(1872) 02 CAL CK 0008

Calcutta High Court

Case No: None

Bholanath Mullick		APPELLANT
	Vs	
Heysham Heysham Vs Bholanath Mullick		RESPONDENT

Date of Decision: Feb. 14, 1872

Judgement

Sir Richard Couch, Kt., C.J.

The case of two Assessors differing as to the amount of the compensation, and the Judge entertaining a different opinion as to the amount of the compensation, is quite as likely, if not more likely, to arise, than the case of the Assessors differing from each other, and the Judge agreeing with one of them. Certainly, unless the language of this Act was very clear in excluding such a case as that, I should not come to the conclusion that the section did not apply to it. Now the two sections, 29 and 30, appear to be intended to embrace all the different cases which would arise. S. 29 provides:--"In case the Judge and one or both of the Assessors agree as to the amount of compensation, their decision thereon shall be final." The other section appears to provide for cases where the decision of the Judge should prevail. If we were to adopt what has been contended for by the respondent that this section and s. 35 do not apply where the Assessors do not agree, and there is only a difference of opinion between the Judge and both the Assessors, there would clearly be in this Act no direction as to what is to be done in that case. I think the Act should be read as meaning a difference of opinion between the Judge and the Assessors, whether the Assessors agree with each other or not. The ss. 29 and 30 so read will include all the different cases which can arise. Unless the language of the Act were very clear, I should not be disposed to put such a construction on it as to deprive the parties of the right of appeal when the Judge did not agree with the Assessors, and the latter did not agree with each other. In my opinion there is as much reason for giving an appeal when the Judge differs from the Assessors when they differ from each other, as when they agree. I take the Act to mean that the award shall not be final whenever there is a difference of opinion between the Judge and the Assessors. For these reasons I think

an appeal does lie in this case.

Couch, C.J.

This case comes before us under the provisions of the Land Acquisition Act, 1870, in consequence of the Judge of the Small Cause Court having differed from the Assessors as to the amount of compensation to be awarded, and both parties have appealed from the decision of the learned Judge.

2. We have considered the matter and the opinions of the learned Judge and both Assessors.

3. One of the Assessors, Mr. Clarke, in giving his opinion, takes the present rent as a correct basis for estimating the value of the land, and gives 16 years'' purchase after deducting 12 per cent, for taxes and collection charges. He takes the rent at Rs. 424, which, according to the evidence, is produced by one-half of the land which is the subject of compensation. Baboo Jodoolall Mullick, the other Assessor, estimates the value of the land upon the probable rental if the whole was let, allowing one-sixth for lanes and by-ways, and deducts the 12 per cent., and gives 16 years'' purchase on the amount of the rental after the deduction. He also deducts Rs. 50 per kata for 100 feet by 120 feet, which he considers to be the extent of the land occupied by the filled-up tank. Both the Assessors take the rent at Rs. 424. We think that shows that they understood the witnesses who were called as proving, although there was some discrepancy, that that was the gross rental, and that taxes and the cost of collection ought to be deducted from that amount. It is also to be mentioned that Jodoolall Mullick, the Assessor whose opinion is very favorable to the claimant, and who is disposed to allow him all that he could possibly be entitled to, takes no notice of the salami. And as that does not appear in the books of the claimant, we think the Assessors were right in disallowing it, and we ought not to take it into consideration. The learned Judge of the Small Cause Court takes another view of the mode in which the amount of compensation ought to be assessed. He takes the present rent of one-half of the land, and adds one-sixth, which is equivalent to the rental of one-twelfth more of the property let at the same rate. In fact, he treats the matter as if the value of the land was to be calculated on the supposition that seven-twelfths only of it would constantly be let at the same rate as the half which is now let. He, in like manner, deducts 12 per cent, for taxes and collection charges, evidently sharing in the view of the Assessors that that amount ought to be deducted from the rent of Rs. 424. But he goes beyond Jodoolall Mullick with respect to the number of years'' purchase, and gives 18 years. Now, with regard to that, we think that the learned Judge has gone too far. Heralall Seal, one of the witnesses for the claimant, although in his examination-in-chief he put it as high as 18 years, says in cross-examination that at an average rate the land could have been bought at 14 or 15 years'' purchase. We think, on the evidence, that 16 years'' purchase would be a fair allowance. But in saying that 16 years'' purchase is a fair allowance in this case, we must not be understood as laying that down as a rule in cases of this kind. Every case must depend on its own circumstances,

on the evidence given and the nature of the property. The number of years'' purchase which it would be right to allow with regard to one sort of property, might not be a fair allowance for other kinds of property, and we wish to guard ourselves against being understood as laying down any rule as to the number of years'' purchase which ought to be allowed. On the evidence, we think that 16 years'' purchase is sufficient to allow in the present case.

4. The other question which has to be considered is as to the deduction which should be made from the total quantity of land for what may be supposed to be generally unlit, and what would be required for lanes and by-ways. Mr. Rowe, one of the witnesses for the Justices, says that in tenanted lands about one-third is usually taken up by lanes and vacant lands, and it seems to us that the allowance of the learned Judge of the Small Cause Court for the land which may be expected to yield a rent is not sufficient. He has allowed too little, as Jodoolall Mullick has allowed too much; Jodoolall Mullick having deducted for only lanes and by-ways. We are of opinion that two-thirds of the land might reasonably be expected to be let upon an average number of years, although half only is now let; and in estimating the amount of compensation to be allowed, we think it right to take two-thirds of the land as let, and as the part unlit would probably be the worst part of the land, the two-thirds may fairly be expected to produce a rental at the same rate as the half now produces.

5. Applying these principles to the case, the result is this; the present rental of half the land is Rs. 424 a month. If to that we add one-third, which is equivalent to one-sixth of the whole land, we get the rental of two-thirds of the whole. That sum is Rs. 141-3-3, making a total of Rs. 565-3-3 as the monthly rental of the land. That makes an annual rental of Rs. 6,783-9-6, being little short of Rs. 6,784. Deducting from that 12 per cent, for taxes and collection charges amounting to Rs. 814-0-7, we have Rs. 5,969-8-9, which at 16 years'' purchase is Rs. 95,518-2-4, and that is the amount of compensation which we think ought to be awarded, to that the 15 per cent, is added, the amount is Rs. 1,09,845-9-7, which is the sum we consider ought to be awarded. In the Court below Rs. 1,492-2-5 was allowed to the claimant as costs, and to each of the Assessors Rs. 300. As we in fact give to the claimant more than the learned Judge gave, it is equally proper that he should have his costs. I do not know whether under the Act it is necessary for us to make any order about those costs, but in case of any doubt we confirm the allowance of costs. With regard to the costs of the appeal, we think the parties should pay their own costs.