

LETTERS PATENT APPEAL.

*Before Justice Sir Henry Scott-Smith and Mr. Justice
Martineau.*

MITRA (PLAINTIFF) Appellant,

versus

MUNICIPAL COMMITTEE, LAHORE

(DEFENDANT) Respondent.

1925

Feb. 17.

Letters Patent Appeal No. 53 of 1924.

Land Acquisition Act, I of 1894, section 16 (corresponding to section 16 of Act X of 1870)—Land acquired by Government—whether free from all encumbrances including an easement of necessity coming into existence at time of acquisition—Indian Easements Act, V of 1882, section 13 (c).

Held, that the owner of a plot of land part of which has been acquired by Government under the Land Acquisition Act, cannot claim a right of way as an easement of necessity over the land so acquired in respect of the remainder of the plot, particularly where he has received substantial compensation for severance.

An acquisition under section 16 of the Land Acquisition Act vests the land absolutely in Government free from all encumbrances, which include easements, even if they come into existence only at the time of the acquisition.

Taylor v. Collector of Purnea (1), Collector of the 24 Pargunnahs v. Nobin Chunder (2), and Municipal Corporation of City of Bombay v. G. I. P. Railway Co. (3), referred to.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice LeRossignol, dated the 29th January, 1924.

BADRI DAS and M. N. MUKERJI, for Appellant.

HARI CHAND, for Respondent.

The judgment of the Court was delivered by—

Sir HENRY SCOTT-SMITH J.—One Kailash Nath

(1) (1887) I. L. R. 14 Cal. 423. (2) (1865) 3 W. R. 27.

(3) (1916) I. L. R. 41 Bom. 291, 297 (P. C.).

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owned $7\frac{1}{2}$ *kanals* of land in Lahore in which were situated a garden, a well and a bungalow called *baradari*. In the year 1879 Government acquired for the Municipal Committee 4 *kanals* 11 *marlas* out of this plot, leaving 2 *kanals* 19 *marlas* in possession of the owner. Compensation was awarded to Kailash Nath under the provisions of the Land Acquisition Act, which included Rs. 201 for the land, Rs. 300 for the well, Rs. 2,428 for the trees, and Rs. 300 on account of severance. The present appellant is not the original owner of the land, but obtained it by gift, and the present appeal arises out of a suit for perpetual injunction to the Municipal Committee to allow him to pass over the land acquired by them in 1879. The suit was dismissed by the first Court on the ground that it was barred by time, and by the District Judge on the ground that the original owner received compensation for severance of 2 *kanals* 19 *marlas* which was left in his possession, and that the appellant was estopped from bringing this suit for the portion sold to the Municipal Committee.

On second appeal to this Court it was held by a single Judge that at the time of the acquisition proceedings it was recognised that the 2 *kanals* 19 *marlas* left in the hands of the owner had been robbed of all its value by the acquisition of 4 *kanals* 11 *marlas*, and the owner received compensation in respect of 2 *kanals* 19 *marlas* on the basis that they had become worthless, and he, therefore, upheld the orders of the lower Courts.

An appeal has now been filed under clause 10 of the Letters Patent, and it is urged before us that the easement asked for by the plaintiff is one of necessity, and that he is entitled to it in accordance with the principle enunciated in section 13 (c) of the

Easements Act. The answer on behalf of the respondent Committee is a reference to section 16 of the Land Acquisition Act of 1894 (corresponding with section 16 of Act X of 1870), which is that when the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. It is contended that "encumbrance" in this section includes easement, and in support of the contention we are referred to *Taylor v. Collector of Purnea* (1), *Collector of the 24 Pargunnahs v. Nobin Chunder* (2) and *Municipal Corporation of City of Bombay v. G. I. P. Railway Co.* (3), in which it was conceded before their Lordships of the Privy Council that the word "encumbrance" in this section includes a right of passage. Counsel for the appellant admits that section 16 would operate to extinguish all existing easements, but he urges that the easement claimed by the plaintiff in the present case only came into existence at the time of the acquisition when the 2 *kanals* 19 *marlas* were severed from the other land. In our opinion, the object of section 16 of the Act was to vest the land acquired in Government free from all encumbrances. This object would be defeated if, while existing easements were extinguished, fresh ones came immediately into existence. Under section 24, secondly, of Act X of 1870 Kailash Nath was entitled to compensation for severance of the land acquired from his other land and he actually was awarded substantial compensation under this head. For the 4 *kanals* 11 *marlas* of land acquired compensation was paid at the rate

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of Rs. 40 per *kanal*, whereas on account of severance Rs. 300, *i.e.*, Rs. 100 per *kanal*, was actually paid. This shows that a sum considerably in excess of the actual value of the 2 *kanals* 19 *marlas* including the buildings thereon was actually paid on account of severance. We, therefore, agree with the Judge in Chambers that at the time of the acquisition the fact that this land with the *baradari* standing on it practically had lost the whole of its value was taken into consideration in fixing the compensation and that the land passed to the Committee free of all encumbrances.

We, therefore, dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Campbell.

PIR BAKHSH AND OTHERS (PLAINTIFFS)

Appellants,

versus

Mst. BASSO AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 2719 of 1921.

Custom—Succession—Self-acquired property—Arains of Hoshiarpur district—brother or daughter and daughter's son—Riwaj-i-am, unsupported by instances and contrary to general custom—Gift by deceased's widow to daughters and daughter's son—Acceleration of succession.

Held, that by custom among Arains of the Hoshiarpur district brothers are not entitled to succeed to the self-acquired property of a deceased proprietor in preference to daughters and daughters' sons.

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