APPELLATE CIVIL.

Before Rankin C. J. and Mukerji J.

COLLECTOR OF JALPAIGURI

v.

THE JALPAIGURI TEA COMPANY, LIMITED.*

1931.

Feb. 19.

Land Acquisition—Valuation—Apportionment—Land Acquisition Act (I of 1894), s. 21.

Where the extent of tenants' interest in land, as against the landlord, was in dispute and the land acquisition collector had inverted the ordinary course of proceedings by valuing the different interests in the said land separately,

held that, under the Land Acquisition Act, the value of land is to be ascertained first without valuing interests which are difficult to define separately, and without having to answer questions as between landlord and tenant as to the exact extent of their respective rights.

After the value of the land had been assessed, any question as to the extent of the rights given by the landlord to his tenants could be raised between these parties at the time of apportionment.

The burden of apportionment should not be laid on the Secretary of State, nor should the public purse be made to bear the costs incidental thereto.

Fink v. *Secretary of State for India* (1), *Girishchandra Roy Chowdhury* v. *The Secretary of State for India in Council* (2) referred to.

The facts are fully stated in the judgment.

The Officiating Senior Government Pleader, Saratchandra Basak, and *the Assistant Government Pleader, Nasim Ali,* for appellant.

Brajalal Chakrabarti and *Asitaranjan Ghosh* for respondents.

RANKIN C. J. This appeal is brought by the Secretary of State and the claimants have filed a cross-objection. It appears that certain property was being taken for a medical school and a hospital in Jalpaiguri. The claimants before us are two tea companies which appear to have been associated and which had tin sheds on *pucca* plinths which they used for their offices and for various forms of accommodation in connection therewith.

*Appeal from Original Decree, No. 6 of 1929, against the decree of D. Vaughan Stevens, District Judge of Jalpaiguri, dated July 23, 1928.

(1) (1907) I. L. R. 34 Calc. 599. (2) (1919) 24 C. W. N. 184.

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The Collector dealt both with the question of value of the land and with the question of the value of the structures and the way in which the Collector valued the land appears to me to be somewhat exceptional and unusual.

It appears that, in this neighbourhood, there is a tendency to regard all interests in land as though they were agricultural interests under the Bengal Tenancy Act and to deal with them by way of analogy to the provisions that are there laid down; but it is quite clear that that is by no means the legal position and it has not been contended before us that that is the legal position. The claimants say—though they have not formally or properly proved it—that they purchased the interest of the lessees under a tenancy which came into existence by Ext. 18, a registered *pâttâ* of the year 1889, whereby 2 *bighâs* of land were let for seven years at a rent of Rs. 10. That instrument contained the provision "After the "determination of the term of this *pâttâ* we shall "grant you a fresh *pâttâ* if you so desire." Now, the Collector, when he was valuing the land, appears most unfortunately, in my judgment, to have made up his mind to invert the ordinary course of proceedings, and I think this was particularly unfortunate in a case where the exact extent of the interest of the tenants as against the landlord was very much in need of definition. He valued the different interests separately and in this way valued the interest of these particular claimants and he came to the conclusion that their interest in the land should be compensated by a sum of Rs. 1,260. He also dealt with the other interests in the land and it would appear that only by adding up the values, according to him, of the various interests is it possible to ascertain what he thought was the value of the land itself; he did not first ascertain the value of the land; and then having ascertained that, treat the question of the value of the particular interest of each claimant as a question of apportionment.

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When the matter came before the learned Judge, the present claimants laid before him a very reasonable and unanswerable argument that the learned Judge's business was to find the value of the land and then to deal, if necessary, with any question of apportionment between the conflicting claimants. If the tenants could show that they had certain rights as against the landlord under their lease, the tenants could get a greater share of the compensation; and if the landlord could show that the tenants were practically tenants-at-will, then the landlord would have a greater share of the compensation; but the Secretary of State would not be interested in a mere question of apportionment. The learned Judge, however, gave various reasons for refusing to proceed in the ordinary way, namely, to find the value of the land first, and he gave among other reasons the not very logical reason that if he was to follow out the methods which these claimants asked him to follow he would have to give them nothing at all or tell them that they had no substantial interest. The law upon this matter is abundantly plain from the Act itself. The first thing that has to be ascertained is the value of the land. In any ordinary case, the value of the land would be determined without valuing interests, which are difficult to define separately, and without having to answer questions as between landlord and tenant as to the exact extent of their respective rights. It may be that a case can be imagined in which the best way to value the land is to find out the different interests and value each separately and add the values together. But this is the worst possible method, unless it is quite clear what the respective rights of the different parties are and unless the evidence affords instances of dealings in exactly the same rights as are in question. Apart altogether from what is said on the face of the statute, I find that, in the case of *Fink* v. *Secretary of State for India* (1), it was laid down "If there be any dispute as to the relative value "of such interests, the total amount of compensation

(1) (1907) I. L. R. 34 Calc. 599, 606.

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"paid may be the subject of a case for apportionment, "and the judge should determine the total amount "payable for the land leaving the question of "apportionment to be decided in a separate proceeding "to be asked for by any of the parties. The "determination of the value of an individual interest "as contemplated in section 21, exclusive of the "interests of other claimants to compensation, is "possible only in a case where such interest is "incapable of variation in a proceeding for "apportionment"; and in the case of *Girishchandra Roy Chowdhury* v. *The Secretary of State for India in Council* (1), to which we have been referred, the learned Judges pointed out "It has been pointed out "in judicial decisions in Bombay and in this Court "that the value of land should ordinarily be "determined as a whole and the question of "apportionment of the compensation awarded amongst "claimants of different degrees should thereafter be "taken into consideration."

The present case turns out to be of such a character that, having regard to the disputable questions that arise about the nature and extent of the interests of these claimants as tenants, the only reasonable course was to find the value of the land as a whole first. The judgment of the learned Judge shows that there was a great deal of material which would have enabled him to ascertain the value in the ordinary way, namely, by considering cases of sales or cases of permanent leases of the whole interest at a *selâmi* and for *mokarrari* rents. However, the learned judge thought fit not to proceed in the ordinary way, and these claimants have been dealt with on a footing which has given to them a substantial proportion of the whole value. We have been told that the effect has been to treat them as though they were entitled to three-fourths of the value of this land. It turns out, when we come to examine whether they have any claim to anything of the kind, that they are people who said that they had succeeded to an interest which

(1) (1919) 24 C. W. N. 184.

was granted in 1889 for a period of seven years. It is true that the document from which they say they derive title has a clause saying that the tenants shall have an option to take a fresh *pâttâ*. It does not say on what terms, it does not say anything as to the rate of rent, and it is plain that the utmost that it can be read to mean is that in 1896 the then tenants or their assignees had a right to another seven years at the same rate. The result is, that by the time the present claimants took any interest in this property, their assignors were merely people holding over upon a lease which had expired and had expired even under the clause of option of renewal.

A contention has been outlined before us that, by the assistance of evidence of custom, it can be made out that people in that position have got permanent right and that though they have got permanent right as tenants the landlord from time to time may raise the rent to the fair or market rate for a tenancy of this nature. Whether it is supposed that the tenants could claim a reduction of rent if rent went down or the landlord could claim only an increase of rent, if rent in the neighbourhood went up, is not clear, but it is said that there was some evidence of custom before the learned judge that entitled him to hold that these claimants had permanent interests as tenants at a certain rate of rent. In my opinion, such an argument is unfounded for several reasons. I entirely demur to the proposition that such a document, as the lease of the 24th March, 1889, can be coupled with evidence of custom so as to make it into a lease for ever at a rent to be fixed according to what it would fetch. Again I demur to the proposition that there is any evidence in this case which amounts to evidence of a custom that a person holding upon the terms of such a *pâttâ* as that has a right to go on for ever on the footing of a fair rent. It seems to me that we are left to this that the claimants are persons who are holding over as tenants —holding over property held for purposes of a business office upon the terms of the Transfer of

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Property Act; in other words, that the landlord can get rid of them on a very short notice.

In these circumstances, the claimants make a cross-objection as to the value which has been given to them by the Collector and by the District Judge. They have brought their appeal in the form of cross-objection and the only parties before us are the Secretary of State and these claimants. It is quite obvious that the whole proceedings have been misconceived. If the learned judge had assessed the value of the land, then any question as to the extent to which the landlord had carved rights out of his estate and given them to his tenants could be raised between these parties upon the question of apportionment. But it is one thing between the landlord and tenants to contend as to the share of each in an ascertained fund and it is another thing to put forward the contention, not against the other party interested, but merely against the Secretary of State on the footing that there is no ascertained fund to be divided and that the public purse is to bear the burden of ascertaining what these rights are and paying for these rights separately. In my judgment, it would be quite impossible for us to deal with this case at all except by sending the case back to be investigated properly upon the proper principle. The question of the right of these tenants against the landlord must be fought out between themselves and not between the tenants and the Secretary of State. If the tenants succeed, then the landlord would get so much less and if the landlord succeeds then the tenants would get proportionately less. As we have been informed by Mr. Chakrabarti that he does not want us to give him any relief in a form which involves a remand, and as it is obvious that the claimant's interest in the land has been much overestimated, I am of opinion that the only proper course is to dismiss the cross-objection.

As regards the Secretary of State's appeal, I cannot say that I am at all impressed with it upon the question of the amount to be awarded as regards the

structures, but it does seem that there is a mistake in the actual sum awarded in respect of the buildings in the judgment of the learned Judge. The figure of Rs. 7,768 is apparently arrived at, as is now admitted, by some mistake and the correct figure should be Rs. 6,410-15. To this extent the Secretary of State's appeal will be allowed. The cross-objection will be dismissed. There will be no order as to costs either of the appeal or of the cross-objection.

MUKERJI J. I agree.

O. U. A.