9, 1952

In the Privy Council.

No. 50 of 1950.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

31395

BETWEEN

DR. AKINOLA MAJA ... ... (*Claimant*) APPELLANT

AND

THE CHIEF SECRETARY TO THE GOVERNMENT (*Plaintiff*) RESPONDENT.

CASE FOR THE RESPONDENT

RESPONDENTS CASE

RECORD

1.—This is an Appeal from an Order of the West African Court of Appeal dated the 4th December, 1948, affirming a Judgment of the Supreme Court of Nigeria dated the 7th November, 1947, whereby the compensation to be paid for the Appellant's interests in land compulsorily acquired by the Government, was assessed at £800. p. 35 pp. 23–28

2.—By Notice dated the 13th May, 1944, the Government of Nigeria acquired, pursuant to the Public Lands Acquisition Ordinance, land at Victoria Beach which included about 8 acres held by the Appellant under a Lease dated the 21st November, 1941, upon which the Appellant had erected buildings, salt pans and other structures. pp. 1–2

3.—At the hearing Counsel for the Appellant submitted that compensation was to be assessed as provided in Section 5 of the Public Lands Acquisition (Amendment) Ordinance, 1945, which had substituted a new Section 15 for the former Section 15 of the Public Lands Acquisition Ordinance (Chapter 88 of the Laws of Nigeria) which was in force when notice of acquisition was given. This submission was accepted by the Respondent and by both Courts. The relevant parts of Section 15 in its amended form are set out in the Judgment of the trial Judge. p. 5, ll. 31–36 p. 26, ll. 40–43; p. 33, ll. 29–35 p. 26, l. 45–p. 27, l. 10

RECORD

p. 32, l. 23–p. 33, l. 28
p. 23, l. 25–p. 26, l. 39 ; p. 28, ll. 4–45

4.—The findings of fact are concisely set out in the Judgment of Lewey, J.A., and agree in all material respects with the findings of the trial Judge. The Appellant and a former partner in 1941 had leased the land for a salt works, but experience showed that salt could not be produced economically without machinery which in 1944 the Appellant was seeking to procure in England notwithstanding that in May, 1943, import licences had been refused on the ground that the salt project was not feasible. In operation from towards the end of 1942 till June, 1943, when the works ceased to operate, only two tons of salt, which sold for about £26, had been produced. New methods would have had to be applied and the existing salt pans were of no further use and were derelict. The machinery and pipes were removeable and the only value of the structures to a purchaser would be as a source of building material. On this basis the Government offered £440, but the Supreme Court considered that an under estimate of the value, and awarded £800.

p. 27, l. 11–p. 28, l. 47

5.—The Appellant claimed to be reimbursed for the whole of the expenditure of the works, and for the loss of the potentialities of the business. The learned trial Judge held that there were material distinctions between the local Ordinance and the Imperial statutes, the Land Clauses Consolidation Act of 1845 and the Acquisition of Land (Assessment of Compensation) Act, 1919. The Ordinance required the Court to disregard the potential profits from more effective means of producing salt which the Appellant proposed to instal after the acquisition notice. The profits to be valued were those to be anticipated from the works as they were when the notice was given ; and no compensation was payable for disturbance. The learned Judge therefore assessed the compensation at £800.

p. 33, l. 36–p. 34, l. 9
p. 34, ll. 10–33
p. 34, ll. 34–49

6.—The Judges in the West African Court of Appeal rejected the argument that the Ordinance provided for compensation for disturbance. Section 15 (b) and the first proviso to Section 15 ruled out the Appellant's claim to reimbursement of his past outlay and compensation for interference with his future plan ; and the Government valuers had adopted the proper basis of assessment, rightly considering that they were not concerned with " disturbance," past expenditure or future possibilities. The only possible basis was the value of the structures as building materials, and the award of £800 was not ungenerous. The Court of Appeal agreed with the learned trial Judge both on law and fact.

p, 5, l. 35 ; p. 16, l. 4 ; p. 26, l. 40
p. 29 ; pp. 30–31

7.—The Respondent respectfully submits that the Courts below were right in applying Section 15 in its amended form, and that in any case the Appellant having successfully contended in the Supreme Court that the amended section applied, and having on appeal adhered to that view is now precluded from putting forward a contrary contention. The Respondent

further submits that on the concurrent findings of fact about the Appellant's enterprise, the award to the Appellant could not have been greater if based on the unamended section.

8.—In the Nigerian legislation there is no provision corresponding to Rule 2, paragraph 6, of the Acquisition of Land (Assessment of Compensation) Act, 1919. The Respondent therefore submits that the Courts below rightly refused to regard as relevant English cases on compensation for disturbance.

9.—The Respondent further submits that by the express terms of the first proviso to the amended Section 15, the Court was bound to have regard to the market value in May, 1944, without regard to any plans for future improvements.

10.—Accordingly, the Respondent submits that the Appeal should be dismissed with costs for the following amongst other .

REASONS

1. BECAUSE the Courts below rightly assessed compensation according to the Public Lands Acquisition Ordinance as amended in 1945.

2. BECAUSE, having advisedly sought compensation in both Courts below on the basis of the amended law, the Appellant should be precluded from now seeking compensation on a different basis.

3. BECAUSE on the concurrent findings of fact of the Supreme Court of Nigeria and the West African Court of Appeal, £800 is adequate compensation to the Appellant whether compensation be assessed under the Ordinance in its unamended or in its amended form.

FRANK GAHAN.

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(*Plaintiff*) RESPONDENT.

CASE FOR THE RESPONDENT

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