

For these reasons, their Lordships are of opinion that the judgment of the High Court is right and that this appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellants will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellants: *T. L. Wilson & Co.*
Solicitors for the respondents: *Downer & Johnson.*

J. V. W.

1916
NRITYAMONI
DASSI
v.
LAKHAN
CHANDRA
SEN.

APPELLATE CIVIL.

Before Holmwood and Imam JJ.

DALCHAND SINGHI

v.

1916
Jan. 11.

THE SECRETARY OF STATE FOR INDIA.*

Land Acquisition—Godowns used as servants' residence—House or building whether part of—Acquisition of such godown alone, legality of—Land Acquisition Act (I of 1894) ss. 49 (1), 54—Practice—Appeal.

Godowns necessary as residence for servants are part and parcel of a building [within the meaning of s. 49 (1) of the Land Acquisition Act] being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence.

The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act.

It has never been doubted that an appeal would lie in the case of such an order under that section.

Hasun Molla v. Tasiruddin (1) distinguished.

APPEAL by Dalchand Singhi, the claimant.

* Appeal from Original Decree, No. 397 of 1915, and Rule No. 929 of 1915, against the decree of H. P. Duval, Special Land Acquisition Judge, 24-Parganas, dated June 29, 1915.

(1) (1911) I. L. R. 39 Calc. 393.

1916
 DALCHAND
 SINGHI
 v.
 THE
 SECRETARY
 OF STATE
 FOR INDIA.

In this case the Calcutta Municipal Corporation had moved Government to declare that, for the purpose of improving the junction of Camac Street and Short Street, 1 chitack 26 square feet of land covered by part of some servants' quarters should be acquired out of premises No. 24, Camac Street belonging to one Dalchand Singhi, who had let out the house for some years in two flats each with its separate kitchen and servants' quarters. The main house was situated almost on Short Street having to the south a tennis lawn facing east and west with a row of out-offices beyond used as stables, etc. The main entrance at present was to the north-west from Camac Street, the second entrance from Short Street having been closed by the tenants. The proposal was to acquire a triangle (its two sides being 11 feet 10 inches and 12 feet) on the north-west corner of the compound, taking away thereby the whole of one and part of a second godown at the corner of the premises. Before the Land Acquisition Collector, 24-Parganas, the claimant contended that the loss of those godowns would affect the full and unimpaired use of the house and consequently the matter was referred to the Special Land Acquisition Judge, 24-Parganas. At the request of the parties the Judge visited the house and, although it was pointed out that new servants' quarters could not be erected without taking away the tennis court, dismissed the claimant's reference observing as follows:—

“The house is already right on Camac Street and the extra few feet of land taken away can make very little difference. Mr. Collingwood (a house agent) is not prepared in his evidence to say that the letting value of the house would be permanently affected if this second godown at the entrance is taken away. Admittedly carriages do not go into the compound now. The entrance therefore in Short Street could be equally well used and if a wall is built on the Camac Street corner, there would be no greater nuisance from dust and noise than there is at present. In this view I must

hold that the full and unimpaired use of the house, as a house, even though the present tenant of the downstairs flat may not like to live there, will not be impaired by this godown being taken away. It may mean that a servant who has hitherto lived in the premises would have to live outside in the future, but that is not a sufficient reason in my opinion for holding that the small part wanted is necessary for the full and unimpaired use of the house. I therefore dismiss the claimant's reference with costs."

Being dissatisfied with this order the claimant preferred this appeal to the High Court.

Babu Provas Chandra Mitra (with him *Babu Jnanendra Nath Sarkar* and *Babu Uma Charan Laha*), for the appellant. Under the provisions of section 49 of the Land Acquisition Act, I requested that the whole property should be acquired and the Collector referred the question to the Civil Court.

Babu Ram Charan Mitra, for the respondent. I have a preliminary objection. Section 54 of the Land Acquisition Act allows an appeal only from an award. If there is no determination of value, as here, no appeal will lie: *Hasun Molla v. Tassiruddin* (1). The sole question here is whether this mali's godown is part of the house. See section 25 for meaning of "award" of which there is no definition in this Act. Reading section 54 with section 25 I submit that the present appeal is incompetent.

[HOLMWOOD J. We should have to interfere in revision on the ground that the Judge has gone quite beside the question to be decided, *viz.*, does the land form part of the house?]

Babu Provas Chandra Mitra, for the appellant. I submit that an appeal does lie. The following rulings—*Venkataratnam Naidu v. The Collector of Godavari* (2), *Nita Ram v. The Secretary of State for India* (3), *Khairati Lal v. The Secretary of State for India* (4) were all decisions on appeal.

(1) (1911) I. L. R. 39 Calc. 393.

(3) (1908) I. L. R. 30 All. 176.

(2) (1903) I. L. R. 27 Mad. 350.

(4) (1889) I. L. R. 11 All. 378.

1916
 DALCHAND
 SINGHI
 v.
 THE
 SECRETARY
 OF STATE
 FOR INDIA.

[HOLMWOOD J. In *Khairati Lal v. The Secretary of State for India* (1), the appeal was heard where they held that the whole property and not a portion could be acquired.]

In *Nita Ram v. The Secretary of State for India*(2), only a small portion of garden was taken, not so in *Venkataratnam Naidu v. The Collector of Godavari* (3) which is on all fours with the present case. *Khairati Lal v. The Secretary of State for India* (1) is most in my favour. The onus is on Government to show this portion is not necessary for the proper enjoyment of the house. I submit that these godowns being the servants' quarters are part of the house. The Collector before making the valuation referred the matter to the Special Judge, 24-Parganas, who is the Land Acquisition Judge for Calcutta as well.

[HOLMWOOD J. (to respondent). What have you to say to this?]

Babu Ram Charan Mitra. Does the taking of a small piece of land matter?

[HOLMWOOD J. One cannot live without servants. In every other country except India servants live under the same roof as the master.]

Babu Provas Chandra Mitra. As it is, the premises has so little servants' quarters that if more be taken it would become highly inconvenient.

HOLMWOOD AND IMAM JJ. This is an appeal from an order of the Special Land Acquisition Judge at Alipore on a reference made by the Collector under section 49 (1) of the Land Acquisition Act. It appears that the owner of the house demanded a reference on the point on the ground that the cutting of the corner

(1) (1889) I. L. R. 11 All. 378. (2) (1908) I. L. R. 30 All. 176.

(3) (1903) I. L. 27 Mad. 350.

of his compound with the whole of one and part of a second godown near the gate would be the acquisition of a part of his house contrary to the provisions of the Act. The learned Collector in making the reference drew attention to the question of what would be reasonably required for the full and unimpaired use of the house, but he very properly made the reference in terms of the section for the determination of the question whether the land proposed to be acquired does or does not form part of the house. The learned Special Land Acquisition Judge appears to have entirely ignored this question which is the only question he had to decide and to have based his decision on a clause in section 49 which allows him to take into consideration the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of a house, manufactory or building. That such a question should be taken into consideration where the circumstances allow there can be no doubt. But it cannot be held that that is the only question, or indeed the main question to be decided.

In appeal before us a preliminary objection is taken that no appeal lies, and the authority of *Hasun Molla v. Tasiruddin* (1) is cited. That is direct authority only for the proposition that an order of the Special Land Acquisition Judge refusing to restore a claim case by setting aside a decree passed *ex parte* for default of the claimant, is not an award and does not come within section 54 of the Land Acquisition Act, but the learned Judges who decided that case pointed out that in every case the order complained of must be considered and the Court has to see whether that order is an award or any part of an award. An order of this nature has been dealt with in appeal on

(1) (1911) I. L. R. 39 Cal. 393.

1916
 DALCHAND
 SINGHI
 v.
 THE
 SECRETARY
 OF STATE
 FOR INDIA.

1916
DALCHAND
SINGHI
v.
THE
SECRETARY
OF STATE
FOR INDIA.

several occasions by the Allahabad Court and by the Madras Court, and it has never been doubted that an appeal would lie. But assuming that it did not lie, we should certainly have to interfere in this case in the exercise of our powers of revision which we have been asked to exercise by a petition upon which a Rule has been issued.

We have already noted that the learned Judge's judgment had altogether missed the point for adjudication; and the only point for consideration is whether these godowns do or do not form part of the premises which consist of a gentleman's house and the necessary out-buildings attached to it, or whether they are separate pieces of land which can be taken away without detriment to the reasonable requirements for the full and unimpaired use of the house. In deciding the latter point the learned Judge makes use of a somewhat curious argument. He says that because the accommodation for servants is already extremely defective it cannot injure the owner to make it still more defective. This is an argument to which we cannot accede. The fact is that these two godowns which the learned Judge calls "durwan's godowns" are the only servants' house properly speaking in the whole of the premises. The premises have been let in flats apparently for many years and there are two kitchens one on each side of the house which of course cannot be used as residences for the servants. There is a stable and there is a very small hut by the side of the stable which is said to be the residence of the sweeper. Where the superior servants of the two tenants live we are at a loss to conceive, unless they live in these durwan's lodges. The Judge himself shows that no durwan is required because he says no carriages ever enter the compound. It seems to us that these two godowns are necessarily

part and parcel of the building and a most important part of that building for the purpose of letting it out to gentlemen as a place of residence.

We must, therefore, set aside the order made by the learned Judge and direct that this portion of the building be not acquired unless the whole premises are acquired by the Land Acquisition Collector. The costs given against the claimant in the lower Court must be refunded, if paid, and there will be costs of this hearing in favour of the appellant.

The Rule will be made absolute for the same reasons without costs.

G. S.

Appeal allowed.
Rule absolute.

1916
DALCHAND
SINGHI
C.
THE
SECRETARY
OF STATE
FOR INDIA.

CRIMINAL REVISION.

Before Greaves and Walmsley JJ.

ABDUL ALI CHOWDHURY

v.

EMPEROR.*

Security to keep the Peace—Conviction under s. 143 of the Penal Code—Absence of finding of acts involving breach of the peace or evident intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1898) s. 106.

To bring a case within the terms of s. 106 of the Criminal Procedure Code, the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same, or at all events the evidence must be so clear that,

* Criminal Revision No. 1159 of 1915, against the order of H. A. Street, Sessions Judge of Sylhet, dated July 28, 1915.

1915
Oct. 28.