

(1874) 07 CAL CK 0004

Calcutta High Court

Case No: None

Aandakrishna Bose and
Another

APPELLANT

Vs

W. Verner

RESPONDENT

Date of Decision: July 13, 1874

Judgement

Sir Richard Couch, Kt., C.J.

S. 24 of Act X of 1870 says that, in determining the amount of compensation to be awarded, the Judge and Assessors must take into consideration, first, the market-value of the land at the time of awarding compensation; secondly, the damage (if any) sustained by reason of severing the land from other land of the owner; thirdly, the damage (if any) sustained by the owner by reason of the acquisition injuriously affecting his other property; and fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses incidental to such changes. S. 29 says that, in case the Judge and one or both of the Assessors agree as to the amount of compensation, their decision shall be final. Looking at s. 24, the amount of compensation must be taken to mean, not the different matters that are to be taken into consideration separately, but the whole compensation. In s. 35 the expression again occurs:--"If the Judge differs from both the Assessors as to the amount of compensation, he shall pronounce his decision," & c. Mr. Beaufort has stated that on some points he differs from Mr. Howe in the manner in which he arrives at the amount of the compensation. He expresses a doubt whether there should be an allowance for the severance, but then he says that "some-thing should be allowed on that account." His doubt seems to be as to the amount to be allowed. He then says:--"Taking the whole account I find that the net total of my valuation differs so slightly from the net total of Mr. Rowe's valuation that I shall not express a dissentient opinion. I concur with Mr. Rowe in awarding Rs. 26,682-8 the value of the land."

2. When Mr. Beaufort says that he will not express a dissentient opinion from Mr. Rowe, and that he concurs with him in awarding the sum named as the value of the land, I cannot read it as a difference of opinion between them as to the amount of compensation. I think the fair construction of what Mr. Beaufort says is:--I do not in some of these

matters entertain the same opinion as Mr. Rowe. I doubt whether his opinion on some of them is right; but the difference between us is so slight that I think I ought to waive my doubts, and ought not to dissent from him. There is not therefore such a difference of opinion between the Judge and the Assessors as entitles the party to an appeal. It is not a question of depriving him of an appeal. There need not be words which will take away an appeal which he would otherwise have had. Unless he brings himself within the words of the section, he is not entitled to any appeal. We must see whether the words are such as to give him an appeal in a case like the present. S. 34 indeed says that the award is to be written and signed by the Judge and the Assessors or Assessor concurring therein, and is to specify the amount awarded under the 1st clause of s. 24, and also the amounts (if any) respectively awarded under the 2nd, 3rd, and 4th clauses of that section. If this is imperative, the award must state how much is given for severance. There might be a difficulty in having the award signed by the Judge and the Assessor, although they both agreed as to the total amount of compensation, if they entirely disagreed as to the amount to be given for severance; but I do not understand Mr. Beaufort as saying that he is not prepared to concur with Mr. Rowe in the amount to be allowed for severance when it comes to be inserted in the award. I understand him as meaning that he will agree to such an award, and I do not see that there would be any difficulty in having the award drawn up according to the directions contained in s. 34. I think in this case there is no appeal to this Court. The appeal must be dismissed.

(¹) Act X of 1870, s. 24.--"In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and Assessors shall take into consideration--

First--The market-value, at the time of awarding compensation, of such land;

Secondly--The damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land;

Thirdly--The damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings; and

Fourthly--If, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

S. 29.--"In case the Judge and one or both of the Assessors agree as to the amount of compensation, their decision thereon shall be final."

S. 30.--"In case of difference of opinion between the Judge and both of the Assessors as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under s. 35."

S. 34.--"Every award made under this Part shall be in writing signed by the Judge and the Assessors or Assessor concurring therein, and shall specify the amount awarded under the 1st clause of s. 24, and also the amounts (if any) respectively awarded under the 2nd, 3rd, and 4th clauses of the same section, together with the grounds of awarding each of the said amounts."

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S. 35.--"If the Judge differs from both the Assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge, whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds Rs. 5,000, in either of which cases the appeal shall lie to the High Court."