

Before Mr. Justice Mitter and Mr. Justice Norris.

SECRETARY OF STATE FOR INDIA IN COUNCIL (APPELLANT) v.
SHAM BAHADOOR AND ANOTHER (RESPONDENTS).*

1884
May 9.

Land Acquisition Act (X of 1870), ss. 27, 28, 30, 35—Construction—Appeal from decision of Judge and Assessors, Right of—Collection charges, Amount of, to be deducted in cases of mokurraree lease.

In a case under the Land Acquisition Act, if there be a difference of opinion between the Judge and the Assessors, or any of them, upon a question of law or practice or usage having the force of law, but ultimately they agree upon the amount of compensation, s. 28 must be taken to apply, and no appeal will lie against the decision of the Court with reference to the point upon which the Court and the Assessors differed.

If, however, in addition to differing upon any question of law, &c., they ultimately differ also as to the amount of compensation to be awarded, s. 28 does not apply, but under s. 35, coupled with s. 30, in such a case an appeal will lie, and in such appeal all questions decided by the lower Court, whether the opinion of the Assessors coincided with that of the Judge or not upon these questions, are open to the parties in the Appellate Court.

When in a Land Acquisition case it was shown that the land to be acquired was subject to a mokurraree lease in favour of the Government, and the Court in estimating the compensation had deducted 5 per cent. from the rent on account of collection charges, *Held*, that such deduction was excessive, and that, having regard to the fact that the amount was Rs. 85-4, and was collected only once in a year, 4 annas was all that should have been deducted.

THIS was an appeal against a decision passed under s. 35 of the Land Acquisition Act of 1870.

The land sought to be acquired by the Government measured 13 bighas and odd cottahs situated in Baukipore, pergunnah Azimabad, and the amount of compensation tendered was Rs. 1,321-6, besides the additional compensation payable under s. 42.

The Deputy Collector, who made the reference to the District Judge, was of opinion that the whole of the land in question was covered by a mokurraree lease granted by the predecessor in title of the claimants on the 1st January 1808 in favor of the Government, when as the claimants contended that only 7 bighas of the

* Appeal from Original Decree No. 320 of 1882, against the decree of H. Beveridge, Esq., Judge of Patna, dated 25th of September 1882.

1884
 SECRETARY
 OF STATE
 FOR INDIA IN
 COUNCIL
 v.
 SHAM BAHADUR.

land was subject to that lease, and that the residue was not affected by it.

Upon the basis of that lease the Collector calculated that, as the annual rent was Rs. 85-4, and as deductions on account of the Government revenue and collection charges should be made, the actual amount enjoyed by the proprietors was Rs. 66-1-1½. And allowing twenty years' purchase for that actual profit, tendered the sum of Rs. 1,321-6. The collection charges were estimated by him at 10 per cent.

The District Judge and the Assessors differed in the amount of compensation which they considered should be awarded. The latter were of opinion that the whole of the land was covered by the lease, and awarded compensation calculating the profits of the land in question upon the basis of the mokurraree rent; whereas the former was of opinion that only 9 bighas were affected by the lease, and accordingly awarded compensation upon the basis of the mokurraree rent as regards those 9 bighas and as regards the remaining 4 bighas odd cottahs upon the amount of rent which, according to the evidence, the claimants would be entitled to realise if the land was let at a reasonable rent. Upon that basis, after allowing for collection charges at 5 per cent. and estimating the value at twenty-three years' purchase, he awarded Rs. 5,129 as compensation, together with the usual 15 per cent. additional and costs.

Both parties being dissatisfied with this decision appealed to the High Court.

Baboo Annoda Pershad Banerjee (Senior Government Pleader) for the appellant.

Munshi Mahomed Yusuf and *Baboo Saligram Singh* for the respondents.

The main question between the parties was, whether the whole of the land in question was covered by the mokurraree lease above referred to or not, and if not, how much was unaffected by it; but there was a further question raised, *viz.*, whether either party had a right of appeal to the High Court at all under the provisions of the Land Acquisition Act.

Upon this latter question the judgment of the High Court (MITTER and NORRIS, JJ.) was as follows :

MITTER J.—This is an appeal against a decision passed under s. 35 of the Land Acquisition Act of 1870. The Assessors disagreed with the Judge as to the amount of compensation to be allowed. The District Judge has allowed Rs. 5,129, whereas the Assessors were of opinion that the claimants, the respondents before us in this case, were entitled to a sum considerably less than this. This difference of opinion between the Assessors and the District Judge has arisen in the following way : The land, which is sought to be taken for public purposes on behalf of Government under the Act in question, according to the Deputy Collector, who made the reference to the District Judge, measures 13 bighas odd cottahs. The Deputy Collector was of opinion that the whole of this land is covered by a mokurraree lease granted by the predecessors in title of the claimants on the 1st January 1808 in favor of Government. On the other hand, the claimants contended that out of the aforesaid lauds only 7 bighas are covered by the said lease, and the residue, *viz.*, 6 bighas odd cottahs, were not covered by the lease. The Assessors being of opinion that the whole of the land was covered by the lease awarded compensation calculating the profits of the land in question upon the basis of the mokurraree rent, whereas the District Judge calculated the compensation receivable by the claimants, as regards 9 bighas, upon the basis of the mokurraree rent, and as regards the remaining 4 bighas odd cottahs upon the amount of rent which, according to the evidence, the claimants would be entitled to realise if the said lands were let at a reasonable rent. Therefore, one of the questions which we have to decide, and which is also, it seems to us, the main question upon the merits, is whether the whole of the 13 bighas odd cottahs, is covered by the mokurraree lease mentioned above, or only a portion of it ; but a preliminary question as to whether or not in this case there is a right of appeal was discussed in the course of the argument. That question arises in the following way : Under s. 27 of the Land Acquisition Act of 1870 the Assessors are to record their opinion upon the whole case ; then s. 28 says : “ In case of a difference of opinion between

1884

SECRETARY
OF STATE
FOR INDIA IN
COUNCIL
v.
SHAM BAHADUR.

1884
 SECRETARY
 OF STATE FOR
 INDIA IN
 COUNCIL
 v.
 SHAM BAIJA-
 DOOR.

the Judge and the Assessors, or any of them, upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom." Section 30 is to the effect that, "in case of difference of opinion between the Judge and both of the Assessors as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under s. 35." Then s. 35 says: "If the Judge differs from both the Assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds Rs. 5,000, in either of which cases the appeal shall lie to the High Court." We entertained some doubt whether, having regard to the provisions of s. 28, there was any right of appeal to either party in this case. It may be mentioned here that both the claimants and the Government being dissatisfied with the award in the lower Court have preferred appeals. No doubt at first sight it seems that if the difference be on a question of law, s. 28 prohibits an appeal; it says that in that case the opinion of the Judge shall prevail, and there shall be no appeal therefrom. But then again s. 30 says: "That in case of difference of opinion between the Judge and both the Assessors as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under s. 35." Section 35 also lays down without any restriction that an appeal will lie if there is a difference of opinion between the Judge and both the Assessors as to the amount of compensation. In this case there was a difference of opinion between the Judge and both the Assessors as to the amount of compensation; and, therefore, if we give effect to s. 35 we must come to the conclusion that there is an appeal. On the other hand, s. 28 provides that no appeal shall lie in any case in which there is a difference of opinion on a question of law between the Judge and the Assessors. We have to construe these sections in a way in which they may be reconciled with one another; we must construe them in some way in

which all these sections may have full effect given to them ; and that can be done by putting this construction upon s. 28, *viz.*, that if there be a difference of opinion between the Judge and the Assessors, or any of them, upon a question of law or practice or usage having the force of law, but ultimately they agree as to the amount of compensation, no appeal will lie against the decision of the Court with reference to the point upon which they differed ; but if, on the other hand, they ultimately differed as to the amount of compensation, an appeal will lie under s. 35, and in that appeal all questions decided by the lower Court, whether the opinion of the Assessors coincided with that of the Judge upon these questions or not, would be open to the parties in the Appellate Court. For instance, there might be a difference of opinion between the Judge and the Assessors on a question of law, but ultimately they might agree as to the amount of compensation ; there s. 28 would have full operation, and no appeal would be allowed ; but if this difference of opinion on a question of law ultimately results in a difference of opinion as to the amount of compensation to be awarded, s. 35, coupled with s. 30, would allow the aggrieved party a right of appeal. We think that this is a reasonable construction of the sections cited above. Putting that construction we think that both the Government and the claimants are entitled to appeal against the decision of the lower Court. As regards the merits of these two appeals we find that the claimants do not question the rate of valuation adopted by the Judge, which is twenty-three years' purchase ; we may, therefore, dismiss that point from our consideration. The claimants in their appeal urged that the lower Court is in error in allowing collection charges at the rate of 5 per cent. It seems to us that, so far as the collection of the mokurraree rent is concerned, this deduction of 5 per cent. for collection charges appears to be too high. We disagree, therefore, with the Judge upon this point. At the same time we are of opinion that some charge, no doubt, would be incurred in collecting the mokurraree rent, and will hereafter consider as to what deduction should be made for collection charges.

[His Lordship then proceeded to deal with the facts of the case and with the construction to be put upon the mokurraree lease, and

1884

SECRETARY
OF STATE
FOR INDIA IN
COUNCIL
S.
SHAM BAHADUR.

1884
 SECRETARY
 OF STATE
 FOR INDIA IN
 COUNCIL
 v.
 SHAM BAHADUR.

after coming to the conclusion that the view taken by the Assessors was the correct one, proceeded.] In this view, although with some hesitation, my brother Norris concurs. Having disposed of this point, we have now to determine the amount of compensation to which the claimants are entitled. We have now come to the conclusion that the whole of the land, which the Government now seek to take for public purposes, is covered by the mokurraree lease, and, therefore, we have the fact established that Rs. 85-4 is the amount of rent which the claimants derive from the Government annually. Having regard to the fact that this amount is collected once a year, we think that annas 4 would be a sufficient deduction to make for collection charges, and we therefore come to the conclusion that the claimants receive Rs. 85 nett from Government. We do not make any deduction on account of Government revenue. The claimants will have in future to pay the whole of the Government revenue of the mehal, and will not be entitled to any deduction on that account, as we capitalise also the Government revenue payable by the claimants in respect of the lands now taken. The District Judge is of opinion that twenty-three years' purchase is quite sufficient compensation, and there being no appeal upon that point we must take that figure. Then we have the value of the land at twenty-three years' purchase Rs. 1,955, to which shall be added 15 per cent., or Rs. 293-4, the whole making Rs. 2,248-4. We accordingly award the said amount of compensation to the claimants. As we find that the amount tendered by Government was Rs. 1,331-6, and as we award Rs. 2,248-4, under s. 33 of the Land Acquisition Act of 1870, we think that the Government must bear the costs of the lower Court as well as of this Court.

NORRIS, J.—I am not, as at present advised, quite certain that there is a right of appeal in this case. Upon all other points I fully agree with the judgment of my learned brother.

Appeal allowed and decree varied.