

Privy Council Appeal No. 26 of 1948

Bengal Appeals Nos. 16, 17 and 18 of 1945

Rai Harendra Lal Roy Bahadur Estates Ltd - - - *Appellant*

v.

Hem Chandra Naskar and Another - - - - *Respondents*

AND

Same - - - - - *Appellant*

v.

Same - - - - - *Respondents*

AND

Same - - - - - *Appellant*

v.

Same - - - - - *Respondents*

Consolidated Appeals

FROM

**THE HIGH COURT OF JUDICATURE AT
FORT WILLIAM IN BENGAL**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY, 1949

Present at the Hearing :

LORD PORTER
LORD MACDERMOTT
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is a consolidated appeal embodying three appeals to His Majesty in Council, namely, Nos. 16, 17 and 18 of 1945, from a judgment and decrees, all dated the 7th June 1945, of the High Court at Calcutta, which reversed the judgment and decrees, all dated 7th November 1941, of the Special Land Acquisition Judge, 24 Parganas, delivered and passed in proceedings under the Land Acquisition Act (Act I of 1894), hereinafter referred to as "the Act."

The property acquired consisted of 3 plots of beel (marsh lands) of which the appellant was the owner to the extent of four-fifth shares, and of which the respondents were the tenants, under mokorari mourasi leases (permanent, heritable and transferable tenures at a fixed rent) granted to their procedessor in title by predecessors in title of the appellant.

The question for determination relates to the apportionment of compensation awarded under the Act as between the appellant as proprietor

and the respondents as tenants, and the answer to this question depends on the construction and effect of grants made by the predecessors in title of the appellant to the predecessor in title of the respondents. It may be noted that at the dates of these grants it was the Land Acquisition Act of 1870 which was in force, but for the purposes of this appeal there was no material difference between that Act and the Act of 1894.

The relevant facts, which are not in dispute, are as follows :—

On the 6th April, 1880, Hari Mohan Roy and PEARI Mohan Roy, some of the predecessors in title of the appellant, by a registered patta of that date written in the Bengali language, granted a mokarari mourasi lease of their four-fifth shares of 1,000 bighas of land situate in the district of the 24 parganas, to Srimati Gokulmani Dasi, predecessor in title of the respondents, at an annual rental of 12 annas per bigha.

On the 15th June, 1880, the said Gokulmani Dasi executed a registered kabuliyat in favour of Kaibalya Nath Biswas and others, the other predecessors in title of the appellant in respect of the other one-fifth share in the same land at the same annual rent.

The said patta and kabuliyat provided that if it should be found by survey of the said land that there was any increase or decrease in the area occupied by the tenants, then the rate of rent mentioned above should apply to the area found to be in increase or decrease. The said patta contained a clause which according to the official translation made for the purpose of appeal to the High Court was in the following terms :—

“And, if any land of this Jama is taken by Government or any Company or Society for the purpose of making embankment or bridge or canal, road, etc., we shall get the money that will be awarded on account of value of the area acquired. You shall get proportionate abatement of rent aforesaid after measurement of the proportionate land so acquired.”

The said kabuliyat contained a clause in corresponding terms.

In the year 1884 the lands comprised in the said patta and kabuliyat were surveyed and it was found that the actual land comprised in the patta and kabuliyat was 710 bighas, and not 1,000 bighas, but that the tenants were also in possession of other land of the proprietors adjacent to the lands leased, the total area in their possession being 1,819 bighas 10 chittacks. Accordingly on the 11th April, 1884, by a registered patta of that date the said Hari Mohan Roy and PEARI Mohan Roy granted a fresh mokarari mourasi lease of their said four-fifth shares in the said 1,819 bighas 10 chittacks to the said Gokulmani Dasi at the former annual rent of 12 annas per bigha. The predecessors of the appellant in the other one-fifth share did not grant any fresh patta or take any fresh kabuliyat, but continued to accept rent at the rate of 12 annas per bigha in respect of their share in the total area of 1,819 bighas 10 chittacks.

The said patta of 1884 contained a clause which, according to the said official translation, was in the following terms :—

“If any land of this Jama is taken by the Government for the purpose of making any embankment, canal, bridge or road, etc., we shall get the money which will be awarded on account of the values of the area so taken, and you shall get proportionate abatement of rent in respect of the acquired area, after measurement later on.”

It will be noticed that from the patta of 1884 the words “or any Company or Society” which had occurred in the earlier patta after the word “Government” were omitted.

In the year 1937 proceedings were initiated under the Act for the acquisition by the Government of Bengal of part of the land comprised in the 1884 patta. The notification under section 6 of the Act provided that the land was “required to be taken by Government at the expense of the Calcutta Corporation for a public purpose, namely, for the Calcutta main drainage outfall channel to the Kulti river.”

The lands acquired included 3 plots of land and in due course the Land Acquisition Officer awarded compensation in respect of these 3 plots. For the purpose of the present appeal it is only necessary to state that the whole of the compensation awarded under section 23 of the Act for the value of the area acquired was awarded to the proprietors.

Being dissatisfied with the awards made by the Land Acquisition Officer both the proprietors and the respondents required this officer to refer the matter of each of the said awards for the determination of the Court, and this was duly done under section 18 of the Act. The references were heard by the Special Land Acquisition Judge, 24 Parganas, and on the 7th November, 1941, the learned Judge delivered a single judgment in all the cases. The only portion of the judgment relevant to this appeal is that relating to the apportionment of the compensation between the proprietors and the tenants. The learned Judge not having before him any official translation of the pattas of 1880 and 1884 himself translated the documents into English.

His translation of the compensation clause in the patta of 1884 was in these terms:—

“If embankment or bridge or channel or road etc., will be constructed by Government on land of this Jama then the value of the land that will be required for that (purpose) will be received by me. The land that will fall will be surveyed and you will get proportionate abatement of rent at the rate aforesaid for the area of the land so surveyed.”

The learned Judge adopted a corresponding translation in respect of the compensation clause in the patta of 1880 but this need not be referred to in detail. The learned Judge was of opinion that the patta of 1884 did not supersede that of 1880; but that the two pattas must be read together. He held, however, that the compensation clauses in the two pattas related to land acquired by Government, whether for their own purpose or for any Company or Society, and that the proprietors were entitled to the whole of the market value of the area of the land acquired.

From the judgment and decrees of the said Special Land Acquisition Judge the tenants appealed to the High Court at Calcutta. The proprietors did not appeal against so much of the judgment as was against them.

The three appeals were heard together and on the 7th June 1945 judgment was delivered. The learned Judges had before them the official translation of the pattas of 1880 and 1884, made for the purpose of the appeal, the terms of which, so far as they related to the compensation clauses, have been already referred to, and the learned Judges also had before them the translations made by the Special Land Acquisition Judge. In dealing with these translations the learned Judges observed “We have had the documents read over to us in Bengali and we are of opinion that the translations given by the learned Judge are accurate and literal; the translations made for the purpose of the appeal are not literal, but introduce words which did not appear in the original”.

The argument on behalf of the tenants in the High Court centred on the omission from the 1884 patta of any reference to a Company or Society after the reference to Government and their Counsel admitted that as to the one-fifth share in respect of which no fresh patta was granted in 1884, the Land Acquisition Judge was right in giving the whole compensation to the proprietors.

The learned Judges of the High Court rejected the view of the Land Acquisition Judge that the patta of 1880 still bound the parties. They held that that patta had been superseded by the patta of 1884. They thought the wording of the later patta was quite clear and that compensation only went to the proprietors if the construction of the works was done by Government, and that, as it was conceded that such works were to be carried out by the Corporation of Calcutta, and not by Government, the tenants had not deprived themselves of their right to receive compensation in respect of the four-fifth shares of the land acquired which passed under the 1884 patta. They accordingly allowed the appeal as to these shares.

Their Lordships agree with the learned Judges of the High Court in thinking that so far as the 1884 patta differs from the 1880 patta, the provisions of the later document must prevail. It is therefore the clause as to compensation contained in the 1884 patta which must govern the rights of the parties.

In their Lordships' view if the official translation of the compensation clause in the 1884 patta be accepted, it is clear that the appellants must succeed. It is not disputed that the compensation clause covers work of a public nature such as is to be performed by the Calcutta Corporation, and the clause applies in terms if land is taken by Government for the purposes specified, and provides that monies awarded for value of the area taken is to go to the proprietors. Under the Act, as also under the earlier Act of 1870, it is only the Government which acquires land compulsorily, though it may do so if the land is required either for itself or for a local authority or Company for the purpose of some work useful to the public. The words "or any Company or Society" in the 1880 patta after the word "Government" were otiose since a Company or Society could not take land, and the omission of the words from the 1884 patta was irrelevant. But if the translation adopted by the High Court is correct and the compensation clause applies only where public works are to be constructed, in the sense of made or built, by Government, the omission of the words is material since it is conceded that it is the Corporation of Calcutta, and not the Government, which are carrying out the work for which the land was acquired.

Their Lordships have laid it down in several cases that it is the duty of Courts in India to act upon the official translation of documents unless there is expert evidence which justifies the rejection of such translation. See *Sasiman Chowdhurain v. Shib Narayan Chowdhury* (1921) L.R. 49 I.A. 25, *Rajendra Prasad Bose v. Gopal Prasad Sen* (1930) L.R. 57 I.A. 296, *Sellamani Ammal v. Thillai Ammal* (1946) L.R. 73 I.A. 264. It may no doubt often happen that a Judge in India knows the vernacular in which a document is written, and he may be as well qualified as the official translator, or even better qualified, to render a correct translation of the document into English. The trouble, however, is that the Judge is not a witness, and the parties are not in a position to test the translation which he makes; whilst if the matter is taken in appeal to the Privy Council, the Board have no material upon which they can estimate the linguistic qualifications of the Judge. If their Lordships thought that the determination of this appeal depended upon whether the official translation, or the translation adopted by the Land Acquisition Judge and the High Court, is correct, they would have to consider whether the proper course would be to send the case back to India, as was done in *Sellamani Ammal's* case (*supra*), or whether in view of the fact that the law is well settled and the respondents omitted to take the proper steps to challenge the official translation, the respondents should be held bound by such translation. It is however, not necessary to consider this question because their Lordships are in agreement with the Land Acquisition Judge, though not altogether for the same reasons, in thinking that the appellant must succeed, even though the translation adopted by the judge be accepted.

The words of the compensation clause in the patta of 1884 as translated by the Land Acquisition Judge are not free from ambiguity and their meaning must be ascertained in the light of certain relevant facts. In the first place the patta of 1880 contemplates a survey of the land in possession of the tenants at some future date and a consequent adjustment of rent. But there is no suggestion that the compensation clause was to be amended as a result of the survey; nor can their Lordships see any good reason why it should be amended, since the basis for division of compensation money agreed upon bore no relation to the extent of the area in possession of the tenants. In the second place, at the time of the patta of 1880, and also at the time of the patta of 1884, it is clear that the parties contemplated that a part of the land comprised in the respective pattas might be compulsorily acquired and desired to settle how, in that event, the money received

as compensation should be dealt with as between the proprietors and the tenants. It is difficult, if not impossible, to suggest any reason why the distribution of the money paid in compensation should depend upon whether the work for which the land was acquired was to be carried out by Government or by a local authority or a Company, a matter with which the proprietors and the tenants would seem to have no concern. In the third place it is plain from the fact that the official translator and the Judges, who were familiar with the Bengali language, differed materially in their translation into English of the compensation clause, whilst the appellant, in his petition to the High Court for a certificate for leave to appeal to the Privy Council, suggested yet a third meaning of the clause, namely, that the Bengali word translated "constructed" really means "coming into existence", that the compensation clause as expressed in the Bengali language is not readily translatable into an English equivalent. It would be wrong therefore to attach to any particular word the precise shade of meaning which it might bear if the clause had originally been written in English.

Bearing these considerations in mind the question for determination is the meaning of the sentence "If embankment or bridge or channel or road, etc., will be constructed by Government". If the word "constructed" means, as the Judges of the High Court think, "made or built", it is obvious that there will have to be an addition to the clause of some such words as "their agents or servants", since no one would suppose that the members of Government are themselves going to engage in the task of building public works. The words cannot be taken quite literally, and their Lordships feel no doubt that, having regard to the context in which they appear, and to the whole tenour of the patta of 1884, the words "constructed by Government" mean constructed by reason of the action of Government, action, that is, in acquiring the land compulsorily for the purpose of enabling the construction to be carried out. In the opinion of their Lordships, therefore, whichever translation of the 1884 patta is adopted, the appellants as proprietors are entitled to the compensation monies in question.

Their Lordships will therefore humbly advise His Majesty that this appeal be allowed. that the judgment and decrees dated 7th June, 1945, of the High Court at Calcutta be reversed and that the judgment and decrees dated 7th November, 1941, of the Special Land Acquisition Judge 24 Parganas be restored. The respondents must pay the costs of the appeal to the High Court and of this appeal. Their Lordships do not propose to make any alteration in the order as to costs made by the Special Land Acquisition Judge.

In the Privy Council

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ESTATES LTD

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