

CALCUTTA HIGH COURT

Maninda Chandra Nandi

Vs

Secretary of State

(Fletcher and Richardson, JJ.)

24.03.1914

JUDGMENT

Fletcher J.

1. This is an appeal from a judgment of the learned special Land-Acquisition Judge of 24-Perganas, dated the 8th May 1911. The land which has been 'acquired for a public purpose is a certain piece of bustee land situated in Halsi Bagan within the original jurisdiction of this Court, that is, within the limits of the Presidency town, and the statutory powers under which the land has been acquired are the Land Acquisition Act of 1894 as varied by Section 557 of the Calcutta Municipal Act (Bengal III of 1899). The point that has been argued before us in this appeal turns solely upon the question whether the learned Judge of the Court below placed a right construction on the provisions of that section of the Calcutta Municipal Act and was right in excluding evidence as to sales of the properties in the neighbourhood which were not sales of bustee lands. The learned Counsel for the appellant conceded that unless he could satisfy us that the learned Special Land-Acquisition Judge had erred in excluding that evidence, there was no evidence before us on which we ought or could award to the appellant more than Rs. 590 a kattah which has been allowed by the lower Court.

2. Now, Section 557 of the Calcutta Municipal Act provides as follows: "Any land or buildings which any Municipal authority is authorised by this Act to acquire," that means one of the three Municipal authorities, namely, the Corporation, the General Committee, and the Chairman who are the three Municipal authorities to carry into effect the Act, "may be acquired under the provisions of the Land Acquisition Act, 1894; and for that purpose the said Act shall be subject to the following amendments." We may here mention only one of the amendments which is necessary for our purpose and that is (c) which provides "the market-value of the land or building shall be deemed, for the purposes of clause first of Sub-section (1) of Section 2 2/7 of the Land Acquisition Act, to be the market-value according to the disposition of the land or building at the date of the publication of the declaration relating thereto under Section 6 of the said Land Acquisition Act." The clause is not very happily worded but it is quite clear what it

means, namely, that when a land is compulsorily acquired, any use to which the land may be put in future should not be taken into consideration in determining its value but the valuation shall be determined according to the market-value then existing of the land or building in the position that the matters then were. That seems to me quite clear on the terms of that sub-section and that was the view which was adopted by this Court in the case of *Harish Chandra Neogy v. The Secretary of State for India*¹. At page 878 the learned Judges in giving the judgment made the following remarks: "Section 557 of the Calcutta Municipal Act precludes any valuation based on the most advantageous disposition of land, e.g., a valuation of bustee land on the supposition of its adaptability for use as building land to carry expensive structures which is the most advantageous use to which the land can be put in Calcutta." With these remarks I entirely agree. It seems to me that Sub-section (c) of Section 557 of the Calcutta Municipal Act precludes evidence being given of other purposes to which bustee lands can be put in future. Then comes Sub-section (d) of Section 557. Sub-section (d) provides the market-value of the land or building shall, until the contrary is shown, be "presumed for the purposes of the said clause first of Sub-section (1) of Section 23," which means Section 23 of the Land Acquisition Act of- 1894, "to be twenty-five times the annual value of the property, as entered in the assessment-book prescribed by this Act." That of course is a rebuttable presumption because the sub-section states that that presumption is to be made only until the contrary is shown, and it is only until the contrary is shown that the Court is entitled to presume that twenty-five times the annual value of the property as entered in the assessment-book is the value of the property within the meaning of Sub-section (c). The only point in this case is, therefore, whether the learned Judge of the Court below rightly excluded the evidence, as appears, first of all, from p. 141 of the printed paper book relating to the under tenants and the rents paid by them for land and structures thereupon. In my opinion, the learned Judge rightly refused to admit evidence relating to the under tenants and the rents paid by them; and that matter is not relevant for the purpose of ascertaining the market-value as defined by Sub-section (c) of Section 557. The other evidence which the learned Judge rejected, was the questions put to a valuer with regard to sales of other lands in the neighbourhood which were not bustee lands. In ordinary cases under Section 23 of the Land Acquisition Act, that evidence would have been admissible, but the case of *Harish Chandra Neogy v. The Secretary of State for India* (1907) 11 C.W.N. 875 to which I have already referred, shows quite clearly that, in the opinion of the learned Judges in that case such evidence is not admissible; and with that opinion I agree. It seems to me that the learned Judge, was perfectly justified in refusing to allow these question to be put to the witness Krishna Chunder Banerjee as appeals from pp. 143 and 144 of the paper-book before us. That being so, the learned Judge, in my opinion, proceeded on a correct basis to arrive at the value of this land as provided by Section 557 of the Calcutta Municipal Act. That being so, the present appeal fails and must be dismissed with costs.

Richardson, J.

3. I agree.

Cases Referred.

¹(1907) 11 C.W.N. 875, 878