

ORIGINAL CIVIL.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie,

1874
July 13.

ANANDAKRISHNA BOSE AND ANOTHER v. W. VERNER.

*Land Acquisition Act (X of 1870), ss. 24, 29, 30, 34, & 35 (1)—Appeal—
Difference between Judge and Assessors—"Amount of Compensation."*

The "amount of compensation" in s. 24, Act X of 1870, must be taken to mean the whole amount of the award, and not the amount of the different items to be taken into consideration separately under that section; therefore, where the Judge differed wholly from one Assessor, and differed from the other Assessor in the amounts awarded for the different items, but agreed with him

(1) *Act X of 1870, s. 24.*—"In opinion between the Judge and both determining the amount of compensation to be awarded for land acquired under this Act, the Judge and Assessors shall take into consideration— Judge shall prevail, subject to the appeal allowed under s. 35."

"*First*—The market-value, at the time of awarding compensation, of such land;

"*Secondly*—The damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land;

"*Thirdly*—The damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immovable, in any other manner, or his earnings; and

"*Fourthly*—If, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change."

S. 29.—"In case the Judge and one or both of the Assessors agree as to the amount of compensation, their decision thereon shall be final."

S. 30.—"In case of difference of

S. 34.—"Every award made under this Part shall be in writing signed by the Judge and the Assessors or Assessor concurring therein, and shall specify the amount awarded under the 1st clause of s. 24, and also the amounts (if any) respectively awarded under the 2nd, 3rd, and 4th clauses of the same section, together with the grounds of awarding each of the said amounts."

* * * * *

S. 35.—"If the Judge differs from both the Assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge, whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds Rs. 5,000, in either of which cases the appeal shall lie to the High Court."

in the total amount awarded.—*Held*, there was not such a difference of opinion between the Judge and both Assessors, as to give a right of appeal from the Judge's decision under s. 35.

APPEAL under the Land Acquisition Act (X of 1870) from the decision of Mr. F. L. Beaufort, who had been specially appointed to hear cases under the Act.

The land in question was a plot containing 3 bigas 9 cottahs 5 chittaks, situate on the bank of the river Hooghly, and being a portion of certain land in possession of Anandakrishna Bose and Shamlal Mitter, as executors under the will of Raja Sir Radhakant Deb, deceased. The sum demanded by them as compensation was Rs. 1,24,962-3-6,—*viz.*, for the land, at Rs. 1,600 per cottah, Rs. 1,10,962-3-6; for the injury sustained by the severance of other property from the river frontage, Rs. 10,000, and Rs. 4,000 for a *pukka* ghat, called the Raja's Khas Ghat. The sum tendered by the Collector was Rs. 22,662-9-4, being an allowance of about Rs. 326-12 per cottah. He allowed sixteen years' purchase, and calculated the annual rental at Rs. 1,419-6-7; but disallowed the claim of Rs. 10,000, and found that there was no damage under ss. 5 and 17 of the Act. In consequence of his being unable to agree with the owners as to amount of compensation, the Collector referred the case to the Judge under ss. 15 and 18 of the Act. Mr. Rowe and Baboo Rajendra Dutt were the Assessors appointed by the Collector and the executors respectively. Baboo Rajendra Dutt was also called as a witness by the owners to show the price which had been given for some land nearly adjoining that now in question, which had been purchased by Finlay, Muir & Co. for Rs. 500. He stated that in his opinion the land in question was more valuable than that purchased by Finlay, Muir & Co., but he had not in the present case made a personal inspection of the land.

Mr. Rowe found that the yearly rental of the land was Rs. 1,682, including the Police and lighting rate, amounting to Rs. 163, which sum, being by the Act recoverable from the occupiers, he deducted, leaving a total rental of Rs. 1,519. He allowed sixteen years' purchase, making the amount Rs. 24,304. From this he deducted 8 per cent. on the yearly rental, Rs. 121-8,

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and after a personal inspection added Rs. 1,500 for the value of the ghat, and Rs. 1000 for severing a portion of the land. His total award was Rs. 26,682-8, the market-value of the land.

Baboo Rajendra Dutt put down the value of the land at Rs. 1,200 per cottah; and found that the claims of Rs. 10,000 for damages, and Rs. 4,000 for the ghat, were justifiable and reasonable. His award amounted to Rs. 97,137.

The Judge was of opinion that the valuation made by Baboo Rajendra Dutt was very much in excess of the real value of the property; and that his award for the ghat and for the severance was not based on any evidence, and that the account of Mr. Rowe was based apparently on an erroneous statement of the annual rental, but was otherwise referable to an equitable principle. He stated his award as follows:—

“The best test of the value of land is the amount of the annual produce of it, because it may be assumed that the owner will realize from it as much as it is capable of yielding, and if he has neglected his own interests, still that account will show what the property is worth to him. I adhere also to the opinion that sixteen years’ purchase is a fair allowance. My valuation on this calculation is somewhat more than the valuation of Mr. Rowe, because he has, I think, deducted too much on account of the rates and taxes. In the absence of any evidence of the value of the Raja’s Khas Ghat, I willingly accept Mr. Rowe’s valuation of it, namely, Rs. 1,500: but I doubt much whether the owners have any well-founded claim to the Rs. 1,000, which Mr. Rowe would award on account of the severance, as the adjoining property would not be injured by the severance apparently, and as that property is also about to be acquired. Something may be allowed on that account however, and taking the whole account, I find that the net total of my valuation differs so slightly from the net total of Mr. Rowe’s valuation that I shall not express a dissentient opinion. I concur with Mr. Rowe in awarding Rs. 26,682-8, the value of the land.”

To this sum was added the 15 per cent. allowed by the Act, amounting to Rs. 4,002-6, making a total amount of Rs. 30,684-14, and interest at 6 per cent., from the date on which the Collector took possession.

From this decision the executors appealed to the High Court. In the grounds of appeal it was stated that “whereas the amount which the Judge proposes to award by his said decision

exceeds Rs. 5,000, and whereas the Judge does in and by his said decision in fact differ in opinion from both the Assessors as to the amount of compensation, therefore the claimants appeal to this Court for the following reasons (*inter alia*):—

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“ In determining the amount of compensation to be awarded for the land of these claimants, the Judge has not taken into consideration, first, the market-value of the land as apparent upon the evidence before him ; secondly, nor the damage as proved before the said Judge to have been sustained by the claimants as the persons interested at the time of awarding compensation by reason of the acquisition injuriously affecting the other property of the claimants.”

Mr. *Montrion* and Mr. *Evans* for the appellants.

The *Advocate-General*, offg. (Mr. *Paul*) and the *Standing Counsel* (Mr. *Kennedy*) for the respondent.

Mr. *Montrion* contended that an appeal would lie. The amount awarded is above Rs. 5,000, and the Judge differs from both the Assessors ; he differs from one entirely, and from the other as to the items of the account, though he agrees with him as to the total amount awarded. Thus they differ as to the amount of compensation, although they agree in awarding the same amount. By s. 24 :—“ The Judge and Assessors in determining the amount of compensation shall take into consideration” certain items : first, the market-value ; secondly, the damage caused by severing the land, &c. Here the Judge differs from both Assessors as to those items. S. 34 says that the award shall be in writing signed by the Judges, and shall express the amount awarded under the 1st and under the 2nd clause of s. 24 ; the intention therefore must have been that they should agree as to those amounts, otherwise they could not sign the award. The award does not show how much is given under cls. 1 and 2 respectively. The Judge and the Assessors nominated by the Collector differ as to these amounts, but agree to amalgamate the sums, and give the same lump sum. This is not the kind of agreement contemplated by the Act ; and such an agreement will not prevent an appeal. The grounds of appeal taken in

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this case allege errors in the decision which make an appeal necessary ; where that is so, and an appeal is not absolutely barred, the Court will allow an appeal.

Mr. *Evans* on the same side.—The intention of the Act is, that a real *bonà fide* opinion as to the amount of compensation should be arrived at by the Judge and the Assessors independently, and the amount is to be arrived at by considering the different amounts to be awarded under the different clauses of s. 24. [COUCH, C.J.—And the Judge finds the net difference between his estimate and that of Mr. Rowe is so slight that he agrees with him.] It is submitted he has no right to waive the difference by which he practically takes away an appeal. The Judge did actually differ from both the Assessors, so that there was a right of appeal by s. 35 ; the Judge ought to have found Mr. Rowe's estimate wrong. [COUCH, C. J.—S. 35 gives an appeal in the case of difference of opinion as to the amount of compensation. Does not that mean the total amount?] But the Act says there must be an agreement of opinion in the award, and the award must contain a statement of the amounts awarded under different heads ; implying thereby an agreement as to the amounts under those heads. The Judge differs from Mr. Rowe as to the market-value and as to the damage for severance. [AINSLIE, J.—The “ amount of compensation ” in s. 24 means the total amount.] The Judge does differ in the total amount, but waives the difference as being slight ; thereby depriving us of an appeal. Suppose the difference was very large, could the Judge have waived it ? [COUCH, C. J.—There would have been no impropriety in his doing so ; you appear to think your right of appeal has been taken away. Mr. *Montriau*.—It is submitted that we had a right of appeal which has been taken away. COUCH, C. J.—I do not think that is so.] The Judge having an actual difference of opinion from both Assessors was not entitled to deprive us of our appeal by expressing an agreement.

The Counsel for the respondent were not called upon.

The Judgment of the Court was delivered by

COUCH, C. J.—S. 24 of Act X of 1870 says that, in determining the amount of compensation to be awarded, the Judge

and Assessors must take into consideration, first, the market-value of the land at the time of awarding compensation; secondly, the damage (if any) sustained by reason of severing the land from other land of the owner; thirdly, the damage (if any) sustained by the owner by reason of the acquisition injuriously affecting his other property; and fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses incidental to such changes. S. 29 says that, in case the Judge and one or both of the Assessors agree as to the amount of compensation, their decision shall be final. Looking at s. 24, the amount of compensation must be taken to mean, not the different matters that are to be taken into consideration separately, but the whole compensation. In s. 35 the expression again occurs:—"If the Judge differs from both the Assessors as to the amount of compensation, he shall pronounce his decision," &c.

Mr. Beaufort has stated that on some points he differs from Mr. Rowe in the manner in which he arrives at the amount of the compensation. He expresses a doubt whether there should be an allowance for the severance, but then he says that "something should be allowed on that account." His doubt seems to be as to the amount to be allowed. He then says:—"Taking the whole account I find that the net total of my valuation differs so slightly from the net total of Mr. Rowe's valuation that I shall not express a dissentient opinion. I concur with Mr. Rowe in awarding Rs. 26,682-8 the value of the land."

When Mr. Beaufort says that he will not express a dissentient opinion from Mr. Rowe, and that he concurs with him in awarding the sum named as the value of the land, I cannot read it as a difference of opinion between them as to the amount of compensation. I think the fair construction of what Mr. Beaufort says is:—I do not in some of these matters entertain the same opinion as Mr. Rowe. I doubt whether his opinion on some of them is right; but the difference between us is so slight that I think I ought to waive my doubts, and ought not to dissent from him. There is not therefore such a difference of opinion between the Judge and the Assessors as entitles the party to an appeal. It is not a question of depriving him of an appeal.

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There need not be words which will take away an appeal which he would otherwise have had. Unless he brings himself within the words of the section, he is not entitled to any appeal. We must see whether the words are such as to give him an appeal in a case like the present. S. 34 indeed says that the award is to be written and signed by the Judge and the Assessors or Assessor concurring therein, and is to specify the amount awarded under the 1st clause of s. 24, and also the amounts (if any) respectively awarded under the 2nd, 3rd, and 4th clauses of that section. If this is imperative, the award must state how much is given for severance. There might be a difficulty in having the award signed by the Judge and the Assessor, although they both agreed as to the total amount of compensation, if they entirely disagreed as to the amount to be given for severance; but I do not understand Mr. Beaufort as saying that he is not prepared to concur with Mr. Rowe in the amount to be allowed for severance when it comes to be inserted in the award. I understand him as meaning that he will agree to such an award, and I do not see that there would be any difficulty in having the award drawn up according to the directions contained in s. 34. I think in this case there is no appeal to this Court. The appeal must be dismissed.

Appeal dismissed.

Attorney for the appellants : Baboo *D. N. Bose.*

Attorney for the respondent : The *Government Solicitor,*
 Mr. *Sanderson.*
