

State of West Bengal

Vs

The Dalhousie Institute Society

Civil Appeal No. 26 of 1967

(J. M. Shelat, C. A. Vaidialingam JJ)

05.08.1970

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal by special leave by the State of West Bengal is directed against the judgment and decree, dated September 9, 1963, of the Calcutta High Court dismissing the cross-objection filed by the appellant in appeal form original decree No. 111 of 1954.
2. The dispute between the parties in this appeal relates to the title to the compensation amount awarded in the land acquisition proceedings to the site of Dalhousie Institute building, premises No. 34 Dalhousie Square. There is no dispute about the amount of Rs. 7,45,640/- awarded as compensation for the land. The appellant claimed the entire amount as being payable to it whereas, on the other hand, the respondent Dalhousie Institute Society (hereinafter to be referred as the Institute) claimed the amount for itself. Therefore, the question of title to the land which is in controversy between the appellant and the respondent has to be decided and on that will depend the right of the party entitled to the compensation amount.
3. Originally the properties acquired under the West Bengal Land (Requisition and Acquisition) Act II of 1948 (hereinafter to be referred as the Act) were No. 34 Dalhousie Square and certain other properties, namely premises No. 34/1 and 35, Dalhousie Square. The controversy regarding premises Nos. 34/1 and 35 Dalhousie Square had been close even at an early stage. Similarly the parties have agreed that the respondent Institute is entitled to the sum of Rupees 3,90,000/- awarded as compensation for the building standing on premises No. 34 Dalhousie Square. The Land Acquisition Officer referred to the Special Land Acquisition Judge the question regarding apportionment of the compensation amount in respect of the land, premises No. 34 Dalhousie Square.
4. The Special Land Acquisition Judge by his judgment dated July 28, 1953, held that the site 34 Dalhousie Square on which the Dalhousie Institute had been constructed was intended to be given as a grant to the respondent by the Government and that it was given as such for the purpose of putting up the Dalhousie Memorial Hall and Institute. The Special Land acquisition Judge further held that although the grant was an invalid one, the respondent has been in possession adverse to the Government for over 60 year and in consequence the Institute has perfected its title by such adverse possession. In this view the Special Land Acquisition Judge held that the compensation money in respect of the site belongs to the Institute and not to the Government. The Special Land Acquisition Judge further held that as the intention of the Government while granting the land to the respondent was to provide a site solely for the purpose of construction of the Dalhousie Institute and not for any

other purpose, the respondent is in the position of a trustee of the site for the said purpose. In consequence, he held that the compensation amount would not be withdrawn by the respondent except for the purpose of acquiring a new site for the purpose for which the original grant was intended to be made. We have not referred to the other findings recorded by the Special Land Acquisitions Judge with regard to the claim in respect of premises Nos. 34/1 and 35, Dalhousie Square, as well as the commutation amount awarded for the building on 34 Dalhousie Square because they are not material for the purpose of this appeal. The respondent filed an appeal against the view of the Special Land Acquisition Judge that the respondent was in the position of a trustee with reference to the compensation amount and placing restrictions regarding the manner in which the amount could be withdrawn.

5. Taking advantage of the appeal filed by the respondent, the State of West Bengal filed cross-objections disputing the Institute's title to the land as well as the compensation money. According to the State no grant of any land wither in fact or in law, valid or invalid, of any land was ever made to the Institute. The Institute, according to the State, was only permitted to put up a building on the site and the finding that the Institute has completed title by adverse possession was erroneous.

6. The appeal and the cross-objection were heard by the Division Bench of the Calcutta High Court. The learned Judges felt that the question whether there was a grant, valid or invalid in law, and the character of the respondent's possession of the land from about 1865 requires further careful and detailed consideration. The learned Judges were also of the view that from the various exhibits referred to by the parties before them further records may be available for the Government, the Corporation or the Institute, which may throw considerable light on the point in controversy between the parties. In this view the learned Judge felt that the parties must be permitted to adduce further oral and documentary evidences before the Special Land Acquisition Judge and that the appeal should be disposed of finally after the receipt of such evidence. According by order, dated June 23, 1959, the learned Judges, retaining the appeal and the cross-objection on the file of the High Court, directed the Special Land Acquisition Judge to record any additional evidence that may be adduced by the parties.

7. After remand it is seen that exception examining an Assistant Engineer on the side of the appellant State, no further oral or documentary evidence was adduced by the parties. The appeal and the cross-objection were taken up for final hearing after receipt of this evidence. The learned Judge by judgment and decree, dated September 9, 1963, agreed with the conclusions arrived at by the Special Land Acquisition Judge and dismissed the appeal filed by the respondent as well as the cross-objections filed by the appellant.

8. The respondent has not further challenged the dismissal of its appeal. Therefore the point that arose for consideration by the High Court in the cross-objection filed by the appellant alone arises for consideration in this appeal.

9. Mr. B. Sen, learned counsel for the appellant State, urged three contentions :

(i) In the order of remand passed by the High Court, dated June 23, 1959, the learned Judges have categorically held that the exhibits referred to by them in the order and relied on by the Special Land Acquisition Judge for recording finding in favour of the respondent do not establish the case of a grant or gift though invalid in law set up by the respondent. After remand there was no additional material before the learned Judges for coming to a different conclusion in favour of the respondent.

(ii) The respondent's specific case was of a grant or gift of the land in question and that is not established by the evidence in the case; and

(iii) The finding of the Special Land Acquisition Judge as well as the High Court that the respondent has completed title by adverse possession is erroneous. On the other hand, the respondent should have been held to be in permissive occupation of the land.

10. Mr. S. R. Banerjee, learned counsel for the Institute, has supported in full the finding recorded by the Special Land Acquisition Judge and the High Court negating the title of the State to the land.

11. We have been taken through the material evidence on record and we are satisfied that there is no scope for interfering with the decision under appeal.

12. Regarding the first contention of Mr. Sen, it is no doubt true that in the order of remand, dated June 23, 1959, the learned Judges have adverted to the material exhibits referred to in the award and have stated that from those exhibits the case of a grant or gift though invalid in law may not immediately or quire easily follow. But a full and complete reading of the discussion contained in the order of remand clearly show that the learned judges have not expressed a final view in the manner urged by Mr. Sen. On the other hand, they have stated in more than one place in the order that the indicated by them is only a prima facie view and that they are not pronouncing a final opinion on the matter with regard to the issue between the parties. Further is clear from the order of remand that the learned Judges were refereeing to some of the exhibits only to show that from those exhibits it could be gathered that further material may be available from the parties concerned for the production of which the must be given a further opportunity. We do not find any indication in the order of remand that the learned Judges have expressed a final opinion on the basis of the exhibits referred to by them. If that were so, the learned Judges could have very well proceeded to pronounce judgment as an order or remand would not have served any purpose whatsoever. Therefore, it follows that the first contention of Mr. Sen has to be rejected.

13. We will deal with the second and third contention of Mr. Sen that the specific case of a grant of a gift of the land in question as set up by the respondent has not been established, and that the finding about the respondent having completed its title by adverse possession is erroneous. According to Mr. Sen the evidence may at the most establish that at one stage the Government of India, in consultation with the State Government, intended to make a grant of some land; but when that land became non-available the question of making a grant of any further land never arose before the Government. On the other hand, the material evidence will only show that the Government permitted the Institute to put up a building on the land and be in permissive occupation. That is, according to the leaner counsel, the respondent is in the position of a licensee and as such no claim of a grant or of adverse possession can ever be sustained.

14. We are not inclined to accept these contentions. As both the Special Land Acquisition Judge and the High Court have elaborately considered that correspondence and other evidence on record, we do not think and useful purpose will be served by refereeing to them over again. We are in complete agreement with the High Court in the inference drawn from those materials. As early as November 1, 1860, in the letter Ext. 1 addressed to the Institute by the Home Department of the Government of India, it is clearly stated that 'the sanction of Her Majesty's Government has been given to the grant of the site referred to in the above-mentioned correspondence, for the Dalhousie Institute'. Exhibit 1

is in reply to a letter of December of the previous year addressed by the Institute to the Government, which is not before the Court. It is further stated in Exhibit 1 is that 'the Government-General in Council will accordingly be prepared to state the definite terms on which the ground will be made over to the Institute ...' There is no controversy that this letter relates to a Maidan and subsequently as it became non-available, a plot of land in the Dalhousie Square appears to have been thought of. Exhibit 1 categorically refers to 'the grant of the site' for the Dalhousie Institute and it also states that 'the ground will be made over to the Institute'. These expressions, in our opinion, clearly show that the intention of the Government from the Institute. Mr. Sen found considerable difficulty in explaining away the recitals in this letter. His attempt was to satisfy us that at the stage when Exhibit 1 was written, the Government of India did have an intention of making 'a grant of land in favour of the Institute', but when once the property referred to therein ceased to be available, the Government changed its mind and it was only prepared to give permission to the Institute to put up a building in 34, Dalhousie Square. We are of the opinion that the subsequent correspondence does not support the stand taken by Mr. Sen. On the other hand, they establish that the Government at no time gave up its idea of making a grant in favour of the Institute.

15. Exhibit 2, dated December 20, 1864, a letter from the Secretary to the Government of Bengal in the Public Works Department, to the Secretary to the government of India of the same Department, again states that 'the site is one which might be given at once which would be more suitable for the particular building it is proposed to construct than any other site in Calcutta'. The reference to the site in this letter is to No. 34 Dalhousie Square. Against the reply by the Government of India to this letter clearly states that "His Excellency in Council has approved the proposition of the chief Engineer to appropriate a portion of the Tank Square Garden to the Institute". A similar expression of appropriation of the site is to be found in Exhibit 4, dated January 12, 1865, which is a letter from the Government of Bengal to the Institute. In Exhibit 13, dated August 30, 1907 the respondent writes to the Assessor, Calcutta Corporation, that under Exhibit 3 the land in question has been granted as a gift in favour of the Institute and its boundaries have also been settled as early as 1868 and iron railing dividing the Institute and from the Public Square have also been erected by the Institute at the request of the Justices of the Corporation. The Institute also claims that it had vested interest in the land and the building put up on the same. Exhibit 15, dated April 11, 1930, is a very crucial and important document which conclusively established the case of grant set up by the respondent. That a letter addressed by the Surveyor and Valuer, Corporation of Calcutta, to the respondent. The Surveyor enclosed a copy of the letter No. 297-C, dated March 19, 1930, from the Secretary, Bengal Public Works Department, and requested the Institute to let him know the area of the land transferred unconditionally by the Government in 1865. The letter, dated March 19, 1930, of the Government of Bengal enclosed with Exhibit 15 is itself a letter to the Chief Executive Officer, Corporation of Calcutta. The Secretary of the Government of Bengal categorically states 'I am directed to say that from the papers available it appears that in January 1865 a portion of the Dalhousie Square Gardens including the building which covered Lord Hastings' Statue was made over to the Council of the Dalhousie Institute as a site for Memorial hall and Institute. How much land was transferred and what the boundaries of land so transferred were, is not known. From the records, however, it appears that the land was made over unconditionally and the Department receives no rent for it" This letter of the Government concludes the case against the appellant. The Government itself has admitted that there are papers available in their office and that the site in question had been made over to the respondent and it has been so made over unconditionally without receiving any rent for the same. This document completely destroys the claim made on behalf of the appellant that though originally there was an intention to make a grant of land, that intention was abandoned later on. On the other hand, the original intention to make a grant was

present at all times; and that there was a grant of this identical site is amply established by the documents referred to above and in particular the letter of the Government of Bengal just now referred to. Therefore, we are in agreement with the finding of the High Court that there was a grant of the site by the Government in favour of the Institute, as early as 1865.

16. There is no material placed before us to show that the grant has been made in the manner required by law though as a fact a grant of the site has been made in favour of the Institute. The evidence relied on by the Special Land Acquisition Judge and the High Court also clearly established that the respondent has been in open, continuous and uninterrupted possession and enjoyment of the site for over 60 year. In this respect the material documentary evidence referred to by the High Court clearly established that the respondent has been treated as owner of the site not only by the Corporation, but also by the Government. The possession of the respondent must have been on the basis of the grant made by the Government, which, no doubt, is invalid in law. As to what exactly is the legal effect of such possession has been considered by this Court in *Collector of Bombay v. Municipal Corporation of the City of Bombay*, 1952 SCR 43 : AIR 1951 SC 469 as follows :

".... The position of the respondent Corporation and its predecessor-in-title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor-in-title of the respondent Corporation took possession of the land under the invalid grant. This possession had continued openly, as of right and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title to it and its predecessor-in-title had been prescribing for during all this period, that it so say, the right to hold in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865"

17. The above extract established that a person in such possession clearly acquires title by adverse possession. In the case before us there are concurrent findings recorded by the High Court and the Special Land Acquisition Judge in favour of the respondent on this point and we agree with those findings.

18. The appeal fails and is dismissed. In the order, dated December 16, 1966, granting special leave, this Court had imposed a condition that the appellant should bear the costs of the respondent in any event. Now that the appeal fails even on merits, the respondent is entitled to its costs.

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