Mahendranath Srimani Vs. the Secretary of State for India in Council

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Court : Kolkata

Decided On : Mar-20-1924

Reported in : 81Ind.Cas.1004

Judge : Newbould and ;B.B. Ghose, JJ.

Appellant : Mahendranath Srimani

Respondent : The Secretary of State for India in Council

Judgement :

1. This is an appeal against the decision of the Special Land Acquisition Judge of the, 24-Perganas in a land acquisition case. A piece of land measuring 9 chattaks 27 square feet was taken from the claimants premises for the purpose of rounding oil the corner between Bowbazar Street and College Street in this town. The Collector valued the land acquired at Rs. 15,000 and houses there on at Rs. 1,390. On the objection by Mahendra Nath Srimani, the lessee of the premises, reference was made to the Land Acquisition Judge and he supported the Collector's award. Against this decision this appeal has been preferred. The owner of the premises is a respondent to this appeal, but he has joined forces with the appellant, and the appeal is really made on behalf of both and Court-fees have been paid on the full amount now claimed. There is very little evidence on the record to help us in determining the value of the land. The appellant relies, on the Municipal evaluation. The entire folding of an area of 1 bigha 4 cottas odd was valued under section 151of the Calcutta Municipal Act III of 1899, in, the year 1917 and the anuual value was then assessed at Rs. 11,448. After this land had been acquired, the remaining premises were re-valued and the annual value was assessed at Rs. 9,917 in October 1921.

2. The first contention of the appellant is that having, regard to the provisions of Clause (d) of Section 557 of the Calcutta Municipal Act the market value, of the land in this case, should be presumed to be 25 times the differencebetween the annual value assessed in 1917 and that assessed, in 1921, or as it is put in another way, having regard to the provisions of this clause the market value of property in 1917 was 25 times Rs. 11,448; in 1921 the annual value of the remainder, of the property was 25 times Rs. 9,917. There being no evidence to suggest that there had been any alteration in the value of the land the value of the land acquired must be the difference between these two sums. We are unable to accept this argument as a sound proposition of law. The provisions of Clause (d) provide for a presumption and advantage could only be taken of that presumption when facts are proved which make the clause applicable. The presumption, however, only applies to holdings which have been acquired. We cannot, therefore, apply the presumption either to the original holding or the part of it which has not been acquired. But we think the appellant has a firmer ground on the second part of his argument. Having regard to

the provisions of Section 151 and the legal presumption that official acts are properly performed the annual valuation made by the Municipality must apparently be equivalent to the profit which the owner of the land would obtain from it. There is no evidence to show that the difference in the annual value of the land was due to any other cause than the reduction of its area by the acquisition of a part of it. It was within the knowledge of the Municipality who have adduced no evidence on this point, if there was any reason why these assessments by them should not represent the annual value of the property to the proprietor in each case. It is true that the appellant has himself given no satisfactory evidence as to the profit obtained by him by letting the land, but we hold that he was entitled to rely on these valuations of the Municipality which were in his favour. With nothing to rebut the evidence of those admissions we must hold that the annual value of the property acquired was the difference between the two annual values assessed by the Municipality. But since we have held that the presumption under Clause (d) of Section 557 is not applicable, the claimant in the absence of any evidence that 25 years' purchase is a reasonable number of years' purchase to allow is not entitled to be benefited by that figure under the clause. The number of years' purchase which should be allowed when calculating the market value must be based on the evidence adduced in each case. In the present case the only evidence at all as to the number of years' purchase that should be allowed is furnished by a copy of the decision in land acquisition proceedings of land whichwas acquired for similar purpose at another corner of these cross-roads. In his judgment-in that case, Exhibit B, the District Judge based his valuation on 18 years' purchase and that decision was accepted by the claimant without appeal. On the evidence, therefore, we hold that 18 years' purchase should be allowed in the present case.

3. The result is that this appeal is decreed. In calculating the total compensation to be made in place of the sums of Rs. 15,000 for land and Rs. 1,390 for houses allowed by the Collector the market value of the land and houses will be taken at Rs. 27,558. In addition to this the claimant will get 15 per cent, allowance on this sum and also damages Rs. 2,450 allowed by the Collector. The amount of compensation awarded will be paid to the appellant lessee and the owner respondents jointly. The damages awarded by the Collector will be paid to the appellant lessee alone.

4. The costs will be given in proportion to the rasult. The appellant will get his costs in proportion of the extra amount awarded to the extra amount claimed. The (Secretary of State will get his costs in proportion of the amount of the claim now disallowed to the extra amount claimed. The owner respondents will pay their own costs in both Courts.

5. The cross-objection is not pressed and is dismissed without costs.