

RANGASWAMI
CHETTI
v.
THANGAVELU
CHETTI.
—
SESHAGIRI
AYYAR, J.

legal representative may institute the suit. The special provision in favour of legal representatives, and the provision that such a representative can institute the suit after the death of the person who was under disability, make it clear that an assignee was not within the contemplation of the legislature and that the suits by such assignees during the lifetime of the disabled person should not have the benefit of the extended period. Clause (4) makes a similar provision in favour of the legal representative when there have been successive disabilities. It seems to me that on the principle *expressio unius personæ vel rei, est exclusio alterius*, section 6 should be regarded as not applicable to assignees from a minor. These considerations show that the legislature regarded that exemptions granted to minors were in the nature of personal privileges, which should not enure for the benefit of a bare transferee. In my opinion, therefore, the Appeal fails and must be dismissed. I agree with the order of my learned brother.

K.R.

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice
Kumaraswami Sastri.*

1919,
February,
12.

THE RAJA OF PITTAPURAM (EIGHTH CLAIMANT), APPELLANT,*

v.

THE REVENUE DIVISIONAL OFFICER, COCANADA
(REFERRING OFFICER), RESPONDENT.

Land Acquisition Act (I of 1894)—Acquisition of lands for building purposes—Wet lands in a zamindari—Occupancy rights of tenants, included—Valuation of lands, mode of—Interests of zamindar and tenant, how valued—Apportionment of compensation—Land, whether to be valued merely as wet lands or as house-site.

Where wet lands in a zamindari are acquired by the Government under the Land Acquisition Act for extension of the village-site, the lands have to be valued in the first instance including all interests in it, and the amount so

* Appeal No. 171 of 1918.

ascertained has then to be apportioned among the parties interested, according to their interests.

The proper way of valuing lands with occupancy rights is to ascertain what would be their market value if they were put to the most lucrative use, having regard to their condition, and when they are acquired for building purposes they ought to be valued as building-sites and not merely as wet lands; the fact that neither the landlord nor the tenant can utilize the lands for building purposes without the concurrence of the other, does not make any difference.

Collector of Belgaum v. Bhima Rao (1908) 10 Bom. L.R., 657; and *Collector of Dacca v. Hari Das Bysak* (1912) 14 I.C., 163, followed.

Raja of Pithapur v. The Revenue Divisional Officer, Cocanada, Appeals Nos. 371 and 372 of 1916 (unreported), dissented from.

APPEAL against the award of J. C. FERNANDEZ, the District Judge of Gōdāvāri at Rajahmundry, in Original Petition No. 161 of 1916.

Certain zamindari lands in which the tenants had occupancy rights were acquired by the Government under the Land Acquisition Act for purposes of extension of the village-site. The Revenue Divisional Officer awarded compensation in favour of the zamindar and the tenants respectively; but in doing so, he valued the zamindar's interest on the basis of twenty years' purchase of the rent less proportionate pesbkash, and further he valued the lands for purposes of compensation merely as wet lands not as lands fit for building sites. In this respect he purported to follow the rulings of the Madras High Court in *Raja of Pithapur v. The Revenue Divisional Officer, Cocanada*(1) and that of the Allahabad High Court in the case of *Secretary of State for India in Council v. Abdul Salam Khan*(2). The Zamindar and the tenants objected to the valuation of the lands. They applied to the Revenue Divisional officer that the award should be referred to the District Judge for adjudication by him. On the reference, the District Judge enhanced the compensation in favour of some of the tenants, and dismissed the petition of the zamindar holding against him as regards the points raised by him as to the mode of valuation. The zamindar preferred this appeal to the High Court against the decision of the District Judge.

A. Krishnaswami Ayyar for appellants.

The Government Pleader (V. Ramesam) for respondents.

(1) Appeals Nos. 371 and 372 of 1916 (unreported).

(2) (1915) 37 All., 347.

THE RAJA
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THE
REVENUE
DIVISIONAL
OFFICER,
COCANADA.

WALLIS, C.J.

The Court delivered the following JUDGMENT:—

WALLIS, C.J.—We think the correct rule in cases like this has been laid down by Sir LAWRENCE JENKINS in *Collector of Belgaum v. Bhima Rao* (1), viz., the land to be acquired has to be valued in the first instance including all interests in it, and that the amount so ascertained has then to be apportioned among the parties interested according to their interests. This was followed by BACHELOR, J., in *Bombay Improvement Trust v. Jalbhoj* (2): Similarly it was held in Calcutta in *Collector of Dacca v. Hari Das Bysak* (3) that the proper way of dealing with lands like this is in the first instance to leave out of consideration the value of the occupancy rights, and to ascertain what would be the market value of the land if it were put to the most lucrative use, having regard to its condition, etc., the value of the occupancy-rights of the tenants settled on the land being left to be ascertained afterwards. The fact that neither the landlord nor the tenant can utilize the land for building purposes without the concurrence of the other makes no difference. The difference between the market value and the value of the tenant's interest represents the landlord's interest. These authorities are not referred to in the judgment in *Raja of Pithapur v. The Revenue Divisional Officer, Cocanada* (4) to which the District Judge has referred. We must set aside the award in so far as it relates to the appellant and remand the case for disposal according to law. Costs will abide the result.

K.R.

(1) (1908) 10 Bom. L.R., 657.

(2) (1909) I.L.R., 33 Bom., 463.

(3) (1912) 14 I.C., 153.

(4) Appeals Nos. 371 and 372 of 1916 (unreported).