

*Privy Council Appeal No. 26 of 1929.*  
*Bengal Appeal No. 35 of 1927.*

Ahidhar Ghosh - - - - - *Appellant*

*v.*

The Secretary of State for India in Council - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN  
BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 1ST MAY, 1930.

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*Present at the Hearing :*

LORD TOMLIN.

LORD THANKERTON.

LORD RUSSELL OF KILLOWEN.

[*Delivered by* LORD TOMLIN.]

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This is an appeal from a judgment and decree, dated the 23rd May, 1927, of the High Court of Judicature at Fort William in Bengal, by which a judgment and decree dated the 18th March, 1925, of the Special Land Acquisition Judge at Alipur was varied.

The nature of the case is this : The Municipality of Calcutta required certain land in Michael Dutt Street in Calcutta, and accordingly invoked the machinery of the Land Acquisition Act, 1894, for the purpose of securing the property. Under that Act anybody seeking to acquire land sets the Government Collector in motion by means of a number of declarations and notifications which need not be specifically referred to. Under Section 11 of the Act, on a day which the Collector fixes, the Collector proceeds to inquire into the objections, if any, raised by the persons interested. He inquires into the value of the land and the nature of the interests therein. It is his duty to make an award as to the true area of the land, the compensation which in his opinion should be allowed for the land, and the apportionment of the compensation among the persons interested.

Section 18 provides :—

“ Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.”

Under Sub-section (2) of the same section the application must state the grounds on which objection to the award is taken. Then the matter goes to the Special Land Acquisition Judge, and under Section 23, Sub-section (1), in determining the amount of compensation to be awarded for the land acquired under the Act the Court has to take into consideration the market value of the land at the relevant date.

Section 25, Sub-section (1), provides :—

“ When the applicant has made a claim to compensation pursuant to any notice given under Section 9 the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.”

It is necessary also to refer to the Calcutta Municipal Act of 1899. Section 557 of that Act provides :—

“ Any land or buildings which any municipal authority is authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and for that purpose the said Act shall be subject to the following amendments.”

The amendments include one (Sub-section (d)) to this effect—

“ The market value of the land or building shall until the contrary is shown be presumed for the purposes of the said clause first of Sub-section (1) of Section 23 “ (i.e., of the Land Acquisition Act, 1894),” to be twenty-five times the annual value of the property as entered in the assessment book prescribed by this Act.”

Under the Calcutta Municipal Act provision is made for the maintenance of a book in which the assessments of lands and buildings are entered, and Section 151 of the Act defines how the annual value of the buildings and lands is to be ascertained.

What happened was this: The Collector in due course, made an award, and the amount of his award was Rs. 69,778 for the land. There was something else awarded in respect of the structures. The appellant, who was interested in the land, was dissatisfied with the award, and under Section 18 he claimed a reference to the Special Land Acquisition Judge. The matter accordingly came before that Judge, and evidence was called before him, and he ultimately awarded Rs. 81,773. In making that award he proceeded upon the footing of accepting the evidence of a Mr. Johnstone, a civil engineer, who was called as an expert by the persons interested in the land, and who gave evidence as to the value of the land. The Special Land Acquisition Judge accepted Mr. Johnstone's figures with one variation, namely, an increase in the amount of certain deductions by substituting for a 6 per cent. basis a 10 per cent. basis.

An appeal was taken to the High Court, and the High Court reversed the judgment of the Special Land Acquisition Judge and affirmed the award of the Collector. In doing that they proceeded upon the footing (1) that they were not prepared to accept the evidence of Mr. Johnstone, and that the presumption which arises under Section 557, Subsection (d), of the Calcutta Municipal Act, 1899, therefore operated; and (2) that though the amount awarded by the Collector exceeded the amount calculated in accordance with the presumption his award must stand having regard to Section 25, Sub-section (1) of the Land Acquisition Act, 1894.

The principles which govern their Lordships' Board in dealing with questions of this kind were stated by Lord Buckmaster in the case of *Narsingh Das v. Secretary of State for India in Council* (52 I.A., 133). In the judgment this passage occurs at page 135 :—

“The matter therefore must be considered and determined in the same manner as if it were a judgment from a decree in an ordinary suit, but it has been repeatedly laid down by the Board that in such cases they will not interfere with judgments of Courts in India as to matters involving valuation of property and similar questions, where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached unless there is something to show not merely that on the balance of evidence it would be possible to reach a different conclusion but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied.”

An examination of the judgments of the High Court shows that they had before them in regard to value the evidence of Mr. Johnstone and no other expert evidence at all, that they considered and criticised Mr. Johnstone's evidence, and that in the end they came to the conclusion that they could not accept his view as to value. Further, there being no evidence of value other than Mr. Johnstone's evidence, they took the view that in those circumstances the presumption must prevail.

Their Lordships are of opinion that it has not been made out that there was any wrong application of principle by the High Court in the rejection of Mr. Johnstone's evidence or that any important point in the evidence was overlooked or misapplied. In these circumstances their Lordships are of opinion that they are not in a position to disturb the conclusion at which the High Court arrived. The appeal must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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AHIDHAR GHOSH

*v.*

THE SECRETARY OF STATE FOR INDIA  
IN COUNCIL.

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DELIVERED BY LORD TOMLIN.

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