

CIVIL RULE.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice
Tottenham.*

1888
September 4. IN THE MATTER OF THE PETITION OF KAMINI DASI (CLAIMANT) v.
SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY)

Land Acquisition Act (X of 1870), s. 22—Determination of amount of compensation—Assessors, non-appearance of—Claimant, non-appearance of—Pleader, non-appearance of.

Where, in a compensation case before the Land Acquisition Court, neither of the assessors nor the pleader for the claimant appear on the day fixed for hearing, the Judge should not proceed with the case in their absence by confirming the Collector's award, but should give notice to the parties; and if they do not, within the time limited by s. 22 of the Land Acquisition Act, cause their assessors to attend or appoint others, the Court should appoint other assessors in the place of those who were not in attendance.

COMPENSATION case under the Land Acquisition Act.

In this case the applicant for compensation was dissatisfied with the amount of compensation awarded to her by the Collector, who, as a consequence, referred the case to the Judge of the Land Acquisition Court.

The applicant nominated as her assessor Mr. Heysham, and the hearing of the case was fixed for the 24th February. On the 24th February neither the assessor for the Government nor the assessor for the applicant or her pleader appeared. The Judge thereupon sent the applicant's agent, who was present in Court, for her pleader; but he being engaged in another Court at the time did not appear until 11-45 A.M., when he discovered that the Judge had confirmed the Collector's award. At 2 P.M. the applicant's pleader applied to have the case restored and re-heard. The Judge, however, refused the application.

The applicant thereupon applied to the High Court for a rule calling upon the Government to show cause why the case should not be restored and re-heard.

Baboo *Anmoda Prosad Banerjee* appeared to show cause.

Baboo *Baidonath Dutta* in support of the rule.

* Civil Rule No. 553 of 1888, against the order of R. F. Rampini, Esq., Judge of the 24-Pergunnahs, dated the 24th of February 1888.

The order of the Court (PETHERAM, C.J., and TOTTENHAM, J.) was delivered by

PETHERAM, C.J.—This is a rule which has been obtained for the purpose of reviewing a decision of the Additional Judge of the 24-Pergunnahs, sitting for the purpose of ascertaining the amount of compensation to be paid for land which was required for public purposes.

This was a piece of land belonging to the applicant here which was to be taken for some public purpose. In the first place it came before the Collector. The Collector for some reason referred the matter to the Judge, and then the proceedings had to be regulated by the law on the subject. But before I notice the law, I may as well state what the rest of the facts were. After the matter was referred to the Judge, an assessor was, as the law required, appointed on behalf of the claimant, and an assessor was also appointed on behalf of the Collector, the Collector representing the public body which wished to acquire the land, and a day was fixed for the hearing of the matter. When that day arrived, neither the assessor for the claimant, nor the claimant himself, nor the assessor for the Government was present, and upon that state of things, the Judge, in the absence of every one, made an award giving the claimant the amount which the Collector had offered in the first instance; and he did that on this ground: that the claimant gave no evidence as to the value of the land, and that the only evidence that was before him was the evidence that the parties who wished to acquire the land were willing to give that amount. He said, under these circumstances, the only thing I can do is to make an award for the amount they are willing to give, because there is nothing before me to enable me to ascertain the real value. The question is, whether he was acting within his jurisdiction in doing that.

The sections which apply to the matter are the sections of the Land Acquisition Act contained in Part III of that Act. Section 18 says that the reference to the Judge shall contain certain particulars for his information; and s. 19 provides that, after the reference comes to the Judge, two qualified assessors shall be appointed, one to be nominated by the Collector, and the other by the persons interested, for the purpose of aiding

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the Judge in determining the amount of the compensation. That was done, an assessor was nominated on each side, and two qualified assessors were appointed for the purpose of ascertaining that amount. Then comes s. 22, which says that, as soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation. So that the claimant had done all that it was his business to do. He had nominated an assessor, and there was no reason why he should be present if he did not choose. It was the duty of the Judge and the assessors to assess the amount to be awarded as compensation. The claimant did not think fit to attend, and he was at liberty to stay away; but that did not relieve the Judge and the assessors, as a body, from ascertaining the value of the land. Then s. 22 also provides what is to be done in case of any or both of the assessors neglecting to act. In that case, the course to be followed by the Judge was to give notice to the parties and to appoint some one else in his or their place. But the Judge did not do that. What he did was to make an award himself without the assessors. There is nothing in the Act which enables him to make an award independently of the assessors, and inasmuch as his powers are derived solely from the Act itself, it seems to me that his award in this case was without jurisdiction altogether. He had not the assistance of the assessors, and without them he himself did not constitute a tribunal for the purpose of determining the amount of the compensation. Under these circumstances we think that these proceedings were without jurisdiction, and this rule must be made absolute to set them aside. We make no order as to costs.

T. A. P.

Rule made absolute.