Privy Council Appeal No. 14 *of* 1946

Sardar Sohan Singh - - - - - - - - *Appellant*

v.

The Governor-General in Council through the Military Estate Officer, Rawalpindi - - - - *Respondent*

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH JUNE, 1947

Present at the Hearing:

LORD SIMONDS

LORD UTHWATT

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a decree of the High Court of Judicature at Lahore, dated the 30th September, 1943, varying a decree of the Court of the District Judge of Rawalpindi, dated the 15th May, 1941. The appeal arises in proceedings under the Land Acquisition Act (Act I of 1894). The question at issue is as to the title to the land upon which stands Bungalow No. 160 (formerly No. 56 and later No. 105) in Rawalpindi Cantonment. The appellant claims that he is the owner, not only of the bungalow, but of the land upon which it stands, whilst the respondent claims that the land was held by the appellant on Cantonment tenure under which the respondent was entitled to resume possession at any time upon giving a month's notice, and upon payment to the occupier of the value of the buildings upon the site, and that that right has been duly exercised. The respondent claims to acquire under the Land Acquisition Act only the bungalow.

On the 15th June, 1935, the appellant had granted to the Secretary of State for India (represented by the Garrison Engineer, Rawalpindi) a lease of the said bungalow and the land upon which it stood on a monthly tenancy. On the 20th February, 1937, notice was given to the appellant on behalf of the Secretary of State alleging that the land in question was held on Cantonment tenure and that the Government was entitled to resume possession thereof, and requiring the appellant to quit and deliver up possession of the property, and Government stated that they were prepared to pay the sum of Rs.12,997, as the value of the erections standing on the said land. It is not now disputed that the lease was validly determined assuming the land to have been held on Cantonment tenure.

On the 1st May, 1937, the Government of the Punjab, in accordance with the provisions of Section 4. of the Land Acquisition Act, issued a notification in the following terms:—

> " Whereas it appears to the Governor of the Punjab that the property known as Bungalow No. 160 in Rawalpindi Cantonment with the outbuildings attached thereto, is required by the Government at public expense for a public purpose, namely, for the housing of Military Officers.
>
> " And whereas the Government of India claim that the land on which the said bungalow and out-houses are erected is the property of the Government of India held by the owner of the said buildings on Cantonment tenure under which Government may resume the land at any time on giving one month's notice and paying the value of such buildings thereon as may have been authorised to be erected.

"And whereas the Government of India have given such notice and the notice has expired and the Government of India claim that the land has been resumed by them and being desirous of acquiring the buildings thereon and other outstanding interest therein (if any) as expeditiously as possible have represented to the Government of the Punjab that the same may be acquired for a public purpose under the provisions of the Land Acquisition Act, 1894. . . . .

"Any person interested in the said property who has any objection to the proposed acquisition may, within thirty days of the publication of this notification, file an objection in writing before the Collector of Rawalpindi District, in whose office a plan of the property may be seen."

The appellant lodged objections to the proposed acquisition on the 28th June, 1937. He denied that the Government was entitled to resume the land at any time on giving one month's notice and paying the value of the buildings standing on the land, or that the condition which according to the Government's claim entitled them to resume possession had been satisfied, and he further alleged that the proposed acquisition of the buildings standing upon the land, as apart from the land itself, was not contemplated by the Land Acquisition Act and was against the law. The Government replied to the objections and the matter proceeded in due course in accordance with the provisions of the Land Acquisition Act.

On the 17th May, 1938, the Land Acquisition Officer made his award. He over-ruled the contention of the appellant that the proceedings were ultra vires as the notification under Section 4 of the Act related only to the buildings and out-houses and not to the land forming the site of such buildings, and he further over-ruled the appellant's claim that the land forming the site of the bungalow belonged to him. He assessed the value of the buildings at a sum of Rs.12,718 and, adding 15 per cent. for compulsory acquisition, awarded a total compensation of Rs.14,626.

On the 27th June, 1938, the appellant made an application under Section 18 of the said Act to the Collector, setting out his objections to the award of the Land Acquisition Officer and praying that the matter be referred to the District Judge for the determination of the matters in dispute.

The reference came before the District Judge on the 15th May, 1941, when the following three issues were raised:—

(1) Is the Government estopped from claiming title of the land against the petitioner by reason of the lease?

(2) If not, does the land in dispute belong to the petitioner?

(3) If the land in dispute belongs to the Government is the compensation awarded by the Land Acquisition Officer for the buildings not correct, and if so, to what compensation for the building is the petitioner entitled?

On the first issue, as to estoppel, the Learned Judge held against the appellant, and as that question has not been pressed before the Board, it is unnecessary to discuss it. Upon the second issue which was the main question in dispute, the Learned Judge held that the appellant was entitled to the land on which the bungalow stood and that it was not held on Cantonment tenure. Upon this finding the Learned Judge was of opinion that the question of compensation did not arise, because the Government would have to take steps to acquire the land, and this they had not done, and accordingly the Government would have to start fresh proceedings. However, in order to avoid a remand in the event of an Appellate Court disagreeing with his finding on Issue No. 2. the Learned Judge considered the question of compensation and came to the conclusion that the appellant would be entitled to a sum of Rs.29,586 as compensation for the buildings if the buildings were to be acquired by Government.

The Governor-General appealed against the findings of the Learned District Judge to the High Court of Judicature at Lahore, and judgment was given on the 30th September, 1943, the leading judgment being given by Mr. Justice Sale. The High Court disagreed with the Learned District

Judge upon his answer to issue No. 2, and held that the land upon which the bungalow stood was held on Cantonment tenure and had been resumed by Government. Mr. Justice Sale expressed the view that if the land belonged to the appellant, as held by the Learned District Judge, it would be open to the Court to assess compensation for such land, notwithstanding that it had not been included in the notice under Section 4 of the Land Acquisition Act, and the matter had not been considered by the Land Acquisition Officer. This opinion was not necessary for the decision of the case, and their Lordships find it unnecessary to express any opinion upon it. The High Court accepted the figure of Rs.29,586 which the District Judge would have awarded as compensation for the buildings and this portion of the decree of the High Court has not been challenged before the Board. Nor has it been contended that if the buildings only belong to the appellants they cannot be acquired under the said Act.

The sole question therefore which calls for the decision of the Board is as to the title to the land upon which bungalow No. 160 stands. As the appellant relied on his title to the land for the purpose either of claiming compensation for its acquisition, or of challenging the right of Government to acquire under the Land Acquisition Act a part only of his total interest in the land and buildings, the burden was upon the appellant to prove his title. In discharge of this burden the appellant relied upon his title deeds supported by extracts from the Property Register kept for the Rawalpindi Cantonment, which is Exhibit R.W.6.B, and upon certain acts of ownership, particularly a mortgage made to the Government of India as hereinafter mentioned, and the said lease of 1935. If this evidence stood alone it would indicate that the appellant and his predecessors in title had been the owners of the land for close upon a hundred years, and no Court could expect more. But the evidence does not stand alone. The respondent put in evidence designed to prove that the land in question is in the middle of the Cantonment Area at Rawalpindi, and that it was acquired for the purposes of the Cantonment about the years 1849 and 1850. The dispute has to be determined in the light of the whole evidence on the record by whichever side produced.

Land in the Cantonment of Rawalpindi is admittedly governed by the terms of Order No. 179 of 1836, Clause 6 of which is in the following terms:—

> "No ground will be granted except on the following conditions, which are to be subscribed by every grantee as well as by those to whom his grant may subsequently be transferred.
>
> "First. The Government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorized to be erected.
>
> "Second. The ground, being in every case the property of Government, cannot be sold by the grantee; but houses or other property thereon situated may be transferred by one Military or Medical Officer to another without restriction, except in the case of reliefs, when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration.
>
> "Third. If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description, who does not belong to the Army, until the consent of the Officer Commanding the station shall have been previously obtained under his hand.
>
> "Fourth. When it is proposed, with the consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed Rs.5,000, the sale must not be effected, until the sanction of Government shall have been obtained through His Excellency the Commander-in-Chief."

The title deeds produced by the appellant show that in 1858 Brigadier Caley possessed the bungalow. In 1862 he sold it to a Mr. Herbert who was a civilian. In 1870, Mr. Herbert sold it to Mr. Corbyn, who in 1873 sold it to Dr. Ince. In 1875 Dr. Ince sold it to Sujan Singh and Kirpal Singh. In 1876 Sujan Singh mortgaged the property to Government as

security for the performance of a contract, and in 1880 the property was sold to Hardit Singh, the father of the appellant. All these transfers (except the mortgage to Government) were shown in the Property Register of the Cantonment, the said Exhibit R.W.6.B. Except in the case of the last transfer to Hardit Singh, when the sanction of the Officer Commanding Rawalpindi was noted, the Register does not record the obtaining of any of the sanctions required by the rules, although there had been a sale to a civilian and to an Indian. The Learned District Judge thought that the absence from the Register of any note of the requisite sanctions having been obtained afforded a strong indication that the property in dispute was privately owned, it having been admitted by Capt. Faujdar Singh, a witness called on behalf of Government, that some sites in the Cantonment are owned privately, though the witness stated that those sites did not lie in the centre of the Cantonment. Their Lordships do not attach any great importance to the omission from the Register of any reference to necessary sanctions having been obtained. There is no evidence of any rule requiring a note of the sanction to be entered on the Register and it may well be that necessary sanctions were obtained, and that the Registrar would not have registered a transfer unless satisfied on this point. However, even if sanction was not obtained, no great importance can attach to the rules of Government not having been strictly observed.

The appellant lays great stress on the mortgage of the 12th July, 1876, made by Sujan Singh in favour of the Secretary of State. The object of this mortgage which included bungalow No. 160, then known as No. 105 and the site thereof, was to provide security for the due performance by Sujan Singh of a contract which he had entered into with Government. The appellant contends that Government are not likely to have taken a mortgage of land which substantially belonged to themselves. It must, however, be observed that the mortgagor undoubtedly possessed a valuable interest in the property mortgaged. He was entitled to the value of the bungalow, and he had an interest in the land which, even if it could be resumed on a month's notice, had in fact existed for some 25 years. It is true that the language of the mortgage, particularly the *habendum* which is to the Secretary of State in Council, his successors and assigns forever, suggests that the person who prepared the mortgage believed that the mortgagor was the absolute owner of the land mortgaged. But this cannot carry the matter very far. There is no statement in the mortgage which can bind Government by estoppel to admit the absolute ownership of the appellant. The appellant further relies strongly on the lease to Government of 1935 which has been already referred to. Here again, the language of the document is not such as to bind Government by estoppel to admit that the appellant is the absolute owner of the land. He granted only a monthly tenancy, and as he had then been in possession of the land for some 85 years and could in any event only be turned out on a month's notice, the lease could be supported even if he held the land on Cantonment tenure. As already noted it is not now claimed that the Government were disentitled to resume possession because of their position as lessees under this lease.

Before the District Judge the file in the Land Acquisition Proceedings of 1849-1850, when the Cantonment Area was defined, was not available, though the plan referred to in such file was produced. The Learned District Judge found the plan unintelligible without the production of the file. When the matter came before the High Court the file had been discovered, and was put in evidence by leave of the Court. Mr. Justice Sale dealt exhaustively with the documents in this file and their Lordships agree generally with the conclusions of the Learned Judge. The Land Acquisition file is contained in Part II of the record before the Board, and it is not easy to follow. It contains a Statement No. 1, which is headed "Statement regarding compensation showing lands pertaining to Rawalpindi Cantonment prepared in 1849-50." This Statement contains the same number of plots, namely 558, as shown on the plan, and the Statement and plan clearly go together. Their Lordships agree with Mr. Justice Sale in thinking that the site on which bungalow No. 160 stands can be identified with plots Nos. 451 and 453. In Statement No. 1 No. 451 is shown as in the ownership of Barkat Ullah and No. 453 as in the ownership of Amir

Shahbaz and Gauhar. The Statement does not show the consideration which was to be paid by Government which, as the High Court pointed out, was to be an annual payment. Further Statements included in the file contain a rather smaller area than that comprised in the first Statement, 2,069 bighas against 2,481 bighas, and these Statements show the compensation to be paid by Government. From these two facts Mr. Pritt, on behalf of the appellants, has argued that the first Statement and the plan merely show the property which Government contemplated acquiring, that the later Statements show the property actually acquired, and that the site of bungalow No. 160 cannot be identified on such later Statements. This suggestion is ingenious, but their Lordships are not satisfied that it is correct. The persons shown as owners of plots Nos. 451 and 453, with other plots, in the first Statement are shown as receiving compensation for land taken in the later Statement, though it is impossible to identify the land in respect of which compensation was payable. At this distance of time, however, it is natural that there should be difficulty in ascertaining exactly what happened. But once it be established, as their Lordships hold that it is, that the land in dispute is in the centre of the Cantonment Area, that no other land in the centre of the area is privately owned, that in 1849-50 this land was either already built upon or was about to be built upon, and that the site was included on the plan of the land which Government was proposing to acquire, their Lordships think that the proper conclusion is that the land was acquired by Government, and they would require cogent evidence to induce them to reach any other conclusion. They find no such cogent evidence. Their Lordships feel no doubt that the decision of the High Court was correct, and they will humbly advise His Majesty that this appeal be dismissed. The appellant must pay the costs.

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In the Privy Council

SARDAR SOHAN SINGH

v.

THE GOVERNOR-GENERAL IN COUNCIL THROUGH THE MILITARY ESTATE OFFICER, RAWALPINDI

DELIVERED BY SIR JOHN BEAUMONT

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