APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Richardson.

1912

May 21.

MANMOHAN DUTT

v.

COLLECTOR OF CHITTAGONG.*

Land Acquisition—Compensation—Apportionment of Compensation-money—Method of Assessment—Government as landlord, share of.

In assessing the amount of compensation due to the landlord, regard must be had to the question of how much the landlord is actually realising from the land.

The Government, in its capacity as landlord, is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken, together with 15 per cent. for compulsory acquisition, and something more in respect of the possibility of the enhancement of the value of the land thereafter.

The Government is not entitled in law to a higher proportion on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise.

APPEAL by Manmohan Dutt and others, the heirs and legal representatives of the claimant Jagat Chandra Dutt.

This appeal arose out of land acquisition proceedings in the district of Chittagong. The land was *noabad*, and the parties to the proceeding were the Government as landlord, Jagat Chandra Dutt and others as *jotedars*, and Shariatullah as *dar-jotedar*. The total amount awarded was Rs. 1,251-10-4, of which $\frac{6}{16}$th portion was apportioned to the Government as proprietor, $\frac{3}{16}$ to the *jotedars* and $\frac{7}{16}$ to the *dar-jotedars*. A reference was made to the Civil Court under section

* Appeal from Original Decree, No. 285 of 1909, against the decree of F. J. Jeffries, District Judge of Chittagong, dated March 22, 1909.

18 of the Land Acquisition Act at the instance of one of the under-tenants. It was contended, *inter alia*, by the claimants that the share awarded to Government was too high and that Government was entitled only to the capitalised value of the rent payable, that the compensation money should be calculated upon the annual value after deduction of the Government revenue and that Government was not entitled to have 6 annas of the profits in addition to its rent. On behalf of Government it was urged that the share taken by Government was warranted by the usage which had sprung up in the district where extensive land acquisition proceedings had been taken for the Assam-Bengal Railway, that the usage had hitherto been acquiesced in by everyone concerned and that as landlord of a temporarily-settled estate, the rent of which is indefinitely liable to enhancement, Government was fairly entitled to the proportion awarded. The Judge upheld the Collector's apportionment.

The other points raised in the case were as regards the relationship between Jagat Chandra and others and Shariatulla, and the share of the compensation money to which each of the above sets were entitled.

Babu Tarakishore Chaudhuri (with him *Babu Dheerendralal Kashtgir* and *Babu Sateendranath Mukherjee*), for the appellants. There is no custom or usage to the effect that Government is entitled to a 6-annas share. The practice relied upon by the Government has not acquired the force of usage or custom. The Government in its State capacity is not entitled to any share, because the proportionate revenue has been deducted in calculating net profit of the land for which compensation has been assessed. The Government, in the other capacity, is in the position of a private *zemindar* in respect of *noabad*

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lands in Chittagong, and is not entitled to anything more than the capitalized value of the proportionate revenue payable for the land. The lower Court has erred in holding that with reference to the compensation money, the Government has a double interest as the State and as landlord. The chance of enhancement is not indefinitely large. The usual rate of 2 annas in the rupee after 15 years stands good here as in other cases. My occupancy right has been recognized by the Government in the *patta* granted to me, and it has no power to dispossess me.

The under-raiyat is not entitled to any share. A lease for more than 9 years is illegal. Shariatulla has not been able to prove that he spent any money on the land. He cannot claim permanent interest.

The Senior Government Pleader (*Babu Ram Charan Mitra*), for the Secretary of State. The usage has been clearly established. There should be some provision for loss of revenue and chance of enhancement. The Government has here a double capacity and loses doubly.

Babu Kshiteesh Chandra Sen, for Shariatulla (respondent). The *patta* creates permanent right and Shariatullah acquired right of occupancy.

Babu Tarakishore Chaudhuri, in reply. As there is a conflict of decisions on the point whether such a lease is invalid or not, the matter should be referred to a Full Bench.

Cur. adv. vult.

STEPHEN AND RICHARDSON JJ. This is an appeal from a decision of the District Judge of Chittagong on a reference under section 18 of the Land Acquisition Act of 1894. The decision under appeal was arrived at on a remand from this Court which prescribed the way in which the lower Court has in fact

dealt with the case. The question that the Court had to try under these circumstances was how a sum of Rs. 1,251-10-4 awarded as compensation for land acquired under the Act should be apportioned. The three parties interested are the Government who are the *zemindar*, Jagat Chandra Dutt and others described by this Court as *jotedars* and Shariatullah and another similarly described as under-raiyats, and the lower Court has apportioned the compensation money to these three parties, respectively, in the proportions of six, three and seven annas.

The first question that we have to decide is whether the apportionment of a 6-anna share to the Government in their capacity as *zemindar* is correct. The land acquired, namely 4·56 kanis, is part of an area of 1 drone 4 kanis odd of land which was settled with Jagat Chandra in 1898 for fifteen years at a rent of Rs. 20. Were Jagat Chandra's rent fixed in perpetuity, it would be enough to capitalize this rent according to the rule laid down in *Dinendra Narain Roy* v. *Tituram Mukerjee* (1) in order to arrive at the share due to Government. As this is not the case, this alone will not be sufficient and some other means of calculation must be adopted. The lower Court has seen fit to allow the *zemindar* six annas of the whole compensation, chiefly on the ground that this has frequently been done, whether by the consent of the parties or not, in other similar cases. We cannot regard this method of assessment as satisfactory, as it leaves out of sight the question of how much the landlord is actually realising from the land, a fact which must have some bearing on the question of the amount of compensation, due to him. We cannot therefore uphold the decision of the lower Court in awarding Government a 6-anna share. But they are no

(1) (1903) I. L. R. 30 Calc. 801

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doubt entitled to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent. for compulsory acquisition, and something more in respect of the possibility of the enhancement of the value of the land hereafter. How this is to be assessed, we will consider later.

The next point dealt with by the lower Court is Jagat Chandra's position. We agree with him that he must be taken to be holding now as a raiyat. The chief ground on which the Judge relies for this finding is that when the land was settled in 1898, Jagat was described as a settled raiyat and Shariatulla as an under-raiyat. It is argued that when Jagat took possession of the land of which the acquired land is a part, and which he treated as an accretion to his jote, he at once made it over to Shariatulla on a permanent lease, and since then it has been cultivated by Shariatulla, who also conducted litigation respecting it. This looks as if Jagat treated it as a tenure-holder; but the action of the Government in settling it as they did was acquiesced in by both parties, and the question whether Jagat is now a tenure-holder is raised in this case for the first time. The conclusion to be drawn from the action of the Government is therefore not rebutted, and we hold that Jagat is now a raiyat and Shariatulla an under-raiyat. Taking Jagat Chandra to be a raiyat, we have to consider the relation in which he stands to Shariatulla. In the Court below the latter set up a claim to a permanent *dar-raiyati* right by custom. This failed and has not been pressed before us.

Jagat, however, has again raised a contention that he failed to substantiate in the lower Court to the effect that the permanent lease he granted to Shariatulla is void by force of section 85 (2) of the Bengal

Tenancy Act as being a sub-lease by a raiyat for a term exceeding nine years.

That, however, is not a complete statement of the question between Jagat and Shariatulla, because it appears that on the one hand when the lease was granted in the year 1894, the condition of things was such that there would seem to have been then no bar to the registration of the lease, and on the other hand rent is now being paid not under the lease but under the settlement of the year 1898. In the peculiar circumstances of the case and for the particular purpose in view, it is in our opinion unnecessary to base our decision of the question before us on an inquiry into the question to what extent (if any) the relationship between Jagat Chandra and Shariatulla is governed by the lease, or to consider the effect of the various cases which were cited at the Bar in connection with the provisions of section 85 of the Bengal Tenancy Act. It is sufficient to say that regard being had to the history of the land and of Shariatulla's connection therewith, to the *status quo* when the proceedings under the Land Acquisition Act were commenced, and to the probability that the state of things which then existed would have continued at any rate till the expiry of the term of the present settlement, we see no reason to differ from the learned District Judge as to the proportion in which the balance of the compensation available after deducting the amount payable to Government should be divided between them. Such a division will in our opinion meet the justice of the case.

In the result, therefore, we hold that the compensation should be apportioned among the three parties concerned as follows: Government receives a revenue or rent of Rs. 20 from the property, and it loses a chance of enhancing the rent of the land

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after the determination of the 15 years. This will amount to something, though as we may suppose that the land is best used as a brickfield, it will not amount to much. We therefore award to Government so much of the compensation as will correspond to thirty years' purchase of the rent that accrues due in respect of the land taken which in this case is to be taken to include the statutory 15 per cent. As to the relative interests of Jagat and Shariatulla, though the figures in the case may give us some indication of how to assess them, we prefer to follow the plan adopted by the lower Court, and direct that after Government claims have been settled, the balance of the compensation money shall be awarded to Jagat and Shariatulla in the proportions of three to the former and seven to the latter.

The appeal is allowed accordingly, and the case is remitted to the lower Court that the compensation may be awarded on the lines we have indicated. Jagat is entitled to his costs against the Government, and Shariatulla to his against Jagat.

The appellants will be entitled to their costs in the remand order in this case both here and in the lower Court. The hearing fee is to be divided according to the respective shares.

S. M. *Case remanded.*