

(1927) 06 CAL CK 0024

Calcutta High Court

Case No: None

Radha Binode Mandal

APPELLANT

Vs

Surendra Nath Ghosal and
Others

RESPONDENT

Date of Decision: June 21, 1927

Citation: 105 Ind. Cas. 377

Hon'ble Judges: Roy, J; B.B. Ghose, J

Bench: Division Bench

Judgement

B.B. Ghose, J.

The question for decision in this appeal depends upon the effect to be given to a contract contained in a maurasi mokarari lease, dated the 8th April, 1889. Two persons, the appellant before us and his brother, granted a maurasi mokarari lease in favour of the predecessor-in-interest of the respondent at a rent of Rs. 21 per year. A provision was contained in the lease which may be translated in these words, "In future, if only for the purpose of the Government, the land is acquired, then, out of the compensation awarded we shall get 8 annas as the malikani right, and you shall get 8 annas of the compensation in your maurasi right." The land had been acquired for a public purpose by a declaration, dated the 16th November, 1920. It was for the purpose of constructing what is called the new main sewer Road from Chetla to the Ballygunge Railway Station. The brother of the appellant, Gopi Kristo, sold his 8-annas interest of the malikani right to the lessee in the year 1901, The appellant is, therefore, only entitled to the remaining 8-annas share of the malikani interest. The total amount of compensation awarded by the Collector was Rs. 46,000 odd. The Collector apportioned the compensation and, in his view, the appellant was entitled to one-half of the lessor's dues under the agreement in the lease which I have already recited. In accordance with that view, he made an award in favour of Rs. 11,565 6-1. The lessees asked for a reference to the Court under 8. 18 of the Land Acquisition Act read with the Calcutta Improvement Act. The matter came for consideration before the learned President of the Calcutta Improvement Tribunal,

That learned Judge held that the provisions contained in the lease do not apply to the present acquisition. He held that the land had not been acquired for the purpose of Government and, therefore, the compensation money should be apportioned between the parties as if the clause referred to in the lease had not existed. In that view, he held that the appellant before us was only entitled to 20 years' purchase of the maurasi rent due to his share, or, in other words, Rs. 210 only and the whole of the balance of the compensation for the land was awarded to the lessees. The lessor-claimant appeals against that judgment and order of the President. The ground on which the learned President bases his judgment was that it has been held by this Court in the case of *Bejoy Kumar Addy v. Secretary of State for India* 84 Ind. Cas. 727 : 40 C.L.J. 301, that a requirement for the Calcutta Corporation was not a requirement for the Government and so a requirement for the Board of Trustees for the improvement of Calcutta cannot be considered as a requirement for Government. With great respect to the learned President, it seems to me to be quite clear that the law was not laid down, as the learned President considers it to have been in the case referred to decided by this Court. There, the Government was the lessor of the land in question and the stipulation in the lease was to this effect "If any portion or the whole of this land be required for the Government, we shall give up the same without any compensation." The land was acquired for a public purpose, namely, for the purposes of the Corporation of Calcutta under the Land Acquisition Act; and it was held by the Collector that by reason of the stipulation contained in the lease, the lessee was not entitled to anything and this opinion of his was confirmed by the District Judge on reference. What the High Court held was this, that possession was not taken by the Government which was in the position of the lessor in terms of the lease; and when that was not done, it could not be said that the lessee had no interest in the land which was incapable of valuation. The position was the same as if in a lease by a landlord it is stipulated that if the land is required for the landlord's own purposes, the tenant would give it up without any compensation. If afterwards the land is acquired for any public purpose, the landlord certainly could not have said that the tenant's interest was of no value and the tenant was not entitled to any compensation. It was distinctly observed in the judgment of Mr. Justice Woodroffe that the land was not taken in that case by enforcing the terms of the lease but it was acquired under the provisions of the Land Acquisition Act. That makes a world of differences. If the Government had enforced the terms of the lease, the conditions of ejection would have been quite different from the conditions under which the land was acquired for a public purpose under the Land Acquisition Act. The argument, therefore, on which the judgment of the learned President is based does not appear to me to be of any substance. The learned Advocate appearing for the respondents admits that he cannot rely upon the case of *Bejoy Kumar Addy v. Secretary of State for India* 84 Ind. Cas. 727 : 40 C.L.J. 301 in support of the judgment of the learned President. He contends that the stipulation contained in that part of the lease should be strictly construed as derogating from the ordinary rights of a grantee under a maurasi

mukarari title. His contention is that under the ordinary law the landlord is only entitled to the capitalised value of his own interest in the land after the grant of the permanent lease. The stipulation expressly provides that if the land is acquired only for the purpose of Government, then the compensation should be divided half and half; End his contention is that this land had not been acquired for the purpose of Government. It seems to me to be difficult to give effect to his contention. Under the Land Acquisition Act, lands can be acquired either for a company or for a public purpose. The learned Advocate for the appellant concedes that if this land had been acquired for a Company, he would not be entitled to rely on the stipulation contained in the lease. But when the land is not acquired for a Company but for public purposes, it must be considered to have been acquired for the requirement of the Government. It seems to me that this contention is of considerable weight. The Government of the country is carried on by different bodies and anything which is for a public purpose must be considered to be a purpose for the Government of the country; e.g., Local self-Government.

2. In my judgment, therefore, the lessor is entitled to rely on the special provisions contained in the lease and under the terms of those provisions, he is entitled to the half share of the lessor's interest reserved under the conditions set forth above, that is to say, he is, entitled to Rs. 11,565-61 as awarded by the Collector. The judgment and order of the President of the Tribunal is, therefore, varied in the manner as aforesaid and the appellant is entitled to his costs of this appeal as well as the costs of the lower Court.

Roy, J.

3. I agree.