
(1874) 05 CAL CK 0008

Calcutta High Court

Case No: None

Bamasoonderee
Dossee

APPELLANT

Vs

W. Verner

RESPONDENT

Date of Decision: May 20, 1874

Judgement

Sir R. Couch, Kt., C.J.

This was an appeal from the award of Mr. Beaufort, the Judge appointed by the Government of Bengal under the Land Acquisition Act, 1870, for the town of Calcutta, and the question to be first determined is whether the appeal lies to this Court. The Act says in s. 3 that "the expression "Court,"" which is found in a subsequent section where the Collector is directed to refer the matter to the Court, "means, in the Regulation Provinces, British Burmah, and Sindh, a principal Civil Court of original jurisdiction." In these the town of Calcutta must be included; otherwise there would be no provision in the Act for any reference in cases within Calcutta. The principal Court of original jurisdiction here is the High Court, and, if there were no other provision in the Act, it would have seemed that the compensation would have to be awarded by this Court. But the Act says that the expression "Court" means a principal Civil Court of original jurisdiction, "unless when the local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer." This has been done here, and Mr. Beaufort has been appointed. The appeal is given by s. 35, which says, "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."

2. Before considering what is the construction of this section, I quote the language of Mr. Justice Blackburn in giving his opinion to the house of Lords in *The Eastern Counties and*

the London and Blackwall Railway Companies v. Marriage 9 H.L.C., 32, at p. 36, which was a case depending on the construction of the provisions of an Act of Parliament in which there was a great difference of opinion. The learned Judge says:--"We are bound to look at the language used in the Act, construing it with reference to the object with respect to which the Legislature has used that language, but construing it in its ordinary grammatical sense unless there is something in the subject-matter or the context to show that it is to be understood in some other sense, and doing all this we are to say what is the intention of the Legislature expressed by that language."

3. Now it appears to me that the object of s. 35 was to give an appeal in all cases from the decision of the Court which assessed the compensation; and looking at the definition or statement of the meaning of "Court" in the 3rd section, with the words of s. 35, if there was an assessment of compensation in Calcutta by the High Court on the original side, there would be an appeal from that in the same manner as from a judgment of the High Court on the original side in a suit. And if the local Government substitute for the High Court, a Judge specially appointed as Mr. Beaufort was, it appears to me that it was not intended that his decision in a case in Calcutta should be final, whilst his decision in a similar case outside Calcutta would be subject to appeal. The object of the section was that there should be an appeal, and bearing this in mind we must read the words of s. 35 "may appeal therefrom to the Court of the District Judge," not literally but as meaning the Court which is the Appellate Court of the district. By "District Judge" is meant the Appellate Court of the district which the District Judge's Court is. It would not be right to read those words in their ordinary grammatical sense. They should be read with reference to the object of the section and as meaning the Court of Appeal for the district, treating Calcutta as a district, which it is for the purposes of this Act, and the High Court exercising its appellate jurisdiction as the Court of Appeal. There is nothing in the General Clauses" Act (Act I of 1868), s. 3, which is opposed to this. That section says:--"District Judge shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction." If in s. 2 of the Land Acquisition Act the words "District Judge" had been used, instead of "Court," the High Court would not have been included, because the section says those words shall not include a High Court in the exercise of its original civil jurisdiction. But the General Clauses" Act does not prevent this Court, where the subject-matter and the apparent object of the Legislature require it, giving to those words such a meaning as will include the High Court on the appellate side. The language is not prohibitory. It is not that "District Judge" shall mean the principal Court of original jurisdiction, and no other--not the Court of Appeal for the district. There is nothing in the Act to prevent us from putting on s. 35 of the Land Acquisition Act a construction which carries out the object of the Legislature. For these reasons we think that the appeal lies.

4. We proceed therefore to consider whether the compensation which has been awarded by Mr. Beaufort is sufficient. The witness Nilmani Mitter, who was called on the part of the claimant, makes the value considerably more than has been allowed by Mr. Beaufort. He

says he has calculated the value at Rs. 4,661, and has made certain deductions. In the latter part of his evidence he says, "that the value is the cost of the building minus 10 per cent. for deteriorations." According to the opinion of the assessor for the claimant, Mr. Hendry, this witness has not made a proper deduction. Mr. Hendry considers there ought to be a deduction of 20 per cent. Nilmani Mitter says he believes the value of the land to be Rs. 300 a cottah, but he gives no grounds for this belief, and I think it obvious that in fixing the value at Rs. 300 a cottah, he has given too great a value for the land. Looking at these circumstances, it appears to me that he is a witness who has exaggerated the amount which should be awarded and cannot be safely relied on in determining what the amount should be. Degambar Manna, a witness, who was called for the Government, is, I think, one whose opinion may much more safely guide us in coming to a conclusion. He appears from his own account (and he was not cross-examined to show that what he said was untrue) to be a man who had considerable experience in estimating the value of buildings. He said that the total value was Rs. 3,636. I think this may be taken as a fair opinion of the value. There appears to be no reason for distrusting his judgment. He makes a deduction, as he says, of 25 per cent.; but on this I think we should rather be guided by what Mr. Hendry said and take the proper deduction for deterioration to be 20 per cent. We may safely follow the opinion of the claimant's own assessor as to that. I would deduct 20 per cent. from Rs. 3,636, the amount which Degambar Manna gives, viz., Rs. 727, leaving Rs. 2,909 for the value of the building.

5. We have next to consider what ought to be allowed for the land. I put out of sight the Rs. 400 a cottah which was given for other land. The circumstances of that purchase are unknown to us, and it can therefore afford no criterion of the value of this land. Nor would it be safe to take the price at which land was sold in this locality at the Registrar's sale as showing the value of this land. Mr. Rowe says it is Rs. 150 a cottah; but I think Mr. Rowe was disposed to make the value of the land as low as possible. I do not say that Mr. Rowe would intentionally do so; but what the Judge has said in his remarks on that subject, shows that Mr. Rowe fixed the value as low as it could be, I am therefore not inclined to adopt the estimate which Mr. Rowe has put on the land. As far as we have the means of judging of it,--and we have very little,--on the materials which have been given to us, I should allow for the land at Rs. 200 a cottah, which will make Rs. 500 the amount to be given for the land. To this must be added the 15 per cent. allowed under s. 42 of the Act, and I think we should also add the Rs. 110 for changing residence. Mr. Apcar might very fairly have supposed that it was not necessary for him to argue that before Mr. Beaufort: it had been allowed by the Collector for compensation for removal, and was not disputed; it was not necessary for the learned Counsel for the claimant to press that before Mr. Beaufort. The total sum to be awarded will therefore be Rs. 4,025.

6. It has been contended that the decision of Mr. Beaufort as to costs is wrong. I think an appeal does not lie on the question of the amount of costs. By s. 35 the subject of appeal is the amount of the compensation. The Act does not clearly lay down what is to be done about costs, or how the amount of them is to be determined; but it seems to me that the

Judge is to determine the amount of costs incurred by either party in the same way as it is done in suits by the Taxing Officer. In similar proceedings in England, the Taxing Officer determines the amount of the costs. I think there is no appeal under this Act on a question of costs, and there is no analogy between this and an appeal from a judgment of the Court where the question of costs may be gone into. The general rule in such cases is that the quantum to be allowed is left to the Taxing Officer. What the Court deals with on appeal is not whether the proper amount has been allowed, but whether the allowance has been made on a proper principle. Here there is no appeal either as to the amount or the principle on which the costs have been allowed, but only as to the amount of compensation to be awarded. We direct the award of Mr. Beaufort to be altered in accordance with the opinion which we have just given. The Rs. 4,025 will bear interest at 6 per cent. per annum from the date of possession being taken by the Government up to the date of payment. The appellant is entitled to the costs of this appeal. It appears to us that in this Court we should give costs on the same scale as we would in an appeal from the decision of a Judge exercising the ordinary original civil jurisdiction, and that the costs of the appeal should be allowed on scale No. 2.