LETTERS PATENT APPEAL.

Before Guha, Bartley and R. C. Mitter JJ.

1936

Mar. 24, 31.

COLLECTOR OF DACCA

v.

GOLAM KUDDUS CHAUDHURI.*

Land Acquisition—Award, if decree—Judgment—Appeal—Letters Patent, s. 15—Market value—Landlord and tenant—Apportionment—Land Acquisition Act (I of 1894), ss. 4, 18, 23, 26, 54—Code of Civil Procedure (Act V of 1908), ss. 2, 98, 110.

By the amendment of the Land Acquisition Act of 1894 by Act XIX of 1921, every award under the Act is to be deemed to be a decree, and the statements of the grounds of such awards are judgments within the meaning of the Code of Civil Procedure.

Rangoon Botatoung Company, Ld. v. *Collector, Rangoon* (1) held overruled by the amendment of 1921.

A judgment under cl. 15 of the Letters Patent means a decision affecting the merits of the question between the parties by determining some rights or liabilities; and a judgment in a land acquisition case is a judgment as mentioned under that clause of the Letters Patent.

Justices of the Peace for Calcutta v. *Oriental Gas Company* (2) followed.

The market value of the lands acquired is to be determined as it was at the time of the publication of the notification under s. 4 of the Land Acquisition Act of 1894.

Where appeals by the Collector against decisions of the Land Acquisition Judge are dismissed by a Division Bench of the High Court under s. 98 of the Code of Civil Procedure for difference of opinion between the Judges of that Bench, appeals under cl. 15 of the Letters Patent are maintainable.

In all valuations, judicial or otherwise, there must be room for conjectural inferences and inclinations of opinion, which are difficult to reduce to exact reasoning, or, to explain to others; there is more than ordinary room for guess work; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at.

Secretary of State for Foreign Affairs v. *Charlesworth, Pilling & Co.* (3) followed.

*Letters Patent Appeals, Nos. 1 to 5 of 1935, in Appeals from Original Decrees, Nos. 242 to 246 of 1930.

(1) (1912) I. L. R. 40 Cal. 21; L. R. 39 I. A. 197.
(2) (1872) 8 B. L. R. 433.
(3) (1901) I. L. R. 26 Bom. 1; A. C. 373; L. R. 28 I. A. 121.

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Where in proceedings under the Land Acquisition Act of 1894 the owner of the land has objected under s. 18 of the Act to the amount awarded, but has not objected to the apportionment between himself and the tenants, who had accepted the compensation awarded to them, the owner is not entitled to the increased amount resulting from his objection less the compensation accepted by the tenants, but only to such proportion of the increased amount as accords with the apportionment awarded; the Government and not the owner is entitled to the benefit arising from the tenants having accepted the compensation upon a lower value.

Prag Narain v. *Collector of Agra* (1) and *Rohan Lal* v. *Collector of Etah* (2) followed.

There can be no rule of general application applicable to apportionment between a landlord and a tenant with a permanent right of occupancy; rough and ready method of settling the apportionment has to be adopted.

LETTERS PATENT APPEALS by the Collector of Dacca.

Appeals from Original Decrees Nos. 242 to 247 of 1930 arose out of some land acquisition proceedings and were heard by Mukerji and M. C. Ghose JJ. There was difference of opinion between their Lordships with regard to the first five appeals and these were dismissed under s. 98 of the Code of Civil Procedure. The remaining appeal was also dismissed, their Lordships agreeing. The Collector thereupon preferred five appeals under cl. 15 of the Letters Patent in the five appeals in which there was difference of opinion.

The other facts of the cases and the arguments advanced in the appeals appear sufficiently from the judgment in the Letters Patent Appeals.

The Senior Government Pleader, Sarat Chandra Basak, and *the Assistant Government Pleader, Bijan Kumar Mukherjea,* for the appellant.

Atul Chandra Gupta, Nurul Huq and *Hamidul Huq Chaudhuri* for the respondents in Appeals Nos. 3 and 4.

(1) (1932) I. L. R. 54 All. 286; L. R. 59 I. A. 155.

(2) (1929) I. L. R. 51 All. 765.

Shamsuddin Ahmad for respondents in Appeals Nos. 1 and 5.

Rajendra Chandra Guha and *Mahendra Kumar Ghosh* for respondents in Appeal No. 2.

Cur. adv. vult.

The judgment of the Court was as follows:—

These five appeals are under s. 15 of the Letters Patent and have arisen out of proceedings under the Land Acquisition Act. In pursuance of a declaration, dated December 17, 1928, lands were acquired for a project named "Landing grounds for aeroplanes at Dacca, in the village of Dhanmandal, Zillah Dacca." The village is just outside the municipal limits, and the lands acquired were near the other lands in the village purchased by private owners for residential purposes. The lands acquired had tenants on them, having rights of occupancy; their landlords had *lakhirâj* right in the same. The Collector valued the tenants' interest in the lands acquired at Rs. 275 per *bighâ* and the *lakhirâj* right of the proprietors at twenty-five times the annual rent, and five years' purchase in addition for the loss of *selâmi* of the net annual profit from rent paid by the tenants to the proprietors; the total valuation of all interests in the lands acquired was about Rs. 450 per *bighâ*. The tenants accepted the Collector's award; there were, however, references under s. 18 of the Land Acquisition Act to the Special Land Acquisition Judge, on application made by the proprietors claiming increment of the valuation of their interest in the lands acquired. The proprietors claimed that the lands acquired should have been valued by the Collector at Rs. 5,000 a *bighâ*.

The learned Special Land Acquisition Judge, on consideration of the materials placed before the Court, increased the valuation of the lands acquired; the value of the lands was estimated by the Judge at Rs. 1,150 per *bighâ*. The increase in valuation was

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based on three transactions subsequent to the notification under which the lands in question were acquired. The two *mirâsh pâttâs*, Exs. 1 and 2 in the case, according to which the value of the lands covered by the document worked out at Rs. 1,350; a deduction was made from that valuation, for the reason that the lands acquired were at a greater distance from the town of Dacca, and therefore slightly less favourably situated. The third transaction relied upon by the Judge was an offer of which, as it appears from the Judge's judgment itself, the exact terms were not in evidence and in regard to which negotiations had not been completed. The evidence relating to this transaction was oral, coming from a witness examined on the side of the Government. From the particulars given by the witness in his deposition before the Court, the learned Judge came to the conclusion that the total value of the land, in regard to which the granting of a permanent lease negotiations had not been completed, was Rs. 1,150 per *bighâ*. This plot of land comprised an area of five *bighâs* adjoining the lands acquired. It may be noticed also, while referring to the judgment of the Special Land Acquisition Judge, that, according to the Judge, the landlords claimants before the Court were entitled to get the full value of the land less the value of the tenants' interest as valued by the Collector. The landlords were to get Rs. 875 per *bighâ* as their share of the value of the lands acquired.

The Collector of Dacca preferred appeals to this Court, directed against the decision of the Special Land Acquisition Judge, to which reference has been made above. The appeals (Appeals from Original Decrees Nos. 242 to 247 of 1930) directed against that decision were heard by two learned Judges of this Court; one of the six appeals (No. 247) was dismissed by the learned Judges, while in the other five (Nos. 242 to 246), there was difference of opinion as between the Judges, and those appeals were also dismissed in view of the provision contained in s. 98 of

the Code of Civil Procedure. The Collector of Dacca preferred these appeals under s. 15 of the Letters Patent, in those five cases in which the opinion of the senior Judge of the Division Bench prevailed.

It is necessary at this stage to give our decision on the question of competency of these appeals, raised by way of preliminary objection. It was urged on behalf of the respondents in these appeals that no appeal was permissible under the Letters Patent, inasmuch as the decision of the High Court in a land acquisition case was not a judgment within s. 15 of the Letters Patent, so as to enable a party to file a further appeal to the High Court under that provision of the law. In support of this position, reliance was placed on the decision of the Madras High Court given in the year 1918, in the case of *Manavikraman Tirumalpad* v. *Collector of the Nilgiris* (1), based principally on the judgment of their Lordships of the Judicial Committee of the Privy Council, delivered in the year 1912, in the case of *Rangoon Botatoung Company, Ld.* v. *Collector, Rangoon* (2), and on the observations of Lord Macnaghten in a case decided by the Judicial Committee in the year 1913: *Special Officer, Salsette Building Sites* v. *Dasabhai Bezanji Motiwala* (3). The provisions in the Land Acquisition Act contained in s. 26 of the Act were, however, amended in the year 1921, by the Amending Act XIX of 1921. Every award under the Land Acquisition Act was to be deemed to be a decree, and the statement of the grounds of every such award, a judgment within the meaning of s. 2, cl. (*2*) and s. 2, cl. (*9*), respectively, of the Code of Civil Procedure, 1908 (s. 2 of the Amending Act); consequential changes were also introduced in s. 54 of the Land Acquisition Act providing for appeal

(1) (1918) I. L. R. 41 Mad. 943. (2) (1912) I. L. R. 40 Cal. 21; L. R. 39 I. A. 197.

(3) (1913) 17 C. W. N. 421.

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to His Majesty in Council, subject to the provisions contained in s. 110 of the Code of Civil Procedure (s. 3 of the Amending Act). The reasons for the amendments referred to above was to remove the anomaly created by the decision of the Judicial Committee in the case of *Rangoon Botatoung Company, Ld.* v. *Collector, Rangoon* (1) and to meet the observations made in that case by their Lordships based on Lord Bramwell's dictum in *Sandback Charity Trustees* v. *North Staffordshire Railway Co.* (2), that an appeal did not exist in the nature of things; a right of appeal from any decision of any tribunal must be given by express enactment; such a right could not be implied. By the Amending Act of 1921, the awards of Courts made in Land Acquisition cases were placed in the same category as decrees, and awards are now, after the passing of the Amending Act, decrees or orders of Civil Courts; and the statements of the grounds of such awards are judgments within the meaning of the Code of Civil Procedure. The question for consideration now is, whether a judgment in a land acquisition case is a judgment as mentioned in s. 15 of the Letters Patent, and the question, in our judgment, must be answered in the words used by Couch C. J. in *Justices of the Peace for Calcutta* v. *Oriental Gas Company* (3):—

> The judgment in cl. 15 means a decision which affects the merits of the question between the parties by determining some right or liability.

The definition of "judgment" in the case of *The Justices of the Peace for Calcutta* (3) must be taken to have received the approval of their Lordships of the Judicial Committee of the Privy Council by their decision in the case of *Hurrish Chunder Chowdhry* v. *Kalisunderi Debi* (4), which affirmed the decision

(1) (1912) I. L. R. 40 Cal. 21; L. R. 39 I. A. 197.
(2) (1877) 3 Q. B. D. 1.
(3) (1872) 8 B. L. R. 433, 452.
(4) (1882) I. L. R. 9 Cal. 482; L. R. 10 I. A. 4.

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of this Court in the case of *Kally Soondery Dabia* v. *Hurrish Chunder Chowdhry* (1), in which the definition of the word "judgment" contained in the case of *Justices of the Peace for Calcutta* (2) was adopted. A judgment in a Land Acquisition Case is now, under the Code of Civil Procedure, appealable as such, and we do not see any reason to give a limited meaning of the word as used in the Letters Patent. The view taken by the Lahore High Court in *Har Dial Shah* v. *Secretary of State for India* (3) was that the Land Acquisition Act (XIX of 1921) did not in any way affect the right of appeal from the judgment of one Judge of a Division Bench under the Letters Patent, the scope of the amendment was to extend the right of appeal, and not to curtail any existing right. As it was pointed out by the learned Judges in the above case, s. 111 of the Code of Civil Procedure prohibits an appeal to His Majesty in Council from the judgment of a single Judge of a High Court established by the Letters Patent, and the reason of the prohibition was that an appeal from such a judgment is provided for in the Letters Patent; that an aggrieved party should not be permitted to appeal to His Majesty in Council, but that he should in the first instance appeal under the Letters Patent to the other Judges of the High Court. As indicated above, the word "judgment" as used in s. 15 of the Letters Patent, must, in our judgment, be held to include all judgments affecting the merits of the question between parties before the Court, by determining some right or liability; and by the express provision contained in the Amending Act of 1921, a judgment includes a judgment in a Land Acquisition Case. The appeals preferred by the Collector of Dacca in the case before us are competent.

On the merits of the appeals, it must be stated at the outset that one of the learned Judges of this

(1) (1881) I. L. R. 6 Cal. 594. (2) (1872) 8 B. L. R. 433.
(3) (1922) I. L. R. 3 Lah. 420.

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Court was of opinion that the decision of the Special Land Acquisition Judge, valuing the lands acquired in the cases before us at Rs. 1,150 per *bighâ*, should be accepted. In the opinion of the other Judge, it would be amply generous to the landlords claimants for compensation if the market value of the lands was fixed at Rs. 960 per *bighâ*. Regard being had to the position indicated above, the appellant before us cannot be allowed to challenge the valuation of the lands acquired at the rate of Rs. 960 per *bighâ*. It must be conceded, as it had been conceded by the learned Senior Government Pleader, that there was agreement as between the learned Judges of the Division Bench to this extent that the Collector's valuation of the lands must be increased from Rs. 450 to Rs. 960 per *bighâ*.

The question arising for consideration in these appeals is whether, on the materials on the record, any further increase in the valuation of lands as mentioned above could be allowed. In our judgment, no such increase would be justifiable. In the first place, there is no reason why the market value as indicated in the documents, Exts. A and B in the case of lands lying immediately to the north of the acquired lands, should be kept out of consideration, and preference given to the value of lands deducible from the two other transactions evidenced by Exts. 1 and 2 and from an offer of a permanent lease, of which the exact terms were not in evidence, and relating to which there is no evidence other than the statement by a witness examined in Court, a transaction which admittedly was not complete even after more than a year after the date of the publication of the declaration for acquisition of lands. The transaction evidenced by Exts. 1 and 2 relate to a time more than a month after the publication of declaration under the Land Acquisition Act for the acquisition of lands in the case before us. The law requires that the market value of lands acquired is

to be determined as it was at the time of the publication of the notification under s. 4 of the Land Acquisition Act [S. 23 (1) of the Land Acquisition Act]; and, in the case before us, there was no special reason for relying on transactions after the publication of the declaration for acquisition of lands, and giving them preference over Exts. A and B on which the Collector's valuation was based. It is, however, unnecessary to pursue the matter any further, as both the learned Judges constituting the Division Bench must be presumed to have relied upon the basis of valuation afforded by transactions to which reference has been made above, and the increase in valuation to the extent of Rs. 960 per *bighâ* must be accepted by us, based presumably upon these transactions, and the oral evidence in the cases before us. In accepting the figure Rs. 960, as we are bound to do, we desire to express our opinion, in the words used by Lord Hobhouse in the case of the *Secretary of State for Foreign Affairs* v. *Charlesworth, Pilling & Co.* (1), that both the learned Judges of this Court appear to have admitted into their minds those very considerations which the law directs to exclude, namely, speculation on the value likely to be conferred on the lands taken for a particular project by the completion of the project itself. The position, however, must be recognised, as was pointed out by their Lordships of the Judicial Committee of the Privy Council in the case mentioned above, that in all valuation, judicial or otherwise, there must be room for inference and inclinations of opinion, which being more or less conjectural are difficult to reduce to exact reasoning or to explain to others; there is more than ordinary room for guess work; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at. On the materials before us, we fix the market value of the lands acquired, in the cases

(1) (1901) I. L. R. 26 Bom. 1; A. C. 373; L. R. 28 I. A. 121

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before us, at the rate of Rs. 960 per *bighâ*, as mentioned in the judgment of one of the learned Judges of this Court, as, in our opinion, no increase on that figure could be held to be justifiable.

The valuation of Rs. 960 per *bighâ*, as mentioned above, represents the value of the proprietor's interest in the lands acquired, on the one hand, and that of the tenants on the lands on the other. The value of the lands being determined as a whole, the question of the apportionment of the compensation awarded had to be taken into consideration with reference to the interests of different degrees as amongst the claimants. The Collector's basis of calculation of the two different interests in the cases before us shows that the valuation of the tenants' share of the compensation money based on average price paid on lands in the immediate neighbourhood as represented by the transactions evidenced by Exts. A and B was Rs. 275 per *bighâ*, out of the total valuation of about Rs. 450 per *bighâ* as a whole, representing the value of the two different interests in the lands. The Special Land Acquisition Judge increased the valuation as a whole from about Rs. 450 to Rs. 1,150 per *bighâ*; and as the tenants had not applied for any reference under s. 18 of the Land Acquisition Act, against the valuation by the Collector, the landlords were held, by the Judge, to be entitled to get the full value of the land, less the value of the tenants' interests, namely, Rs. 275 per *bighâ*, *i.e.*, Rs. 875 per *bighâ*, as their share of the compensation money for the lands acquired.

One of the learned Judges of this Court affirmed the decision of the learned Special Land Acquisition Judge mentioned above, while the other learned Judge of the Division Bench expressed the opinion that the view taken by the Judge in the Court below was not sound. In our judgment, the question arising for consideration on this part of the case must be decided in accordance with the rule laid

down by their Lordships of the Judicial Committee of the Privy Council in the case of *Prag Narain* v. *Collector of Agra* (1) that where, in proceedings under the Land Acquisition Act, the owner of the land has objected under s. 18 to the amount awarded, but has not objected to the apportionment between himself and tenants, who had accepted the compensation awarded to them, the owner is not entitled to an increased amount resulting from his objection less the compensation accepted by the tenants, but only to such proportion of the increased amount as accords with the apportionment awarded; the Government and not the owner is entitled to the benefit arising from the tenants having accepted compensation upon a lower value. The above rule is in consonance with what was held in the case of *Rohan Lal* v. *Collector of Etah* (2). In the cases before us, there was, in the words of Lord Russell of Killowen in *Prag Narain's Case* (1), no foundation for the landlord's claim to be entitled to extra amount which the tenants might have received if they had not accepted the lower valuation, and the landlords were, therefore, only entitled to their share of the compensation money, so much of the value of the lands acquired, as represents their interest in the same.

In the matter of determining the value of the two different interests, the landlords and the tenants, the position that the tenants on the lands acquired had right of occupancy in the same has to be taken into consideration. There is no doubt that there is, and can be, no rule of general application, applicable to apportionment between a landlord and a tenant with a permanent right of occupancy; and what is sometimes called a rough and ready method of settling the matter of apportionment has to be adopted. In view of all the circumstances that have to be taken

(1) (1932) I. L. R. 54 All. 286; L. R. 59 I. A. 155.

(2) (1929) I. L. R. 51 All. 765.

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into consideration in the matter of rights conferred upon *râiyats* with rights of occupancy, it is not, in our judgment, unreasonable to hold in the cases before us that the landlords claimants for compensation who applied for a reference under s. 18 of the Land Acquisition Act for increased valuation, were entitled to get two-fifths of the value of the entire interest in the lands acquired, which is fixed at Rs. 960 per *bighâ*.

In the result, the appeals are allowed in the manner indicated above. The Collector's valuation of the lands acquired in the cases before us is increased to Rs. 960 per *bighâ*, representing the valuation of the landlords' and tenants' interests in the same. The landlords claimants are held entitled to get two-fifths of increased valuation of Rs. 960, the statutory compensation 15 per cent. allowed by law being added to the same.

The appellant is entitled to get his costs in these appeals and in the appeals heard by the Division Bench of this Court, as also in the Reference cases before the Special Land Acquisition Judge, in proportion to his success.

Appeals allowed.

A. K. D.