 1933 the Land Acquisition Collector Mr. Avadh Behari Lal made an award which is paper No. 8-A of this

record. That award shows that the area in question was covered in part on the east side by kucha huts, on the south side by some kucha-pucca

shops, while on the west side it was mainly open to a road. In the centre of the area there was a large area of open land which was being used for

the purpose of cultivation of vegetables and also for guava trees. The Land Acquisition Collector applying the provisions of the Act had

ascertained the income which was being received by the Appellant, who is the owner of all this land, as derived by him from the land, from the

kucha houses and from the kucha-pucca or kucha shops. He found that the rental income of the houses came to Rs. 207-6-0 p.m., giving an

annual income of Rs. 2,488-8-0. The annual income from the cultivated land was Rs. 378 and in regard to the guava trees the Land Acquisition

Collector accepted Rs. 250 as the annual income, though he obviously thought that the figure was improbably high. He thus arrived at an annual

income from these three forms of property of Rs. 3,116-8-0. He then went on to deal with the valuation of the houses with which we are not

concerned in the present appeal as there is a finding of fact that the materials of those houses were the property of the occupiers.

3. He had next to consider the question of capitalisation of the income received by Debi Din Appellant from these different sources. He noted that

the kucha huts would ordinarily be valued at about 10 years' rent while the ground rent reserved full 16-2/3 years' rent. He went on to say that the

agricultural rent of suburban areas was ordinarily capitalised at 25 years' purchase but in such areas the rents were governed by the Tenancy Act

and were subject to revenue. Here the rents were as full as could be agreed between the parties and possibly 20 years' purchase was fairer. With

regard to the fruit trees he remarked that the yield of fruits was usually capitalised at 8 years, as the life of such fruit trees was short and their yield

was uncertain. He went on to remark that instead of this differential treatment proposed to capitalise the whole income from agricultural rent and

fruits as also the rents from the kucha houses at 16-2/3 years' purchase "which is equivalent to an interest of 0-8-0 (8/0 p.m.) and is the usual

factor for valuation of landed property in the town". On this assumption he proceeded to value the entire property at the rate of 16-2/3 years'

purchase of the income and he arrived thus at a figure of Rs. 47,073 after deducting from the gross income the payments which had to be made by

Debi Din on account of house tax and water-tax. To this sum of Rs. 47,073 he added Rs. 2,875 on account of wells for which the Applicant was

entitled to compensation, Rs. 577 for scattered trees. The sum total allowed by him was Rs. 50,525 as the valuation of Debi Din's proprietary

rights in this ahata.

4. Debi Din in due course took the matter to the Tribunal and the learned members of the Tribunal have, after framing a number of issues and

discussing all the points which were necessary, affirmed the amount of compensation allowed by the Land Acquisition Collector.

5. In such an appeal as the present one the only points which are really open to consideration are points of law. Sub-section (2) of Section 3 of the

Town Improvement (Appeals) Act provides that

An appeal under Clause (6) of Sub-section (1) shall only lie on one or more of the following grounds, namely:

(i) the decision being contrary to law or to some usage having the force of law:

(ii) the decision having failed to determine some material issue of law or usage having the force of law;

(iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the

case upon the merits.

6. It is not suggested that Clauses (2) and (3) have any application to the present case. The main ground taken and in fact the only ground taken

and argued arises out of the decision on issues 3 and 6.

Issue 3: Is the open land to be regarded as building site or as agricultural land?

Issue 6: At what rate should the open land be valued? What is its market value?

7. Before dealing with the argument we must make clear the state of the law. The relevant section of the Land Acquisition Act is Section 23 which

the modifications which have been effected in that section by the Town Improvement Act, VIII of 1919. Section 23 of the Land Acquisition Act

(Act I of 1894) provides:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration....first, the

market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1).

8. We are not concerned with clauses ""secondly"" to ""sixthly"" of this sub-section.

9. This clause has been modified by Para. 10 of the Schedule to the United Provinces Town Improvement Act. That Schedule has reference to

Section 58 of the same Act which provides:

For the purpose of acquiring land under the said Act for the Trust--

(b) the said Act (The Land Acquisition Act) shall be subject to the further modifications indicated in the Schedule.

10. By Paragraph 10(3) of this Schedule it is provided as follows ""At the end of Section 23 of the said Act, the following shall be deemed to be

added, namely:

(3) For the purposes of clause first of Sub-section (1) of this section--

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the

market-value is to be determined under that clause.

11. We need not here refer to the other additions (b) to (g) added with (a) as Sub-section (3) to Section 23 of the Land Acquisition Act by this

Schedule.

12. The learned members of the Tribunal have referred to this section and have said:

It is clear from these words that we have no option and we have to value the land according to the actual use to which it was put at the time of

notification.

13. They went on to refer to the Full Bench case of this Court, Secretary of State Vs. Makhan Das , to which we shall in due course refer and they

held that in the light of the wording of the clause and of the interpretation by the Full Bench of Section 23 as amended, it was not open to them to

consider the potential value or what they called the ""actual"" value and they were only entitled to consider the value as calculated from the net

income actually being received by Debi Din at the date of the notice, that is, October 10, 1930.

14. Learned Counsel for the Appellant has sought most diligently to persuade us that the course adopted by the Tribunal is incorrect and that in

spite of the provision to which we have referred, potential value or market value in the more general sense of the amount which a willing seller

could obtain in the open market from a willing purchaser, must necessarily be considered. We are of opinion that there is no force whatever in this

contention. The matter is now entirely concluded by the decision of the Full Bench above referred to by which we are bound and with which, in

any case, we must say with the greatest respect that we have no hesitation in agreeing. The question referred to the Full Bench was a very

comprehensive question, namely,

(1) What is the correct interpretation of Section 23, Sub-section (1), Clause first of the Land Acquisition Act (Act I of 1894) as amended by

Paragraph 10, Clause (3) of the Schedule to the United Provinces Town Improvement Act, 1919 (United Provinces Act VIII of 1919)?

15. The judgment of the Full Bench was pronounced by Lindsay, J. who remarked at an early stage on page 73:

It is therefore not possible for the purposes of this Act to take into account any potential value of the land; no valuation can be made with reference

to what has been called "the most advantageous disposition of the land".

16. (This was with reference to a quotation from a judgment of the House of Lords which laid down principles which have been held to be

applicable to cases falling under the Land Acquisition Act as free from the amendments of the Town Improvement Act). He went on:

The consideration of potential value being excluded, the question is what factors can be considered when assessing the market-value according to

the use to which the land was put at the material date.

The basis of compensation should be the value to the owner at the date of the notification and prima facie this would depend upon the profit which

on that date the owner is deriving from the land and that profit could be estimated from the use to which, at that point of time, the land was being

actually put. No great difficulty could arise in dealing with a case where, at the material date, the land is actually being used.

17. He went on to discuss the cases in which the land was not being put to any use, but in that connection also he made some remarks which are

of value in considering the arguments raised in the present case.

At p. 74 he remarked:

The language of the section is rigid. The governing words are "according to the use to which the land was put, etc" The determining factor is the

actual use of the land at the date in question and any use of the land prior to that date is to be disregarded.

In view of this phraseology it appears to be impossible for the purpose of assessing the market-value, to resort to any other facts such, for

example, as the history of the land, its physical features or its situation; for while data of this nature might otherwise be of weight as indicating the

value of the land to the owner, they could only be of service in estimating a potential value based upon the use to which the land might most

profitably be put. But the section expressly excludes all consideration of potential use by laying down that the determining factor in the assessment

of the market value is the actual use to which the land is being put on the date of the notification and from this the conclusion appears to be that

either intentionally or through inadvertence the Legislature has declared that in certain conditions the market-value of the land on the material date

may be nil.

18. The effect is that the only matter which is to be taken into consideration by the Land Acquisition Collector and the Tribunal in applying Section

23 of the Land Acquisition Act as modified by Paragraph 10 of the Schedule of the Town Improvement Act which adds a Sub-section (3) to

Section 23 of the Land Acquisition Act is the use to which the land was put and the income which was derived by the owner of the property by

means of that use. In effect one might almost add to the Clause (a) which we have quoted above the words ""by the person entitled to receive

compensation,"" so that the clause would read:

The market-value of the land shall be the market-value according to the use to which the land is put by the person entitled to receive compensation

at the date with reference to which the market-value is to be determined under the clause.

19. In the light of the wording of the clause and its interpretation by the Full Bench of this Court we are of opinion that there is no force in the

arguments put forward suggesting that by one means or another we should take into consideration a market-value calculated in any other way or

with an eye to any other considerations than the income which was actually being derived from the property acquired by the person who is entitled

to receive compensation. If that property is land it will be calculable on the basis of the rent of the land, if it is a building it will be calculable on the

rents received from the tenants of that building subject to certain other rules laid down, for example in Clause (ii) of the same Para. 10(3) of the

Schedule.

20. The only other argument which has been addressed to us relates to the multiple, that is, the number of years" purchase which has been adopted

by the Tribunal. In this respect Learned Counsel wanted to rely on the decision of the Tribunal presided over by Mr. White in Ghosiana case, but

we are of opinion that this judgment is not admissible under the Indian Evidence Act and even if it could be regarded as an exemplar, exemplars do

not come into the scheme of clause ""firstly"" of Section 23 of the Land Acquisition Act as modified by the Town Improvement Act. For the same

reason there is no evidentiary force in the sale-deeds which were put before the Court on behalf of the Appellant, even though they related to

pieces of land which abut on or are even part of the land which is now being acquired. Some reliance was however sought to be put upon some

cases of this Court and particularly a decision of another Bench of this Court in a similar Improvement Trust Case. In one of the cases quoted a

higher multiple was allowed upon the ground that Cawnpore was ""a growing town."" Such a higher multiple is clearly something based upon

potential value and not upon actual market-value as we are bound to calculate it for the purposes of the present case. Reliance was placed in this

connection on a Bench decision in F.A. No. 512 of 1929 but we have to note that in the judgment of that case a reference is made to ""fair market-

value"" and to ""improvement value over a certain period,"" but with great respect we are of opinion that ""fair market-value"" is not in terms what has

to be arrived at in a case under the Town Improvement Act. What has to be arrived at is market value as calculated in accordance with what was

described in the Full Bench case as the rigid language of the section. The Land Acquisition Collector, whose view was followed by the Tribunal,

applied a flat rate, although he was of opinion that something different might have been arrived at had he chosen to value the different classes of

property according to the individual rates which he obviously considered to be proper; for example, he said that kucha houses being flimsy huts are

usually only liable to be valued at 10 years' purchase, on the principle of course that their life cannot be regarded as greater than ten years and

presumably at the end of ten years there is very little left of the original house. Similarly he took the view that he could have capitalised the yield of

fruits at 8 years' purchase on the view that the life of the trees was short and the yield uncertain. The effect of so doing would have been to make a

very heavy reduction in the capitalised value of the kacha houses which were the main foundation for the calculation of a capitalised value. He

ultimately calculated the capitalised value on a basis which would give the Appellant a sum calculated at 6 p.c. p.a. to give him the same return

which he was now getting on the whole of this property, although some of it was of only a semi-permanent value. It seems to us that this calculation

is definitely more than fair to the Appellant and it would be impossible to accept the view that the rents received from the kucha houses should be

Capitalised at a higher rate than 16-2/3 years' purchase, giving a return of 6 p.c. p.a. It may be that the line of reasoning followed by the lower

Court is not in every respect sound but on the whole we are satisfied that this rate is a fair rate and if it errs in any direction it errs in favour of the

Appellant. Indeed it is obvious that the Tribunal felt that the Appellant, the Applicant before them, was rather hardly treated by the provisions of

the Act and the Tribunal did its best to interpret those provisions in favour of the Applicant. In our judgment therefore there is no force in the

present appeal which must therefore fail and be dismissed with costs.

21. We have before us a cross-objection on behalf of the Secretary of State asking that this Court will be pleased to set aside the order of the

Tribunal disallowing the costs of the Secretary of State, on the ground that the Tribunal has erred in not awarding costs to the Secretary of State.

The ground upon which the Secretary of State's costs have been disallowed by the Tribunal, despite the fact that the Appellant's application or

suit was dismissed, are stated in the following terms:

On account of the above findings the objector is entitled to no compensation over and above the one awarded to him by the Trust. The objector is

losing a very valuable land for a very low compensation and if correct value were to be allowed he would get nearly Rs. 90,000 as compensation.

He is claiming one lakh only. So under the circumstances we are not going to allow any costs to the Secretary of State.

22. It is clear that the costs of the Secretary of State were disallowed on purely sentimental grounds. Incidentally we may note that the statement in

the judgment that the Applicant-Appellant was claiming one lakh only was incorrect. He was claiming one lakh further in addition to the sum of

roughly half a lakh which had already been awarded to him. The Applicant was in the position of a Plaintiff who had instituted a suit to recover a

large sum and whose suit to recover that sum was found not to be entitled to success under the provisions of the law relating to the subject. We

can see no ground upon which the Tribunal was entitled to deprive the Secretary of State of the costs to which he was entitled under the ordinary

provisions of the law. We accordingly allow this cross-objection and set aside the order refusing to allow the Secretary of State his costs of the

proceedings before the Tribunal. The Secretary of State will therefore have his costs which were allowed by the Tribunal and he will also be

entitled to his costs of the cross-objection in this Court.