## APPELLATE CIVIL.

*Before Guha and Mitter JJ.*

# ANANTA RAM BANERJI

*v.*

# SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1937

*July* 5, 6, 9.

*Land Acquisition—Valuation of property—Compensation to owner—Agreement of parties as to value, if a bar to determination of market value—Estoppel—Land Acquisition Act (I of 1894), ss. 11, 18, 23.*

The owner of a property which was acquired under the Land Acquisition Act entered into a contract with the acquiring party as to its value and the amount of compensation payable to the owner. In the acquisition proceedings the Land Acquisition Collector made his award on the basis of the contract and did not proceed to determine the market value independently. A reference was made under s. 18 of the Land Acquisition Act and was rejected. The owner appealed to the High Court.

*Held*: (1) that the Collector was under no obligation to disregard the contract;

(2) that in making his award on the basis of the contract, the Collector did not act erroneously;

(3) that on a reference under s. 18 of the Land Acquisition Act, the Special Judge must exercise his jurisdiction according to principles of law and decide what evidence was to be admitted for the determination of the issues before him;

(4) that the owner was estopped from leading before the Court further evidence relating to the market value of the property under s. 23 of the Land Acquisition Act.

*Fort Press Company, Limited* v. *Municipal Corporation of the City of Bombay* (1) explained.

*Bijayakanta Lahiri Chaudhury* v. *Secretary of State for India in Council* (2) and *British India Steam Navigation Co.* v. *Secretary of State for India* (3) referred to.

*Appeal from Original Decree No. 276 of 1935, against the decision of D. C. Ghose, President, Calcutta Improvement Trust Tribunal, dated July 31, 1935.

(1) (1922) I. L. R. 46 Bom. 767; L. R. 49 I. A. 331.
(2) (1933) 58 C. L. J. 38.
(3) (1910) I. L. R. 38 Cal. 230.

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

APPEAL by the claimant against a decision of the President, Calcutta Improvement Trust Tribunal.

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

*Surendra Madhab Mallik*, *Radhika Charan Chatterji*, *Prem Ranjan Ray Chaudhuri* and *Amiya Ranjan Ray Chaudhuri* for the appellant.

*Bipin Chandra Mallik*, *Beereshwar Bagchi* and *Phaneendra Kumar Sanyal* for the respondent.

*Cur. adv. vult.*

MITTER J. Premises No. 26, Durga Charan Mukherji Road, in the town of Calcutta, which comprises an area of 4 *cottâs* 12 *ch.* 30 sq. ft., of which the appellant was the owner, fell within the road alignment of a "projected street" in Scheme No. IX prepared by the Board of Trustees for the Improvement of Calcutta. The appellant desired to erect a building thereon and, in accordance with the provisions of s. 63 (*4*) of the Calcutta Improvement Act, applied to the said Board for permission to erect the same. The Board refused permission, whereupon he demanded acquisition by the Board of the said premises. Negotiations, thereafter, were started with a letter written by the appellant to the Board on October 31, 1930. This letter has not been produced, but the reply has been (Ex. K). The said negotiations were carried on between Mr. Datta, an advocate of this Court acting on behalf of the appellant, and Mr. Ganguli, the Assistant Valuer of the Board, from November 14 to November 26, 1930. At all these negotiations, it appears that the appellant was also present. These negotiations terminated in an agreement for the acquisition of the whole of the said premises No. 26, Durga Charan Mukherji Road. The appellant agreed to a price of Rs. 1,225 per *cottâ* for the land plus statutory allowance of 15 per cent. The terms of the agreement he put down in an application dated November 26, 1930, addressed to

the Chairman, Calcutta Improvement Trust (Ex. A-II-16). Paragraph 5 of the said application runs as follows:—

That your petitioner is willing to accept Rs. 1,225 (one thousand two hundred and twenty-five) only per *cottâ* as value of the land besides statutory allowance and other allowances and costs as provided under law and that the said entire premises may be acquired in the course of two months.

The prayer was as follows:—

Under the circumstances your petitioner prays for acquisition of the said premises as soon as possible.

Mr. Datta's evidence is that, although his client, who was then in need of money, at first insisted on the acquisition within two months as a condition precedent,—it was on this view the period of two months must have been mentioned in para. 5 of the said application, Ex. A,—Mr. Ganguli pointed out that it would not be possible to acquire the same within the said period through the machinery of the Land Acquisition Act and would not have the said term as a condition. Finally it was agreed between his client and Mr. Ganguli that the term about the acquisition within two months was not to be a condition at all. The effect of the agreement between the appellant and Mr. Ganguli, therefore, was—

(*i*) that the whole of premises No. 26, Durga Charan Mukherji Street, was to be taken over by the Board,

(*ii*) that the property was to be acquired by the Board through the machinery of the Land Acquisition Act, and

(*iii*) that the appellant would get compensation for the land at the rate of Rs. 1,225 per *cottâ* plus statutory allowance of 15 per cent.

As the premises was to be acquired according to this agreement through the machinery of the Land Acquisition Act, the Chief Valuer of the Board of

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

*Mitter J.*

Trustees put himself in communication with the Land Acquisition Collector. By a letter written by him to the latter on December 5, 1930 (Ex. O-II-18) he asked the latter to prepare a revised estimate for the acquisition of the whole of premises No. 26, Durga Charan Mukherji Road, on the basis of the agreed price of Rs. 1,225 *per cottâ* for the land. With this letter was enclosed a copy of the appellant's aforesaid petition dated November 26, 1930, *i.e.*, a copy of Ex. A. The Land Acquisition Collector prepared an estimate and forwarded the same with his covering letter, dated December 23, 1930 (Ex. G). His estimate was also marked as part of Ex. G, but it has not been printed in the record. As it is a very important document we have looked into the original estimate of the Collector. In this estimate he valued the land separately at Rs. 1,225 per *cottâ* and expressly stated that he proceeded on that figure as it was the price agreed to by the owner and the Board. Thereafter by a final resolution passed at a meeting of the Board of Trustees held on January 17, 1931, the Collector's estimate was approved (Ex. H-II-20). The Board thereafter obtained the necessary sanction from the Local Government and proceeded with the acquisition through the Collector. These facts lead us to the inevitable conclusion that the Board accepted the offer of the appellant as contained in Ex. A with the term of the acquisition within two months being left out. We cannot, accordingly, accept the appellant's contention that there was only an agreement on November 26, 1930, between the appellant and Mr. Ganguli and that there never was any agreement with the Board of Trustees about the price. This argument was presented before us by the appellant with the express purpose, as his advocate stated, of avoiding the said agreement relating to compensation for the land, the argument being that Mr. Ganguli had no authority to enter into any agreement on behalf of the Board, and, as the Board could have repudiated the said agreement concluded with Mr. Ganguli, there

was no contract between his client and the Board. We hold that action of the Board culminating in its resolution dated January 17, 1931, was the ratification of the action of Mr. Ganguli and constituted acceptance of the appellant's offer as contained in his petition Ex. A subject to the modification indicated above. There was, therefore, a contract between the appellant and the Board by which the appellant was bound to accept Rs. 1,225 per *cottâ* plus statutory allowance of Rs. 15 per cent. as compensation for the land. The actual work of acquisition was, however, started by the Collector later on. He received the Local Government's order authorising him to acquire the premises on August 13, 1931, and issued general notices and directed the Surveyor and Valuer, Ramesh Babu, to submit his card. The Surveyor submitted his card on August 24, 1931, whereupon the Collector directed special notices to issue upon persons interested in the premises and fixed the 16th September following for submission of claims. On September 14, 1931, the appellant filed his claim wherein he only disputed the area, and the tenants who were then on the land also filed their claims. All of them, including the appellant, were directed to file their respective title-deeds. The appellant could not file title-deeds but he filed municipal tax-receipts and an affidavit. The Collector, thereafter, inspected the property on January 4, 1932, and passed an order on the same date as follows :—

> Inspected. Show offer to landlords and hut owners or representatives and put up on January 13, 1932.

The landlord mentioned in the said order is the appellant, and the hut owners his tenants, who had preferred claims before, they having no interest in the land beyond that of *thikâ* tenants. The matter was adjourned to January 25, 1932, on which date the Collector, having apparently forgotten that the appellant had already agreed with the Board to accept Rs. 1,225 per *cottâ*, offered to him Rs. 1,500 per *cottâ*. This offer we hold was not accepted by the claimant

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

*Mitter J.*

or his pleader on that day and the matter was left over for further bargaining at a future date. On the next day fixed for further bargaining Mr. Phani Kumar Nandi, an assistant valuer of the Board, drew the attention of the Collector to the fact that the appellant had previously entered into an agreement with the Board by which he bound himself to accept Rs. 1,225 per *cottâ* and in support of his statement produced the appellant's petition Ex. A. The Collector, thereupon, made and signed his award on March 3, 1932, by which he gave the appellant Rs. 1,225 per *cottâ* for the land plus statutory allowance. The ground for fixing the compensation for the land at that figure was stated by the Collector in the following terms :—

> This was an alignment case in which acquisition proceedings were taken up at the instance of the claimant who demanded acquisition under s. 63 of the Calcutta Improvement Act and agreed with the Trust for land value Rs. 1,225 per *cottâ*. Award was made accordingly.

On April 8, 1932, the appellant filed his petition for reference. In the said petition no express reference was made to the said agreement, nor was the same challenged. Neither did the appellant say that there was no agreement between him and the Board. Three grounds are given, namely, (*i*) that the award was too low, (*ii*) that the Collector ought to have given the market value according to the provisions of the Land Acquisition Act, and (*iii*) that the claimant claims Rs. 2,000 per *cottâ* as the market-value of the land. When the reference came to be heard before Calcutta Improvement Tribunal, the Secretary of State raised an issue in bar, the contention raised being that the said Tribunal could not go into the question of market value as there was a contract between the claimant and the Board by reason of which the claimant had agreed to take Rs. 1,225 per *cottâ*. The appellant took up the position that there was no doubt a contract, but there was a condition in it, which was an essential one, that the acquisition was to be completed within two

months of the date of the said contract. The learned President, with whom the assessors agreed, held that there was no such term in it and decided the issue in bar in favour of the Secretary of State and refused to consider the evidence of market-value.

The claimant has preferred the aforesaid appeal before us with the leave of the learned President. His learned advocate, Mr. S. M. Mallik, has raised the following points before us:—

(*i*) That there was no contract between his client and the Board relating to the compensation to be paid for the land, the agreement between him and Mr. Ganguli, the Assistant Valuer of the Board, having no legal effect;

(*ii*) that even if there was a contract between the claimant and the Board, there was a term that the acquisition was to be within two months of November 26, 1930, and time was of the essence of the contract. The acquisition being about a year and half from that date, the contract with the Board has been discharged;

(*iii*) in spite of the contract the Collector was bound to make his award on the basis of the market-value, there being no contract between the claimant and the Collector; and

(*iv*) on a reference made under s. 18 of the Land Acquisition Act, the learned President was bound to determine the market-value on the evidence produced before him and to make his award in accordance therewith.

We have already dealt with the first two points in the earlier part of this judgment and for the reasons already given by us we hold that there was a contract between the appellant and the Board by which the appellant agreed to take compensation for the land at Rs. 1,225 per *cottâ*, plus statutory

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

*Mitter J.*

allowance on the land being acquired through the machinery of the Land Acquisition Act and that there was no condition that it was to be acquired within two months from the date of the contract.

We will now take up the third and fourth points raised before us.

The appellant's contention has been put forward by his learned advocate, Mr. S. M. Mallik, in the following manner. He says that when land is acquired under the provisions of the Land Acquisition Act there are three parties to reckon with. The first party is the owner, the second party is the Government represented by its agent the Collector, and the third party is the party for whom it is acquired. A contract between the first and the third party is not binding on the second party, the Government, on the ground that the latter is not a party to the contract. The Collector who is the agent of the second party and not of the third must, therefore, ignore the contract and proceed to discharge his statutory duties. It is said that these statutory duties are to issue the notices mentioned in s. 9 of the Act and to enquire into and determine the market-value of the land in accordance with the directions of the legislature as contained in s. 11. If the person, for whose benefit and at whose instance the land is being acquired, wants to take advantage of any contract between him and the owner his remedy is to go to the civil Court; he cannot have any advantage from the contract in the land acquisition proceedings, either in the proceedings before the Collector or before the Special Judge. These principles he says are deducible from Lord Buckmaster's judgment delivered in the case of *Fort Press Company, Limited* v. *Municipal Corporation of the City of Bombay* (1). We do think that the said judgment, instead of helping the appellant, is against him. There the Municipality of

(1) (1922) I. L. R. 46 Bom. 767; L. R. 49 I.A. 331.

Bombay, which had power to acquire land, started negotiations in the year 1916 with the Fort Press Company, Limited, for the purpose of purchasing the land, by private treaty. These negotiations continued till 1917 and, while they were still pending with no bright prospect of terminating in a contract proceedings for compulsory acquisition under the Land Acquisition Act were started. The Local Government issued the notification for acquisition under the Land Acquisition Act on July 17, 1917. Notices under s. 9 of the said Act were issued by the Deputy Collector on August 22, 1917. While the Collector was holding enquiries for determining the market-value, negotiations again started between the Fort Press Company, Limited and the municipality and culminated in a contract on September 12, 1917, the former agreeing to take Rs. 1,45,517 for the land inclusive of statutory allowance. This contract was brought to the notice of the Collector, but later on the Fort Press Company, Limited, took up the position before the Collector that there was no such contract. The Collector adjourned his proceedings and asked the parties to take steps to settle whether or not a bargain had been made between them. On that the municipality brought a suit against the company for a declaration that there was such a contract which was binding on the company and for a declaration giving effect to the contract in the Land Acquisition proceedings. Both the Courts in India found the contract as pleaded established, and made a declaration that the company was "not entitled to claim in the proceedings before the "Collector under the Land Acquisition Act any sum "for compensation other than Rs. 1,45,517 or to pro- "ceed in those proceedings on any other footing".

The company appealed to His Majesty in Council and the counsel appearing for them contended that :—

(*i*) "the Indian Act" (Land Acquisition Act) "gives an overriding power, vested in the Government, to settle the compensation by the procedure under the Act," and (*ii*) "no binding contract could be made by the parties after the proceedings under the Act had been instituted."

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

*Mitter J.*

Both these contentions were overruled by Lord Buckmaster. The disagreement of Lord Buckmaster on the first of the aforesaid contentions, if that contention was intended to mean that in all cases the Collector must ignore the contract, cuts at the root of Mr. S. M. Mallik's argument to the effect that in spite of the contract pleaded and established, the Collector was bound to ignore it and determine the market-value under s. 11 of the Act.

In the course of his judgment Lord Buckmaster pointed out that the Municipality of Bombay had under the statute constituting it power to acquire land. The Board of Trustees for Improvement of Calcutta has also such power under the Calcutta Improvement Act (s. 68). Then he pointed out that such being the capacity of the municipality it had the power to enter into a contract for settling the price of the land with the owner before proceedings under the Land Acquisition Act had been started. On this foundation he held that the contract would be a valid one even if made after the initiation of the proceedings under the Land Acquisition Act. Then he made the following observations :—

> Their Lordships' opinion is not intended to interfere with the jurisdiction of the Collector. It may be a very unusual thing that he should proceed to determine what in his view the price should be, after he had evidence of a complete contract on the point, but if he thought right to do so their Lordships' judgment will not affect his taking such a course.

This passage does not indicate that the Collector has no option but to disregard the contract and must proceed to determine the market-value under s. 11 of the Act. It implies that he is under no such obligation, but, if he likes, he may disregard the contract, but he should rather respect the contract and proceed upon its basis. In fact, in dismissing the appeal, their Lordships of the Judicial Committee in effect directed the Collector to proceed upon the basis of the contract by preventing the company from proceeding before the Collector on any other footing than

that of the contract. The view we are taking is not opposed to the judgment of Henderson J. in *Bijayakanta Lahiri Chaudhury* v. *Secretary of State for India in Council* (1). In the case before us the Collector has not brushed aside the contract, but has made his award on its basis and in doing so he has followed the course approved of by the Judicial Committee in *Fort Press Company, Limited* v. *Municipal Corporation of the City of Bombay* (2). The Collector having proceeded upon a correct course we cannot see how the appellant before us could succeed on the reference, for to succeed on a reference he must show that the Collector had proceeded upon a wrong basis. It has been repeatedly held in this Court, that though the proceedings before the Collector are not strictly judicial proceedings the Court of the Special Judge on a reference made under s. 18 of the Act is in effect (though not strictly in law) the appellate Court and the claimant who has carried the matter on reference before it must show, the burden is on him, that the Collector is wrong.

The next contention of Mr. S. M. Mallik is that, when the reference had in fact been made by the Collector under s. 18 of the Act, the Improvement Tribunal was bound to take evidence of market-value and to award compensation on the basis of market-value. For this contention reference has been made to ss. 23 and 26 of the Land Acquisition Act. This broad proposition so enunciated that, as soon as a reference is made under s. 18 of the Act, the Special Judge must in all cases proceed to take evidence of market-value of the land or evidence on the other heads mentioned in s. 23 and make his award on such evidence, is, in our judgment, not a correct one. Mr. Mallik further contends that the learned President and the assessors have in effect enforced the contract between the parties which they as a Court of limited and special

(1) (1933) 58 C. L. J. 38.

(2) (1922) I. L. R. 46 Bom. 767; L. R. 49 I. A. 331.

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

*Mitter J.*

jurisdiction had no power to do. To support this proposition reference has been made in the case of *British India Steam Navigation Co.* v. *Secretary of State for India* (1). It is quite true that the Special Judge appointed under s. 3(*d*) of the Land Acquisition Act (the Improvement Tribunal is in the position of the Special Judge) has not all the powers of a civil Court. It is quite true also that he cannot decree specific performance of a contract in a direct way, but, within the scope of his jurisdiction as conferred on him, he can and is required to act according to principles of law. His jurisdiction extends to and is confined to the determination of the compensation payable on an acquisition and he is directed to have in view the different heads mentioned in s. 23 of the Act. When a reference comes up for consideration he must decide, if the point is raised, (*i*) if the reference is competent and (*ii*) if it is, he, in determining the question of compensation payable, must decide what evidence is admissible and what not and whether a party by reason of special circumstances and on established principles is precluded from leading evidence on a particular point. These are fundamental principles to be kept in view in considering the exercise of jurisdiction of a Court. When the jurisdiction of a Court is challenged that Court has the power, and it is its duty to decide it. The Special Judge derives his jurisdiction from the reference made under s. 18 by the Collector. If the reference made by the Collector is *ultra vires*, the Special Judge would have no jurisdiction to proceed further and must stop the reference in *limine*. If the question of power of the Collector to make the particular reference be raised before the Special Judge he must decide it. It is on this principle that the Special Judge must decide the question, if raised, as to whether the Collector made the reference beyond time and, if he finds it to be so, reject the reference without proceeding further: In the matter of *Government* and *Nanu Kothare* (2). If the question raised

(1) (1910) I. L. R. 38 Cal. 230. (2) (1905) I. L. R. 30 Bom. 275.

by the Secretary of State before the Special Judge is that the reference had been made by the Collector by mistake at the instance of a person who had accepted the award, and if the claimant's case be that he had not accepted the award, the question of fact as to whether the claimant had accepted the award must be gone into by the Special Judge and, if he decides that question in the affirmative, he must throw out the reference on that ground. The case before us does not come within the strict terms of s. 18, for there was no acceptance of the award by the appellant, but is within an inch of the bar imposed by that section and it would not be wrong for the learned President to say that the contract alleged in the case, being established, the reference was not to be further proceeded with.

If the reference be in order, the Special Judge must decide all questions which legitimately come within the scope of the enquiry coming within his sphere. If he comes to the conclusion that, by reason of the doctrine of estoppel, the claimant is precluded from leading evidence on a particular point he must shut out the evidence sought to be led on the point. This is the principle enunciated by D. N. Mitter and S. K. Ghosh JJ. in *Nalin Behari Basu* v. *Secretary of State* (1). Whether in that case the evidence sought to be led could be excluded on the principle of estoppel or any other principle it is not for us to consider, but the case is an authority for the proposition that the whole of the evidence on the only point for consideration by the Special Judge could be excluded, if the facts justify such a course. In that case no compensation for injurious affection for severance was given by the Collector to the claimant who obtained the reference. It was held that by reason of some facts, which, in the opinion of the learned Judges who decided that case, attracted the operation of the doctrine of estoppel, the claimant was precluded from

(1) (1936) F. A. 125 of 1934 decided on 27th July.

1937

*Ananta Ram Banerji* v. *Secretary of State for India in Council.*

*Mitter J.*

adducing any evidence in support of his claim and the reference was accordingly dismissed.

In the case before us the contract between the appellant and the Board, which according to Lord Buckmaster's judgment in *Fort Press Company, Limited* v. *Municipal Corporation of the City of Bombay* (1) was a perfectly valid one and which could be enforced in a civil Court, would prevent the appellant from leading any evidence relating to market-value before the Improvement Tribunal or in proceeding upon any other footing than that of the contract. The learned President was right in treating the issue framed on the factum and subsistence of the contract as a preliminary issue and did not extend his jurisdiction by holding that the said contract prevented him from considering the evidence led on the question of market value. He did not grant a decree for specific performance in form or in substance but confined himself strictly to the matter over which he had jurisdiction, namely, whether the award of the Collector was to be increased or confirmed.

For these reasons we overrule all the contentions raised before us and dismiss the appeal but without costs.

GUHA J. I agree.

*Appeal dismissed.*

G.K.D.

(1922) I. L. R. 46 Bom. 767 ; L. R. 49 I. A. 331.