

PRIVY COUNCIL.

PRAMATHANATH MALLIK

v.

SECRETARY OF STATE FOR INDIA IN
COUNCIL.

P. C.*

1929

Oct. 17;
Dec. 6.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Land Acquisition—Reference to court—Jurisdiction in reference—Land Acquisition Act (I of 1894), s. 18, sub-s. (1).

Upon a reference to the court under the Land Acquisition Act, 1894, section 18, sub-section (1), which mentions four different objections to an award under the Act, upon which a reference may be required, the jurisdiction of the court is confined to considering and pronouncing upon that objection which has been raised in the written application for the reference.

APPEAL (No. 98 of 1928) from a decree of the High Court (August 3, 1926), varying a decree of the Land Acquisition Judge of 24-Parganas.

An award under the Land Acquisition Act, 1894, having been made in respect of land, of which the appellant was owner, he applied for and obtained a reference to the court under section 18, sub-section (1) of the Act. The only question arising upon the appeal was whether, upon that reference, the appellant could object to the measurement of the land stated in the award. The appellant, by his written application, prayed for a reference "for determination of proper compensation and valuation for the lands acquired."

The High Court, affirming, on this point, the decision of the Land Acquisition Judge, held that the inquiry was confined to the particular objection raised by the appellant upon his application for the reference.

B. B. Ghose J. (with whose judgment Cammiade J. agreed), after referring to cases in other High Courts in which a different view had been taken, said that the Court was bound by its own decisions in

*Present: Viscount Dunedin, Lord Darling, Lord Tomlin and Sir George Lowndes.

Abu Bakar v. Peary Mohan Mukerjee (1) and *British India Steam Navigation Co. v. Secretary of State for India* (2), as well as *Gobinda Kumar Roy v. Debendra Kumar Roy* (3), *Mahamad Safi v. Haran Chandra Mukerjee* (4) and *Prabal Chandra Mukherjee v. Peary Mohun Mukherjee* (5). Further, the question had been decided against the applicant by another Division Bench in the present proceedings.

Sir Gerald Hurst, K. C. and *Dube*, for the appellant. The terms of the appellant's application for the reference were sufficiently wide to cover an objection to the measurement of the land. But, in any case, upon the true construction of sections 18 to 24, the inquiry, upon the reference, was not confined to the specific objection raised. By section 18, subsection (1), it is "the matter" which is referred, and that means the award as a whole. That contention is directly supported by *In re Rustomji Jijibhai* (6), also by *Gangadara Sastri v. Deputy Collector of Madras* (7).

[*Sir George Lowndes* referred to *In re Government and Nann Kothare* (8).]

The observations in that case were obiter. The Calcutta decisions relied on in the High Court are distinguishable. They were cases of attempts by persons, who had no *locus standi* in the reference, to enlarge its scope, not cases in which the applicant merely wished to go beyond the objection raised in his application. The Collector, in making an award under the Act, merely determines the sum which the Government should offer; he does not act judicially: *Ezra v. Secretary of State for India* (9). It may, therefore, be presumed that the intention was that, upon objection, the whole award should be open to review by the Court.

Dunne, K. C. and *Kenworthy Brown*, for the respondent, were not called upon.

(1) (1907) I. L. R. 34 Calc. 451.

(2) (1910) I. L. R. 38 Calc. 230.

(3) (1907) 12 C. W. N. 98.

(4) (1908) 12 C. W. N. 985.

(5) (1908) 12 C. W. N. 987.

(6) (1905) I. L. R. 30 Bom. 341.

(7) (1912) 22 Mad. L. J. 379.

(8) (1905) I. L. R. 30 Bom. 275, 287.

(9) (1905) I. L. R. 32 Calc. 605 ;

L. R. 32 I. A. 93.

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The judgment of their Lordships was delivered by SIR GEORGE LOWNDES. This appeal arises out of proceedings under the Land Acquisition Act, I of 1894. Certain lands of the appellant were required by Government for a public purpose. The usual formalities were gone through and awards were made by the Collector in 11 cases in which the appellant was concerned. At his request, references were made to the Land Acquisition Judge, 24-Parganas, who slightly increased the Collector's awards. The appellant carried the matter to the High Court, where a further and more substantial increase was allowed, and he has now appealed to His Majesty in Council. The appellant's grounds of appeal to the High Court and his objections to the High Court's decree were voluminous, but only one question has been submitted on his behalf to the judgment of this Board.

It is contended that the measurements of four of the most valuable plots taken up, the compensation for which was fixed at Rs. 1,000 per *cottâ*, are incorrect, and that the appellant has been denied by the courts in India the opportunity of proving their correct area. Their Lordships are, accordingly, invited to send the case back for the remeasurement of these plots.

By section 8 of the Act, after the intended acquisition has been notified, the Collector is to cause the land to be marked out and measured and a plan to be prepared. It is not disputed that this was regularly done and that the statutory notices were served on the appellant, calling upon him to appear before the Collector and to state (*inter alia*) his objections (if any) to the measurements so made. The appellant did not admit the Collector's area, but he tendered no independent measurements of his own and seems to have made no attempt to show that the Collector's measurements were incorrect. Awards were made in all the 11 cases on the 10th and 11th March, 1921, and, on the 14th April following, the appellant claimed references to the Land Acquisition court on the ground in each case that the award was

insufficient, and that it should be referred to the Judge "for the determination of the proper "compensation." The awards were based on the Collector's measurements, but no question as to their correctness was raised. The references were duly made by the Collector on various dates between the 18th July and the 11th August, 1921. He stated in each case that objection was taken "to the valuation "of the land" only. The cases dragged on for nearly three years, and it was not till April, 1924, that the appellant raised any objection to the measurements. He then asked that Government should admit a larger area or, in the alternative, that there should be a fresh measurement. This was refused by the Judge on the ground that the only objection before him was as to the amount of compensation. The appellant applied to the High Court for revision of this order, but without success. The valuation proceedings then went on at considerable length before the Land Acquisition Judge, and on appeal from him in the High Court, with the result stated above. In the High Court, the question of measurement was again raised, but the learned Judges, by whom the appeal was heard, upheld the previous decision. Their Lordships have now to consider whether it was right.

The material section of the Act, under which the references were made to the court, is section 18, which is in the following terms:—

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

The section clearly specifies four different grounds of objection, *viz*: (1) to the measurement of the land; (2) to the amount of compensation; (3) to the persons to whom it is payable, and (4) to the apportionment. The distinctions between objection to area and to amount of compensation are also borne out by other sections of the Act; see sections 9, 11, 19 (*d*), and 20 (*c*). The appellant's objection was manifestly

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only to the amount of compensation and was correctly so described by the Collector in making the references.

By section 20, the function of the court upon a reference being made is "to determine the objection" and only persons "interested in the objection" are to be summoned before it, and, by section 21, the scope of the inquiry is to be "restricted to a consideration of the interests of the persons affected by the objection."

Their Lordships have no doubt that the jurisdiction of the courts, under this Act, is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once, therefore, it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the court has no power to determine or consider anything beyond it.

For these reasons, their Lordships are of opinion that the ruling of the courts in India was right, and that this appeal fails, and they will humbly advise His Majesty that it should be dismissed. The appellant must bear the costs of the appeal.

Solicitors for appellant: *Clarke, Rawlins & Co.*

Solicitor for respondent: *Solicitor, India Office.*

A. M. T.