

1911

THE BANK
OF BANGAL,
CALCUTTA,
v.
KALKA
DAS.

of the suit. Consequently the court was justified in the course which it took in refusing to allow the appellant's pleader's fees. But it is said that the *proviso* to the rule in question meets this case. That *proviso* runs as follows:—"Provided that in any case the presiding officer may, for valid reasons to be recorded by him, accept a certificate for fees filed after the time mentioned above." It will be observed that this *proviso* only enables a presiding officer to exercise a discretion as to whether or not he will accept a certificate for fees filed after the commencement of the hearing. It gives him no discretion in regard to the allowance of a fee which was not paid at or before the commencement of the suit. It may be, when these rules were drawn up, that it was intended to give the presiding officer a general discretion in the matter of a fee tardily paid: but if this was intended, it is certainly not expressed in the *proviso* as it at present stands. In view of this rule we think that the court below rightly refused to allow the pleader's fee in this case. We dismiss the appeal, but under the circumstances without costs.

Appeal dismissed.

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January 5.

Before Mr. Justice Richards and Mr. Justice Tudball.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY)
v. BISHIAN DAT (APPELLANT).*

Act No. I of 1894 (Land Acquisition Act), sections 9, 25—Omission to attend in answer to notice—Owner not entitled to claim more than was awarded by the acquisition officer.

It is intended by section 9, clause (2) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry. Section 25, clause (2), makes the refusal or omission to comply with the provisions of section 9 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector.

This was an appeal arising out of a reference under the Land Acquisition Act, 1894. The acquisition officer awarded Rs. 3,450 as the price of the land to be acquired. The owner

* First Appeal No. 293 of 1909 from a decree of Prag Das, officiating District Judge of Allahabad, dated the 3rd of July, 1909.

made no claim in compliance with section 9, clause (2), of the Act, but he applied for a reference to the District Judge claiming Rs. 12,830. The District Judge awarded him the sum of Rs. 6,668, including the 15 per cent. for compulsory acquisition. The Secretary of State appealed, mainly upon the ground that having regard to the provisions of section 9, clause (2), and section 25 of the Land Acquisition Act, the owner was not entitled to more than was awarded to him by the acquisition officer.

Mr. A. E. Ryves, for the appellant.

Dr. Tej Bahadur Sapru, for the respondent.

RICHARDS and TUDBALL, J.J.:—This appeal arises out of a reference under the Land Acquisition Act. The property is situated in Allahabad. The acquisition officer awarded Rs. 3,450 for it. The owner made no claim in compliance with section 9, clause (2), of the Land Acquisition Act of 1894. He, however, applied for a reference to the District Judge, claiming Rs. 12,830. He examined one witness, Mr. Acton, the Municipal Engineer, and no other. The learned District Judge awarded the sum of Rs. 6,668. The sum so awarded included the 15 per cent. for compulsory acquisition. The Secretary of State has appealed. The first ground of appeal is that having regard to the provisions of section 9, clause (2), and section 25 of the Land Acquisition Act, the owner can have no greater sum awarded to him than the amount awarded by the Collector, or in the present case the Land Acquisition Officer. The respondent contends that the notification of dissatisfaction with the award is a sufficient compliance with the provisions of the Act. We are not prepared to take this view. In our opinion it was intended by clause (2) of section 9 that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, proper, and reasonable award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry. Section 25, clause (2), makes the refusal or omission to comply with the provisions of section 9, clause (2), without sufficient cause an absolute bar to the applicant in the reference obtaining a greater sum than that awarded by the

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Collector. There is, however, no reference in the judgment of the learned District Judge to this point having been raised before him. It is suggested that the point was waived. Even on the merits, we think that the order of the District Judge cannot be sustained. For the reasons given in our judgment in F. A. No. 294 of 1909, decided yesterday, we cannot approve of the conclusion of the learned District Judge in respect to so much of the property as was let to tenants. Furthermore, the evidence given by the Collector applies to this case as well as to the others, while the evidence given in the present case by the owner is confined to the evidence of Mr. Acton. With regard to the house No. 194-C, part of the property acquired, which is in the occupation of the owner himself, we find that the acquisition officer allowed the sum of Rs. 920. Mr. Acton, the sole witness examined by the owner, valued this property as a whole, at Rs. 798. It thus appears, that the acquisition officer allowed the owner a larger sum than his sole witness valued it at. The learned Judge in arriving at his conclusion has, contrary to the evidence produced by the owner himself and contrary to the evidence of the Collector, awarded a still greater sum. In our opinion the appeal must prevail. We accordingly allow the appeal, set aside the order of the court below and award the applicant the sum of Rs. 3,450, namely, the amount awarded by the acquisition officer. The Secretary of State will have costs in both courts to be paid by Bishan Dat.

Appeal allowed.