

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Manmatha Nath Mitter and another v. The Secretary of State for India in Council and others, from the High Court of Judicature at Fort William in Bengal; delivered 24th July 1897.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The question raised in this appeal is whether the 'Appellants, who were Plaintiffs below, are entitled to compensation for land taken by the Government of India for the purpose of making a dock. The land consists of three plots, being respectively portions of three public roads within the ambit of a mouza belonging to the Plaintiffs. A large quantity of the Plaintiffs' land in the mouza has also been taken and their compensation awarded. The land now in question is less than 20 bigas. The evidence shows that the roads were in use, two about 50 years ago, and one about 70; how much longer is left to conjecture.

The Subordinate Judge decided partially against the Plaintiffs and partially in their favour. As to some 7 bigas in the Budge-Budge road, he held there was evidence to show that it was "taken" by the Government within the meaning of Act XLII of 1850, and that the title of the

Government became indefeasible five years after the taking. As to the remaining 13 bigas in the two other roads, he held there was no such evidence, and that they formed part of the assets of the village included in the settlement with the Plaintiffs' predecessors. He further held that, as there is no evidence of the origin of the roads, there must have been a dedication of the land by the owner for the purpose of a highway; and that theory has been supported at this bar by the Plaintiffs' counsel. From that he infers that when the land was otherwise used, viz., for the purpose of a dock, it reverted to the grantors, and that they are entitled to recover possession, as in fact they ask by their plaint. His decree however is not for possession but for the money equivalent of the land. That he assessed at Rs. 4,112 being the same average value as that of the adjoining land, of which the Plaintiffs had full enjoyment.

Both parties appealed to the High Court; the Plaintiffs in respect of the Budge-Budge road, and the Defendant in respect of the two other roads. The High Court thought that, as there is no evidence that the roads were made subsequently to the Permanent Settlement, the Plaintiffs had shown no title, and the speculation of the Subordinate Judge as to dedication and reverter of the land had no foundation. They also held that the Subordinate Judge was wrong in his valuation; that the land as road had no separate market value, or at all events that none was proved. Reversing the decree, they dismissed the suit with costs.

Their Lordships think the High Court so clearly right on the question of value that they do not enter into the questions affecting the Plaintiffs' title. The land was taken for a public purpose under the provisions of the Land Acquisition Act 1870, and the Plaintiffs' right

is not to recover the land but to claim compensation for it. By Sections 13 and 24, the market value of the land at the time of awarding compensation is to be taken into consideration. It is not suggested that there is any market value of these lands as roadways. Mr. Graham argues that when the compensation was awarded in this case the roads had been broken up, and therefore the Subordinate Judge rightly valued the land as belonging absolutely to the Plaintiffs, free from the burden of the roads and capable of being used for any purpose. In their Lordships' opinion that would be a very unreasonable construction of the Act. There is an express provision in Section 25 that the assessor shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put. That points to the time when the land is acquired as the time for ascertaining its value. Independently of that provision it would lead to very strange and capricious results if changes in the condition of the land between the time when it was taken and the actual conclusion of the award were to increase or to lessen its value. The time of awarding compensation must be construed as meaning the time of compensation, the time at which the right to compensation attaches. At that time these plots of land were roadways; and the Plaintiffs are claiming for a supposed loss of value which had no existence when the ownership of the land was changed.

Their Lordships will humbly advise Her Majesty to dismiss the appeal with costs.

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