

# ALLAHABAD HIGH COURT

Krishna Bai

Vs

The Secretary Of State

(P Banerji, CJ. Sulaiman, J.)

27.04.1920

## JUDGMENT

### **P Banerji, CJ.**

1. This appeal arises out of an order passed by the District Judge of Cawnpore in a reference under Section 18 of the Land Acquisition Act. A certain area of land, approximating 9 acres, has been acquired for the erection of a European Civil Hospital at Cawnpore. The Collector assessed the compensation for this land with a few buildings and trees upon it at Rs. 30,000, Musammat Krishna Bai, who is the owner of this land, did not accept this amount and claimed Rs. 89,301 more. It appears that in 1895 the land had been purchased by Musammat Krishna Bai's husband for Rs. 2,000 on condition that it was to be used for the erection of bungalows and for no other purpose. The learned District Judge has accepted the calculation of the Collector on the following basis:

2. That under the new Rules of the Municipal Board only four separate bungalows can be built on this land, that the cost of building a bungalow which would yield Rs. 100 as monthly rent would be about Rs. 14,000, that accordingly four such bungalows will yield Rs. 4,800 a year, and their value at 16  $\frac{2}{3}$  years' purchase would be about Rs. 80,000. Deducting from this amount a sum of Rs. 56,000 as the cost of construction, the value of the land comes to Rs. 24,000. From this he has deducted the value of ground rent at 16 years' purchase amounting to Rs. 2,145 and thus calculated the net value of the land in question at Rs. 21,855. Adding 15 per cent. to this he has found the total compensation payable for the land to be Rs. 25,133.4.0. To this sum he has added further sums of Rs. 4,710 and Rs. 154 as values of existing buildings and timber respectively. The total of the compensation awarded thus comes to Rs. 30,000.

3. The learned District Judge seems to have been of opinion that Musammat Krishna Bai was only a limited owner of this property and he has, therefore, thought it desirable to direct that the money deposited in Court should be invested in the Indian War Loan and the lady should have only the interest on the amount.

4. On appeal to this Court Musammat Krishna Bai contends that the amount of the compensation awarded is too low, and that in any case the money deposited should have been ordered to be paid over to her.

5. As to the first point, the appellant's contention before us is that she is entitled to get compensation at the rate of Rs. 2 per square yard. Strong reliance is placed on the fact that the Municipal Board of Cawnpore has fixed a series of rates for the sale of nuzul land and that the rate fixed for sites in the Civil lines, in which the property in question is situated, is Rs. 10 per square yard. We are of opinion, however, that the rates which may have been fixed for sales of small plots of land would not ordinarily be a safe guide in calculating the value of a large area of land like 9 acres. At the same time we find that the calculation accepted by the District Judge is based on mere surmise. There is no evidence on the record to show that the construction of a house which would yield a rent of Rs. 100 per mensem would cost Rs. 14,000. Nor is there any evidence on the record to show that 16 2/3rds years' purchase is the prevailing rate in Cawnpore. The appellant, however, got the nuzul clerk of the Municipality examined as a witness, and he produced a municipal register showing the areas of lands let out on rent by the Municipality as well as the amounts of rent. Ignoring the cases where the land let out measured less than one acre and confining our attention to recent years only, we find that there are five instances which can give us an average of rent per acre realised by the Municipality when letting out large tracts of land in the Civil lines:

					Rs. A. p.
n 1907	... 1 Acre	0 Roods	13 Poles	were let out for	... 27 15 0
" 1910	... 1 "	2 "	23 "	do.	... 493 14 0
" 1911	... 2 "	2 "	24 "	do.	... 732 11 0
" 1911	... 4 "	3 "	33 "	do	... 148 12 4
" 1914	... 1 "	2 "	23 "	do.	... 521 1 9
	-----				
	11	3	36		-----
					1,924 6 1

6. Thus taking into account the five recent instances, an area of 11 acres 3 roods 36 poles was let out at an annual rent of Rs. 1,924.6.1. This gives us a rough average of over Rs. 161 per acre. The 9 acres of land may, therefore, be reasonably supposed to yield about Rs. 1,450 per year. Taking 16 2/3rds years' purchase as the correct basis of calculation the net value of the land of the appellant comes approximately to Rs. 24,166, instead of Rs. 21,855 which the Collector has found it to be. We have intentionally discarded out of the account the ground rent paid by the appellant, because in our opinion the net value of the land is always greater than its letting values and we think that we would not be far wrong if we take the letting value of the land as shown by the Municipal leases to be its net value.

7. The learned District Judge has added 15 per cent. on the net value of the land and then awarded compensation for the buildings and timber. In our opinion this was not a correct method

of calculation. The total value of the property ought to have been found first and then 15 per cent added on this total as compensation for compulsory acquisition, The value of the existing buildings has been found to be Rs. 4,710 and that of the standing timber as Rs. 154, Adding these sums to the net value of the land the total comes to Rs. 29,030. If we add to it 15 per cent for compulsory acquisition, the grand total comes to Rs. 33,384.

8. We think that in the absence of any positive evidence of the prevailing price of large tracts of adjoining lands the above calculation would be a more satisfactory and safer basis of decision than the one adopted by the learned District Judge which is based on mere surmise. We accordingly find that Rs. 33,384 was the amount of the compensation to which the appellant was entitled at the time when her property was acquired.

9. We are further of opinion that inasmuch as there is no evidence on the record to show that the appellant had only a limited interest in this property, and that on the other hand it was contended on her behalf that under a custom prevailing in Bikaner where her husband came from, she was the absolute owner of her husband's property, the Court below was not justified in proceeding under Section 32 of the Land Acquisition Act as it purports to have done. As no other claimant had come forward and asked the Court to protect his right, the order directing that the amount of the compensation should not be paid to the lady personally but should be invested in the Indian War Loan and she should be allowed only the interest on that amount, was not a proper order. If there are really any reversioners and they fear that the money in her hands would be wasted by the lady, it would be open to them to seek relief in a Court of law. We accordingly allow the appeal in part and modify the decree of the Court below to this extent, that we award Rs. 33,384 as compensation for the property in question instead of Rs. 30,000 awarded by the Judge, and we further declare that the appellant is entitled to obtain the whole of the aforesaid amount and not only the interest on this sum, and set aside the order of the Court below in this respect. The parties will receive and pay costs in both Courts in proportion to success and failure and the costs in this Court will include fees on the higher scale.

