APPELLATE CIVIL.

Before Mitter and Guha JJ.

PRASANNAKUMAR DATTA

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1933

Nov. 22, 23.

Land Acquisition—Infringement of privacy of a house, if entitles the owner to compensation—Land Acquisition Act (I of 1894), s. 23, cl. (4).

Obiter. The owner of a house, the privacy of which has been affected by the acquisition of another property made for public purposes under the Land Acquisition Act, is entitled to compensation by reason of the acquisition injuriously affecting his property under section 23, clause (*4*) of the Land Acquisition Act.

In re *Charles Penny and the South-Eastern Railway Company* (1) dissented from.

In re *Ned's Point Battery* (2) and *Blundell* v. *Rex* (3) followed

Sri Narain Chowdhry v. *Jodoo Nath Chowdhry* (4), *Mahomed Abdur Rahim* v. *Birju Sahu* (5), *Sreenath Dutt* v. *Nand Kishore Bose* (6) and *Gokal Prasad* v. *Radho* (7) referred to.

APPEAL by the claimants.

The facts of the case and arguments in the appeal are sufficiently stated in the judgment.

Gunadacharan Sen and *Binayendranath Palit* for the appellants.

Saratchandra Basak and *Rupendrakumar Mitra* for the respondent.

MITTER J. This is an appeal by the claimants against an award made by the Subordinate Judge, 1st Court, Sylhet, exercising the powers under the Land Acquisition Act.

It appears that certain lands of the claimants were compulsorily acquired for the K. L. V. Railway line. The lands form the western portions of the claimants' homestead, as will appear from the map prepared by the pleader commissioner, which is

*Appeal from Original Decree, No. 22 of 1930, against the decree of Bhupendranath Mukherji, First Subordinate Judge of Sylhet, dated Sep. 2, 1929.

(1) (1857) 26 L. J. Q. B. 225.
(2) [1903] 2 I. R. 192.
(3) [1905] 1 K. B. 516.
(4) (1900) 5 C. W. N. 147.
(5) (1870) 5 B. L. R. 676.
(6) (1866) 5 W. R. (C. R.) 208.
(7) (1888) I. L. R. 10 All. 358.

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annexed to the paper-book. The homestead of the claimants is a very large one and towards the west of the homestead there is a wall of a certain height, there is also a wall towards the north of the homestead. On notice being given for the acquisition of the land for the purpose of the railway line, one of the claimants Prasannakumar Datta wrote a letter to the Land Acquisition Collector on the 26th January, 1927, in which he stated that the K. L. V. Railway line has touched the border line of the western compound wall of his residential house at Kâyasthagrâm and the bank of the line seriously disturbed the privacy of his house, having exposed it to public view. To avoid this, namely, the infringement of his privacy, the letter further states that "he had been compelled to "reconstruct the entire length of his *puccâ* wall with "greater width and height involving an extra "expenditure of Rs. 2,200." On receipt of this letter, the Special Land Acquisition Officer asked for proof about the expenditure for reconstructing and raising the height of the wall. In reply, Prasanna, one of the claimants, submitted an estimate of Rs. 2,200 as being the cost required for the reconstruction of and raising of the height of the wall in question. Upon this, the Land Acquisition Collector made an award allowing Rs. 524 for raising the height of the existing wall and this was awarded as compensation due to proprietor's damage under section 23(4) of the Land Acquisition Act. The petition for reference under section 18 of the Land Acquisition Act was made not only on behalf of Prasanna but also on behalf of his two brothers, the other two claimants Purnendu and Saradindu. In paragraph 7 of that petition, it was stated that the letter of the 26th January being hurriedly written, the estimates and the calculations were made erroneously and that, since writing that letter, the claimants prepared correct estimates and calculations and they asked for time to rectify the mistakes in that letter, which was treated as a sort of petition made to the Collector under the

Act claiming compensation, and they wanted compensation to the extent of Rs. 6,825 for constructing and raising the wall. On the 9th July, 1928, a petition for amendment of the application for reference under section 18 of the Act was made and the amount of claim was raised to Rs. 25,000 and this amount was claimed as cost for erecting the wall in question.

After taking evidence on behalf of the claimants as also on behalf of the Secretary of State, the Subordinate Judge made an award for a sum of Rs. 3,445 and this award was in excess of the claim as originally laid in the letter to the Land Acquisition Officer, dated the 26th January, 1927.

Against this award, the present appeal has been brought by the claimants and it is contended that the award has been inadequate and that, on the evidence furnished, not only on their own behalf but even on the evidence of the engineer examined on behalf of the Secretary of State, the claimants are entitled to a larger compensation. It is to be noticed, however, that, so far as this ground of appeal, *viz.*, the claim for an excess sum over and above the sum which has already been awarded by the court and which is in excess of the original claim by their letter of the 26th January, 1927, is concerned, the appellants are met by the provisions of section 25 of the said Act. It has practically been conceded by Mr. Sen, who appears for the appellants, that section 25 really bars the claim of the appellants, for an excess sum as made in this appeal, if his clients had the notice served on them under section 9 of the Act. Section 25 (*1*) of the Act runs as follows:—

> When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

Having regard to the provisions of section 25, clause (*1*), it is quite clear that it was not permissible to the Land Acquisition Judge to award a sum in excess of that claimed by the petition of the claimants

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of the 26th January, 1927, provided the claimants had the notice served on them under section 9. Mr. Sen strenuously contended that there is no proof of the service of notice on at least two of the claimants, that is, the claimants other than Prasanna and consequently section 25 does not at any rate prevent these two claimants from pressing the appeal with regard to an amount in excess of the claim made by the petition of the 26th January, 1927.

It appears, however, that there is evidence of Prasanna himself on the question of service of notice, which precludes the appellants other than Prasanna from raising this contention. Prasanna says :—

> I got notice under section 9 for land in connection with this railway line. I also accepted the notices addressed to claimants Nos. 2 and 3.

So there is *prima facie* evidence of the service of notice on claimants Nos. 2 and 3 and it is significant that these two claimants have not entered the witness-box to deny service of notice under section 9, nor they have suggested anywhere in their petition for reference under section 18 that they had no notice. On general principles, a notice, which is addressed to all the joint claimants and served on some of them, should be regarded as good service as against the persons not personally served. Reference may be made in this connection to a decision of their Lordships of the Judicial Committee of the Privy Council, in the case of *Harihar Banerji* v. *Ramshashi Roy* (1). That was no doubt a case of service of a notice to quit which was addressed to several joint tenants and which was accepted by some of them. In those circumstances, their Lordships laid down that—

> In the case of joint tenants, each is intended to be bound, and it has long ago been decided that service of a notice to quit upon one joint tenant is *prima facie* evidence that it has reached the other joint tenants.

Mr. Sen has, however, contended that section 9 must be strictly construed and the principles which are applicable to notices to quit may not apply to the

(1) (1918) I. L. R. 46 Calc. 458 (480); L. R. 45 I. A. 222 (230).

notice under section 9, where it is said that notice must be served personally on each of the several persons interested or believed to be interested in the land sought to be acquired. There may be something in this contention and it is not necessary to decide the question, seeing that the evidence of Prasanna which is not contradicted by the evidence of the other claimants leads us to hold, having regard to the further circumstances, that the question of notice was not raised by them, that notice was actually served in this case in the manner provided for by section 9 of the Land Acquisition Act. It having been established that notice under section 9 was served, under section 25(*1*) of the Act, it was not open to the claimants to claim a sum higher than Rs. 2,200. The Subordinate Judge has, however, awarded a larger sum, but as there was no appeal or cross-appeal on behalf of the Secretary of State, this award, even for a sum in excess of Rs. 2,200, must necessarily stand.

The compensation which has been awarded in this case is on the score of "injurious affection to the "property" by reason of the fact that the privacy of the claimants' house has been affected by the acquisition made for the purposes of the railway, and, there is evidence that passengers travelling by trains passing by this railway, as well as people at the railway station, overlook the premises of the claimants, which have not been acquired and which really, on the evidence, are the *zenânâ* or inner apartments used by the ladies of the family. Before the Subordinate Judge, as also before the Land Acquisition Collector, it seems practically to have been conceded on behalf of the Secretary of State that the claimants are entitled to some compensation for, to quote the words of the Subordinate Judge, "throwing "open the back side of the *bârhi* to public gaze". The Subordinate Judge has stated that—

> As the learned Government pleader admits that the claimants are entitled to some compensation, namely, for the acquisition having thrown open the back side of the *bârhi* to public gaze, he should go into the question of cost of constructing a screen for the protection of the back side of the appellant's *bârhi* and that they should be allowed compensation.

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Although it is not necessary for the purposes of the present appeal, having regard to the fact that the appeal fails on another point, to go into the question as to whether the infringement of privacy entitles the claimants to compensation under the provisions of section 23, clause (*4*) of the Land Acquisition Act, as the question has been debated before us and as it is a question of some importance, we should express our opinion on this question. But having regard to the course the appeal has taken, the opinion we express is not a final opinion and the question may have to be considered in some other case.

It appears that there is some conflict of authority on this question, even in courts in England. In a very early case cited in Cripps' well-known text-book on the Law of Compensation, 7th Edition, 1931, at page 212, namely, the case of In re *Charles Penny and the South-Eastern Railway Company* (1), it seems to have been laid down that—

> Interference with the privacy of lands through their being overlooked from a railway embankment is not a damage to a private right which would, but for statutory powers, have given a right of action and the owners of such lands are not entitled to compensation.

In this case the learned Judges expressed their views in separate judgments and it may be useful to quote the reasons which induced the Judges to take this view. Mr. Justice Wightman, in delivering the judgment, says :—

> One of the items, in respect of which compensation has been given, is the disturbance of the claimant's privacy by his premises being overlooked by the passengers along the railway. Is that a legitimate ground in respect of which compensation can be claimed ? It is not every kind of disturbance that entitles a party to compensation ; it is necessary to draw the line somewhere. It is difficult to say, that for every fanciful ground of complaint, compensation is to be given, as for the obstruction of a prospect which might detract from the agreeable enjoyment of a house.

Mr. Justice Earle puts his judgment in this way :—

> In this case, from the affidavits, I come to the conclusion that, in awarding compensation, the annoyance caused by persons standing on the bank of the railway and overlooking the claimant's grounds has been included. These are injuries to the amenities of his residence, and not injuriously affecting his property, so as that an action would lie.

(1) (1857) 26 L. J. Q. B. 225.

Mr. Justice Crompton gives his reasoning in these words :—

> The rule is rightly laid down, that, in order to entitle a person to compensation, there must be an injury and damages, for which, without the railway Act, there would have been a ground of action, and the act must have taken away that remedy. The overlooking of the claimant's premises, which the jury were directed to take into their consideration, was a matter for which they ought to have given compensation : it might as well be claimed for the erection of an ugly structure.

On the other hand, in a later case, In re *Ned's Point Battery* (1), it has been laid down that, in considering the question of compensation under the compulsory acquisition Acts, injury to amenities and privacy can be considered. Mr. Justice Gibson in delivering the judgment of the Court says :

> Whether compensation under the Defence Act is as extensive as under the Land Clauses Code is doubtful. It certainly is not greater. Compensation can only be given under the Lands Clauses Acts for an injuriously affecting occasioned by the execution of the works. The construction and use of a camp may depreciate the value of adjoining parts of the estate ; for such depreciation from loss of privacy, loss of amenity, vulgarization of the neighbourhood, and the natural concomitants of a camp, compensation may be assessed.

This decision has been followed in a later case, in *Blundell* v. *Rex* (2), which turns on the construction of sections 63 and 68 of the Land Clauses Act of 1845, awarding compensation for injurious affection as under the Indian Act.

We are not inclined to follow the earlier English decisions, having regard to peculiar conditions prevailing in India with reference to the question of privacy. In Bengal, as it appears from some of the cases referred to at the bar, the right of privacy has long been recognised in *Sri Narain Chowdhry* v. *Jodoo Nath Chowdhry* (3), *Mahomed Abdur Rahim* v. *Birju Sahu* (4) and *Sreenath Dutt* v. *Nand Kishore Bose* (5). There is also a decision which has been cited in the Allahabad report, of the Chief Justice and Mr. Justice Mahmood in *Gokal Prasad* v. *Radho* (6). In other parts in India such a right can

(1) [1903] 2 I. R. 192, 198.
(2) [1905] 1 K. B. 516.
(3) (1900) 5 C. W. N. 147.
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be based on custom, as appears from Easement Act of 1882, illustration (*b*) in section 18.

In this case, having regard to the fact that the Secretary of State at the very outset recognized the existence of a right of privacy, it was not necessary for the claimants to adduce any evidence of custom. As at present advised, we are inclined to think that, having regard to conditions prevailing in India, the right view would be to follow the decision reported in Irish Reports to which reference has already been made. But as the appeal fails on the other points, we do not say that this will be our final opinion in the case and the matter may have to be reconsidered fully when occasion demands.

The result is that the appeal fails and is dismissed, but, having regard to all the circumstances, there will be no order as to costs.

Appeal dismissed.

GUHA J. I agree.

A. A.