30 C. 576.

APPELLATE CIVIL.

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GANGA RAM MARWARI v. SECRETARY OF STATE FOR INDIA.*
[20th March, 1903.]

Notice—Land Acquisition Act (X of 1870), ss. 9, 16, 40—Persons known or believed to be interested—Power to take possession—Vesting of land absolutely in Government.

Land acquired under the provisions of Act X of 1870 vests absolutely in the Government, free from all encumbrances, after a *bona-fide* award or reference by the Collector has been made and possession taken, even when no special notice, as required by s. 9 of the Act, has been served on persons known or believed to be interested therein

North London Railway Company v. *Metropolitan Board of Works* (1) and *Galloway* v. *Mayor and Commonalty of London* (2) referred to.

[Ref. 34 C. 470=5 C. L. J. 669=11 C. W. N. 356; 36 I. C. 265; 16 A. L. J. 669; 10 L. W. 331=26 M. L. T. 268; **Fol.** 43 M. 280.]

APPEAL by the defendant, Ganga Ram Marwari.

The suit was for possession of a plot of land acquired by the Government, under the provisions of the Land Acquisition Act (X of 1870) for the construction of public latrines by the East Indian Railway Company. It was alleged by the plaintiff that the defendant was repeatedly called upon verbally to give up possession of the land, but that he did not do so. The defendant alleged that as he had a permanent *jemai* right in the land in suit, and as he was no party to the land acquisition proceedings, **[577]** not having been served with any notice of the same as required by law, and having no knowledge thereof, he was not bound by them; and that therefore the plaintiff could not be said to have acquired the land in suit.

The Munsif found that a declaration was published under s. 6 of the Act in which the land in suit was referred to, there was measurement of the land under s. 8, notices were issued under s. 9, there was an enquiry into the value and claims as required by law, and then there was a reference to the Court under s. 15, and finally an award by the Judge; and that the Collector took possession. It was, however, found that there was no evidence to show that a notification, as required by s. 4, was published, and that no special notice, as required by s. 9, was served on the defendant, although his name appeared in the schedule of lands prepared by the Sub-Deputy Collector, but was omitted, apparently by mistake, from the final report prepared later on. Upon these findings the Munsif held that the omissions did not prevent the land in suit from vesting absolutely in the Government under s. 16 of the Act, and he accordingly decreed the suit.

The decree of the Munsif was confirmed on appeal by the District Judge.

Dr. *Rash Behary Ghose* and Babu *Digambar Chatterjee* for the appellant.

Senior Government Pleader (Babu *Ram Charan Mitter*) for the respondent.

BANERJEE AND HENDERSON, JJ. In this appeal, which arises out of a suit brought by the plaintiff-respondent, the Secretary of State for

* Appeal from Appellate Decree No. 799 of 1900, against the decree of B. L. Gupta, District Judge of Burdwan, dated March 3, 1900, affirming the decree of Bhaba Charan Mukerjee, Munsif of Ranigange, dated Aug. 3, 1899.

(1) (1859) 28 L. J. Ch. 909. (2) (1860) L. R. 1 H. L. 34.

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India in Council, against the defendant-appellant, for possession of a plot of land, which had been acquired by the plaintiff under the Land Acquisition Act (X of 1870), the only question raised on behalf of the appellant is, whether the Court of Appeal below was right in holding that, under section 16 of Act X of 1870, the land vested absolutely in the Government, free from all encumbrances, when no special notice, such as is required by section 9 of the Act to be served on [578] all persons, known or believed to be interested, had been served on the appellant.

The learned vakil for the appellant contends that this question should be answered in the negative, because the service of special notice on all persons known or believed to be interested is a condition precedent to the making of an award or of a reference to the Civil Court by the Collector and to his taking possession, after which alone can the land vest in the Government under section 16 of the Act, and that as the Lower Appellate Court has found that no such notice was served on the appellant, who was known to be interested in the land acquired, the subsequent proceedings in the land acquisition case must be deemed to have been *ultra vires* and inoperative in affecting the rights of the appellant. It is urged that, in a matter like this, the requirements of the Act should be strictly complied with, and that the objection as to the non-service of special notice is not a mere technical objection, as it is only after such notice that a person can become aware of the land acquisition proceedings and appear and see that the compensation is properly assessed. And in support of this contention the cases of *Herron* v. *Rathmines and Rathgar Improvement Commissioners* (1) and *North Shore Railway Company* v. *Pion* (2), Maxwell on the Interpretation of Statutes, p. 419, and Cripps on the Law of Compensation (3rd edition), p. 78, are relied upon.

On the other hand, the learned Senior Government Pleader argues that the scheme of the Land Acquisition Act is to make the land acquired vest absolutely in Government where possession has been taken after a *bonâ fide* award or reference by the Collector, even though all persons interested have not had notice, the remedy of a person in the position of the defendant being one under section 40 of the Act; and as the *bona fides* of the Collector's proceedings, having regard to the facts found, cannot be called in question, the suit has been properly decreed.

After considering the facts found by the Lower Appellate Court and the arguments on both sides, we are of opinion that [579] the question raised in this appeal, as stated above, must be answered in the affirmative.

The facts found by the Lower Appellate Court are that all the preliminary steps, including the taking of possession, had been duly taken, with only this exception, that by some mistake the name of the defendant was omitted from the report of the Sub-Deputy Collector, and no special notice was issued to him, but that he had knowledge of the proceedings under the Act, though he did not appear, because he said, on being warned by a friend, that no notice had been served on him. The *bona fides* of the proceedings under the Act have not been, and cannot be, questioned in this case.

These being the facts found, let us see what the bearing of the law is upon them. The Land Acquisition Act (X of 1870) evidently contemplates the valid acquisition of land and its absolute vesting in Govern-

(1) (1892) A. C. 498, 532. (2) (1889) L. R. 14 A. C. 612.

ment after a *bona fide* award or reference by the Collector has been made and possession has been taken, notwithstanding that persons interested may not have had notice. This is clear, not only from section 40 of the Act, which provides the proper remedy for persons interested who have not had proper notice, and also from section 9 itself, which is relied upon by the other side: for the very provision that "persons known or believed to be interested are to have notice shows that persons interested who are not known or believed to be interested may not have notice, and yet the proceedings may go on validly. Where it is known or believed that a person is interested and yet the Collector wilfully and perversely refuses to give him notice, there his proceedings cannot be considered *bona fide* and should be held to be colourable and therefore inoperative in vesting the land in the Government, as was held in the somewhat analogous case of *Luchmeswar Singh* v. *Chairman of the Darbhanga Municipality* (1). But where through mere inadvertence or mistake a person interested has not had notice served upon him, the reason for the non-service is rather allied to ignorance of the fact of his being interested than to any wilful perversity; and that was the case here. If there was any wilful negligence on any side in this case, one might well say it was on the side of the defendant. **[580]** Although he was aware of the proceedings and was warned by a friend that he ought to appear, he refused to do so and took his stand on the ground that no notice had been served upon him. We are of opinion that so far as the provisions of the Act go, there has been a substantial compliance with them, and that there is no sufficient reason for holding that the vesting of the land in the Government under section 16 has not taken place.

As for the authorities cited, they are, in our opinion, inapplicable to this case. They relate to cases of privileges of an exceptional character to interfere with the property and rights of others being vested in private persons, or bodies of persons by statute law, and in such cases the strictest compliance with the requirements of the statute has been rightly held to be a necessary condition precedent to the exercise of the powers and privileges conferred. In cases under the Land Acquisition Act (X of 1870) the proceedings are required to be conducted, and the powers and privileges conferred are required to be exercised, not by any private or even public body of persons, but by a responsible officer of Government of the rank of a Collector, and the chances of neglect to observe rules from interested motives are reduced to the narrowest limits. That being so, the principle of law underlying the authorities cited could not apply, at least in its entirety, to the case before us. A distinction such as we have adverted to is observed by the English Courts, as will appear from the observations of Vice-Chancellor Wood in the case of *North London Railway Company* v. *Metropolitan Board of Works* (2) and the observations of Lord Cranworth in the case of *Galloway* v. *Mayor and Commonalty of London* (3) and we may also refer in this connexion to Maxwell on the Interpretation of Statutes, pp. 421, 422, and Cripps on the Law of Compensation, p. 21.

For all these reasons, we are of opinion that the decree appealed against is correct and should be affirmed, and that this appeal must be dismissed with costs.

Appeal dismissed.

(1) (1890) I. L. R. 18 Cal. 99; L. R. 17 I. A. 90.

(2) (1859) 28 L. J. Ch. 909.

(3) (1866) L. R. 1 H. L. 34.