

Babu Kailash Chandra Jain - - - - - *Appellant*
v.
The Secretary of State - - - - - *Respondent*
(Allahabad Appeal No. 10 of 1942)
Same - - - - -
v.
Same - - - - -
(Allahabad Appeal No. 11 of 1942)
Same - - - - -
v.
Same - - - - -
(Allahabad Appeal No. 12 of 1942)

CONSOLIDATED APPEALS

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 1ST MAY, 1946

Present at the Hearing:

LORD MACMILLAN
LORD WRIGHT
LORD DU PARCQ
LORD JUSTICE MORTON
SIR JOHN BEAUMONT

[*Delivered by* LORD JUSTICE MORTON]

These consolidated appeals are from three decrees of the High Court of Judicature at Allahabad dated the 27th November, 1941, affirming three decrees of the Court of the Improvement Trust Tribunal, Allahabad, dated the 27th April, 1934, whereby, in respect of the compulsory acquisition of certain lands and buildings belonging to the appellant, he was awarded as compensation certain sums of money. The appellant contends that the sums awarded to him by the Tribunal were insufficient, in that they did not include any compensation for the acquisition of the following four pieces of land:—

- (1) The garden of House No. 8, Mohalla Chak, Allahabad.
- (2) 504 square yards of *Parti* land with enclosure wall known as No. 32, Mohalla Chah-Chand, Allahabad.
- (3) Land with a long shed on one side of it known as No. 13, Mohalla Mahajani Tola, Allahabad.
- (4) *Parti* land No. 22, Mohalla Mahajani Tola, Allahabad.

The appellant further contends that the Tribunal, relying upon the Full Bench decision of the Allahabad High Court in *Secretary of State v. Makhan Das* (1928) I.L.R. 50 Allahabad, 470, took an erroneous view as to the construction of Section 23 (3) (a) of the Land Acquisition Act, 1894 (Act. No. I of 1894) as amended by the United Provinces Town Improvement Act, 1919 (U.P. Act. No. VIII of 1919).

The respondent, on the other hand, contends that if the facts are carefully examined it will be found that the appellant was awarded compensation in respect of each of these four pieces of land, and that in assessing such compensation the Tribunal did not apply any wrong principle.

It is, therefore, necessary for their Lordships to examine in some detail the facts in regard to each of these four pieces of land.

The question of compensation was first considered by the Land Acquisition Officer (hereinafter referred to as "the Officer"). His award in regard to the first piece of land is in the following terms:—

" This is an old *pakka* building with a decent flower garden attached to it and also a *pakka* well.

It is assessed to Municipal taxes on the yearly rental of Rs.480. The net profit, after deducting the taxes, repairs, vacancies, etc., comes to Rs.400. The current rate of profit on investments in buildings is six per cent. and at this rate the market value comes to $400 \times \frac{100}{6}$ or Rs.6,650.

According to the Land and Buildings method, its value works out to Rs.9,228. This of course does not take into account the enhanced value of the building and land on account of the garden.

A fair monthly rental that could be got should be Rs.60. Deducting the taxes, repairs, etc., the net profit comes to Rs.600 per annum and its capitalized market value at the rate of six per cent. comes to $Rs.600 \times \frac{100}{6}$ or Rs.10,000.

The building is not in the actual occupation of the owner but is lying vacant and the garden is used by the owner as a place of resort and I would allow fifteen per cent. for compulsory acquisition which comes to Rs.1,500.

Therefore I would award Rs.11,500."

It was suggested by Counsel for the appellant that the Officer had awarded nothing in respect of the garden, and he relied upon the sentence " This of course does not take into account the enhanced value of the building and land on account of the garden ". Their Lordships cannot accept this suggestion. The sentence just quoted is merely a comment by the Officer on the " Land and Buildings method ", and it is plain from the remainder of the Award that the Officer in fact adopted a method of valuation which did take into account the garden. There can be no doubt that in assessing " a fair monthly rental " the Officer was assessing a rental for the house and garden taken together. This is made clear by the fact that, having arrived at his valuation of Rs.10,000, he allows an additional fifteen per cent. for compulsory acquisition because " the garden is used by the owner as a place of resort ". This is a reference to Section 23 (2) (c) of the Act of 1894 as amended by the Act of 1919 (set out below) and it would have been wholly illogical for the Officer to add fifteen per cent. if the garden had not been a portion of the property which he had already valued at Rs.10,000.

In his Award with regard to the second piece of land, the Officer observed:—

" No. 32 is 504 square yards of *Parti* land with enclosure wall not all round but on a portion of it. The cost of the wall is estimated to be Rs.204. The value of the land at Rs.2 per square yard comes to Rs.1,008."

He goes on to explain how he arrives at the value of Rs.2 per square yard, and concludes:—

“ I would award Rs.204 + 1,008 or Rs.1,212 in all for No. 32.” It is thus apparent that compensation was awarded for this piece of land.

The Award in regard to the third piece of land is in the following terms:—

“ This is mainly open land with a long shed on one side known as Mahfil.

The building is assessed to the Municipal taxes on a monthly rent of Rs.6.

Deducting for repairs, taxes, etc., the net yearly profit comes to Rs.60 and its capitalized value at the current rate of 6 per cent. comes to Rs.1,000 but this represents, in this case, only the value of the building, the open land having not been taken into account obviously.

The area of the land is 548 square yards and its value at Rs.2 per square yard comes to Rs.1,096. According to the Land and Buildings method, its value comes to Rs.1,427.

I award Rs.1,000 plus Rs.1,096 or Rs.2,096.”

The Award in regard to the fourth piece of land is as follows:—

“ This is ‘ parti ’ land in continuation of the garden house of the owner only recently acquired for the same Zero Road Scheme.

It is enclosed within a compound wall and bears a few ordinary trees.

There is a disused ‘ pakka ’ well outside the compound wall.

The compound wall and other small constructions would be worth Rs.900. Well must be worth not more than Rs.500. The trees will be worth Rs.50. The area is 2,637 square yards and at the rate of Rs.2 per square yard its value comes to Rs.5,274. There have recently been cases in the neighbourhood in which the land has been valued in private transactions at the rate of less than Rs.2 per square yard.

The total compensation admissible then comes to Rs.900 plus Rs.500, plus Rs.50, plus Rs.5,274 or Rs.6,724. It is said that the compound wall was constructed after the scheme was notified but I do not see any act of bad faith on the part of the owner.

I would award Rs.6,724.”

Again it is apparent that in each of these cases the Officer awarded a specific sum in respect of the land.

The appellant was not satisfied with the sums awarded by the Officer, and applied, under Section 18 of the Act of 1894, as modified by the Act of 1919, for reference of the amount of compensation to the Court of the Improvement Trust Tribunal at Allahabad. Their Lordships find no justification for the suggestion that the Tribunal awarded no compensation for these four pieces of land. The only sentence in the judgments of the Tribunal which at first sight appears to justify this suggestion occurs in the judgment of the President in regard to the first piece of land. After referring to *Secretary of State v. Makhun Das (supra)* he observed:—

“ The Applicant has failed to prove that he was getting any fruits from the trees standing in the garden, consequently he cannot get any compensation for the land that is lying vacant and is being used as a place of resort and garden.”

Taken by itself, this sentence would appear to justify the appellant's suggestion, but the remainder of the judgment shows that the President accepted as “ correct and reasonable ” the rental of Rs.60 per month which had been found by the Officer to be the fair monthly rental for the house and garden. Having accepted this rental as fair and reasonable, the President continued:—

" The annual rent is Rs.720, it should be multiplied by $16\frac{2}{3}$ that is $720 \times \frac{50}{3} = \text{Rs.}12,000$. The market value will thus come to Rs.12,000 and compulsory acquisition comes to Rs.1,800. Thus the total will come to Rs.13,800. I therefore allow Rs.2,300 more to the Applicant in addition to the sum already awarded by the learned Land Acquisition Officer."

It is plain that the President, like the Officer, rightly treated the building and garden as one property and increased the valuation which the Officer had placed upon that property. The President appears to have overlooked this fact when he made the observation first quoted above.

As to the other three pieces of land, the Tribunal clearly awarded compensation in respect of each of them.

The appellant appealed to the High Court of Judicature at Allahabad. In their judgment, the learned Judges of that Court first referred to the first piece of land, and observed:—

" The method which should be adopted for calculating the market-value in the case of property which is in the occupation of the proprietor and is not put to the use of earning any income, on the material date, raises a question which is not altogether free from difficulty, and we might have been inclined to consider the suggestion that the matter should be referred to a larger Bench if the evidence produced by the appellant in the case before us had not, in our judgment, been entirely worthless."

The Court then went on to review the evidence, and continued:—

" The result is that the appellant's case fails on the merits and it is not necessary to consider the question of law raised by learned Counsel. In our judgment the method adopted by the Tribunal for calculating the compensation to be awarded to the appellant was, in all the circumstances of this case, the only satisfactory method that could be adopted."

The Court then mentioned the other three pieces of land in question, and continued:—

" Learned Counsel for the appellant has stated that there is no other evidence on which he can rely for the purposes of these cases and that there are no fresh points which he proposes to raise. For the reasons given above we have come to the conclusion that these appeals are without force."

The result is that there is no foundation for the appellant's contention that he was awarded no compensation in respect of these four pieces of land.

Turning to the appellant's second contention, their Lordships are unable to find that any wrong principle was applied by the Tribunal in assessing the market-value of these pieces of land.

The material subsections of Section 23 of the Act of 1894, as amended by the Act of 1919, are as follows:—

" (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:—

First the market-value of the land at the date of the first publication of the notification under Section 36 of the United Provinces Town Improvement Act, 1919.

* * * * *

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition;

Provided that this subsection shall not apply to any land acquired under the United Provinces Town Improvement Act, 1919, except:—

* * * * *

(b) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(c) gardens not let to tenants but used by the owners as a place of resort.

(3) For the purposes of clause first of subsection (1) of this section:—

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause.

(b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him."

Their Lordships are unable to find that either the Officer or the Tribunal failed to assess the market-value according to the use to which these four pieces of land were put at the relevant date. The value placed upon them by the Officer appears to have been the market-value so assessed, and the Officer made his awards before the case of *Secretary of State v. Makhan Das* (*supra*) had been decided. The Tribunal appears to have adopted the same method of valuation, though it would appear that the Assessors would have liked to adopt a more generous scale of compensation. Reference was made, however, by the President and Assessors of the Tribunal, and also by the High Court, to the decision of the Full Bench of the Allahabad High Court in *Secretary of State v. Makhan Das*, and the Judges of the High Court expressed their agreement with the decision of the Full Bench in that case.

Their Lordships accordingly think it desirable to say that certain observations in the judgment of Lindsay, J. (with which Sulaiman, J. and Mukerji, J., agreed) in *Makhan Das*' case cannot be supported. Lindsay, J., appears to have taken the view that under Section 23 of the Act of 1894, as amended by the Act of 1919, the market-value of land must be treated as being nil if the owner was not deriving any profit from the land at the relevant date. He continued:—

"It need hardly be pointed out that such an enactment is fraught with much possible hardship to owners of property which has become subject to the operations of the Act. Lands of great value may, from a variety of causes, fall temporarily out of use. Agricultural land may have to be left fallow for a season or two in order that it may recover productivity. Or the owner of a valuable site acquired for a building scheme may have to suspend the execution of his project in order, for example, to contest in court a claim to a right of way over the land. In either case the owner is liable to be expropriated without compensation if a notification issues under the Act while the land is not being put to actual use.

It is difficult to imagine that cases of this kind were in contemplation when the Act was passed, but the language of the Act, as it stands, must, if followed, lead to these results. It must be left, therefore, to the Legislature to declare whether it was intended to invest the Improvement authorities with this power of confiscation, or to amend the Act so as to avoid the results above-mentioned."

It would appear that, in the view of the Full Bench in *Makhan Das*' case, neither a plot of land used by its owner as a garden at the relevant date, nor a plot of agricultural land lying fallow at the relevant date, is being put to any "use" within the meaning of Section 23, because the owner is deriving no profit therefrom; consequently, in the view of the Full Bench, the owner is not entitled to any compensation on its compulsory acquisition. Their Lordships are unable to assent to this view. On the true construction of Section 23 the former plot ought

to be valued as a garden and the latter plot ought to be valued as agricultural land. The effect of Section 23 (3) (a) of the Act of 1894 as so amended is that the possibility of the garden or agricultural plot being used (e.g) for building purposes in the future must be disregarded. It is significant that subclause (b) of that subsection makes provision for the case of the owner having taken active steps and incurred expenditure to secure a more profitable use of the land. In such a case the owner may be paid " further compensation based on his actual loss ". Apart from such a case, only the present use of the land can be considered for the purpose of arriving at the market-value.

There may be cases in which the Officer, or the Tribunal, could properly assess the market-value of the land acquired at nil, but their Lordships do not find it necessary to discuss that matter; each of the four pieces of land in question in this appeal clearly has a market-value. A value was placed on each of these pieces of land by the Officer and by the Tribunal and that value appears to have been assessed in accordance with the statutory provisions.

Accordingly, their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed. The appellant must pay the costs of the respondent.



In the Privy Council

BABU KAILASH CHANDRA JAIN

v.

THE SECRETARY OF STATE

(ALLAHABAD APPEAL NO. 10 OF 1942)

SAME

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