APPELLATE CIVIL.

Before Mukerji and Bartley JJ.

NRISHINGHACHARAN NANDI CHAUDHURI

v.

NAGENDRABALA DEBEE.*

1932

June 24; July 5.

Revenue Sale—What is sold and when it takes effect—Encumbrance, how annulled—Land acquisition—Award—Compensation—Apportionment—Land Acquisition Act (I of 1894), ss. 6, 15, 16, 23, 24, 30—Bengal Land-revenue Sales Act (XI of 1859), ss. 28, 31; Sch. A.

Sections 15, 23 and 24 of the Land Acquisition Act only lay down rules for determining the market value and do not create any right on the part of the owners of the lands or the holders of interest therein to obtain compensation on the footing of their respective rights as at the date of the declaration.

Where, on the 18th September, 1925, A bought at a revenue sale an estate, but two days before his purchase (*i.e.*, on the 16th September, 1925) certain lands of that estate had been acquired by the Collector and, subsequently on the 22nd December, 1925, certain other land of the same estate was also acquired by the Collector, but meanwhile, on the 3rd October, 1925, A had applied to the Collector, with regard to the later acquisition, claiming the compensation to be awarded for the *gânti*, thus signifying his intention to annul that *gânti*, and the defaulting proprietors claimed the compensation money of the earlier acquisition, though the default had taken place on the 28th March, 1925,

held: (*i*) that what passed to A at the revenue sale was the interest of the Crown subject to the payment thereto of revenue:

Surja Kanta Acharjya v. *Sarat Chandra Roy Chowdhuri* (1) and *Narayan Das Khettry* v. *Jatindra Nath Roy Chowdhury* (2) followed;

(*ii*) that the lands acquired by the Collector on the 16th September, 1925, vested absolutely in the Crown free from encumbrances and the late proprietors of that estate were entitled to the surplus of the purchase money under section 31 of Act XI of 1859 with regard to the lands that were sold and also entitled to compensation for what could not be sold, the acquisition having taken place in the meantime;

(*iii*) that A, who bought the interest of the Crown on the 18th September, 1925, obtained something less than had existed before the 16th September, 1925, the date of the Collector's award, though A's title to what he bought related back to the 28th March, 1925, when the default occurred: so, at the time of the sale, the said lands were no longer subject to the

*Appeals from Original Decrees, Nos. 146 to 149 of 1929, against the decrees of S. K. Ghosh, Special Land Acquisition Judge of 24-Parganas, dated April 24, 1929.

(1) (1914) 18 C. W. N. 1281.

(2) (1927) I. L. R. 54 Calc. 669; L. R. 54 I. A. 218.

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payment of Government assessment and the capitalised value of the Government revenue due on them had already been realised under the award that had been made:

Shyam Kumari v. *Rameswar Singh* (1) referred to;

(*iv*) that A was entitled to nothing in respect to the lands acquired by the Collector on the 16th September, 1925; but as regards the land acquired by him on the 22nd December, 1925, A had already, on the 18th September, purchased at the revenue sale the land, which was subsequently acquired and was, therefore, entitled to the compensation in respect of the proprietary interest in the land as land of that *touzi*;

(*v*) that A's claim on the 3rd October, 1925, to the compensation to be awarded for the *gânti* was a formal annulment thereof and A was entitled to get the entire compensation, which the award (subsequently made on the 22nd December, 1925) divided into 2 parts, one for the proprietary interest and the other for the *gântidâri* interest in that land.

FIRST APPEALS by the claimant-auction purchaser in revenue sale.

The facts of the cases, as well as the arguments advanced at the hearing thereof, appear fully in the judgments.

Saratchandra Basak, Senior Government Pleader, *Sateendranath Mukherji* and *Sateeshchandra Munshi* for the appellant.

Bijankumar Mukherji for the respondents.

Cur. adv. vult.

MUKERJI J. These four appeals have arisen out of four apportionment cases dealt with by the Land Acquisition Judge of 24-Parganâs under section 30 of the Land Acquisition Act. The claim of the appellant for being awarded the compensation in respect of a *gânti* interest has been disallowed and hence these appeals. There are cross-objections in connection with three of these appeals, the same being directed against the compensation, which has been awarded to the appellant on account of his proprietary interest in the *touzi*.

The facts are quite simple. The *gânti* consists of the lands of a certain village named Rahara, which appertains to seven amalgamated *touzis*, of

(1) (1904) I. L. R. 32 Calc. 27; L. R. 31 I. A. 176.

which *touzi* No. 188 is one. The respondents were the owners of the said *touzi* and were also *gântidars* in the lands of the said village, having a 3 annas *gântidâri* interest under their *touzi* No. 188. For arrears of revenue defaulted on the 28th March, 1925 the *touzi* was sold on the 18th September, 1925. In pursuance of a declaration, dated the 11th December, 1924, some lands were acquired under the Land Acquisition Act. In respect of the lands concerned in Appeals Nos. 146,147 and 148 the Collector made his awards and took possession on the 16th September, 1925, and as regards the lands of Appeal No. 149 he did so on the 22nd December, 1925. In the awards so made, certain amounts were awarded to the respondents as proprietors of the *touzi*, and some further amounts were awarded to them for their *gântidâri* interest. The appellant, after his purchase at the revenue-sale, applied to the Collector on the 3rd October, 1925 for a reference praying to be allowed all the amounts so awarded. The Judge, as already indicated, awarded the compensation for the proprietary interest to the appellant and that for the *gântidâri* interest to the respondents.

Some argument has been addressed to us on behalf of the appellant to establish that there was no *gânti* under *touzi* No. 188, and that the *gânti*, that there was, was under the other six *touzis* or some of them. We think the existence of 3 annas *gânti* interest under *touzi* No. 188 has been established beyond doubt, and indeed its existence was not a matter disputed in the court below.

As regards all the appeals, the substantial contention, urged on behalf of the appellant, is that he is entitled to the entire compensation for the lands, that is to say, the amounts awarded both to the proprietors and to the *gântidars*, because, under section 28 of the Revenue Sale Law (Act XI of 1859), his title as purchaser dated back to the date of the default and, as such purchaser, he annulled the *gânti* at the earliest possible opportunity. On

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behalf of the respondents, it has been urged, so far as Appeals Nos. 146, 147 and 148 are concerned, that, inasmuch as before the sale these lands had been acquired under the Land Acquisition Act and so lost to the *touzi*, what the appellant purchased was not the *touzi* but the *touzi minus* the acquired lands, and consequently he was not entitled to get either of the amounts awarded as compensation. In the aforesaid appeals as well as in Appeal No. 149, a further argument was advanced on behalf of the respondents, namely, that what was said in the petition of the appellant of the 3rd October, 1925, was not sufficient to annul the *gânti*.

Now, section 15 of the Land Acquisition Act says that, "in determining the amount of compensation, "the Collector shall be guided by the provisions "contained in sections 23 and 24". Under section 23 (*1*) first clause, the market value at the date of the publication of the declaration under section 6 has to be taken, and under section 24, seventh clause, any outlay, improvements or disposal since that date, but without the Collector's sanction, is not to be regarded. These sections, however, only lay down rules for determining the market-value and do not create any right on the part of the owners of the lands or the holders of interest therein to obtain compensation on the footing of their respective rights as at the date of the declaration.

In the case of *Surja Kanta Acharjya* v. *Sarat Chandra Roy Chowdhuri* (1), the Judicial Committee observed that, on the failure of an owner to pay the Government assessment, his estate or interest in the land is forfeited, or rather determined, and that, under such a sale, what is sold is not the interest of the defaulting owner, but the interest of the Crown subject to the payment of the Government assessment. The same view has also been expressed by their Lordships in the case of *Narayan Das Khettry* v. *Jatindra Nath Roy Chowdhury* (2).

(1) (1914) 18 C. W. N. 1281.

(2) (1927) I. L. R. 54 Calc. 669; L. R. 54 I. A. 218.

And under section 28 and schedule A of the Revenue Sale Law (Act XI of 1859), the title of the purchaser is to be deemed to have vested in him on the date of default. But, as observed by their Lordships of the Judicial Committee in the case of *Shyam Kumari* v. *Rameswar Singh* (1):

> When the Act is considered as a whole it seems clear that when a sale or purchase is spoken of in connection with time, the time meant is that at which the sale takes place in fact, not that to which its operation is carried back by relation.

Also, under section 16 of the Land Acquisition Act, on the Collector taking possession of land after making an award under section 11, the land vests absolutely in Government free from all encumbrances.

If these propositions are applied to the concrete facts of these cases, the position seems to be the following. So far as the lands of all the four cases are concerned, the respondents' interest as proprietors of the *touzi* and so of all the lands thereof was forfeited or rather determined on the 28th March, 1925. The acquired lands of Appeals Nos. 146, 147 and 148 vested in the Collector free from incumbrances on the 16th September, 1925 and those of Appeal No. 149 on the 22nd December, 1925.

At the sale, which took place on the 18th September, 1925, the appellant purchased the interest of the Crown in the lands of the *touzi*, which were subject to the payment of the Government assessment. By the awards that were made, on the 16th September, 1925, in the cases, out of which Appeals Nos. 146, 147 and 148 have arisen, abatement of Government revenue was allowed for the acquired lands from the *kist* previous to the date of taking possession; and so, at the time of the sale, the said lands were no longer subject to the payment of Government assessment and the capitalized value of the Government revenue due on them had already been realised under the award that had been made. The appellant never purchased the said acquired

(1) (1904) I. L. R. 32 Calc. 27 (39): L. R. 31 I. A. 176 (187).

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lands, though, in respect of the lands that he purchased, his title on purchase related back to the default. In our opinion, therefore, the appellant cannot be regarded as having acquired any interest in the lands of Appeals Nos. 146, 147 and 148 by the purchase that he made. The late proprietors, that is to say, the respondents, were entitled to the surplus of the purchase money under section 31 of Act XI of 1859 as regards the lands that were sold. They are, in our opinion, the persons also entitled to compensation for what could not be sold, the acquisition having taken place in the meantime. So far as these three appeals are concerned, no question of annulment of the *gânti* arises, because the appellant never purchased the lands themselves.

As regards Appeal No. 149, the award not having been made nor possession taken by the Collector till the 22nd December, 1925, and the sale having taken place on the 18th September, 1925, the appellant purchased at the sale the lands, which were subsequently acquired. He was, therefore, clearly entitled to the compensation in respect of the proprietary interest in the lands as lands of the *touzi*. On the 3rd October, 1925, he made the petition, in which he claimed the compensation that was to be awarded for the *gânti*, and thus signified his intention to annul the *gânti*. As he did so before the award was made and when the *gânti* was yet subsisting, though liable to annulment at his option, he was entitled to get the compensation for the land, which the award, subsequently made, divided into two parts, one for the proprietary interest and the other for the *gântidâri* interest. His title as proprietor related back to the date of default, but the annulment could only operate from the date it was made.

The result, in our opinion, is that Appeal No. 149 should be allowed to the extent of 3/16ths of the compensation awarded for the *gântidâri* interest, and Appeals Nos. 146, 147 and 148 being dismissed,

the cross-objections therein should be allowed to the extent of the entire amounts claimed.

There will be no order for costs in any of these appeals and cross-objections.

BARTLEY J. I agree.

Appellant bought estate No. 188 at a revenue sale on the 18th September, 1925. What then passed was the interest of the Crown subject to the payment of revenue, the estate on which the Crown assesses revenue and which can be sold for arrears. This estate has been limited to the land, which is subject to the payment of revenue and in respect of which the proprietor is entered in the general register of revenue paying estates. *Narayan Das Khettry* v. *Jatindra Nath Roy Chowdhury* (1).

Now in three of these appeals, there was acquisition on the 16th September, 1925, two days before appellant bought certain lands of the estate vested absolutely in the Crown, and the interests then existing in these lands were assessed at a money value payable to the respective owners.

At the same time an abatement of land revenue was granted. I take the effect of this to have been that, on the one hand, the amount of land subject to the payment of revenue decreased, and on the other, the interest of the Crown diminished, as is evidenced by the fact that the Crown assessed that interest, the land revenue, at a lower figure.

The appellant, who, on the 18th September, 1925, bought the interest of the Crown, bought something less than had existed before the 16th September, 1925, the date of the acquisition, though his title to what he bought related back to March.

In this view of the matter, appellant is entitled to nothing in respect of the lands acquired on the 16th September, 1925.

(1) (1927) I. L. R. 54 Calc. 669 (676); L. R. 54 I. A. 218 (224).

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In the last case, he took the interest of the Crown, with a right to annul the *gânti*. If his claim to the value assessed on it in the subsequent land acquisition proceedings is construed as a formal annulment, he gets both sums and I accept this construction.

Appeal No. 149 allowed in part.

G. S.