(1954) 08 CAL CK 0002

Calcutta High Court

Case No: Appeal from Original Decree No. 11 of 1954

Purna Chandra Chandra	APPELLANT
Vs	
Sk. Fakir Mohammad	RESPONDENT

Date of Decision: Aug. 13, 1954

Acts Referred:

- Land Acquisition Act, 1894 - Section 4

Citation: 59 CWN 568

Hon'ble Judges: Renupada Mukherjee, J; Mookerjee, J

Bench: Division Bench

Advocate: A.C. S; ircar, R. Guha and Biswanath Dhur, for the Appellant; Sudhansu Kumar Sen and Sovendra Madhab Basu, for the Respondent

Final Decision: Allowed

Judgement

Mookerjee, J.

Premises Nos.86, 87, 87/1 and 87/2, Phears Lane, Calcutta, were acquired in connection with Calcutta Improvement Trust Scheme No.LVII (Chittaranjan Avenue to Blackburn Lane). The notification was issued in August, 1948, and the declaration was published on the 4th August, 1949.

2. The subject matter of the appeal now before us is limited to the question of apportionment, so far as premises No.86, Phears Lane is concerned. On the 18th September, 1947, a lease of the premises was granted by the landlord, the appellant before us, to the tenant-respondent. As stated already, the notification u/s 4 was issued within a year of the lese. One of the conditions on which the lease was granted was that the tenant agreed to repair the building at a cost of four thousand rupees, such repairs to be completed within six months of the execution or the commencement of the lease. It was further agreed between the parties that

"if at any time during the said term the demised premises or any material or substantial parts thereof be acquired under the provisions of the Land Acquisition

Act, 1894, or any other Act for the time being in force for the acquisition of land for public purposes the term hereby granted shall be deemed to terminate and cancelled on the authentic publication of the declaration in respect of such acquisition and the lessee shall not be entitled to any compensation whatsoever from the lessor or from the acquiring body on behalf of the lessor, but without prejudice to claim o the lessee for compensation as against the Government or any local authority."

3. On behalf of the owner the entire compensation fixed by the Land Acquisition Collector was claimed as due to him alone. The lessee, Fakir Mohammad, claimed that as the lessee he was entitled to a portion of the said compensation. Accordingly a joint award was made and a Reference was made to the President, Calcutta Improvement Tribunal. The Tribunal has, on hearing the parties, allowed Rs.4,000 out of the compensation money to the lessee together with the statutory allowance of fifteen per cent. The balance of Rs.11,145 with statutory allowance has been awarded in favour of the owner. The present appeal has been preferred on behalf of the owner.

4. The only question in issue is whether the lessee can in view of the agreement between the lessor and the lessee, dated the 8th September, 1947, be entitled to any portion of the compensation awarded for the land.

5. In Gadadhar Das v. Dhanpat Singh (ILR 7 Cal 585), effect was given to a clause in a durputni deed whereby the durputnidar agreed to be conent only with an abatement of the rent which was to be paid to the putnidar relinquishing his claim to any share of the compensation money. In Gadadhar Bhatta v. Lalit Kumar Chatterjee (10 CLJ 476), a covenant in lease that upon acquisition of the premises under the Land Acquisition Act, the whole of the compensation for the land should belong to the landlord alone was held to be valid in law and enforceable; such a covenant was not illegal or contrary to public policy even if the lease-hold interest was transferable and the rent was fixed in perpetuity. Reliance was placed on In Re. Arbitration between Morgan and London Northwestern Railway Company, [(1898) 2 QB 469], where a similar covenant was held to be valid and enforceable.

6. Similar view was expressed in Ashutosh Chandra Mitra v. Haripada Ganguli (35 CLJ 133). The Judicial Committee in Rai Harendra Lal Roy Bahadur Estate Limited v. Ram Chandra Naskar (53 CWN 803), affirmed the principle enunciated in he earlier cases, and the proprietors alone were held to be entitled to the compensation money in question.

7. This principle was not seriously contested before us, but a claim was made on behalf of the lessee that the amount spent by him for repairs and structural alterations had rightly been decreed in favour of the lessee. In support of such a claim, reliance was placed on a Bench decision of this Court in Radhanath Maity v. Krishna Chandra Mukherjee (40 CWN 722). Although reference was made in course

of argument before that Bench to Asutosh Chandra Mitra v. Hari Pada Ganguli (supra), towards the concluding portion of the judgment the lessee was allowed a certain share of the compensation money for reasons, with due respect to the learned Judges, which are not clear.

8. We have before us the registered kabuliayat which was the subject matter of consideration in Radhanath Maity''s case, and we shall quote from the same the relevant extract. The Kabuliayat was executed by Radhanath Maity in favour of Benoy Krishna Mukherjee on the 30th June, 1914. It was a Kabuliyat for a term of five years, and it was the common case of the parties that the tenant had after the expiry of the lease been holding over on the same terms and conditions. The relevant portion of that Kabuliayat was in the following terms:

"After the expiry of the term, I shall remove the aolat (trees) or houses, etc. grown or erected by me at my own cost and put you in khas possession of the said land. Further be it mentioned that if the Municipality or the Government acquires the said land at any time for any purpose then you shall get the compensation awarded therefor. I shall not have any concern therewith; and if some portion of the said land be acquired, then I shall not get abatement of rent therefor. After the expiry of the term, I shall give up (the said land) without any notice and without any objection. No sort of right will accrue to me in the said land either at present or in future according to law."

9. In spite of such a clear provision in the kabuliayat, this Court proceeded to consider what steps had been taken by the lessee to raise the level of the land and the amount spent therefor and observed:

"The clause that the tenant is not to receive any compensation in case the acquisition is made by Government or Municipality is not inconsistent with the nature of the tenancy, namely, the tenancy being one from month to month. The clause regarding the non-taking of compensation cannot be said to be a clause which is collateral to the ordinary incidents of the holding. The real test is as to whether this is a clause which has really the effect of affecting the tenancy so long as it exists. We do not see anything inconsistent in this clause with the precarious nature of the tenancy".

10. Even after giving expression to this opinion, the learned Judges proceeded to consider the effect of holding over, and on the authority of certain English decisions concluded that the clause regarding the abandonment of compensation money was not in any way inconsistent with the condition under which the tenancy was held under the previous kabuliayat of 1906. It was then held that the clause, however, did not disentitle a tenant to claim any compensation which might be given on the acquisition of the land subject to this that the clause did not preclude the tenant from claiming such part of the compensation as had been the result of improvements on the land made by the tenant.

11. The decision above referred to rested, for reasons referred to above, upon the fact of holding over and the conditions appearing in an earlier kabuliayat being different from those in a later one. In the present case before us, there is no such question, and there is a clear provision under which the lessee is directed not to claim any portion of the compensation which may be awarded if the property in question be compulsorily acquired. It is the market value of the property which is the compensation allowed. The compensation so allowed is to be apportioned amongst the different claimants. If, therefore, the lessee gives up his right to any portion of the compensation which is fixed by the Collector, he cannot be heard to say that he has any share in that compensation money.

12. In the present case, there is another important factor which militates against the claim of the lessee. Under he agreement, the lessee was bound to undertake repairs to the structures to the extent of at least Rs.4,000 and that within a limited period. The learned President came to the conclusion that Rs.4,000 had been spent by the lessee as stipulated. If the parties with their eyes open entered into a contract of that description and at the same time agreed that the entire compensation money, in case of compulsory acquisition, would go to one of the parties only. The Court has no option in the matter. The entire compensation money must go to the lessor, who is the owner.

13. The decision of the learned President, Calcutta Improvement Trust Tribunal, awarding Rs.4,000 out of the compensation money in favour of the lessee must accordingly be set aside and the Reference made by the lessee rejected. This appeal is accordingly allowed and the decree of the Court below in so far as it awarded Rs.4,000 out of the compensation money to the lessee be set aside and we direct that the entire compensation money together with the statutory allowance be paid to the lessor appellant.

14. The appellant will be entitled to the costs of the hearing of the appeal in this Court. The hearing-fee is assessed at five gold mohurs. There will be no order as to costs so far as the hearing before the Tribunal is concerned.

Renupada Mukherjee, J.

15. I agree.