

1908

MUNIR-UN-
NISSA
v.
AKBAR
KHAN.

has paid any, and if so, what amount in discharge of those incumbrances?

We accordingly refer this issue to the lower appellate Court, and we shall ask that Court to determine it with the utmost expedition. The Court will take such relevant evidence as the parties may tender. On return of the finding seven days will be allowed for filing objections. We shall reserve the question of costs for the final hearing.

[On this issue it was found that Munir-un-nissa had paid somewhat more than the amount of the unpaid purchase money. The appeal was accordingly decreed, and the plaintiff's suit dismissed with costs on the 7th of April, 1908.]

Appeal decreed.

APPELLATE CIVIL.

1908
February 18.

Before Mr. Justice Banerji and Mr. Justice Richards.

NITA RAM (OBJECTOR) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY).*

Act No. I of 1894 (Land Acquisition Act), section 49—“House, manufactory or building”—Acquisition of part only required—Whether whole must be purchased.

Land which is not a house, manufactory or building in the literal sense, and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the “house, manufactory or building” within the meaning of section 49 of Act No. I of 1894. Whether or not the land is so reasonably required is a question of fact depending upon the particular circumstances of each case. *Khairati Lal v. The Secretary of State for India in Council* (1) distinguished.

THE facts of this case are as follows:—

The Government were acquiring, under the powers conferred by the Land Acquisition Act, 1894, a small piece of land at the end of a garden occupied by one Nita Ram. The piece of land was situate at one corner at the extreme end of the garden which was used in connection with a house. Nita Ram objected that, inasmuch as the piece of land was part of the garden, it was a part of the house within the meaning of section 49 of the Land Acquisition Act and that he was entitled to insist that the

* First Appeal No. 43 of 1908 from a decree of L. G. Evans, District Judge of Saharanpur, dated the 18th of December 1905.

(1) (1889) I. L. R., 11 All., 378.

Government should take the whole house and garden, and not merely the particular bit of the garden which was necessary for the special purpose for which the land was being acquired. No evidence was offered by either side, but the District Judge went and inspected the locality himself. He came to the conclusion that the particular piece of land was not reasonably required for the full and unimpaired use of the house occupied by Nita Ram, and in this view he decided that the Government was not bound to take over the entire house and garden. From this decision Nita Ram appealed to the High Court.

The Hon'ble Pandit *Sundar Lal*, for the appellant.

Mr. A. E. *Ryves*, for the respondent.

BANERJI and RICHARDS, JJ.—This is an appeal from a decree of the District Judge of Saharanpur upon a reference to him under section 49 of the Land Acquisition Act. The Government were acquiring, under the powers conferred by the Act, a small piece of land at the end of a garden occupied by Nita Ram. We expressly refrain from any expression of opinion as to the nature of Nita Ram's occupancy. That question is not before us. The piece of land is situate at one corner at the extreme end of the garden which is used in connection with the house. The appellant contends here, as he clearly contended before the District Judge, that, inasmuch as the piece of land was part of the garden, it was a part of the house within the meaning of section 49 of the Land Acquisition Act and that the owner of the property was entitled to insist that the Government should take the whole house and garden, not merely the particular bit of the garden which was necessary for the special purpose for which the land was being acquired. No evidence was offered by either side, but the learned District Judge went and inspected the locality himself. He clearly came to the conclusion that the particular piece of land was not reasonably required for the full and unimpaired use of the house occupied by Nita Ram, and in this view he decided that the Government was not bound to take over the entire house and garden. In our opinion, once he came to the conclusion that the plot to be acquired was not reasonably required for the full and unimpaired use of the house, his decision was perfectly correct. A case has been cited to us in support of the

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contention of the appellant that the entire house and garden should be taken. That is the case of *Khairati Lal v. The Secretary of State for India* (1). In that case, the facts of which differed considerably from the facts of the present case, a Bench of this Court held that where the Government were compulsorily acquiring certain out-offices in a compound, the owner could insist upon their taking the whole. That case, however, was decided under Act No. X of '1879, section 55. Section 55 of that Act is exactly the same as the first part of the first sub-section of section 49 of Act No. I of 1894. But sub-section I of section 49 of Act No. I of 1894 contains the following additional provision :—“ Provided also that if any question shall arise as to whether any land proposed to be taken under this Act does or not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined. In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.”

In our judgment land which is not a house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the “ house, manufactory or building ” within the meaning of section 49 of Act No. I of 1894. Whether or not the land is so reasonably required is a question of fact depending upon the particular circumstances of each case. In our judgment the appeal should be dismissed and we accordingly dismiss it with costs. We direct that these costs should include Rs. 100, which we hereby fix as the fee of the respondent's counsel.

Appeal dismissed.

(1) (1899) I. L. R., 11 All., 373.