

## APPELLATE CIVIL.

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*Before Mukerji and Guha J.J.*

NITYAGOPAL SEN PODDAR

*v.*

SECRETARY OF STATE FOR INDIA IN  
COUNCIL.\*

1931

Aug. 20, 26.

*Land Acquisition—Valuation—Belting system—Front land—Back lands.*

In land acquisition or improvement schemes, in and near about Calcutta, land is generally divided into blocks facing some particular street or road or lane and each block is divided into three belts, the first to a depth of 60 feet or so on the road frontage, the second to a depth of about 150 feet thereafter and the third consisting of all land behind, the relative value of the blocks being fixed in the proportion of 100, 66·6 and 50.

This system of belting is widely used, but its value as a system depends much upon a variety of facts.

If *data* are available showing the proportion at which the value of land diminished, accordingly as it is situated at a particular distance from a main road or thoroughfare, the system would be perfectly scientific.

In the absence of any such *data* also, it may be assumed that in big cities where land sells by *cottás* or yards or feet, there is such a proportion, as common experience shows.

But in places and localities where land is sold by *bighás* or acres, and there is no real evidence of such proportionate diminution in value, the system is based on no sound principle and must be regarded as a method not quite satisfactory.

Of course there is almost always a distinction in value between front lands and back lands everywhere, but that distinction would not obviously justify a recourse in each and every case to the belting system, which is highly artificial and cannot be resorted to as a hard and fast rule.

*Secretary of State for India v. India General Steam Navigation and Railway Company, Ltd.* (1), *Roghunath Das v. The Collector of Dacca* (2) and *The Collector v. Ramchandra Harischandra* (3) referred to.

There cannot be any hard and fast rule that back land must be always of less value than front land or that the proportion should be as one to a half or that there must be a certain proportion at a certain distance from the road.

\*Appeals from Original Decrees, Nos. 424 and 441 of 1928, against the decrees of S. K. Haldar, Addl. District Judge of Bakarganj, dated June 25, 1928.

(1) (1909) I. L. R. 36 Calc. 967 ;  
L. R. 36 I. A. 200.

(2) (1910) 11 C. L. J. 612.

(3) [1926] A. I. R. (Bom.) 44.

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FIRST APPEALS in land acquisition case by the objectors.

The facts of the case and relevant portions of arguments of counsel appear fully in the judgment.

IN FIRST APPEAL No. 424 of 1928 :

*Gunadacharan Sen* and *Bhageerathchandra Das* for the appellants.

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

IN FIRST APPEAL No. 441 of 1928 :

*Santoshkumar Basu* and *Birajmohan Ray* for the appellants.

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

*Cur. adv. vult.*

MUKERJI AND GUHA JJ. These two appeals have arisen out of an award made by the Land Acquisition Judge of Bakarganj. The land was acquired for a project known as "Additional land for the new "Reserve Police line at Barisal." The lands are situate by the side of a road known as the Bagura Alekanda Road and lie within the municipal limits of the town of Barisal. The declaration was dated the 13th November, 1926. The claimants are the appellants.

In the decree of the court below will be found the different plots, their character, the award made in respect of them by the Land Acquisition Collector and the variation, if any, made by the Judge.

(1) (1886) I. L. R. 10 Bom. 585.

(2) (1908) I. L. R. 33 Bom. 325.

(3) (1909) 11 C. L. J. 393.

(4) (1900) 18 C. L. J. 244.

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There were four groups of claimants in respect of the land acquired, of whom only two are the appellants in two appeals. Group No. 1 are the appellants in Appeal No. 441 and Group No. 2 in Appeal No. 424. It will be convenient to deal with the appeals separately.

*F. A. No. 424 of 1928.*

As regards L. A. Plots Nos. 13 and 16, which consist of a building and a tank, the Land Acquisition Collector proceeded on the basis of rental. He assessed the rent at Rs. 35 a month and deducted 10 *per cent.* on account of collection charges, probable vacancies and costs of repairs. He proceeded on the same basis as regards L. A. Plot No. 5, which consists of a building and a half of a tank, took Rs. 80 as its rental and made a similar deduction. The Judge has upheld the Collector's award so far as these plots are concerned.

The rest of the area, so far as the lands of these appellants are concerned, was divided into three belts according to their distances from the Bogura Alekanda Road. He valued the belts at the following rates *per bighá*: 1st belt Rs. 5,000, Rs. 4,800 and Rs. 4,700; 2nd belt Rs. 4,300 and Rs. 4,000; and 3rd belt Rs. 3,000. The different rates for lands in one and the same belt were assessed as the lands were of different qualities; but we are only concerned with the rate of Rs. 5,000 for the 1st belt and Rs. 4,000 for the 2nd belt, which were awarded for the appellants' lands. He valued tanks, ditches and drains at  $\frac{1}{4}$ th of the said rates. The Judge has upheld the system of belting but enhanced the rates as follows: 1st belt Rs. 6,000, 2nd belt Rs. 4,700, 3rd belt Rs. 3,500. He ordered that deep ditches and tanks should be valued at  $\frac{1}{4}$ th of the said rates, but that superficial ditches should be valued at the full value of adjoining lands.

The appellants contend that the values so fixed are too low. The evidence adduced on their behalf related to the transactions evidenced by Ext. 1, Ext. 2, Ext. 3, Ext. 4, Ext. 5, Ext. 9 and Ext. 10. Of these those

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evidenced by Ext. 4 and Ext. 5 cannot be relied on, being of dates subsequent to the declaration. The other transactions are in respect of lands, of which the only analogy to the present lands is that they are situate in the same *mouzá*, but they are located at spots far away from these lands and the transactions themselves in some cases are complicated by the presence of structures for which no *data* are available. They have been very carefully dealt with in the Collector's award and we think that, for the reasons which he has given and with which, upon the evidence on the record, we entirely agree, they are perfectly worthless for the purposes of valuation of the lands with which we are concerned. On behalf of the Government, evidence was given in respect of a valuation made by a commissioner, who had been deputed in a certain suit to value and partition some adjoining lands. The report, dated 5th December, 1924 (Ex. C), which this commissioner made seems to us to be the only reliable guide available for judging of the value of these lands. The commissioner had been asked to value the lands in that suit in order to determine what money compensation, if any, should be given to the plaintiff in that suit. Clearly, therefore, accuracy in the valuation was necessary. The appellant's contention that the lands should be valued in the light of the evidence which they adduced cannot be upheld.

As regards the plots which have been valued on the basis of rental, we think nothing can be said on behalf of the appellants. Their values as determined by the Land Acquisition Collector and the Judge must remain as they are.

As regards the rest of the area, the main argument of the appellants is that it should be valued at an all round rate of Rs. 6,000 which the Judge has awarded for the first class lands of the first belt and that tanks should be valued at full rates for lands.

Now so far as the system of belting is concerned it is a system which is widely used, but its value as a

system depends much upon a variety of facts. If *data* are available showing the proportion at which the value of land diminished, accordingly as it is situated at a particular distance from a main road or thoroughfare, the system would be perfectly scientific. In the absence of any such *data* also, it may be assumed that in big cities where land sells by *cottās* or yards or feet there is such a proportion, as common experience shows. For instance, in land acquisition or improvement schemes in and near about Calcutta land is generally divided into blocks facing some particular street or road or lane and each block is divided into three belts, the first to a depth of 60 feet or so on the road frontage, the second to a depth of about 150 feet thereafter and the third consisting of all land behind, and the relative values of the three belts are fixed in the proportion of 100, 66·6 and 50. But in places and localities where lands are sold by *bighās* or acres, and there is no real evidence of such proportionate diminution in value, the system is based on no sound principle and must be regarded as a method not quite satisfactory. Of course there is almost always a distinction in value between front lands and back lands everywhere but that distinction would not obviously justify a recourse to the belting system in each and every case. It is a highly artificial system and cannot be resorted to as a hard and fast rule. [See *Secretary of State for India v. India General Steam Navigation and Railway Company, Ltd.* (1), *Roghunath Das v. Collector of Dacca* (2), *The Collector v. Ramchandra Harischandra* (3).] Nor again can there be any hard and fast rule that back land must be always of less value than front land or that the proportion should be as one to a half or that there must be a certain proportion at a certain distance from the road. [See *Collector of Poona v. Kashinath Khasgiwala* (4), In the matter

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of *Government of Bombay* (1), *Ataul Huq v. Secretary of State for India in Council* (2), *Guru Das Kundu Chowdhry v. Secretary of State for India in Council* (3)]. In the case before us, no data are available except such as are contained in Ext. C; and if we rely on that document we think the proper conclusion to arrive at so far as the present lands are concerned is to leave the value of the lands of the 1st belt (*i.e.*, L. A. Plots Nos. 14, 15 and 17) intact, and to value the lands of the 2nd and the 3rd belts (*i.e.*, L. A. Plots Nos. 9, 12, 6, 7 and 8) at an all round rate of Rs. 4,500 *per bighâ*. As regards tanks we hold upon the evidence that they are very valuable in the locality and their utility is in no sense less than the lands, having regard to their position and size. L. A. Plots 10B and 19A should be valued at the rate of Rs. 4,500 *per bighâ* and L. A. Plot No. 18 at Rs. 6,000 *per bighâ*. It may be noted that the commissioner in Ext. C did not value the tank at any different figure from the lands.

The result is that the Judge's award should be enhanced as indicated above, and statutory allowance being added, the total amount of enhancement will carry interest at the rate of 6 *per cent. per annum* from the date on which the Collector took possession, that is to say, from the 30th January, 1927.

The appellants will be entitled to their costs on the amount of success in this appeal. Hearing-fee, 5 gold mohurs.

*F. A. No. 441 of 1928.*

In this case the lands concerned lie at the corner, being L. A. Plots Nos. 1, 2 and 3, on which there are buildings and a big tank with a *puccâ ghât*. The Collector valued the premises on rental basis, taking the rental to be Rs. 75 a month and making the usual deduction of 10 *per cent.* The Judge has assessed the rental at Rs. 80. The buildings consist of a main

(1) (1908) I. L. R. 33 Bom. 325.

(2) (1909) 11 C. L. J. 393.

(3) (1900) 18 C. L. J. 244.

building with 14 rooms: two of which are in the upper storey, an one-roomed structure standing apart and an out-house with two rooms. The claimant used to occupy the buildings and they were never on rent. In 1922, the claimant submitted an income-tax return stating the letting value as Rs. 1,000. In the return for 1926-27, he gave the letting value at Rs. 1,300. There is some indication that he had become aware of the contemplated acquisition and for that reason this return may not be fit to be implicitly relied on. But comparing the adjoining premises for which the award has been on the basis of a rental of Rs. 35 and Rs. 80, as already stated above, it is difficult to resist the conclusion that the rental assessed is inadequate. The accommodation which these buildings provide and their site, compared with those of the other two premises for which those rentals have been assessed, would call certainly for a figure somewhere about Rs. 100. The learned Judge has observed—"The house is, however, "nicely situated and has a large number of rooms and "outhouses. The rent of houses at Barisal has always "been high and it is difficult to rent any good house in "the town." We think we shall be justified, on the materials before us, in assessing the rental at Rs. 100 per month.

The award should be made on the basis of this enhanced rental with the usual deduction of 10 *per cent.*, and with the addition of statutory allowance and interest as in the other appeal.

The appellant will be entitled to his costs in this appeal on the amount of his success. Hearing-fee, 3 gold mohurs.

*Appeals allowed in part.*

G. S.

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