**AIR 1929 Cal 826 : 121 Ind. Cas. 572**

**Calcutta High Court**

**Case No:** None

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| Madhab Gobinda Ray | | APPELLANT |
| | Vs | |
| Secy. of State | | RESPONDENT |

**Date of Decision:** Dec. 5, 1928

**Citation:** AIR 1929 Cal 826 : 121 Ind. Cas. 572

**Hon'ble Judges:** Panton, J; B.B. Ghose, J

**Bench:** Full Bench

**Judgement**

B.B. Ghose, J.
This is an appeal by claimant No. 5 against the award of the District Judge in a matter of land acquisition by which the

learned District Judge varied the award of the Collector by increasing it to the extent of about Es. 4,000. The land acquired is about 4 bighas in

area which was divided in two plots by the Collector. Both the plots were divided into two belts and the total amount awarded by the Collector

with the statutory allowance came up to Bs. 5,669-15-8. Before the Collector, the claimant asked for plot No. 2 at the rate of Bs. 7,000 per bigha

and plot No. 3 at the rate of Bs. 5,000 per "bigha, together with compensation for loss and damage to business to the extent of Rs. 10,000,

altogether Rs. 39,775. In his application for reference, the claimant only claimed the same amount in a lump without specifying the amount he

claimed separately, either as value of the land or for loss of business. The land acquired with other lands was purchased by the claimant by a

kabala,, dated 8th December 1919. The total area, conveyed by that document was 32 1/2 bighas and the price paid was Rs. 45,000. On 19th

December 1919, the-claimant purchased by a documents which purported to sell a half share of 21 bighas 10 cottas for Rs. 10 000. It is urged on

behalf of the claimant that this kabala included about 3 bighas of land included in the previous kabala. The claimant purchased another piece of

land, 1 bigha 17 1/2 cottas in area, for Rs. 2,250 on 15th December 1920. These three plots are apparently in the same locality. The declaration

was made in December 1920. The learned Judge took an average of the price of these three purchases per bigha and came to the conclusion that

the market value of the land would be a little under Rs. 1,200 per bigha. Calculating the price of the area acquired, he came to the conclusion that

the actual value would be about Rs. 5,000. To that he added what he considered to be the loss to the business of the claimant and he allowed

damages at Rs. 4,000. Adding these two figures with the statutory allowance he varied the award of the Collector to Rs, 10,400 which was

reduced to Rs. 9,800 by correcting. a mistake in the calculation and Appeal No. 72 of 1927 was preferred on account of this correction

2. In the appeal on behalf of the claimant the same amount which was claimed in the Court below was claimed The principal ground upon which

the claim rested was that the Judge made a mistake in taking an average price of the three puchases stated above. The argument was hat out of the

lands purchased within the 321/2 bighas area 14 bighas were in the possession of mokarari tenants paying Rs. 5 or Rs. 6 as rent and the value of

that area could not by any means exceed Rs. 100. Therefore, the value of Rs. 45,000 should be calculated on about 22 bighas of land. This

argument is answered on behalf of the Secretary of State by pointing out to us the recitals in the kabala itself by which the claimant purchased the

property. The recitals are that only a small portion of the lands is in the possession of temporary thika tenants whom the claimant might eject at any

time. The claimant himself has given evidence in this case. He is a business man and a person of education and position. From him we may naturally

expect definite evidence with regard to matters of claim. He himself states that he does not know the lands which were in the possession of tenants

nor does he know how many tenants there were on the lands. Apparently, there was no investigation on his part as regards the truth or otherwise

of the statement that he made in his examination-in-chief, about 14 bighas being in the possession of mokarari tenants. There is no evidence

whatsoever that between the date of puachase in 1919 of the 32 1/2 bighas of land by the claimant and the date of the declaration land values had

increased to any appreciable extent in that part of the locality. On the other hand, it appears from the claimant''s own kabala of 15th December

1920, that the land values were about the same. Therefore, in calculating the market value of the lands acquired, it cannot be said that the learned

Judge was wrong in taking an average of the price that was paid on account of the lands purchased by the claimant himself only a year before the

acquisition. It is urged, however, that the Collector valued a portion of the land which was only 17 cottas in area at the rate of Rs. 2,000 per bigha

and, therefore, the claimant was entitled to have the market value of the whole of the area acquired at the rate of Rs. 2,000 per bigha.

3. Now, if the claimant really accepts the valuation of the Collector who went to the locality and valued different portions of the land according to

its character, then the value would be much less than he claims it to be. But even assuming that Rs. 2.000 per bigha would be the valuation of the

land the total amount of the market value of the land would be only Rs. 8,000. Let us take that as the basis of. valuation by accepting the entire

contention oh behalf of the claimant. The next thing that was urged on behalf of the claimant was that the learned Judge has given Rs. 4,000 for loss

of business which ought to have been at least Rs. 10,000 as-claimed in the petition of the claimant before the Collector, if not more. Evidence was

given on behalf of the claimant that he intended to use 3 bighas of land for the purpose of making bricks and he examined an expert to show that

by making an excavation of 15feet on this land, the claimant could manufacture 64 lacs of brick. The first difficulty in accepting the evidence is that

no boring was made on the land : nobody could tell whether there was any soil fit for making bricks down to the depth of 15 feet in the land. The

claimant himself gives evidence that on the contiguous land he was making bricks and that it was exhausted after he had made six lacs of bricks. It

is unnecessary to pursue that question, because in my opinion ""loss of business"" does not mean the profit you make by using the corpus, the result

of which would be . that after some lapse of time, the property would be altogether valueless:

Loss of ""business"" means that a man pursuing some trade or business is compelled to give it up or to carry it on elsewhere, which would give him

less profit than what he was making at the former place,

4. In that case he would be entitled to compensation on that account. There is no evidence that the claimant cannot carry on the trade of brick-

making on the other land that he has on account of the acquisition, nor is there any evidence that he could not obtain any other lauds to carry on the

trade of brick-making in the vicinity. To give the market value of the land and, in addition compensation for loss which, the claimant says, has

happened to him for being prevented from taking the corpus of the land would really be giving the value of the land twice over. Under the

circumstances, in my opinion, nothing could be claimed by the claimant for any loss of business. There is another remarkable thing which was not

expected from the claimant of the position of the present appellant that no definite evidence has been given as to what his profits were before the

acquisition and what loss he has suffered in his business after the acquisition. No account books have been filed, although we have been told that a

mass of papers had been produced in the Court below. The claimant himself says that from his account books profit and loss cannot be calculated.

Under these circumstances, to claim anything for the loss of business on the ground as purported to have been proved by the so called expert is of

no substance whatsoever. The appeal is dismissed with costs, as accepting the market value as urged by the appellant the total award is not below

that amount.

Panton, J.

5. I agree.