

B.N. Elias Vs. Secy. of State

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Court : Kolkata

Decided On : Dec-22-1927

Reported in : AIR1929Cal20,108Ind.Cas.251

Appellant : B.N. Elias

Respondent : Secy. of State

Judgement :

B.B. Ghose, J.

1. The appeal is by claimant 2 arising out of the acquisition which has been dealt with in the judgment immediately delivered in *Swarnananjuri Dasi v. Secretary of State* : AIR1928Cal522 . If it had been a question of apportionment between the parties, we should ordinarily have remanded this case also for consideration by the President. But having regard to the agreement between the parties in the lease of 1st March 1920 no question of apportionment arises, as claimant 1 would get the whole amount of compensation which has been awarded on account of the acquisition of the land. This case may, therefore, be decided on its own merits.

2. The contention raised on behalf of this appellant is that he is entitled to an excess amount of money as compensation under the provisions of Sub-section (3), Section 23, Land Acquisition Act as amended by the Calcutta Improvement Act. Clause (b), which is specially referred to in the course of the argument runs thus

If it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation based on his actual loss may be paid to him.

3. It is pointed out that in awarding the compensation for his actual loss the Collector has only given the appellant the value of the structure and damages for preparing the plan of the site. He claims that he is entitled to compensation for being obliged to keep the land vacant after the scheme had been sanctioned as he could not erect any structures for the building of which he had pulled down the old structure. Now this clause as I read it is a rider to Clause (a) which runs thus:

The market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating there to under Section 6.

and under Clause (b) further compensation based on his actual loss which is payable to the owner must be on account of his having taken some active steps and incurred expenditure to secure a more profitable disposition of his property. In this case the

argument amounts to this that the claimant is entitled to compensation for having been prevented from taking active steps in order to make an income out of the property. I do not think that this falls within the provisions of this clause. It may be a grievance that the claimant, although he had demolished the old structure, was unable to build a new one on account of the sanction of the scheme and thus had to incur loss. But it seems to me that the legislature has not provided for any compensation on that ground.

4. I must, however, observe while rejecting the contention of the appellant that the opinion of the learned President that the lessee should not be considered to be an owner under this clause cannot be supported. He is certainly the owner of the leasehold interest in the property and I fail to understand why the learned President had dealt with this person as if he was not the owner. The learned Government Pleader does not support the learned President's view of the meaning of the term, but he explains to me the reason why the learned President has made such a distinction by referring us to Section 23 of the Act where the expressions 'owner' and 'person interested' are used for the purpose of determining the compensation payable to different persons and probably the learned President was pressed with that distinction in his mind. It seems to me, however, that if the lessee suffers loss as provided in that clause that should be taken into consideration in determining the market-value of the land and compensation awarded with reference to it. To hold otherwise would amount to this that if a lessee erects a building even at a very great cost no compensation would be allowed for such buildings. That would lead to a very undesirable result. The appeal, however, should be dismissed with costs for the reason already stated.

Cammiade, J.

5. I agree.

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