

CIVIL REVISION.

Before Pearson and Mallik JJ.

1932

Feb. 15, 16, 29.

NAWAB BAHADUR OF MURSHIDABAD

v.

DEENENDRA MALLIK.*

Land Acquisition—Re-investment of money in the purchase of land—Report of expert—Nawab Bahadur of Murshidabad, if a person who has power to alienate the Murshidabad estate—Land Acquisition Act (I of 1894), s. 32—Murshidabad Act (XV of 1891)—Code of Civil Procedure (Act V of 1908), s. 115.

When with a view to re-invest money in the purchase of land under the Land Acquisition Act, the court engages an expert to report on valuation of rival properties and bases its order on the report without giving an opportunity to the parties concerned to examine the report or cross-examine the expert and make their submissions on it, the procedure is irregular and if it results in substantial injury, the High Court will interfere under section 115 of the Code of Civil Procedure.

The Nawab Bahadur of Murshidabad, holding his estate under the Murshidabad Act, is a person who has no power to alienate the estate, within the meaning of section 32 of the Land Acquisition Act.

Nawab Bahadur of Murshidabad v. Karnani Industrial Bank, Limited (1) referred to.

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The facts are fully stated in the judgment.

Amarendranath Basu and *Sureshchandra Mukherji* for the petitioner.

Saratchandra Basak and *Sureshchandra Mukherji* for the Secretary of State.

N. N. Sircar, *S. C. Mitter*, *R. N. Sircar* and *Heeralal Chakrabarti* for the opposite party.

Cur. adv. vult.

PEARSON J. This Rule has been obtained on behalf of the Nawab Bahadur of Murshidabad, and

*Civil Revision, No. 1251 of 1931, against the order of D. C. Ghosh, President of the Calcutta Improvement Tribunal, dated Oct. 2, 1931.

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is directed against an order of the President of the Calcutta Improvement Tribunal, dated the 2nd October, 1931, whereby he directed the investment of a sum of Rs. 9,83,000, out of the compensation money at present invested in Government Bonds, in the purchase of premises No. 8, Esplanade East, belonging to Kumar Deenendra Mallik.

Certain properties of the Nawab Bahadur in Calcutta known as Maidapati properties had been acquired on behalf of the Calcutta Improvement Trust and the compensation money had been invested under section 32 (1) (b) of the Land Acquisition Act in Government securities (1933, 5 per cent. Bonds) of the face value of Rs. 14,68,200 producing an annual income of Rs. 73,589. The acquired properties were part of those held by the Nawab Bahadur under the Murshidabad Act (XV of 1891) and the schedule to that Act, whereby certain lands were settled for the maintenance and support of the Nawab Bahadur for the time being and for the maintenance of the honour and dignity of his station.

It appears that, in July, 1930, an application on behalf of the Nawab Bahadur was made to the President of the Tribunal for the purchase, out of the compensation money of a *zemindâri* property belonging to one Surendranath Tagore. Subsequently, other persons came in and made offers of Calcutta houses. Government opposed the purchase of the Tagore properties, and, on the 31st March, 1931, the Nawab Bahadur applied that the investment in Government securities should not be disturbed, and, on the 30th April, formally withdrew his application for purchase of the Tagore *zemindâri*.

On the 11th May, the President of the Tribunal directed that the compensation money should be invested in the purchase of some suitable properties in Calcutta, and ordered the Land Acquisition Collector to enquire into those which had not yet been enquired into.

On the 19th June, 1931, the Government of Bengal assumed control of the Nawab Bahadur's estate and

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Mr. K. C. De was made manager. He is a retired member of the Indian Civil Service and was recently the member-in-charge of the Board of Revenue of the Government of Bengal.

On the reports of the Land Acquisition Collector, the matter came up, on the 24th August, 1931, before the President, when representations were made on behalf of the Nawab Bahadur that the properties in question were not suitable, that the Collector's valuation was too high, and that in any event the investment in Government Bonds should remain at least until the Bonds matured in 1933 and full par value could be obtained for them. The attitude adopted by the Nawab Bahadur was also supported on this occasion by Government, and Mr. K. C. De's memorandum, dated the 11th August, 1931, is very strong on the point.

On the 2nd October, 1931, the President directed that premises No. 8, Esplanade East, belonging to Kumar Deenendra Mallik should be purchased for Rs. 9,83,000.

Certain facts have been emphasised upon the merits, which would possibly have been of great weight, if this were a first appeal. For instance, the Nawab Bahadur and the Government, who between them are the persons really interested, now present a united front in saying that this is not the time to invest in house property in Calcutta, and that in any event the matter should be postponed till the bonds mature. They stand at present at a discount and a sale now would result in a loss of many thousands of rupees. It is said further that the President has only taken into account taxes and repairs in his estimate of the income from the premises, has made no allowance for discount on the bonds, stamp duty on the conveyance, the income-tax on the property rental as compared with the bonds (which are income-tax free) or the fall in rental values. On a proper comparison of the investments, it is further said that the income from the bonds is a clear Rs. 6,000 a year better than that from the property proposed and,

though the Advocate-General argues that the statute does not make the amount of income the deciding factor, its importance cannot be doubted, particularly where it is a question of maintaining the honour and dignity of the station of the Nawab Bahadur. Assuming that the President has not considered all these facts, important though they be, it cannot be said that they would authorise us to interfere in revision.

Certain contentions have been raised before us, however, of a different nature. It has been argued that the order complained of is without jurisdiction, because section 32 of the Land Acquisition Act does not apply to this case at all. The contention is one now raised for the first time, though before the President the parties have made applications and the proceedings have all along been conducted on the footing that section 32 does apply. Be that as it may, the contention now made is that the section only applies to the case of money representing compensation for land in the case of "any person who had no power "to alienate the same," and that, in the case of these lands, the Secretary of State and the Nawab Bahadur jointly possessed such power of alienation, so that the present case would not be within the section at all. But the Murshidabad Act (XV of 1891) in the Indenture of Settlement which is the schedule to the Act specifically provides that the Nawab Bahadur shall not "sell, mortgage, devise or alienate" the properties "otherwise than by lease or demise, the "terms and conditions of which have been previously "approved by the Governor of Bengal in Council" (amending Act XXV of 1923) and, in case the Nawab Bahadur does attempt to go against that provision, the Indenture gives power to the Secretary of State to enter into possession of the properties and realise the rents, issues and profits. There is nothing here to confer any right of ownership or disposition on the Secretary of State with or without the concurrence of the Nawab Bahadur: the latter continues as a limited owner but with the income intercepted in

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certain contingencies: See *Nawab Bahadur of Murshidabad v. Karnani Industrial Bank, Limited* (1). It appears, therefore, to be a case where the provisions of section 32 would be applicable and this contention, therefore, fails.

A further contention based on the construction of section 32 is as follows, and also appears to have been raised in these proceedings now for the first time. It is said that, once the alternative in section 32 (b) has been adopted and the money invested in Government securities, there is no power expressly to be found in section 32, whereby the judge or anybody else can order the money to be re-invested in the purchase of land. There is, however, the definite provision that the money, if invested, is to remain so "until the same be applied in the purchase of such "other lands as aforesaid"; and from that it appears clear that some authority has power to pass orders to give effect to that provision of the section. It has, however, been argued further that, even in that case, the authority in question would not be the judge, but the Collector, and that it is no part of the duty of the judge to negotiate for sale or fix the value. In this connexion, our attention is drawn to a resolution of 10th May, 1896, in which the Government of India laid it down that, under section 32, "purchases of "land should be effected under the court's orders "through the Collector or other revenue authority of "the province." On the other hand, it may well be doubted whether this is intended to say more than that once the court has made an order for purchase, the details of carrying the order into effect upon such matters as investigation of title and settling the conveyance are to be left for the Collector to carry out. We may refer to the judgment of Suhrawardy and Jack JJ. in this same matter, dated the 15th December, 1930, where it is said *inter alia* that "The "President of the Tribunal has the discretion to "enquire into the value of the various offers made to "him and to decide the best mode in which the money

(1) (1931) I. L. R. 59 Calc. 1; L. R. 58 I. A. 215.

“should be invested.” We may also refer to the passage in *Kamini Devi v. Pramatha Nath Mookerjee* (1), where it is said that “upon first principles the position may be justified that as under section 32 the fund is placed in the custody of the court, jurisdiction is by implication conferred upon the court to deal with all questions that may arise as to the application of the fund in its custody”. We think, therefore, that the President had jurisdiction to make the enquiry he did and to pass orders thereon.

Next, it is contended that the procedure adopted by the President was wrong mainly in two respects: firstly, that he allowed the prospective sellers to be parties to the proceedings before him; and, secondly, that the figure of Rs. 9,83,000 was arrived at in an irregular manner. As regards the first point, it has already been laid down by this Court in the order of 15th December, 1930, above referred to, that the parties interested in the properties forming the subject matter of investigation are not parties to the proceedings under the Act, and that the President was wrong in allowing them to appear before him and treating them as parties. Nevertheless, it appears that the sellers were allowed to appear before the Tribunal subsequently, and complaint is now again made of this by the petitioner. From the order of the learned President it appears that, on the 17th August, 1931, he allowed the advocates of the rival sellers to appear before him. He explains that this was only done because he was in need of information from them regarding the various properties and wanted their help in examining the merits of their respective offers: he did not allow their appearance at the final hearing.

Then, lastly, it is contended that the learned President adopted an illegal procedure in ascertaining the value of this property along with the others. He referred to the Collector in the first instance and that officer fixed it at Rs. 9,72,000. The learned President

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says that, considering all the circumstances, and certain discrepancies between the various valuations put forward, he thought it best to obtain an independent valuation of the rival properties by an outside expert. Accordingly, after the close of the whole case, he placed the matter in the hands of Mr. Hingston and, on receipt of his report, passed his order on the basis of it, without giving the parties concerned—the Nawab Bahadur and the Government—any opportunity of examining the report or cross-examining Mr. Hingston or making their submissions upon it. Mr. Hingston's valuation of these premises went up to Rs. 9,83,000, and that is the figure accepted by the judge. It is Rs. 11,000 higher than the Collector's figure, and, though that is not perhaps a big sum compared to the total valuation, it is in itself a large amount and a substantial one. The President in these proceedings was a judge and was bound to exercise his functions in a judicial manner, whereas, in adopting this procedure, he has clearly acted illegally, and substantial prejudice has resulted to the party. The Rule must be made absolute. The order of the learned President, which has been challenged in this Rule is dated the 2nd October, 1931. Having regard to the time which has since elapsed and the possibility of changed conditions at the present moment, the whole matter should be left open from the beginning and the learned President should consider afresh in the first instance whether it is at all desirable or advantageous at this time to direct investment in landed property at all, especially in view of the expressed wishes of the Nawab Bahadur and the Government, whose *bona fides* can hardly be impugned.

MALLIK J. I agree.

Rule absolute. Case remanded.

A. A.