APPELLATE CIVIL.

Before Walmsley and Chakravarti JJ.

NIBAS CHANDRA MANNA

v.

BIPIN BEHARY BOSE.*

1925

Nov. 30.

Land Acquisition—Market value—Landlord and Tenant—Apportionment—Occupancy raiyat.

An occupancy *raiyat*, occupying land in Calcutta, which is not situated in the midst of agricultural land and where changing conditions have given it an increased value as being a prospective building site, is entitled only to the capitalized value of the tenant's interest. The landlord is to get the whole of the balance and not only a sum representing the capitalized value of the rent and an estimated sum for the value of possible enhancements in the future or possible forfeiture.

APPEAL by Nibas Chandra Manna, the tenant.

This appeal was against the decision of the President of the Calcutta Improvement Trust Tribunal in a dispute between the landlord and the tenant regarding apportionment of the compensation granted by the Land Acquisition Collector. The landlord, Bipin Behary Bose, claimed the entire sum, alleging that the tenant was merely a tenant-at-will and was entitled to no compensation. The tenant set up a *mourasi mokarari* tenancy and claimed the major portion of the compensation-money, after leaving for the landlord a sum amounting to twenty times the annual rent. The compensation awarded was Rs. 5,000 for

* Appeal from Original Decree, No. 192 of 1923, against the decree of S. C. Banerjee, President, Calcutta Improvement Tribunal, dated May 5, 1923.

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the acquisition of premises No. 5, Ekdalia Road in Baliganj, which is an added area to Calcutta. The tenant, Nibaran Chandra Manna, claimed Rs. 4,860. The learned President of the Tribunal, however, held that the tenancy was not a *mourasi mokarari* one and that the tenant had a right of occupancy in the land. He, therefore, held that the tenant was "entitled to be compensated for what he had lost, viz., his "rights as an occupancy *raiyat* in the land in question "and that in evaluating those rights all considerations "about the potential value of the land and the tank as "prospective building sites should be eliminated, "except as regards his homestead." He accordingly awarded only Rs. 800 to the tenant and the balance to the landlord. The tenant appealed and the respondent filed cross-objections.

Mr. Surendra Madhab Mallik (with him *Babu Khagendra Nath Mitra*), for the appellant. The landlord is entitled to the capitalized value of the rental only. Land is to be valued at its present disposition according to the Calcutta Improvement Act: *see* section 23, cl. (*1*). It is so provided in the Calcutta Municipal Act also: *see* section 557. The interest of the tenant is, therefore, to be valued at its present disposition and not as an agricultural land. *See Manmohan Dutt* v. *Collector of Chittagong* (1), *Surendra Nath Roy* v. *Dwarka Nath Chakravarty* (2) and *Shama Prosunno Bose Mozumdar* v. *Brakoda Sundari Dasi* (3).

Mr. Ram Chandra Majumdar (with him *Mr. Rishindra Nath Sarkar* and *Babu Kali Sankar Sarkar*), for the respondent, was called upon only to

(1) (1912) I. L. R. 40 Calc. 64. (2) (1919) 24 C. W. N. 1.
(3) (1900) I L. R. 28 Calc. 146.

explain how the sum of Rs. 800 was calculated. The cross objections were not pressed.

WALMSLEY J. This appeal is directed against an order made by the President of the Calcutta Improvement Tribunal about the apportionment of some compensation money. The necessary facts may be shortly stated as follows: The appellant was the tenant of a piece of land measuring 1 bigha 8 cottas 12 chitaks. This land with other lands was acquired by the Improvement Trust and the total amount of compensation payable was fixed by amicable agreement. The agreement further stated that, in respect of this particular area of 1 bigha 8 cottahs 12 chitaks, the compensation was to be Rs. 15,000. There were three sharers in the landlord's right and the appellant compromised his claim with the owners of two-thirds. The present dispute is between the appellant as tenant of this land and the owner of the remaining one-third share of the landlord's right.

The learned President has given the appellant, the tenant, the sum of Rs. 800 for his interest in the land; and it is contended on his behalf that that sum is entirely inadequate. The first claim advanced on his behalf goes so far as to demand the whole amount of Rs. 5,000 less the capitalized value of the annual rent of Rs. 7. The argument advanced on behalf of the claimant is this that, under section 23 of the Land Acquisition Act as applicable to the Calcutta Improvement Trust, the market value of the land should be assessed according to the disposition of the property at the time of the declaration. Now, this property at the time of the declaration was being used as agricultural land. It is said, therefore, that its valuation of Rs. 15,000 must have been arrived at on that basis. I

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WALMSLEY J.

have already mentioned that the amount of compensation was fixed on an agreement between the Collector and the landlords and I do not think that the claimant, the appellant, can now ask us to hold that the ground on which the parties to the compromise arrived at this sum was that the value of the land as agricultural land was as much as Rs. 15,000. I have no doubt that the parties took into their consideration other circumstances and came to the conclusion that that was the value of the land, having regard to those circumstances.

The next argument advanced on behalf of the appellant is that his status was that of a *raiyat* at a fixed rate of rent. The answer to that is given by the learned President. The landlord's predecessor bought the land in 1872 and from the terms of the *kobala* it appears that the land recently acquired was then in the actual possession of the vendors. The only evidence which the appellant has to combat the effect of that conveyance is a series of *dakhilas* which undoubtedly relate to a period prior to 1872 but about which there is no evidence to show that they were for rents paid in respect of this land. Clearly there is no material on the record to warrant the suggestion that the tenant's right in the land was that of a *raiyat* at a fixed rate. He was an occupancy *raiyat* and nothing more.

Then it is urged on behalf of the appellant that, as between the landlord and the occupancy *raiyat*, the proper method of apportionment must be to give the landlord a sum representing the capitalized value of the rent plus an estimated sum for the value of possible enhancements in the future or possible forfeiture, and to give the whole of the balance to the tenant. That method has been adopted in some cases. But, in the present instance, it would be inapplicable.

This land is not agricultural land situated in the midst of agricultural land. Changing conditions have given it an increased value as being a prospective building site. I do not think that it would be right, in such circumstances, first to assess the value of the landlord's interest in the land as agricultural land and nothing more, and then, after deducting that amount, to hand over the balance to the tenant. In the present case, the right method seems to me to approach the subject from the point of view of what the tenant should get as a tenant of agricultural land and, after capitalizing the tenant's interest, to give the whole of the balance to the landlord. That is the method which the learned President has adopted and I entirely agree with him that it is the right method. As to the valuation which the learned President has put upon the tenant's right, he has taken it as high as Rs. 100 per cottah. That is no doubt high. But there is no material before us on which we ought to modify it and we are not asked to modify it. From that sum he has deducted an estimated sum of Rs. 400 for the whole area as representing the capitalized value of the actual rent *plus* the capitalized value of future enhancements and possible forfeiture. This brings the sum payable to the tenant in respect of a third share to Rs. 800. I think that sum is, in the circumstances, a reasonable one. In my judgment, therefore, the decision of the lower Court should be affirmed and this appeal dismissed with costs, hearing-fee two gold mohurs.

The cross-objection is not pressed and is dismissed without any order as to costs.

CHAKRAVARTI J. I agree.

S. M. *Appeal dismissed.*