

(1919) 06 CAL CK 0038

Calcutta High Court

Case No: None

Girish Chandra Roy Choudhury
and Others and Hem Chandra
Choudhury

APPELLANT

Vs

The Secretary of State for India
in Council and Another

RESPONDENT

Date of Decision: June 25, 1919

Acts Referred:

- Land Acquisition Act, 1894 - Section 23(1)

Citation: 55 Ind. Cas. 150

Hon'ble Judges: Panton, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

Nos. 19 and 40 of 1918.

1. These appeals are directed against the award made in a Land Acquisition Case in respect of land acquired at Serajgunj for the purpose of the Sara Serajgunj Railway. We are concerned in these appeals with two sets of claimants, one is a tenure-holder (Hem Chandra Choudhury) and the others are sub-tenants, described as merchant tenants, in actual occupation of the land acquired. The appeal preferred by the Roy Choudhuries, the merchant tenants, relates only to one plot of land. The appeal preferred by the Choudhury tenure-holder includes that parcel as also other parcels of land. We shall at this stage consider the parcel of land included in the appeal by the merchant tenants and if the other lands included in the appeal preferred by the tenure-holder require separate consideration, we shall discuss the matter hereafter.

2. The question before this Court is the determination of the market value of the land required, within the meaning of Section 23, Sub-section 1, Clause 10 Bom. L.R. 657 of the Land Acquisition Act. It has been pointed out in judicial decisions in

Bombay and in this Court Collector of Belgaum v. Bhimrao 10 Bom. L.R. 657; Bombay Improvement Trust v. Jalbhoy 3 Ind. Cas. 767 : 83 B. 483 : 11 Bom. L.R. 674; Government of Bombay v. Esufali Salebhai 5 Ind. Cas. 621 : 12 Bom. L.R. 34 : 84 B. 618 and Dunia Lal v. Gopi Nath 22 C. 820 that the value of land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claim-ants of different degrees should thereafter be taken into consideration. This view, however, has not always been accepted in practice and the procedure adopted in the case before us has been followed as a matter of convenience, namely, that the market value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other. Now what is the market value either of the land as a whole or of a specific interest in the land acquired? Reference may usefully be made to the two definitions given in two of the reported cases, namely, the cases of Bombay Improvement Trust V. Jalbhoy 3 Ind. Cas. 767 : 83 B. 483 : 11 Bom. L.R. 674 and Kailas Chandra v. Secretary of State for India 18 Ind. Cas. 638 : 17 C.L.J. 34. In the former case, the market value of land was stated to mean the price which would be obtainable in the market for that concrete parcel of land with its particular advantages and its particular drawbacks, both the advantage and the drawback being estimated rather with reference to commercial value than with reference to any abstract legal rights. In the second case the market value of land was described as the price that an owner willing, and not obliged, to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land; in other words, the price which it will bring when it is offered for sale by one who desires, but is not obliged, to sell and is bought by one who is under no necessity of having it Wernicke v. Secretary of State 2 Ind. Cas. 562 : .

3. Now, let us determine the market value of the interests of the tenure-holder and the sub-tenants under him, in the case before us. The land acquired falls into two classes. One portion of about 4 bighas and 2 cottas is described as Bazar land and the remainder about 6 bighas 5 cottas is described as back land. As regards land of former class, which, has a frontage of 385 cubits and is also described as front land, the Collector has awarded to the tenure-holder the capitalized value of the rent actually recovered by him from the subtenants. It has been contended before us on behalf of the tenure-holder that this is not adequate. On the other hand, on behalf of the Secretary of State, we 13 C.W.N. 1016 have been pressed to take the view that the sum awarded is really more than adequate. It is pointed out that some years ago when the tenant in occupation transferred his interest in the land to the present occupant, the rent was increased from 4 annas a cubit to 6 annas a cubit; that is, from Rs. 24 a bigha to Rs. 36 a bigha. The Senior Government Pleader has contended that it is not probable that the rent can be further increased and that consequently the capitalised value of the present rent, which is the rent actually levied for more than 10 years, is adequate compensation to the tenure-holder. This

argument may be conceded to be not without weight, but it does not take into account one important element in the case. When the rent was enhanced from 4 annas a cubit to 6 annas a cubit, a premium was paid by the new tenant to the landlord at the rate of Rs. 192 per bigha, in other words, the landlord at the time took the premium and did not claim a higher rent as he might well have done if no premium had been paid. Consequently, it is not sufficient to award to the tenure-holder the capitalized value of the rent as then settled. In our opinion the amount awarded to him should be increased by Rs. 192 per bigha. In respect of the back land, which is also described as agricultural land, the award has been made on the basis of the rent at present levied, namely, Rs. 10, per bigha. The tenure-holder does not claim any additional amount in respect of this land.

4. We have now to take into consideration the case of the merchant tenants. The Court below in concurrence with the Collector has not awarded them any compensation. The ground for this decision is that the tenancies of these persons are of so precarious a nature, that they cannot be deemed to have any market value. It has been found on the evidence that the merchant tenants are tenants-at-will and that they have no transferable interest in the land. They may at any time be pulled upon by the tenure holder to leave the land; and if they transfer the land the transferee is not entitled to retain possession against the wishes of the superior landlord. In our opinion these facts do not necessarily justify the conclusion that the interest of these merchant tenants has no market value. It is conceivable that under the circumstances mentioned no buyer can be found in the open market for these lands; and if that had been established as a fact, the position might well have been maintained that their interest has no market value, But as was pointed out in the case of *Bombay Improvement Trust v. Jalbhoy* 3 Ind. Cas. 767 : 83 B. 483 : 11 Bom. L.R. 674, in the determination of the question of market value we have to look to the commercial value rather than to abstract legal rights. It has been established by the evidence beyond the possibility of a doubt that although the interest of these merchant tenants is so precarious that they themselves and their transferees may be compelled to leave the land at the will of the superior landlord, still their interest in the land is frequently sold and substantial prices are paid by the purchasers. The purchasers thereupon approach the landlord and get his consent to the sale, sometimes upon payment of premiums and sometimes upon payment of increased rent. In these circumstances it is impossible for us to hold that these merchant tenants have an interest in land which has no market value. We are not concerned with the motive which induces the intending purchaser to acquire title to such precarious interests in land. We are concerned with the unquestionable fact that such sales are common : and they are common because purchasers are able in usual course to secure recognition from the landlord. The conclusion appears to us to be inevitable that compensation must be awarded to the merchant tenants in respect of their interest in the land acquired. Here considerable difficulty presents itself. The case in the Court below was not approached from the point of view which

has presented itself to us in this Court, and the evidence as to the value realised on the occasion of sales is not only conflicting but of a somewhat doubtful nature. The prices stated in several of the conveyances include the value of the interest in the land as also of structures on the properties conveyed and sometimes the value of the good will of the business which was carried on there. In such circumstances, a remand and retrial would ordinarily be inevitable, but the parties have wisely come to the conclusion that no useful purpose would be served by a remand for a fresh enquiry. At their request we have decided to act as assessors ourselves and to make an award on the basis of such materials as are on the record. Our decision is that the merchant tenants should have, in respect of the bazar lands, Rs. 490 a bigha, and for the back or agricultural land, Rs. 200 a bigha; to this will be added the usual statutory allowance. As between the Secretary of State on the one hand and the tenure-holders and the merchant tenants on the other, the costs will be proportional. As between the tenure-holder and the tenants under him, there will be no order for costs" either here or in the Court below.

F.A. No. 40 of 1918.

6. One of the plots in this appeal is also the subject-matter of Appeal No. 19 of 1918 and has already been dealt with in our judgment in that case. We have now to deal with the other plots included in this appeal. The award in favour of the tenure holder in respect of these plots will be modified according to the rates stated in our judgment already delivered. There will be the same order for costs.

P.A. No. 41 of 1918.

8. In this case the compensation granted to the tenure holder will be increased on the basis of our judgment in First Appeal No. 19 of 1918. Costs will be in proportion, Hearing fee Rs. 200.