APPELLATE CIVIL.

Before Woodroffe and Walmsley JJ.

1921

Jan. 21.

R. C. SEN

v.

THE TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA

AND

THE LAND ACQUISITION COLLECTOR OF CALCUTTA.*

Land Acquisition—Award—Piecemeal acquisition—Land Acquisition Act (I of 1894) ss. 6 to 9, 11.

Where there is one holding there cannot be piecemeal acquisition, as the Land Acquisition Act refers only to one notice, one proceeding, and one award to be given, taken, and made regarding one holding and one ownership.

But when the Collector in obedience to the decision of a Court to which he was subject desisted, pending an appeal from that decision, from proceeding with the acquisition of the portion of the premises affected by that decision, he is not thereby debarred from further proceeding with the acquisition when a Court superior to that which gave the decision declared the latter to be erroneous.

APPEAL by R. C. Sen, Manager, Bijni Court of Wards, in place of the late Rani Abhayeswari Debi, plaintiff.

This suit had been originally instituted by Rani Abhayeswari Debi of the Bijni Estate who was the absolute owner of premises No. 147 Russa Road South. On her death the Court of Wards took charge of her estate and was represented in this suit by the Manager, Mr. R. C. Sen. Plaintiff sought to restrain

* Appeal from Original Decree No. 12 of 1919, against the decree of Siddeswar Chakravarty, Subordinate Judge of 24-Parganahs, dated Sep. 13, 1918.

the Trustees for the Improvement of Calcutta and the Land Acquisition Collector, Calcutta, from acquiring a portion of premises No. 147, Russa Road, South. In connection with Street Scheme No. V a declaration No. 1827 L.A., dated 16th February 1915, had been published in the *Calcutta Gazette* of 17th February 1915 for the acquisition of 1 bigha 16 chittacks, 3 square feet of land, including a portion of the tank, which forms the eastern part of the aforesaid premises belonging to the plaintiff. But the special notice under section 9 of the Land Acquisition Act had been served on the plaintiff for the acquisition of 14 cottas 10 chittacks 27 square feet of land being only a portion of the tank. Actually, however, a part of the portion of the tank measuring 8 cottas 4 chittacks 34 square feet was only acquired, and an award made for the same by the Collector. The plaintiff having refused to accept the price and compensation offered by the Collector, a reference had been made to the Court of the Special Judge which was still pending.

Plaintiff alleged that in consideration of the plaintiff having given up her right to claim compensation for defendant No. 1 filling up the remainder of the tank without her permission, the Collector had made an agreement abandoning the acquisition of the remainder of the portion of the tank and eastern land ; but in spite of this, the Collector was attempting to acquire the same by serving a fresh notice on the plaintiff, hence the plaintiff had brought this suit for restraining the defendants from making the said acquisition. Both defendants contested the suit, the principal contention being one of fact, viz., that the Collector never entered into any such agreement as alleged in the plaint, and that the acquisition of the remaining land had never been given up or abandoned. It was also contended, *inter alia*, on behalf of the defendants

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that the acquisition beyond the road alignment had been held temporarily in abeyance in view of the decision in the case of *The Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghosh* (1) and pending the Full Bench reference in the case of *Mani Lal Singh* v. *Trustees for the Improvement of Calcutta* (2); that the decision of the Full Bench being in favour of defendant No. 1 the acquisition of the remaining land covered by the declaration had been proceeded with, and that the plaintiff was therefore not entitled to any injunction.

The learned Subordinate Judge of 24-Parganas dismissed the suit with these remarks:—"The true criterion in such a case is to see whether the proceedings of the Collector terminated. If they did terminate it would not be open for him to acquire the remainder without a fresh declaration. If, for instance, after acquisition of a part no further proceedings were taken for a large number of years, and if there is no sufficient reason for the part acquisition it might be fairly presumed that the proceedings terminated. But in the present case sufficient cause has been shown by the defendants to keep in abeyance the acquisition of the remainder, and as soon as the cause was removed further proceedings have been taken. I hold that this is quite within the power of the defendants. The plaintiff can claim compensation for the delay under section 48 A of Act V of 1911 or may have the award recalled and one entire award made for the whole land". The plaintiff thereupon preferred this appeal to the High Court.

Mr. H. D Bose (with him *Babu Manmatha Nath Mukherjee*, *Babu Santimoy Majumdar* and *Babu Promatha Nath Banerji*, for the appellant.

(1) (1916) I. L. R. 44 Calc. 219. (2) (1917) I. L. R. 45 Calc. 343.

The Land Acquisition Act does not contemplate anything beyond one declaration, one notice and one award. Sections 6, 7, 9, 16, etc., contemplate that the land for which the Collector is to make an award is the land under declaration in respect of which notices have been issued. "Land" in sections 7 and 8 is the entire land, *i.e.*, 1 bigha, etc., in this case under declaration. [Reads sections 9 (*1*), 9 (*2*).] Section 9. cl. (*3*), clearly refers to specific notice to each proprietor. [See section 10.] The notice contemplated in this section is not in respect of the entire land, 1 bigha, etc., but of only a specific holding, *i e.*, 14 cottas and 10 chittacks, etc., while the Collector takes only 8 cottas, etc. This shows that the Collector intended to abandon acquisition of the remainder. Sections 10, 11 and 12 refer to the particular holding. There could be separate proceedings in respect of separate holdings, but there must be one proceeding in respect of one holding. In respect of one holding there must be one notice and one award. There is nothing in the Land Acquisition Act itself which authorizes such a piecemeal acquisition. If piecemeal acquisition had been permissible, then the Collector may acquire 1 chittack of land out of 100 bighas under a declaration in one year and another chittack in another year, keeping the declaration alive in this way for an unlimited period. This was never the intention of the statute. The ordinary principle is that if the plaintiff having a claim for a larger amount sues for a smaller amount then the portion not sued for must be deemed to have been waived or relinquished by him so as to bar a fresh suit for the same. This principle should be applied in this case. *Vide* Halsbury's Laws of England, Vol. VI, p. 73. The decision in *Thompson* v. *The Tottenham and Forest Gate Railway Co.* (1)

(1) (1892) 67 Law Times 416.

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shows they cannot acquire piecemeal in England without the consent of the owner. Here, Mr. R. Sen, the Court of Wards Manager, did object to piecemeal acquisition. Having taken only a portion of the lands the Improvement Trust cannot come now and say that they want the rest. The Land Acquisition Act being a statute in derogation of the common law rights of the public must be construed strictly and in favour of the subject and not against him.

Mr. S. R. Das (with him *Babu Ambicapada Chowdhury*), for the respondents. Certain dates are important in order to know how piecemeal acquisition happened to be made in this case. The date of the declaration is 15th February 1915. Mr. Justice Greaves's judgment was in July 1916, while the decision of Mookerjee & Cuming JJ. in *Chandra Kant's case* (1) was on 22nd August 1916. The letter from Government to the Land Acquisition Collector directing the latter to exclude the portion of any premises outside the road alignment from acquisition until the question of recoupment was settled was dated 20th January 1917. In the present case as the alignment ran through a tank, the question arose how to acquire a portion of the tank. This resulted in the letters Exhibits H and I, on 2nd and 26th January 1917, respectively. The judgment of the Full Bench in *Mani Lal Singh's case* (2) was on 14th August 1917. The notice about 14 cottas was issued on 30th March 1917. The letter purporting to be an undertaking was on 19th May 1917. The final award was made on 29th May 1917. Looking at these matters in their proper sequence, it is clear that 8 cottas was acquired as a result of the undertaking, and pending the settlement of the question of recoupment. There is nothing in the Land Acquisition Act preventing the Collector

(1) (1916) I. L. R. 44 Calc. 219. (2) (1917) I. L. R. 45 Calc. 343.

from proceeding piecemeal in the matter of acquisition of lands under declaration. If there be undue delay on the part of Government the party can get compensation for it.

[WOODROFFE J. Delay will be evidence of abandonment.]

But in the present case there is satisfactory reason for this delay. The Land Acquisition Manual provides may instances where it is necessary to acquire land piecemeal. Reads section 48 (*a*) and (*b*).

Mr. H. D. Bose, in reply. This property comprises one holding only. The practice of taking piecemeal refers to cases of separate holdings (reads page 69 of the Bengal Land Acquisition Manual Rules). Sections 10, 11, and 12 show that the Land Acquisition Act contemplates only one set of notices in connection with the same case and same award, (*vide* section 19). There is not only one case before the Collector but only one reference to the Judge. Reads sections 31, 32 and 33 and refers to sections 48 (*a*) and (*b*). It is shift and contrivance to acquire piecemeal and is an evasion of and fraud on the Land Acquisition Act, being only a pretended compliance with the statute. The declaration was in 1915 and the notice in 1917 and therefore it could have been pleaded that the acquisition was wholly *ultra vires*.

Cur. adv. vult.

WOODROFFE J. The plaint seeks for a declaration that the defendants are not entitled to acquire the land in suit, and for an injunction. By a notification of the 16th February 1915 the Government declared that a portion of the premises 147, Russa, Road amounting to 1 bigha 16 cottas and 3 chittacks was required for a public purpose, namely a street scheme framed by the defendants as Trustees for the Improvement of

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Calcutta. No notice was given under section 9 of the Land Acquisition Act for two years. Meanwhile a question arose in two other cases whether the compulsory acquisition of surplus land for the purpose of recoupment was authorised by the Calcutta Improvement Act. In a case decided in July 1916, before Greaves J., the question was answered in the affirmative. In the following month the High Court (Mookerjee and Cuming JJ.) held in *Chandra Kant's case* (1) to the contrary, namely that recoupment was not one of the purposes of the Act. This decision until reversed was binding on the Collector. It became obviously necessary that the work of the Trust, so far as it might conflict with this ruling, should be kept in abeyance pending the recognition of the legality of the principle of recoupment. Accordingly on the 20th March 1917 the Government ordered that unless an owner wished the whole of his premises to be acquired, the portion outside the roadway which was being formed should be excluded from acquisition until the question of recoupment was settled. It is obvious that no question of abandonment arises on the facts, nor is this alleged before us. In pursuance of this policy, which was the only reasonable one under the circumstances, notice was issued on the 30th March 1917 for the acquirement of 14 cottas 10 chittacks and 27 square feet only in lieu of 1 bigha 16 cottas and 3 square feet as set out in the original declaration. It was then ascertained that the portion of the premises intended to be taken and actually required for the execution of the scheme consisted mostly of a tank which existed in the premises and measured 8 cottas 4 chittacks and 34 square feet. The plaintiff objected to the acquisition of any portion of the premises otherwise than the area last mentioned.

(1) (1916) I. L. R. 44 Calc. 219.

The plaint alleges an assurance by the Collector that the acquisition would be confined to this area. But this is denied and it is not argued before us either that there was any abandonment of right or agreement restricting acquisition. The argument for the appellant is confined to the point that the Act does not allow what has been called piecemeal acquisition. An award was made on the 29th May 1917 in respect of this 8 cottas odd.

Meanwhile an appeal was filed to the High Court in its Appellate jurisdiction against the decision of Greaves J. (of 17th July 1916) and was heard by Sanderson C. J., Woodroffe and Chitty JJ. [*Mani Lal Singh* v. *Trustees for the Improvement of Calcutta* (1).] This Bench being in disagreement with the decision of 22nd August 1916 of Mookerjee and Cuming JJ. abovementioned [*Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghosh* (2)] referred the question of recoupment to a Full Bench (1) which held on August 14, 1917 (Chatterjea J. dissenting) that the Calcutta Improvement Act does authorize the Board of Trustees to acquire land compulsorily for purposes of recoupment, that is by selling or otherwise dealing with the land under section 81 or by abandoning the land on consideration of the payment of a sum under section 78. Subsequently the decision of Mookerjee and Cuming JJ [*Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghosh* (2)] was reversed by the Privy Council (3) who adopted the view as to recoupment taken by the Full Bench. There being after the decision of the Full Bench an authoritative decision on the question of recoupment,

(1) (1917) I. L. R. 45 Calc. 343. (2) (1916) I. L. R. 44 Calc. 219.
(3) (1919) I. L. R. 47 Calc. 500.

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the Collector on the 7th November 1917 gave notice that he would acquire the balance of the land mentioned in the declaration of 16th February 1915. To this objection is taken, the argument being that the Land Acquisition Act contemplates one declaration, one notice, one proceeding and one award and as there was already one proceeding and award in respect of the 8 cottas odd it is contended that the power to take action under the Act was exhausted and the subsequent acquisition was without jurisdiction. We must distinguish between two cases of what has been called piecemeal acquisition. A declaration may be issued for a quantity of land consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land covered by a single declaration. (See Executive Instructions, Government of Bengal, Ch. V, 554.) There is no objection to separate proceedings being taken in respect of separate holdings. It is, however, a different matter where (as here) there is one holding. In such a case it does not seem reasonable to hold that there can be a piecemeal acquisition. Had it therefore not been for the judicial decisions to which I have referred I should have been disposed to hold that the proceedings were not valid, as the Act refers only to one notice, one proceeding and one award to be given, taken and made regarding (in my opinion) one holding and one ownership. But in the present case the Collector was prevented from following this course by the decision of the High Court in *Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghosh* (1). If in this particular case an injunction had been granted and proceedings held up regarding portion of the land declared for acquisition and

(1) (1916) I. L. R. 44 Calc. 219.

proceedings had gone on as regards the rest it could not have been contended that further proceedings were barred if and when the injunction was removed. This is not the case here, but the principle applies. There was a decision, though in another suit, which the Collector was bound to respect even though it had been passed in relation to other premises. He could not have gone on to acquire the whole land in the teeth of the High Court decision against recoupment. When however the Full Bench affirmed the principle of recoupment the Collector was free to proceed with the acquisition and did so. It would be anomalous and unfair to hold that because the Collector in obedience to the decision of a Court to which he was subject desisted, pending an appeal from that decision, from proceeding with the acquisition of the portion of the premises affected by that decision, he was thereby debarred from further proceeding with the acquisition when a Court superior to that which gave the decision declared the latter to be erroneous. I am of opinion, therefore, that the proceedings complained of were valid and dismiss the appeal with costs.

WALMSLEY J. I agree.

G. S. *Appeal dismissed.*