

## PRIVY COUNCIL.

SECRETARY OF STATE FOR INDIA

v.

INDIA GENERAL STEAM NAVIGATION AND RAILWAY  
COMPANY. LTD.1909  
P.C.  
Jul. 1, 20

[On appeal from the High Court at Fort William in Bengal.]

*Compensation—Land Acquisition Act (1 of 1894)—Amount of Compensation payable for land on left bank of river Hooghly near Calcutta required for purposes of the Port Commissioners of Calcutta—Judgment in former land acquisition case regarding land in the vicinity, and amount awarded therefor—Review by High Court of valuation by Special Judge.*

In this case which related to the amount of compensation payable to the owners of certain land on the left bank of the river Hooghly near Calcutta, which had been acquired by the Government of Bengal under Act I of 1894 for the purposes of the Port Commissioners of Calcutta, the High Court did not agree with the scheme of valuation made by the Special Judge, and had increased his award relying upon the prices paid for a piece of land in the vicinity in previous land-acquisition proceedings as affording a guide to the amount of compensation to be awarded in the present case. And on appeal by the Government, it was contended that in doing so the High Court had wrongly disregarded the great experience of the Special Judge and had given undue weight as evidence to the decision in the former case, in which it was said that the land was so essentially different in area, locality, and special and peculiar advantages, that no deduction could be drawn from the amount awarded for it which would be of any use in estimating the value of the land now in dispute. Their Lordships of the Judicial Committee holding that no good ground for such a contention had been established, dismissed the appeal.

APPEAL from a decree (11th April 1906) of the High Court at Calcutta which varied a decree (11th January 1905) of the Special Land Acquisition Judge of the 24-Pergunnahs, made in Land Acquisition Case No. 200 of 1903.

The party opposing the award of compensation for the acquisition of the land was the appellant to His Majesty in Council.

\* *Present*: LORD MACNAGHTEN LORD DUNEDIN, LORD COLLINS, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.

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The matters in dispute between the parties arose out of the acquisition by the Government of Bengal, under the powers conferred by Act I of 1894, of the premises Nos. 6, 7 and 8, Garden Reach, in the suburbs of Calcutta, for purposes connected with improvements at the Kidderpore Docks proposed to be made by the Port Commissioners of Calcutta.

The facts and findings of the Special Judge are sufficiently stated in the judgment of the High Court (MR. JUSTICE RAMPANI and MR. JUSTICE ASHUTOSH MOOKERJEE) now appealed from, which was as follows :—

“This is an appeal against a decision of the Special Land Acquisition Judge of the 24-Pergunnahs in a reference made to him under section 18 of Act I of 1894. The land in dispute is 53 bighas in area, situated on the Garden Reach Road and bearing the numbers 6, 7 and 8. It has been acquired at the instance of the Port Commissioners for improvements at the Kidderpore Docks, and for the accommodation of their workshops at Garden Reach. The claimants are one Mrs. Malcolm and the India General Steam Navigation and Railway Company. The first claimant raised only a question of apportionment. The second claimant objected to the valuation of the Collector who had estimated the value of the land at Rs. 500 per cottah, had allowed Rs. 1,31,050-2 for the structures on the land, and Rs. 500 for removal of moveables. After deducting the capitalized value of the Government revenue and adding 15 per cent. for the statutory allowance, the net amount awarded by the Collector was Rs. 7,57,024-12-9.

“The Special Judge appraised the land as follows :—

“He regarded it as apportioned into blocks, and roads constructed through it, which in his opinion would occupy nine bighas of the area. He then divided it into belts of river frontage, firm and low land, valuing the first class at Rs. 1,20,960, the second, as if it paid a rental of Rs. 9 per cottah per month (= Rs. 5,18,400), and the third class, as if it paid a rental of Rs. 3 per cottah per month (= Rs. 34,560). He further allowed a sum of Rs. 25,000 for the value of the position of lands so that he altogether allowed the claimant Rs. 6,83,920 for the land.

“He still further allowed Rs. 20,000 for the materials of the buildings on the land, for they would, in his opinion, have to be removed, if the land were divided into blocks, and roads constructed through it. He gave the same amount as the Collector for the removal of movables, *viz.*, Rs. 500. Rs. 3,961 for a pontoon, and certain jetties and shear-legs. After deducting the capitalized value of the Government revenue at 20 years' purchase and adding the statutory allowance, he awarded to the claimants Rs. 54,594-11-11 in excess of the Collector's award or Rs. 8,11,619-8-8 in all.

“The India General Steam Navigation and Railway Company now appeals.

“Mr. Garth on their behalf objects to the system of valuation adopted by the Special Judge and claims Rs. 6,79,340-2-3 in excess of the sum awarded

by the Judge. According to the particulars of the Company's claim, a sum, of Rs. 10,70,000 is claimed for the land at the rate of Rs. 1,000 per cottah, Rs. 90,786-10-0 for the buildings on the premises No. 6, Rs. 22,937-12-0 for the buildings on premises No. 7, and Rs. 52,186-7-9 for the buildings on the premises No. 8, Garden Reach Road, Rs. 90,000 for the jetties, pontoons and shear-legs, total Rs. 13,25,910 and the statutory allowance at 15 per cent. on this sum.

"Mr. Garth's objection to the Special Judge's system of valuation are :— (i) that he has over-estimated the area of land necessary to be set apart for roads; and (ii) that he has under-estimated the value of the land, and overlooked the fact that by the opening up of the land by means of roads, the land would practically all become frontage land.

"He relies in support of his claim for the valuation of the land at Rs. 11,000 per cottah on—(1) the fact that the Port Commissioners, when they sold certain land, at the Watganj Pumping Station, which is not very far from the disputed land, to the Calcutta Municipal Corporation, charged them at the rate of Rs. 3,300 per cottah, (2) on an opinion expressed by Mr. Apjohn, the former Engineer and Vice-Chairman of the Port Commissioners, that one-third of the premises Nos. 6, 7 and 8, Garden Reach, was worth 5 lakhs, (3) on two judgments of this Court as to the value of land in the neighbourhood, (4) on certain awards of the Collector for similarly situated lands, (5) on certain conveyances and a lease of lands not far from the lands acquired, (6) on evidence of rents paid for land in the neighbourhood, and (7) on the evidence of certain expert witnesses. On the other hand, the Port Commissioners contend that the land they have now acquired is to the south of the Kidderpore Docks, and therefore of admittedly less value than land to the north of the docks, to which all the awards, conveyances and leases (except one) produced by the claimants relate, and (2) on certain conveyances and leases of land to the south of the docks, i.e., on the same side of the docks as the premises Nos. 6, 7 and 8, Garden Reach Road, and (3) on the evidence of their present Engineer Mr. F. Palmer.

"We must admit that there is much force in Mr. Garth's criticisms of the the Special Judge's system of valuing the land. It is impossible for us to say how much land would require to be left for roads. There is no evidence in this point. Mr. Beachcroft's conjecture that it would be proper to leave nine bighas out of account as required for this purpose may be right or may be wrong, but without the evidence of an Engineer on the subject we can form no definite conclusion on this point. Similarly, there are practically no data on which we can check his division of the land into belts of frontage, firm and low land, or his valuation of the frontage land or of the firm land at Rs. 9 per cottah, the low land at Rs. 3 per cottah, and the dock basin and tank land at half rates. We can only say that comparing the rates allowed by him with the rates mentioned in the conveyance and leases produced by the claimants they appear to be inadequate and below the rates to which, in our opinion, the claimant company is justly entitled.

"We do not attach much importance to the sale of the land for the Watganj Pumping Station by the Port Commissioners to the Calcutta Municipal

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Corporation at the rate of Rs. 3,300 per cottah. The Municipality urgently required a small area of land in that particular locality for a Pumping Station; no other land than the land the Port Commissioners had to sell would meet their requirements; so the Port Commissioners clearly took advantage of the Municipality's exigencies and made them pay a 'fancy' price.

"Nor do we consider that we can regard Mr. Apjohn as having definitely valued a third of the premises 6, 7 and 8, Garden Reach Road, at 5 lakhs of rupees. It appears that Mr. Apjohn and Mr. Ashton of the firm of Messrs. Kilburn and Company had some informal conversation on the subject of this land. Both gentlemen seem to have been endeavouring to ascertain the views of the other. Mr. Apjohn led Mr. Ashton to think, he would recommend to the Port Commissioners to buy one-third of the premises at this figure; but it does not appear certain, that Mr. Apjohn, when officially approached on the subject, would have made any such recommendation, or that the Port Commissioners would have accepted such recommendation, if made to them.

"The judgments of the High Court relied on by the claimant are two in number, one dated the 13th August 1903 when the Chief Justice and Mr. Justice Geidt awarded Rs. 950 a cottah for certain frontage, and Rs. 550 a cottah for certain back land situated at the junction of the Watganj and Garden Reach Roads, *i.e.*, for land in a very favourable situation and on the Calcutta side of the docks. The other judgment is one by Harington and Brett JJ., dated the 18th June 1903, awarding Rs. 375 per cottah for land on the south side of the docks. This land faced the Mithapukur Road, which connects the Garden Reach with the Circular Garden Reach Road. The awards were for the premises 11, 12 and 13, Garden Reach Road, which are situated very near the land which is the subject of contention in this case, and with considerable, if not exactly similar, advantages in the way of river frontage. A rate of Rs. 240 per cottah was awarded for No. 12, Garden Reach, and Rs. 495 per cottah for the adjoining premises. There appears to be no satisfactory explanation forthcoming of the difference in these rates.

"The rates specified in the conveyances relied on by the claimant also vary in an extraordinary manner—running from Rs. 1,000 to Rs. 8,000 per cottah. But as the Judge points out, these conveyances are for small pieces of land situated in the populous quarter of Watganj on the Calcutta side of the docks. The lease is at the rate of Rs. 4-8-0 per cottah, but a bonus of Rs. 1,000 was paid which raises the rental to about Rs. 8 per cottah.

"Then, evidence has been given of rents paid in the neighbourhood. The indenture in favour of Messrs. John King and Company, dated the 31st March 1904, shows that certain land on the Calcutta side of the docks was let to this firm at a rental of about Rs. 6 per cottah. The evidence of the witness, Hari Mohan Ghose, shows that he pays rent for land on the south side of the docks at the rate of Rs. 4 per cottah.

"The valuations made by the expert witnesses cited by the claimant also differ very greatly. Mr. Warwick values the road and the river-frontage land at Rs. 1,000 per cottah and the interior land at Rs. 800 per cottah. Mr. Owen values the high land at Rs. 1,000 per cottah and the interior land at Rs. 800 per cottah. Mr. Owen values the high land at Rs. 900 per cottah and the

sloping and tank land at Rs. 450. Mr. Stevens divides the whole land into two portions and gives Rs. 1,000 per cottah for the river side portion, and Rs. 800 per cottah for the road side portion with lower rates for tank and low lands. Mr. Aitken values the high land at Rs. 800 per cottah. Now, these gentlemen are all expert witnesses. We are familiar with their names. They appear in almost every land acquisition case, either for the one side or the other. They have of course special knowledge of the value of land in Calcutta and its neighbourhood, but we can only say that we consider they have in their valuations estimated the lands at somewhat above the maximum rates fairly payable for it. It is unnecessary for us to allude to the scheme framed by Mr. Warwick for the laying out of the land to the best advantage. The Land Acquisition Judge, Mr. Beachcroft, has sufficiently criticised this scheme and pointed out the defects that are inherent to it.

“On the other hand, the Port Commissioners have given evidence of much lower rates of rent being paid to them by their tenants. The rents paid to them vary from 8 annas per cottah upwards for lands both to the north and south of the disputed land.

“They also produce a large number of conveyances of lands more or less to the south of the premises 6, 7 and 8, Garden Reach Road, the prices paid for which vary from Rs. 148 per cottah to Rs. 296 per cottah. This higher rate was paid for 46, Garden Reach Road, which is the farthest away from Calcutta.

“We may mention that we are informed that the alleged sale of the Shibpur College, which the Judge discusses in his judgment, has not taken place.

“Mr. F. Palmer, the present Engineer to the Port Commissioners, deposes that in his opinion the proper value of the acquired premises is Rs. 400 per cottah which would seem to us to be much too low a rate for the land.

“It is clear, however, we consider from the evidence adduced on behalf of the Port Commissioners, that land on the Calcutta side of the docks is much more valuable than on the further side. This may be partly due to the obstruction caused to passers-by owing to the constant and prolonged closure of the Swing Bridge at the docks; but also to a great extent to the fact that the land on the further side of the docks is more sparsely populated than the land on the Calcutta side and is in every way less favourably situated for business purposes.

“In these circumstances we must admit we find it most difficult to appraise accurately the value of the premises Nos. 6, 7 and 8, Garden Reach Road. But basing our valuation on the evidence given in this case on both sides and taking into consideration such evidence, as to rates of rent, sales and awards, we are inclined to value the land at very much the rates given by the learned Chief Justice and Mr. Justice Geidt for the land taken up at the corner of the Watganj and Garden Reach Roads. This land is very near, if it is not the nearest land, to the subject of this reference, of the value of which we have evidence. This land is no doubt to the north of the docks and nearer Calcutta than the lands now the subject of enquiry: but on the other hand Nos. 6, 7 and 8, Garden Reach, have greater advantages in the way of river frontage. The learned Chief Justice and Mr. Justice Geidt gave Rs. 950 per cottah to the front and Rs. 550 per cottah for the back land, *i.e.*, Rs. 750 per cottah on an

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average. We consider we should give this average rate for the firm land of the premises Nos. 6, 7 and 8, Garden Reach, irrespectively of its situation, *i.e.*, whether front or back, but we think we should give only half this rate for the dock, basin, and tank land. Two of the expert witnesses on the side of the claimant, Mr. Stevens and Mr. Owen, give lower rates for the dock basin, and tank land and the Special Judge proceeds on the same principle.

“As for the buildings, we think, we should allow the claimant the sum of Rs. 1,31,050-2-0 which was the Collector’s estimate of their value. The claimant is also entitled to Rs. 500 as allowed by the Collector for the removal of movables, Rs. 3,961-0-0 for the value of the jetties, pontoon and shear-legs, to the valuation of which no exception has been taken during the hearing of this appeal. From the amount must be deducted the capitalized value of the Government revenue at 20 years’ purchase. The claimant is, of course, entitled to the statutory allowance of 15 per cent. on the amount of compensation awarded and to costs in proportion in both Courts. We decree the appeal to this extent accordingly. The cross-objections were not pressed.”

On this appeal,

*Cohen, K.C., DeGruyther, K.C., and A. M. Dunne*, for the appellants, contended that the High Court proceeded on an erroneous principle in adopting as the basis of valuation of the land the value put in previous land acquisition proceedings between different parties, in connection with an entirely different plot of land, and irrespectively of and without regard to essential elements of dissimilarity in regard to area, locality, and special and peculiar advantages. The judgment in the previous case relied upon by the High Court was not evidence in the present case of the value of the land in dispute. The land to which that judgment related had, by reason of its position in a highly congested business area at the junction of two main traffic thoroughfares, a special and extraordinary value, and it had nothing in common with the land now in question which could form the basis of comparison between the two in estimating their respective values. In so acting erroneously the High Court had disregarded evidence relating to other land which in respect of proximity and advantages was more similar to the land now in dispute than that covered by the decision relied upon by the High Court. The value of the land in question ought to have been based on the evidence adduced in relation to the value of land on the west and south sides of the docks which as regarded area,

proximity, and general advantages was shown to possess very similar conditions to that now in question. The High Court when valuing the land on the abovementioned basis erred also in awarding to the respondents in addition the value of the existing buildings otherwise than as old materials the value of which had been agreed upon as Rs. 20,000. Finally, the High Court was in error in setting aside the scheme of the Special Judge in ascertaining the value of the land on a rental basis, and had ignored the fact of his special knowledge in connection with such valuation. The date of the declaration of requirement of the land (20th January 1903) was the date to be considered in valuing the land. Reference was made to the Land Acquisition Act (I of 1894), sections 11, 15, 18, 19 and 24: *Secretary of State for Foreign Affairs v. Charlesworth Pilling & Co.* (1) and *Premchand Bural v. Collector of Calcutta* (2), a case under the former Land Acquisition Act (X of 1870).

*Sir Robert Finlay, K.C., Sir Alfred Cripps, K.C., and Kenworthy Brown*, for the respondents, contended for the reasons given in the judgment of the High Court that the amount of compensation allowed was not excessive, and that the valuation arrived at by the High Court should be upheld. Reference was made to *Ezra v. Secretary of State for India* (3) and Land Acquisition Act (I of 1894), section 40.

*Cohen, K.C.*, replied.

The judgment of their Lordships was delivered by

LORD COLLINS. This is an appeal against a decree of the High Court of Judicature at Fort William in Bengal, dated the 11th April, 1906, and made in appeal No. 58 of 1905, which varied the decree of the Special Land Acquisition Judge of the 24-Pergunnahs, dated the 11th January, 1905, and made in Land Acquisition Case No. 200 of 1903.

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(1) (1901) I. L. R. 26 Bom. 1, 16, 17, 24; (2) (1876) I. L. R. 2 Calc. 103.

L. R. 28 I. A. 121, 130, 141.

(3) (1905) I. L. R. 32 Calc. 605;

L. R. 32 I. A. 93.

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The question relates to the amount of compensation payable to the owners of certain land on the left bank of the Hooghly, near Calcutta, which has been acquired by the Government of Bengal under Act I of 1894 for the purposes of the Port Commissioners of Calcutta.

The respondents to this appeal were owners of some portions, and lessees of other portions, of the land in question.

On the 12th June, 1903, an award was made by the Land Acquisition Collector under section 11 of the said Act of 1894, in which he assessed the compensation payable to the parties interested in the said premises at a sum of Rs. 7,57,024-12-9.

The claimants (respondents) filed a petition of objection to the said award and required the matter to be referred by the Collector for the determination of the Civil Court. The matter accordingly came in due course before the Special Judge of the 24-Pergunnahs appointed to hear and determine cases arising out of proceedings under the said Act, who allowed a sum of Rs. 54,594-11-11 in addition to the sum awarded by the Collector.

Against this decision the claimants appealed to the High Court. That Court, in a very careful judgment reviewing the earlier awards and comparing the prices realized on sales of land in the neighbourhood, having regard to the special advantages of, or drawbacks to, their respective situations, and having heard the evidence of experts on both sides, came to the conclusion that the total compensation due to the claimants ought to be increased to the sum of Rs. 10,13,591-8.

It seems to their Lordships that there is no question of principle involved in this appeal. In fact, the main argument of the appellant is a practical denial of the right of the High Court to review the findings of the Special Judge, whose great experience in such cases, they suggested, ought to outweigh all other considerations. Indeed, when one comes to close quarters with their objection to the decision, it seems to resolve itself into no more than this, that the Court gave undue weight to the prices paid on the sale of a particular piece of land in the vicinity as affording a guide to the compensation to be



awarded in the case before them. It is by no means clear to their Lordships that there is any good ground for this suggestion.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be dismissed.

The appellant will pay the costs of the appeal.

*Appeal dismissed.*

Solicitor for the appellant : *The Solicitor, India Office.*

Solicitors for the respondents : *Morgan Price & Co.*

L. V. W.

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## APPELLATE CIVIL.

*Before Mr. Justice Stephen and Mr. Justice Vinces.*

NIRAD MOHINI DASSI

v.

SHIBADAS PAL DEWASIN.\*

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*Hindu Law—Shebaitship—Alienation of Shebaitship, inter vivos.*

An alienation (*inter vivos*) of the office of *shebait*, by an *arpannamah*, to a closely connected member of the family who seems to have more interest in the worship of the idol than any one else, and without any idea of personal gain, is valid under the Hindu law.

*Mancharam v. Pranshankar* (1) followed.

*Rajeshwar Mullick v. Gopeshwar Mullick* (2) distinguished.

*Khetter Chunder Ghose v. Hari Das Bundopadhya* (3) and *Rajaram v. Gonesh* (4) referred to.

SECOND APPEAL by Srimati Nirad Mohini Dassi, the defendant No. 2.

The plaintiff, Shibadas Pal Dewasin, sued to establish his title and to recover possession of the land held in *khas* by partition, and of a certain share of the *pala* of the Billeshwar *Thakur's sheba*.

\* Appeal from Appellate Decree, No. 1520 of 1907, against the decree of Aghore Chandra Hazra, Subordinate Judge of Burdwan, dated April 15, 1907, confirming the decree of Saroda Prasad Banerjee, Munsif of Katwa, dated July 30, 1906.

(1) (1882) I. L. R. 6 Bom. 298.

(3) (1890) I. L. R. 17 Calc. 557.

(2) (1907) I. L. R. 35 Calc. 226.

(4) (1898) I. L. R. 23 Bom. 131