

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah

1929
February, 20.

ROHAN LAL (APPLICANT) v. THE COLLECTOR OF
ETAH (OPPOSITE PARTY).*

Act No. I of 1894 (Land Acquisition Act), sections 21 and 23(1)—Land occupied by occupancy tenants—Assessment of value of such land—Apportionment of compensation between landlord and tenants—Valuation of occupancy rights—Scope of inquiry by District Judge—Extent of rights of objector where the other parties have not contested the award.

In proceedings under section 21 of the Land Acquisition Act, 1894, commenced on the objection of the zamindar of the acquired land, the District Judge can re-apportion the shares, out of the total compensation money, payable respectively to the zamindar and the occupancy tenants, although the tenants did not contest the Collector's award; and the zamindar is entitled to the share so apportioned to him and has no right to demand the whole of the compensation money minus the amount awarded to the tenants by the Collector.

Under section 23(1) of the Land Acquisition Act, in determining the amount of compensation the court should take into consideration the market value of the land, and this would mean that the value of the land should be ascertained irrespective of the question as to how it is held, *i.e.* whether by the landlord himself or by permanent or temporary tenants.

Considerations and criteria for the apportionment of the compensation money between the zamindar and the occupancy tenants were laid down by the High Court, and where the District Judge had apportioned the money in the shares of 2 annas and 14 annas, respectively, the High Court altered the shares to 10 annas and 6 annas, respectively.

L. W. Orde v. Secretary of State for India in Council (1), not approved. *Raja of Pittapuram v. The Revenue Divisional Officer, Cocanada* (2), referred to.

* First Appeal No. 141 of 1926, from a decree of J. Allsop, Additional Judge of Aligarh, dated the 23rd of December, 1925.

(1) (1915) I. L. R., 40 All., 367.

(2) (1919) I. L. R., 42 Mad., 641.

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Dr. K. N. Katju, Mr. Panna Lal and Mr. Misri Lal Chaturvedi, for the appellant.

Mr. U. S. Bajpai and Mr. Iqbal Ahmad, for the respondent.

MUKERJI and NIAMAT-ULLAH. JJ. :—This appeal arises out of proceedings taken for acquisition of land in the district of Etah. The area acquired is small and the learned District Judge has found that the total market value of the land is Rs. 1,600. The zamindar of the land, which was in the possession of occupancy tenants when it was acquired, was the only contesting party before the District Judge. The tenants were given a small amount of money as compensation and they did not choose to contest the Collector's award.

The learned District Judge, having found that Rs. 1,600 was the market value of the acquired plot, proceeded to find out what would be the fair share for the zamindar's interest. He found that the tenants paid a rent of Rs. 8-13 per annum to the landlord and the landlord paid Rs. 3 as the land revenue. The learned Judge accordingly found that Rs. 5-13 a year or roughly Rs. 6 was the zamindar's income from the property. The patwari stated before the learned Judge that a sub-tenant of the occupancy tenants was likely to pay a rent of between Rs. 20 and Rs. 25. The learned Judge then expressed the opinion that having regard to the situation of the plot and the possibility of growing tobacco on it, the tenant was likely to make Rs. 40 a year out of the land. Thus the learned Judge thought that the tenant could make seven times the profit which the zamindar could make out of the land. Proceeding on this basis, the Judge thought that the zamindar's income from the property was one-eighth of the total income and that, therefore, he should assess the value of the zamindar's interest at one-eighth of the total value.

He accordingly directed that a sum of Rs. 200 be paid to the appellant before us, the zamindar.

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Although one of the grounds of appeal before us states that the market value of the land is not less than Rs. 2,400, the learned counsel has accepted Rs. 1,600 as the right market value for the purposes of his appeal. His contention is that the learned Judge has awarded to his client a grossly inadequate amount as compensation. We have to see if this contention is substantially right.

As regards the contention of the learned counsel that the occupancy tenants not having chosen to contest the award, the zamindar should get the entire market value of the land minus the amount paid to the occupancy tenants, it is sufficient to say that this contention is not sound. The fact that the occupancy tenants have accepted the compensation awarded to them amounts to this that there is no contest as between the Collector and the occupancy tenants. If by the award the Government happens to be the gainer, that gain is entirely the Government's and the zamindar has no right to share in that gain. If the compensation awarded to the tenants had been too large, the zamindar would not have been precluded from saying that whatever the Collector might choose to give to the tenants, he, the zamindar, was entitled to a fair compensation for himself. On principle, therefore, the appellant cannot get anything more than what fairly should be awarded to him. This view would find support from the language of section 21 of the Land Acquisition Act which runs as follows: "The scope of the inquiry in every such proceeding (before the District Judge) shall be restricted to a consideration of the interests of the persons affected by the objection."

Coming now to the compensation to be given to the appellant, the learned District Judge has relied on the case of *L. W. Orde v. Secretary of State for India*, in

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Council (1). In that case two learned Judges of this Court held that where land is occupied by an occupancy tenant, the owner is not entitled to anything more than the capitalized value of the rent-income from the plot. We have great difficulty in accepting the view of the learned Judges of this Court. The right principle to be adopted in awarding compensation and in apportioning the same seems to be this:—

Under section 23, sub-section (1), of the Land Acquisition Act, in determining the amount of compensation the court should take into consideration the market value of the land at the date of the publication of the notification. This would mean that the value of the land should be found out, irrespective of the question how it is held. The land may be held by a permanent lessee, with the result that neither the landlord nor the lessee alone represents the whole estate. In such circumstances the landlord or the lessee alone may not possess the absolute right to dispose of the entire body of interests in the land. But that is no reason why the compensation to be awarded for the same land should be different in different circumstances. If a land is worth, say, Rs. 2,000 in open market, its value would remain Rs. 2,000 whether the landlord holds it in his own possession without encumbrances or whether he has let it out permanently to some people. What therefore has to be done is first to find out what is the market value of the land itself, irrespective of any consideration as to how it is held. The next step would be to apportion the value among the several parties holding distinct and separate interests in the land. If, for example, there be 4 co-owners and no tenant, the value would be divided equally among the 4 co-owners. If there be, say a landlord and a tenant, the value will have to be apportioned between the two according to their respective in-

terests. This opinion of ours finds support in the case of *Raja of Pittapuram v. The Revenue Divisional Officer, Cocanada* (1).

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The next question is, how is the compensation to be divided between the landlord and the occupancy tenant? In our opinion the learned Judge, in arriving at the figure Rs. 40 as the profit of the tenant, has omitted to consider the fact that the tenant's income includes the value of his own labour and the value of some capital in the way of purchasing seed, employing labour and paying for irrigation costs. A tenant who tills his own soil gets the crop not only as the value of his right to hold the land but also as the value of his labour and capital spent. Usually the labour is not only his own labour but also the labour of his whole family and also possibly hired labour. Further, in assessing the proportionate value of occupancy rights, several matters have to be borne in mind. They are these facts, viz. :—

mind. They are these facts, viz. :—(1) that an occupancy tenant's rent is liable to enhancement, although within statutory limits; (2) that the tenant is unable to transfer his rights; (3) that his right even to sublet is very much limited; (4) that in the case of rent falling into arrears, from whatever reason, he is liable to be ejected; (5) that in the case of the tenant dying without one of the statutory heirs, the tenancy would lapse to the landlord. We might add that the number of statutory heirs is small and the chances of the occupancy rights lapsing are not at all remote.

Having regard to all the circumstances, although a tenant may, for the time being, make out of the land more than the landlord can make out of it, the actual gain of the tenant is less than that of the landlord. The landlord may easily borrow money on the security of the property and at any time may sell the property outright. The minerals under the land belong to the landlord and

(1) (1919) I. L. R., 42 Mad., 644.

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not to the occupancy tenant, whose rights are confined to the tilling of the upper soil. If any mineral is discovered under the soil, it would be the landlord who would be entitled to it and not the occupancy tenant. In our opinion, therefore, there is a substantial disparity between the rights of the landlord and the rights of an occupancy tenant, in these provinces.

But when all is said, it remains still difficult to give a money value to the respective rights of the zamindar and the occupancy tenant. But howsoever we may decide, we have to assign somewhat arbitrary value to the two rights. Having given the case our best consideration, we think that it is a fair estimate of the respective rights to say that, in a rupee the landlord's share ought to be ten annas and the occupancy tenant's right six annas.

We hold that the appellant is entitled to Rs. 1,000 as the proper share of the compensation money found by the learned Judge. We allow the appeal, modify the decree of the court below and direct that a sum of Rs. 1,000 be given to the appellant as the compensation payable to him. The appellant will have one-half of his costs in this Court and the court below, and the respondent will pay his own costs throughout.