

(1920) 06 BOM CK 0024

Bombay High Court

Case No: None

Mangaldas Girdhardas Parekh

APPELLANT

Vs

The Assistant Collector of Prantij
Prant

RESPONDENT

Date of Decision: June 14, 1920

Acts Referred:

- Land Acquisition Act, 1894 - Section 3(b)

Citation: (1921) ILR (Bom) 277

Hon'ble Judges: Shah, J; Hayward, J; Crump, J

Bench: Full Bench

Judgement

Shah, J.

This is an appeal under the Land Acquisition Act from the award made by the District Judge of Ahmedabad to whom a reference was made at the instance of the claimant, who is the appellant before us.

2. The property with which we are concerned is bungalow No. 33 with the compound and out-houses which formed part of the Andheri Bagh. The property in question was acquired under the Land Acquisition Act and a declaration u/s 6 was made on the 29th of April 1913. Under that declaration three bungalows Nos. 33, 34 and 35 with the lands appurtenant to these bungalows and out-houses were acquired. It was declared that for residences of Government Officers in the Ahmedabad Cantonment the superstructures on the land specified together with all such rights, if any, over the sites thereof were required within the limits of the Ahmedabad Cantonment. The total area of the land with reference to the bungalow No. 33 is stated in the declaration to be 36, 137 square yards 7 square feet. The present appellant appeared before the Collector and contended that he was owner of the superstructure as well as of the land and of the out-houses and trees. The Collector came to the conclusion that the present appellant was owner of the superstructure and that the Government was the owner of the land. Accordingly he

awarded Rs. 4,500 in respect of the bungalow with out-houses and Rs. 150 as compensation for the garden with the statutory 15 per cent, on the total sum making a total of Rs. 5,347-8-0. He valued the land at Rs. 18,634 and the old buildings thereon at Rs. 160 and the trees at Rs. 400 and awarded all these sums with the statutory 15 per cent, to the Government. The claimant objected to this award and claimed that the superstructure was under-valued and that he was entitled to the full compensation in respect of the land, the old buildings and the trees, which was awarded by the Collector to the Government. The learned District Judge on a consideration of the evidence in the case came to the conclusion that the claimant before him was entitled only to the value of the superstructure and the garden and not to the value of the land. He was satisfied on the evidence that the Government and not the claimant was the owner of the land, and he made an award under which the sum determined by the Collector and accepted by him as representing the market-value of the land was awarded to the Government and the value of the bungalow and the out-houses which was fixed by him at Rs. 4,896 with the value of the garden fixed at Rs. 150 was awarded to the claimant. The total sum awarded to the claimant was Rs. 5,802-14-5 inclusive of the statutory 15 per cent. From this award the present appeal is preferred to this Court.

3. It may be mentioned that along with the reference relating to bungalow No. 38 there were two other references relating to bungalows Nos. 34 and 35. Different sums were awarded to the claimants in respect of the superstructures. Those claimants have not appealed to this Court. The judgment of the District Court relates not only to the property known as bungalow No. 33, but to all the three bungalows with the land constituting the whole of the Andheri Bagh; but in the appeal we are concerned only with bungalow No. 33 and the land appurtenant to that bungalow.

4. In support of the appeal two questions have been raised. The first is a question of law relating to the jurisdiction of the Court, and the second as a question of fact relating to the merits of the dispute between the claimant and the Government as to the title to the land.

5. The question of law, with which I shall deal first apparently was not raised in the lower Court, and there is no reference to it in the judgment of that Court. The question, however, is one of jurisdiction, and we have heard full arguments on that question. That question as stated on behalf of the appellant is that under the Land Acquisition Act it is not open to the Court to consider and determine any question of title to the land acquired as between the claimant and the Government. It is urged that the Government is not a person interested in the land within the meaning of the expression "person interested" as defined in Clause (b) of Section 3 of the Land Acquisition Act and that the question of title relating to the land and relating to the different interests of the claimants can arise under the scheme of the Land Acquisition Act only as between private claimants and that the Government cannot

be a claimant within the meaning of the Act to claim part of the compensation. Farther, it is urged that u/s 23 the Court has to determine the market-value of the land; and it is urged that the whole of the compensation for the property acquired must be awarded to the claimant and that the question of apportionment as between the Government and the private claimant cannot be determined in proceedings under the Land Acquisition Act.

6. That is broadly the argument urged on behalf of the appellant, and in support of this argument reliance is placed upon *Imdad Ali Khan v. The Collector of Farakhabad* (1885) 7 All. 817; *The Crown Brewery Mussoorie v. The Collector of Dhera Dun* (1897) 19 All. 339; *Shyam Chunder Mardraj v. Secretary of State for India* (1908) 35 Cal. 525. The judgment of the trial Court in [In Re: Esufali Salebhai](#), which was ultimately reversed in appeal is also relied upon in support of this argument. On the other hand it is urged that there is nothing either in the provisions or in the scheme of the Land Acquisition Act to prevent the Government from acquiring land with the building thereon in which they may be interested, and there is nothing in the Act requiring them to pay the claimant anything more than the value of his interest in the property. In other words it is urged that where the Government have admittedly any interest in the land, the claimant would be entitled under the Act to claim only the value of his interest in the land, and that it makes no difference, whether the interest of the Government in the land is admitted by the Claimant or whether it is a matter of dispute between the Government and the claimant as in the present case. It is urged that if it is a matter of dispute, it can be determined and ought to be determined in the present proceedings and that the claimant cannot claim anything more than the value of his interest in the property. In support of this contention the respondent relies upon the judgment of the appellate Court in *The Government of Bombay v. Esufali Salebhai* (1909) 34 Bom. 618, and reference is also made to several unreported cases in which this Court has considered and determined the question of title as between the Government and the private claimant in proceedings under the Land Acquisition Act. It is quite true and it is conceded by the counsel for the respondent, that in those cases the point was not expressly raised and considered. But it is urged that the view taken by the appellate Court in *Esufali's* case (1909) 34 Bom. 618 has been followed by this Court without challenge in all these cases.

7. We have considered the arguments on both sides and the decided cases bearing on the question; and after a careful consideration of the provisions and the scheme of the Land Acquisition Act in the light of the arguments urged on both sides I do not see any reason to doubt the correctness of the view taken by the appellate Court in *Esufali's* case (1909) 34 Bom. 618 nor do I see any reason to refer the matter to a Full Bench as suggested by Mr. Campbell in his argument. The view taken by the appellate Court has been followed in this Presidency as would appear from the several unreported cases to which Mr. Coyajee has referred in the course of the argument. It is quite true that under the Land Acquisition Act what is acquired is the

land which includes all that is stated in Clause (a) of Section 3 of the Land Acquisition Act. But in the case of any land with superstructure thereon, in which either the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government, it seems to me that it is open to the Government to acquire that property under the Act. When it comes to a question of determining the market value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property, it is open to the Court to determine what sum is really payable to the limited owner. The determination of that amount might involve the determination of the value of the interest of the Government in the land; and in determining that value it would be necessary to determine the extent of the interest of the Government. But ultimately the question that the Court has to decide is as to what is the amount of compensation payable to the claimant. The question of title in such proceedings is really incidental to the question of the determination of the market value of the interest of the claimant in the land acquired.

6. I think, therefore, that apart from the form in which, the award in such a case may be made, substantially the question is as to the market-value of the land and as to the part of the value to be paid to the claimant as representing the value of his interest in the land. That was the question raised before the awarding Officer and before the District Court and that really is the question on the merits before us. I think that the District Court had jurisdiction to decide the question and that we can and ought to decide the question in appeal.

8. As pointed out by Mr. Campbell, there is a difference of opinion on this point. The Calcutta and Allahabad High Courts have taken a different view of the question. It is desirable that on a question of such practical importance relating to the interpretation of an Act applicable to the whole of India such diversity of opinion should be avoided as far as possible. But it seems to me that this diversity can be properly avoided now either by a decision of the Privy Council On the point or by the Legislature making its intention clear in favour of one view or the other. It may be that the question as to whether the Court has power to determine the dispute as to title between the Government and a private claimant under the Land Acquisition Act assumes greater practical importance in view of the decision of their Lordships of the Privy Council in *Rangoon Botatoung Co. v. The Collector, Rangoon* (1912) IndAp 197, where it is held that an appeal from the High Court to the Privy Council was incompetent under the Land Acquisition Act. But after all questions of title between private claimants have to be determined under the Land Acquisition Act without the parties having the right to appeal to the Privy Council; and I do not see any particular anomaly or hardship in the Courts having to decide similar questions between the Government and a claimant without either party having the right of appeal to the Privy Council.

[His Lordship next dealt with the merits of the case and passed the following order.]

9. The result is that the appeal is dismissed and the award so far as it relates to the amount payable to the appellant is affirmed with costs.

Crump, J.

10. I agree.