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MUSAMMAT CHANDA BIBI v. MOHANRAM SAHU.

DHAVLE, J.

The result is that the appeals are allowed and the cross-objections allowed in part. The decree of the lower court will be modified in two respects: (*1*) plaintiffs to have interest at the bond rate on the amounts decreed in their favour from the date of suit to the date of judgment and (*2*) the mortgage decrees in favour of the plaintiffs to be made subject to their repaying to the appellant the amount of the mortgage of 1899 in favour of Srikishan, namely, Rs. 8,000. The appellant will be entitled to her costs in this and also in the lower court from the plaintiffs who, in their turn, will be entitled to the costs of their cross-objection in respect of the interest from defendant no. 1 in each of the suits. Defendants 2 to 6 in suit no. 57 of 1928 will also be entitled to their costs in respect of the plaintiffs' cross-objection regarding the house in Arrah.

SAUNDERS, J.—I agree.

Appeals allowed.

Cross-objections allowed in part.

APPELLATE CIVIL.

Before Wort and Fazl Ali, JJ.

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

BARA LAL KANDARP NATH SAH DEO.*

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December, 1.

Land Acquisition Act, 1894 (*Act I of* 1894), *section* 27(1)—*acquisition of building site—proprietary interest and tenancy right vested in one person—principle on which market value should be determined.*

It is not the separate interest but primarily the land which has to be valued under section 27(*1*) of the Land Acquisition Act, 1894.

* Appeal from Original Decree no. 204 of 1930, from a decision of G. J. Monahan, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 15th August, 1930.

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Where the Government are treating with the whole body of persons who, if they were so minded, could have disposed of the land for the purpose upon the basis of which they alleged a price should be fixed, the land should be valued on that basis.

Where, therefore, the claimant had both the proprietary interest as well as the tenancy right in the land covered by the land acquisition proceeding, and the land being a building site the claimant asserted that it should be valued as such.

Held, (*i*) that the effect of the notification for the acquisition of the land was to place the parties in the position in which they would have been had the landlord on the one hand and the tenant on the other agreed together to dispose of the land to a third party for building purposes;

(*ii*) that, therefore, the market value should be determined on the basis of the land being a building site.

Lucas v. *The Chesterfield Gas and Water Board*(1) and *Collector of Jalpaiguri* v. *The Jalpaiguri Tea Company, Limited*(2), followed.

Stebbing v. *The Metropolitan Board of Works*(3) and *Ujagar Lal* v. *The Secretary of State for India in Council*(4), distinguished.

Appeal by the opposite party.

The facts of the case material to this report are set out in the judgment of Wort, J.

Government Pleader, for the appellant.

K. K. Banerjee and *A. Burman*, for the respondents.

WORT, J.—This is an appeal against the decision of the learned Judicial Commissioner of Chota Nagpur on a reference under section 18 of the Land Acquisition Act.

(1) (1909) L. R. 1 K. B. D. 16.
(2) (1931) I. L. R. 58 Cal. 1345.
(3) (1870) L. R. 6 Q. B. 37.
(4) (1911) I. L. R. 33 All. 733.

The land which was the subject-matter of the acquisition was 7.39 acres in extent comprising a number of plots, but in this appeal we are concerned only with a part of plots 231, 232 and 214. As regards plots 231 and 232 the claimants nos. 1, 2, 3 and 4 are concerned and in regard to plot no. 214 the claimant no. 10 is concerned. There was a suggestion during the course of the argument that the claimant no. 1 had the landlord and tenant's rights regarding .35 of an acre in regard to plots 231 and 232, but that becomes irrelevant by reason of the fact that the acquisition of the landlord's rights took place after the notice under the Land Acquisition Act; so we have no concern with that matter.

The Collector in making the award under the Act had allowed compensation at the rate of Rs. 625 per acre for lands within 100 feet of the road and Rs. 500 for lands beyond that limit. I should have stated that the land is situate in the town of Ranchi and was required for the extension of a Cattle market.

The matter, as I have indicated, went up before the Judicial Commissioner by way of reference and so far as the plots in question are concerned the learned Judicial Commissioner raised the compensation to Rs. 50 per katha in regard to the portions of these three plots, the value as fixed by the Collector being about Rs. 8 to a little over Rs. 10 per katha. The learned Government Pleader in supporting the case for the Government has contended that the learned Judicial Commissioner was wrong in law in granting compensation on the basis of these plots being building plots. The substance of the contention is that by reason of the fact that the claimants are tenants on the one hand and proprietor on the other, the tenants being prohibited from selling their land by reason of section 46 of the Chota Nagpur Tenancy Act, and the landlord being equally precluded by reason of the existence of the tenancy rights, the learned Judicial Commissioner should have valued the

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land and given compensation on the basis of the agricultural interests involved, that is to say, given compensation so far as the tenant was concerned for the appropriation of his tenancy rights and compensation to the landlord on the basis of his rights to collect rent from the tenants. In support of this argument several authorities were relied upon. One was the case of *Stebbing* v. *The Metropolitan Board of Works*(1). That was a case under the Lands Clauses Act in England for the acquisition of certain lands which at the time of the acquisition were being used as graveyards. The plaintiff claiming compensation was the rector of parishes. The Chief Justice Sir Edward Cockburn in the course of his judgment made these observations :

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"It never could have been intended that, because a person has a freehold interest, he shall be compensated in respect of that freehold interest in the land taken from him, without reference to the character of the land. It cannot be said that, because a man has a freehold interest in a piece of waste land, he is to receive the same amount of compensation as if he were owner of an equal extent of rich alluvial soil. Owing to the nature of this land, the rector never could have alienated it."

Later on he says :

"It was, therefore, in his hands practically valueless. He can have no claim to have a new value attached to that which was before valueless, merely because the legislature has said it shall be transferred from one public purpose to another."

Then he goes on to hold that the value to be placed on the land was the value of the interest of the rector of parishes and not what the value would be to the person acquiring it.

(1) (1870) L. R. 6 Q. B. 37.

In relying upon this decision Mr. Justice Karamat Husain in the Allahabad High Court in the case of *Ujagar Lal* v. *The Secretary of State for India in Council*(1) declined to allow compensation on the basis of the land in dispute being a building land on the ground that although the claimant was the proprietor he was forbidden by the Municipal regulations to build on the land. In the course of his judgment he makes this statement: "In these circumstances it seems to me that the fact that the appellant would never have been allowed to build on the land must be taken into consideration in ascertaining the market value and that the land cannot be valued as a building site," and then refers to the case to which I have made a reference. On the other hand, the claimants by their Advocate have relied on the decision in the case of *Lucas* v. *The Chesterfield Gas and Water Board*(2) in which it was held that in determining the value arising from such special adaptability the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose, and not to the value of the realized possibility arising from the fact of the promoters having obtained statutory powers for the construction of the reservoir. Reliance is also placed upon a decision of Sir George Rankin and Mr. Justice Mukerji in the case of *Collector of Jalpaiguri* v. *The Jalpaiguri Tea Company, Limited*(3). Before I deal with that case I propose to deal with the two authorities upon which the learned Government Pleader has relied. It must be noted that both in the case of Queen's Bench and the case decided by Mr. Justice Chamier, as he then was, the Government in acquiring the land were dealing with persons who either by law, or as in the Allahabad case by Municipal regulations, were forbidden to use the land for the purpose upon the basis of which they contended the valuation should be fixed. Those cases, in my judgment, are

(1) (1911) I. L. R. 33 All. 733.
(2) (1909) L. R. 1 K. B. D. 16.
(3) (1931) I. L. R. 58 Cal. 1345.

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to be distinguished from the present case having regard to the fact which exists in this case, namely, the Government were treating with the whole body of persons who, if they were so minded, could have disposed of the land for the purpose upon the basis of which they alleged a price should be fixed, namely, as building site. In my opinion, this makes a very material difference. As is pointed out in the case of *Collector of Jalpaiguri* v. *The Jalpaiguri Tea Company, Limited*(1) by Sir George Rankin it was not the separate interest which had to be valued, but primarily the land, under section 27(*1*) of the Land Acquisition Act. The effect of the notification is, in my opinion, that the parties are placed in the position in which they would have been had the landlord on the one hand and the tenant on the other agreed together to dispose of the land to a third party for building purposes. The only matter, therefore, that can strictly arise in relation to the several interests is the question of the division of the compensation allowed. The learned Judge in the Court below has gone into the evidence which consisted of a number of instances of the sale of land for building purposes, the lowest price of which was Rs. 110 a katha and has allowed, as I have already stated, in this case for the plots in question compensation at the rate of Rs. 50 per katha. In coming to this decision he appears to have taken into consideration the fact, which was quite clearly proved in evidence, that the plots with which we have to deal differed from those about which evidence was given by reason of their being much lower than the road which they adjoin. In the case of plot 214 there was a difference in level of between 1½ feet to 2 feet. Plot no. 231 was lower than plot 214, and plot 232 was in parts as low as 6 feet below the adjoining road. He has also considered the evidence which was given as regards the cost of raising the land to the level of the road, thus making it fit for building purposes. He has not been

(1) (1931) I. L. R. 58 Cal. 1345.

unmindful of the fact, which is also proved in evidence, that water during the rainy season flowed through the land in question into a nala and then into a lake in the vicinity. But it is rather difficult to appreciate the reasons which have affected the mind of the learned Judicial Commissioner in awarding compensation at the rate of Rs. 50 per katha for plots 231 and 232, being, as they admittedly are, much lower than plot 214 in relation to the adjoining road. He has, as I have already stated, come to the conclusion that the cost of Rs. 750 per acre for raising the land was an under-estimate. It seems to necessarily follow that if that was an under-estimate in regard to plot 214, which is admittedly only a foot or two below the level of the road, it is a much greater under-estimate as regards plots 231 and 232 and, in my judgment, therefore it seems that compensation for those plots, that is to say, 231 and 232 is too high. It is difficult, as the learned Judicial Commissioner has pointed out, to make any exact calculation or to arrive at any exact conclusion as regards these figures and the best that can be done in the circumstances must necessarily be somewhat speculative. But having regard to the difference in levels of these plots, I am of opinion that compensation at the rate of Rs. 2,000 per acre for plots 231 and 232 would be adequate. This works out a little over Rs. 33 per katha depending upon the number of bighas to the acre. We shall, therefore, fix the compensation for plots 231 and 232 at Rs. 33 per katha in place of Rs. 50 per katha fixed by the learned Judicial Commissioner. The compensation awarded by the Judicial Commissioner for plot 214 will remain as fixed by him.

In the circumstances the appeal is allowed in part. The Crown will, therefore, be entitled to costs proportionate to its success. So far as the claimant no. 10 is concerned the appeal is dismissed but without costs.

FAZL ALI, J.—I agree.

Appeal allowed in part.