APPELLATE CIVIL.

Before Mr. Justice Kania and Mr. Justice Wassoodew.

1940
January 9

RUTTONJI ARDESHIR WADIA, KHOT (ORIGINAL CLAIMANT NO. 1), APPELLANT *v.* THE ASSISTANT DEVELOPMENT OFFICER, BANDRA, (ORIGINAL LAND ACQUISITION OFFICER), RESPONDENT.*

Land Acquisition Act (I of 1894), s. 6—Public purpose—Government Notification—Claimant's lands acquired—Kowl in favour of claimant empowering Government to take up lands for "public purposes"—Court not to shut out evidence relating to "public purposes" within the meaning of the term in the Kowl, because of Government notification—Interpretation of contract terms.

Under a Kowl (grant by the Crown) dated 1847-48, a certain village was granted to the claimant's predecessor-in-title. Clause 16 of the Kowl was in these terms: "In the event of any quantity of ground being acquired by Government for roads or other public purposes it should be given up by you (the Khot) on the usual terms of the mere remission of the assessment if the land in question be cultivated." In the year 1931 a notification was published under s. 6 of the Land Acquisition Act, 1894, whereby it was declared that certain lands in the village were required for public purposes. The Land Acquisition Officer made an award declaring that the lands were acquired for public purpose mentioned in the notification and no compensation could be awarded to the claimant in view of cl. 16 of the Kowl. A reference being made to the Court under s. 18 of the Land Acquisition Act, 1894, it was urged for the claimant that the land was not required for "public purposes" within cl. 16 of the Kowl and Government's refusal to pay compensation was unjust. It was also contended that the declaration made by Government that the land was to be acquired for public purpose was not *bona fide*. In the lower Court orders were passed the consequence of which was to shut out evidence to find out whether the land was required for "public purposes" within the meaning of cl. 16 of the Kowl and ultimately the award made by the Land Acquisition Officer was upheld. The claimant having appealed to the High Court:

Held, that on a true construction of cl. 16 of the Kowl it could not be disputed that the right to refuse compensation must depend upon proof on the part of Government that the land was required for a public purpose and for that the Government might put in the notification issued under s. 6 of the Land Acquisition Act, 1894, as evidence on their side but it could not be urged that that was conclusive proof for the purpose of defeating the claimant's right to compensation under cl. 16 of the Kowl.

Hamabai Framjee v. *Secretary of State for India*: *Moosa Hajee Hassam* v. *Secretary of State for India*,[1] distinguished.

The reference was remanded for leading evidence to show that the purpose of the acquisition was not the purpose which was contemplated by cl. 16 of the Kowl.

* First Appeal No. 157 of 1936.

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FIRST APPEAL against the decision of S. M. Kaikini, Assistant Judge at Thana.

Land acquisition proceedings.

By Government Notification No. 5837/28, dated May 20, 1931, issued under s. 6 of the Land Acquisition Act, 1894, certain lands in the village of Vileparle were to be acquired for the development of Bombay and Suburban area.

The villages Vileparle and Juhu were granted by a Kowl (grant by the Crown), in the year 1847-48 to Nowrojee Jamsetjee and his heirs in perpetuity. Clause 16 of the Kowl was as follows :

" In the event of any quantity of ground being required by Government for roads or other public purposes it should be given by you (the Khot) on usual terms of the mere remission of the assessment if the land in question be cultivated."

On the lands being acquired the claimant R. A. Wadia, who was the Khot of the villages Vileparle and Juhu, contended that the acquisition made by Government was not for " public purposes " within the meaning of cl. 16 of the Kowl and he claimed Rs. 1,15,476 the capitalized value of non-agricultural assessment as compensation.

The land acquisition officer made his award holding that the lands were acquired for public purpose stated in the notification and that all the claimants, including the Khot R. A. Wadia, were not entitled to get any compensation in view of cl. 16 of the Kowl.

Being aggrieved by the award, the claimants Nos. 1 and 2 asked for a reference to the Court under s. 18 of the Land Acquisition Act, 1894.

Before the Assistant Judge who tried the reference, it was contended for the Khot that although he could not challenge the land acquisition proceedings because of s. 6 of the Land Acquisition Act, 1894, still in construing cl. 16 of the Kowl he could go into the question whether the land in this case was acquired for a public purpose and from the evidence already on the record he could show that the acquisition was not for

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public purpose and therefore cl. 16 of the Kowl could not stand in his way. The learned Assistant Judge, however, held that having regard to the turn the case had taken and the orders passed by his predecessors shutting out all evidence on the point as to whether the acquisition was for a public purpose, he could not allow the contention urged on behalf of the claimant. He, therefore, held that cl. 16 of the Kowl applied and as the lands under reference were warkhas or waste lands, the claimant was not entitled to any compensation. The award of the Land Acquisition Officer was upheld.

The Khot, claimant No. 1, appealed to the High Court.

H. C. Coyajee and *R. W. Desai*, with *R. R. Desai*, for the appellant.

M. C. Setalvad, Advocate General, with *R. A. Jahagirdar*, Government Pleader, for the respondent.

KANIA J. This is an appeal from the judgment of the Assistant Judge at Thana in Land Acquisition Reference No. 7 of 1932. We are not concerned with the merits of the matter at this stage. The short point which arises for consideration is whether the lower Court was right in shutting out evidence and preventing parties from contending that compensation should be paid as the land was not required by Government for public purposes.

The relevant facts are that under a *kowl* (grant by the Crown) which was granted before any Land Acquisition Act was in force, Government granted the particular property to the claimant's predecessor-in-title. Clause 16 of that grant is in these terms :—

"In the event of any quantity of ground being required by Government for roads or other public purposes, it should be given up by you (the Khot) on the usual terms of the mere remission of the assessment if the land in question be cultivated."

In 1931 under the Land Acquisition Act a notification was published whereby it was declared that the land was required for public purposes. The necessary steps were taken

thereafter for adjudicating upon the claimant's right to compensation. The matter appears to have passed through the hands of different Assistant Judges or District Judges. The written statement filed on behalf of the Government contained the contention that because of cl. 16 of the *kowl* no compensation was payable to the claimant. The claimant urged that the land was not required for public purpose within the meaning of cl. 16 of the *kowl* and the Government's refusal to pay compensation was unjust. It appears to have been contended also that the declaration made by the Government that the land was to be acquired for public purposes was not *bona fide*. As pointed out in the judgment under appeal, the two questions do not appear to have been clearly kept apart but were mixed up. The result was that different Judges dealing with the matter passed orders, the consequence of which was to shut out evidence to find out whether the land was required for public purposes within the meaning of cl. 16 of the *kowl*. From the judgment under appeal it appears that in the course of final arguments when the learned advocate for the claimant tried to urge that on the evidence on record he could show that the condition required for defeating the claimant's right to compensation, namely, that the land was required for public purposes, was not fulfilled, he was prevented from doing so.

The short point for consideration is whether this procedure adopted by the lower Court is correct. On behalf of the Government it is urged that by reason of s. 6 (*3*) of the Land Acquisition Act a declaration that the land was required for a public purpose was conclusive evidence to prove that the land was needed for a public purpose. It was therefore urged that if evidence were admitted to give effect to cl. 16 of the *kowl*, it might give rise to a conflict in the conclusion on the question whether the land was required for a public purpose. The learned Advocate General drew our attention in this connection to the judgment of the Judicial Committee

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in *Hamabai Framjee* v. *Secretary of State for India* : *Moosa Hajee Hassam* v. *Secretary of State for India*.[1] That decision does not directly touch the point. In that case the Government tried to resume possession of land, which was granted under a lease containing the words permitting Government to resume the land if required for public purposes. The holder contended that the purpose stated by the Government was not a public purpose, and the Court decided the point in favour of the Government. In the course of the judgment of the High Court it was stated by Mr. Justice Chandavarkar as follows (p. 286) :

"Though, strictly speaking, this rule of the Legislature does not bind the Court in interpreting the expression where, as in the present case, it occurs in a contract, yet the Court may well take the Legislature as its guide in ascertaining the meaning of the expression [public purpose]."

Those observations, instead of supporting the contention of the Crown, in our opinion, support the contention of the claimant. According to s. 6 (*3*) of the Land Acquisition Act the declaration would be conclusive evidence that the land was required for a public purpose. The only result is that it is not open to the claimant to urge that Government was not entitled to issue the notification. Beyond that no further effect could be given to the declaration. In the present case the contention of the Government is that because of the notification, which has the effect given in s. 6 (*3*), it should be read as a term of the contract (*kowl*) between the parties that if such a notification were issued it shall be conclusive evidence against the claimant. To do so there is no authority in law. If, instead of the Government, another party was the lessor and the terms of the lease were the same, in my opinion, it would not have been open to the lessor to contend that because Government had issued a notification which had the effect mentioned in s. 6 (*3*), it was not open to the lessee to point out that the land was not required for a public purpose. Whether the claimant succeeds in his attempt or not is altogether a different matter. The question is

[1] (1914) 39 Bom. 279, s. c. L. R. 42 I. A. 44 P. C.

whether it is permissible to him to make the attempt. On a true construction of cl. 16 of the *kowl* it cannot be disputed that the right to refuse compensation must depend on proof on the part of Government that the land was required for a public purpose. For that, the Government may put in the notification as evidence on their side but it cannot, in my opinion, be urged that that was conclusive proof for the purpose of defeating the claimant's right to compensation under cl. 16 of the *kowl*.

In admitting evidence the lower Court will have of course to bear in mind that the evidence cannot be considered for the purpose of defeating the Government's right to issue the notification to acquire the land. The evidence would be relevant only for the purpose of determining whether the claimant's right to compensation failed according to cl. 16 of the *kowl*. For this limited purpose the evidence should be admitted and the point should be determined. The judgment and order under appeal are set aside. The matter is remanded to the lower Court for recording evidence on this point, with the object mentioned above, and for determining all the issues which arise on the contentions of the parties after the evidence is recorded. The lower Court will make a fresh award on its findings arrived at in the manner aforesaid. The appellant must get his costs from the respondent of this appeal.

WASSOODEW J. There is an obvious fallacy underlying the contention of the respondent that the declaration that the land is needed for a public purpose under s. 6, sub-s. (*1*) of the Land Acquisition Act concludes the right of the claimant to contend in these land acquisition proceedings that the Government must satisfy the Court, independently of the declaration, that the purpose of the acquisition is such as to render the land resumable without payment of compensation under cl. 16 of the *kowl* or grant from Government. There is no doubt that the notification

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containing the declaration under s. 6 is conclusive evidence under sub-s. (*3*) of that section in the sense in which a fact is regarded as conclusive evidence of another under s. 4 of the Indian Evidence Act. But the conclusive character of the declaration is for a particular purpose. As a condition precedent to the exercise of jurisdiction and to legalise the acquisition a declaration under s. 6 is undoubtedly necessary, for the Act could be put into operation only if the land is required for a purpose which according to the view of Government is public. Consequently the declaration is to be regarded according to law conclusive evidence of the fact that the Government have arrived at such a decision in such a matter; and the Court cannot enquire into the question of that decision. But the Government's decision as to the purpose for which the land is required cannot conclude the question of the enforcement of the terms of the grant. The question, whether the terms of the clause enabling Government to acquire without compensation the claimant's land are satisfied, has to be determined upon the interpretation of those terms and the proof of the true purpose of the acquisition. The term 'public purpose' used with reference to s. 6 of the Act may not have the same bearing as that term used in the grant; and even if it has, Government can claim the right of pronouncing authoritatively as to the purpose according to their caprice or whim under s. 6. That right cannot be claimed in the interpretation of the term in the grant. As pointed out by my learned brother, if such a term were contained in a grant between third parties, the provisions of sub-s. (*3*) of s. 6 of the Land Acquisition Act could not properly be invoked.

Section 11 of the Act postulates an enquiry before making an award by the Collector. If the award involves the ascertainment of the true area of the land, the compensation which in the Collector's opinion should be allowed for the land, and the apportionment of the said compensation among

all the persons known or believed to be interested in the land, it must necessarily follow that the Collector must hold an enquiry into the contention of the claimant on the one hand and that to the contrary of Government on the other independently of the latter's decision under s. 6 which might or might not be cogent in the consideration of the question. That the Collector in the acquisition proceedings was obliged to make an award is not denied. But what is urged is that in making the award the Collector was bound to accept as conclusive the Government's decision as regards the character of the purpose for which the land was required in determining the compensation payable to the claimant. It may be that Government's view might be relevant as an item of proof. But the argument is not well founded when it says that that view of Government is conclusive. The probative effect given to a particular act of Government for a specific purpose under the statute cannot be given to it for a purpose other than what is expressed. It will lead to obvious injustice if the rights of the grantee under the grant could be concluded by reference to a decision of Government under s. 6 of the Land Acquisition Act. In that view of the matter I think it was perfectly open to the claimant to refute the claim that no compensation was claimable by reason of the terms in cl. 16 of the *kowl*. That could only be done by leading evidence to show that the purpose of the acquisition was not the purpose which was contemplated by cl. 16 of the *kowl*. It was suggested that the same officer who acts upon the Government's declaration could not consistently refrain from viewing that declaration as correct in the interpretation of the clause in the *kowl*. Apart from the embarrassment, which is not impossible to avoid, I think that difficulty could not be allowed to cloud the issue which mainly centres round the right of the claimant to establish independently of the Government's opinion his own contention with regard to the purpose of the acquisition. Therefore I agree that the order passed, without allowing

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relevant evidence to be led, must be set aside and the case remanded for decision on the main question involved as stated in the order proposed by my learned brother.

Appeal allowed and case remanded.

J. G. R.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Sen.

EMPEROR *v.* RAMJI VALA (ORIGINAL ACCUSED).*

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Criminal Procedure Code (Act V of 1898), ss. 423 (2), 439 (2), 439 (6)—Conviction on jury trial—Appeal by accused—Notice to enhance sentence—Right of accused to challenge facts—Court can look at evidence to determine sentence.

The Court on a notice to enhance sentence in considering whether the conviction was justified cannot go behind the verdict of the jury on facts, but in considering the notice to enhance the Court can look at the whole of the evidence in order to satisfy itself as to the exact nature of the offence in order to determine what sentence should be imposed on the accused.

On a notice to enhance the sentence passed on an accused convicted on a trial with a jury the accused cannot challenge the verdict of the jury on facts.

Khodabux Haji v. *Emperor*,[1] followed.

Emperor v. *Ramchandra*,[2] referred to.

Having regard to the fact that the offence was a serious one and that the accused thrust, without justification, a Vindhna, a pointed instrument, into the back of the complainant, the High Court enhanced the sentence to five years' rigorous imprisonment from the sentence of three years' rigorous imprisonment imposed on the accused by the Sessions Judge.

CRIMINAL APPEAL from an order of conviction and sentence passed by D. V. Vyas, Sessions Judge, Surat.

Attempt to murder.

At about 6-45 in the evening of December 31, 1938, Abdulnabi Nazirmia, a school teacher in Machhad in the Jalalpore Taluka of the Surat District, left the school in order to go home. As he was proceeding, Ramji Vala

*Criminal Appeal No. 396 of 1939 (with Criminal Review No. 385 of 1939).

[1] (1933) 61 Cal. 6. [2] (1932) 35 Bom. L. R. 174.