

Whether or not damage arising out of a subsidence referred to in the notice, but arising after the date of the notice, could be recovered, without fresh notice and fresh suit, may be a question. If the subsidence alone constituted the cause of action, of course subsequent damage arising from it might be recovered in a suit brought within three months from the subsidence. If the damage arising from the subsidence be the cause of action, as seems to be the result of the cases, then only what is stated in the notice can be recovered, and nothing arising after it.

It may be that the Courts in the face of the recent decisions, if this be the effect of them, might be asked to place a liberal construction on the words of section 357 as to the requirements of the notice.

Appeal dismissed.

A. for the appellant: Baboo *Mooraly Dhur Sen.*
 A. for the respondents: The *Offy. Government Solicitor*
 (Mr. *A. Eddis*).

A. A. C.

PRIVY COUNCIL.

LUCHMESWAR SINGH (PLAINTIFF) *v.* CHAIRMAN OF THE
 DARBHANGA MUNICIPALITY (DEFENDANT).

[On appeal from the High Court at Calcutta.]

P.C.*
 1890
 12th March
 25th April.

Minor—Guardian, Powers of, to deal with minor's estate—Application of the Land Acquisition Act, 1870, to the land of a minor—Insufficiency of compliance with the other requirements of the Act, without actual compensation to the minor's estate—Recovery of land by minor on coming of age.

The guardian of a minor's estate has no power to waive a right to compensation for part of the estate taken under the Land Acquisition Act, 1870; although the owner, had he been of full age, might have waived it.

* *Present*: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

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Although the Court of Wards had no power to alienate the land of a minor of whose estate it had charge, yet possession might have been lawfully taken of the land for a public purpose, under and in conformity with the Land Acquisition Act, 1870, if there had been due compliance with the provisions of the Act, as regards compensation to the minor's estate.

Where, however, compensation had not been given, and a merely nominal consideration had passed, the Collector not having acted, as the representative of the Court of Wards, so as to protect the interests of the minor, *held*, that no valid title to the land was established as against the ward, and that on his attaining full age he could recover it with mesne profits.

APPEAL from a decree (24th February 1888), reversing a decree (1st September 1886) of the District Judge of Mozufferpore, and dismissing the appellant's suit with costs.

The appellant, the Maharaja of Darbhanga, when the proceedings which afterwards gave rise to this suit took place was a minor whose estates were under the charge of the Court of Wards (Bengal Act IV of 1870), and he so remained until the 24th September 1879. That Court, for Darbhanga, consisted of the Commissioner of the Patna Division, acting under the orders of the Board of Revenue, and the representative of the Commissioner and Agent of the Court of Wards was the Collector of the district. There was also a manager of the estates of the Raj Darbhanga appointed by the Government. The transaction which occasioned this suit, between the latter and the Collector, in his capacity of *ex-officio* Chairman of the Municipality of Darbhanga, and in another capacity acting under the Commissioner's authority, is stated in their Lordships' judgment.

The suit was brought to recover possession of about 18 cottahs of land on the bank of the river Baghmata in the town of Darbhanga, which had been taken for a public purpose by proceedings nominally in pursuance of the Land Acquisition Act, 1870, and made over to the municipality, during the minority of the Maharaja. The Court of Wards had waived the minor's right to substantial compensation, therein acting in excess of its powers. But the High Court had held that a reference having been formally made under section 15 of the above Act, although only on the passing of a nominal consideration, and the other forms having

been complied with, the result had been to establish in the municipality a good title to the land—a decision which this appeal questioned. But no question was raised as to the plaintiff's liability to reimburse the municipality for money spent on the land, he being willing to pay it.

The principal issue was whether the notification under section 6 followed by merely nominal compensation, and a reference to the Civil Court under sections 15 and 18, with the order to take possession issued under section 16 of the Land Acquisition Act, 1870, conferred a legal title.

The District Judge, in reference to this, found that the transaction was really a gift, and a gift by a guardian of his ward's property, which the guardian was unable, legally, to make. He concluded that the arrangement was illusory and void from its commencement. He therefore decided the issue in the plaintiff's favour, decreeing possession and mesne profits.

On appeal the High Court (WILSON and O'KINEALY, JJ.) also regarded the transaction as merely a gift which the Court of Wards had no power to make. But it was of opinion that the operation of the Land Acquisition Act, 1870, was not reversible, and that it had operated. All the forms had been complied with, and there was nothing to prevent the Government from taking the land when the proper notices were issued. "The proceedings were, both in substance and form, proceedings under the Land Acquisition Act, and all that was done by the guardian was to accept nominal compensation when he had a right to insist on substantial compensation." The Court then examined the proceedings in detail, and expressed its opinion that everything had been done under sections 6, 9 and 15 to entitle the Collector to take possession; and that his action in doing so could not be reversed. "The question is not before us whether the Maharaja was or is entitled to claim compensation, or whether he was or is bound to accept nominal compensation. The question is one which was open to the District Judge on the reference, and, for ought we know, it may be open now." Finally, the Court held that the municipality was justified in using the land for any purpose for which the statute authorised its use, although not the purpose for which it was professedly taken, it having been taken for a bathing ghât, but afterwards, in part, used for a market.

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On this appeal,

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Mr. *T. H. Cowie, Q.C.*, and Mr. *J. H. A. Branson*, for the appellant, argued that the proceedings taken did not constitute either an award or a reference under the Land Acquisition Act, 1870, and did not operate to extinguish the plaintiff's title. The land had been, in fact, given to the municipality at the suggestion, and by the sanction, of those who were the guardians of the appellant, and the trustees of his estate. Such a transaction was invalid, and inoperative against the appellant, who was then a minor.

Mr. *W. F. Robinson, Q.C.*, and Mr. *J. D. Mayne*, for the respondent, argued that the High Court had been right in deciding that the land had vested in the municipality by the effect of the Land Acquisition Act, 1870.

If the appellant had any claim in respect of the inadequacy of the compensation, still no suit would have lain against this respondent, nor was this suit framed to assert such a right. No appeal had been preferred against the decision of the District Judge, to whom reference had been made under the Act, and, consequently, the whole proceeding had become final. They referred to sections 35 and 38 of Act X of 1870.

Mr. *T. H. Cowie, Q.C.*, replied.

Their Lordships' judgment was delivered by

SIR R. CROFT.—The question in this appeal is whether a piece of land, which was the property of the appellant and is now in the possession of the Darbhanga Municipality, represented in the suit by their Chairman the respondent, has been validly acquired by the municipality under the provisions of The Land Acquisition Act, 1870. On the 26th of August and 2nd and 9th of September 1874, a declaration was published in the *Calcutta Gazette*, in accordance with section 6 of the Act, that the land in question was required to be taken by Government, at the expense of the Darbhanga Municipality, for a public purpose, viz., construction of a public ghât or landing-place in the town of Darbhanga. At this time the appellant was a minor, under the care of the Court of Wards of the Province of Bengal, and he remained a minor until the 25th of September 1879. The Court

of Wards for the district of Darbhanga was the Commissioner of Patna, and the representative of the Commissioner in Darbhanga was the Collector for the time being of Darbhanga, who was also *ex-officio* Chairman of the Darbhanga Municipality. The Court of Wards has power to appoint a manager of the estate of a minor who is under its care, and at this time the manager appointed was Colonel J. Burn.

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On the 10th May 1875 the Officiating Collector of Darbhanga wrote to the manager a letter, in which, after referring to a petition which had been presented by the manager's mookhtar, claiming rent for the land at the rate of Rs. 16-5-3 pie per annum, he says—“Permit me to invite your attention to the last clause of section 3 of the Act. From this it appears that you, as far as acquisition of land under this Act is concerned, are as competent to act for the minor Maharaja as he himself would be were he of age. This being so, I trust you will favour me with the expression of your consent to the sale of the land. The object in view is to benefit the town, and I am confident that this object will have weight with you in making your claim for compensation.” The clause referred to says, under the description of persons deemed entitled to act, “the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.” These words must be read with reference to the obligations and duties of guardians and committees, which appear to have been entirely overlooked in this and his subsequent proceedings by the Officiating Collector, who was the representative of the Court of Wards, the guardian of the minor. On the 12th May 1875, the manager wrote to the Collector:—“Sir,—With reference to your letter No. 49 of 10th instant, I have the honour to represent that, from the tenor of section 68 of Bengal Act IV of 1870, you will perceive that the Court of Wards has not power to alienate *raij* land except for the purposes mentioned in that section; but I beg the matter be submitted to the Court of Wards for orders. I have no objection to present the land in question to the town, but doubt my power to do so.” The Collector appears to have written to the Commissioner of Patna, who represented the Court of Wards, on the 19th

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of May. This letter is not in the proceedings, but its contents may be inferred from the notice of it in the reply of the Commissioner on the 2nd June. That is, "Sir,—I have the honour to acknowledge the receipt of your letter No. 62, dated the 19th ultimo, regarding the land belonging to the Darbhanga raj made over to the municipality, free of cost, for the construction of a bathing ghât. In reply, I beg to state that Act X of 1870 came into force on the 1st June 1870, while Bengal Act IV of 1870, though it purports to have come into force on the same date, does not appear to have been sanctioned until the 17th June 1870. As regards the procedure to be observed in the case, you should offer the manager one rupee compensation, and allow the manager to refer the point to the Board of Revenue, with whose sanction the award can undoubtedly be accepted, and acceptance of the award will act as a valid conveyance." The words "made over to the municipality free of cost," in their Lordships' opinion, show that the matter submitted to the Commissioner was the presenting the land to the town, which was in accordance with the manager's letter of the 12th May. Their Lordships feel compelled to state their opinion that the direction or suggestion to offer one rupee compensation was a colourable way of doing indirectly what it was seen could not be done directly, viz., the guardian making a present to the town of the land of his ward.

The procedure referred to is contained in sections 11 and 13 of the Land Acquisition Act. On a day fixed the Collector, who, after the declaration, is by section 7 to take order for the acquisition of the land, is to proceed to inquire summarily into the value of the land, and to determine the amount of compensation which, in his opinion, should be allowed for it, and to tender such amount to the persons interested. And in determining the amount of compensation, he is ordered to take into consideration the matters mentioned in section 24, one of which is the market value, at the time of awarding compensation, of the land. It is obvious that the offer of one rupee compensation was not in accordance with the duty of the Collector under these sections, and it would be altogether wrong to treat one rupee as the amount of compensation determined under section 13. Section 14 says that if the Collector and the persons interested agree as to the amount of compensation

to be allowed, the Collector shall make an award under his hand for the same. This was never done. On the 14th July 1875 the Collector wrote to the manager enclosing a copy of the Commissioner's letter, and saying, "I hereby offer you one rupee as compensation for the land in question, and request you to refer the point to the Court of Wards, with a view to obtaining sanction for the acceptance of the offer." Upon which, on the 16th July, the manager wrote back to the Collector asking him to obtain the authority of the Board of Revenue to accept the one rupee as compensation. This letter appears to have been sent by the Collector to the Commissioner of Patna, and by him to the Board of Revenue. On the 4th August 1875 the Officiating Secretary of the Board of Revenue wrote to the Commissioner that the Member in charge had no objection to the manager of Darbhanga estate accepting the compensation of one rupee which had been awarded by the Collector of Darbhanga for the land belonging to the estate which had been taken up by the Darbhanga Municipality for the construction of a ghât on the Baghmâti river. On the 19th August 1875 the rupee was paid by the Collector, and the manager gave a receipt for it, describing it as a nominal compensation for the raj land taken up by the Darbhanga Municipality. The land was thereupon taken possession of by the municipality, a bathing ghât was erected upon a portion of it, and the rest has been used by the municipality as a market.

On the 11th February 1886 the Maharaja brought a suit to recover possession of the land, and for mesne profits and damages. The District Judge of Mozufferpore on the 1st September 1886 made a decree in his favour, which has been reversed by the High Court, and the suit has been dismissed. Although the Court of Wards had not power to alienate the land for the purpose for which it was required, possession might have been lawfully taken of it if the provisions of the Land Acquisition Act had been complied with. But they were not. The Collector made no inquiry into the value of the land. He was the Chairman of the municipality, and his sole object appears to have been to benefit the town, forgetting that, as the representative of the Court of Wards, it was his duty to protect the interests of the minor, and to see that the provisions of the Act were complied with. It is

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1890 not true, as the High Court seems to have thought, that, as the
 LUCHMES- Maharaja, if he were of age, might waive the right to compensa-
 WAR SINGH tion, his guardian might do so. The Maharaja, if of age, might
 v. have made a present of the land to the town, and probably, if it
 CHAIRMAN, was only to be used for a bathing ghât, would have done so, but
 DARBHANGA MUNICI- it was known by all parties that the manager had no power to
 PALITY. do this. The offer and acceptance of the rupee was a colourable
 attempt to obtain a title under the Land Acquisition Act without
 paying for the land, and their Lordships have felt some surprise
 at the direction which originated it having come from the Commis-
 sioner. It is, however, to be observed that the letter of the 2nd
 June is signed by a subordinate officer.

The 16th section of the Act says that when the Collector has made an award under section 14 or a reference to the Court under section 15, he may take possession of the land, and it has been argued that there was a reference which authorized him to take possession, although he had not made any award. This appears to have been the view of the High Court. Section 15 says that if the Collector considers that further inquiry as to the nature of the claim should be made by the Court, or if he is unable to agree with the persons interested as to the amount of compensation to be allowed, he shall refer the matter to the determination of the Court in manner after appearing. A reference to the Civil Court was made by the Collector on the 7th February 1876, months after the rupee had been paid and accepted. That acceptance as compensation is stated in the reference, and it is also stated that all the claimants for compensation except four had agreed to the Collector's award and accepted the compensation tendered to them. Then facts are set forth as to the four claimants and the amounts of compensation tendered to them. The document then concludes,—“As they have refused to accept this compensation, and as it appears to the Officiating Collector that their claims are preposterously high and there is no chance of their coming to terms, the matter is referred to the District Judge for decision under sections 15 and 18 of the Land Acquisition Act.” This cannot be held to be a reference of a claim to compensation by the manager of the Darbhanga estate, his claim being treated as settled.

The claims of the four who had refused to accept the compensation tendered to them are the matter referred, and their Lordships can see no ground for the opinion of the High Court that on this reference the whole matter was open to the District Judge, and that "he could inquire, and possibly he did inquire, whether or not the consent was binding on the minor." The Collector had not said that an inquiry ought to be made, and there is no trace in the proceedings of the District Judge having made such an inquiry. Their Lordships are clearly of opinion that the reference had not the effect which has been given to it by the High Court, and that the decree reversing the decree of the District Judge cannot be supported. But the latter decree must be modified. The District Judge, in allowing mesne profits, has taken the income for the three years 1883 to 1885, and has set that off against the Rs. 5,000 which it was admitted by the plaintiff he was bound to pay to the defendant for the money expended on the land. This income was received by the municipality after the expenditure of a considerable sum of money on the land. It is not the measure of the damages sustained by the Maharaja by being out of possession. The rent which could have been obtained for the land if the Maharaja had been in possession during those years is the fair measure of the mesne profits. And it appears from the Collector's letter of the 10th May that the manager had claimed rent for the land at the rate of Rs. 16-5-3 per annum. Their Lordships therefore think that Rs. 50 will be a proper sum to allow for mesne profits for the three years. That sum only must be deducted from the Rs. 5,000.

Their Lordships will therefore humbly advise Her Majesty to reverse the decrees of the High Court and the District Judge, and to make a decree that, on payment to the defendant of Rs. 4,950, the plaintiff recover possession of the land claimed in the plaint, and that he recover the costs of the suit in both the lower Courts. The respondent will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

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