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Court : Chennai

Decided On : Nov-10-1922

Reported in : (1923)44MLJ132

Appellant : Rathnamasari Declared Mad and ors.

Respondent : The Secretary of State for India in Council by the Collector of Salem

Judgement :

1. This is an appeal in a land acquisition case against the decree of the District Court of Salem. Three plots of land, Survey Nos. 29, 34 and 35, suitable for housebuilding, were acquired for the purpose of building a hostel for the Salem College in 1915, the date of the notification being July, 1915. On plots Nos. 34 and 35, there was a bungalow and that was also acquired. The Deputy Collector awarded in the first instance for the three plots of land including the bungalow and the houses standing on them Rs. 12,170-13-8 and 15 per cent, the statutory compensation in addition. The District Judge has increased that award to Rs. 15,620 including the 15 per cent for compensation. The claimants have appealed to this Court and they claim that their properties are worth much more and that they should get Rs. 8,333-5-7 extra, that is, Rs. 23,953-5-7 in all.

2. At the opening of the case the learned Advocate for the appellants wanted us to admit in evidence in this Court the Tahsildar's reports of the 18th June, 1913 and the 26th September, 1913 and a special valuation statement submitted by him on the 12th June, 1913. With reference to that prayer we called for a report from the lower Court and also the original documents in a sealed cover. The report and those documents have now come up before us. The learned Government pleader has objected to their being admitted in evidence under Section 124 of the Indian Evidence Act and also because he contended that they were irrelevant as evidence. As regards Section 124 of the Indian Evidence Act, it is hardly necessary to go into any detailed consideration of the meaning of that section, for we notice that copies of all these three documents had been filed in the lower Court as Exs. A and J, apparently without any objection on the part of the Government Pleader that they were privileged documents under Section 124 which should not be admitted in evidence, for we do not see anything in the lower Court's records or judgment to show that any objection was raised. These copies were proved to be correct copies taken by one of the claimants and he swore to that effect in the witness-box. After having done that we do not think it can be claimed any more that they are communications made in official confidence. If the Government intended to take the objection under Section 124 the learned Government Pleader in the lower Court should have objected to these copies going on record. Now that these copies are on record in this case we cannot consider the communications made to be communications made in confidence. That being so, we must overrule the objection under Section 124 of the Evidence Act. It is not necessary to refer to the authorities cited on the point namely Venkatachella Chettiar v. Sampathu Chettiar I.L.R.(1909) M. 62 and Nagaraja Pillai v. Secretary of State I.L.R. (1914) M. 304. They do not touch the point before us.

3. As regards the next plea that the documents are irrelevant we are unable to uphold that contention of the learned Government Pleader. We think they are relevant under Section 35 of the Evidence Act. The Tahsildar made these reports in obedience to an order passed by his superior officer and in discharge of his official duty. Whether it is a duty enjoined on him by the law of the country to send up these reports or not, he was bound as an officer subordinate to the Deputy

Collector to make the report when he was called upon to do so and the report was made as an official report after such enquiries as the Tahsildar could make. His report is kept on the record of this land acquisition case in the Collector's office and thus it comes expressly within the words of Section 35. But it is hardly necessary to put the originals on record because there are correct copies already filed and it is sufficient to refer to them if necessary for our purposes here. As a matter of fact we may observe that no reliance has been placed upon these documents by either side.

4. As regards the merits of the case we may observe at the outset that there is very little evidence on record to enable us to come to a satisfactory conclusion as to the market value of the properties acquired. Properties forming survey Nos. 34 and 35 seem to stand on a somewhat different footing from property forming survey No. 29, for the two former are accessible to the road on two sides whereas the latter is not so and is inferior land with no road access and faces the river. We will therefore consider their market value separately.

5. Taking Surey Nos. 34 and 35 with the buildings standing on them first, the District Judge has adopted the method of capitalising the rental value of these plots. They are 8 1/2 acres in extent and have a fairly large building on them. They have been let for twenty years prior to 1911 to the Police Department for Rs. 75 a month, subsequently to Government for the Sankari Deputy Collector's Office, and for a few months thereafter to one Mr. Levinge. All through the rent has been Rs. 75 except during the short period when Government was in occupation for the purpose of locating the Deputy Collector's Office when the Municipal tax was paid by Government. The learned Judge capitalises the net rental at twenty years' purchase and arrives at the figures Rs. 13,100 as the proper value of the plot. It has been argued strenuously before us by the learned Advocate for the appellant that this method was not correct and that the land and the buildings should have been valued separately and the District Judge should have taken into consideration the compensation paid by Government for a former acquisition of a plot of land, 1.8 cents in extent, under Ex. H, for the purpose of laying a road. The price then paid was at the rate of Rs. 15 a cent, which would work out to Rs. 1,500 an acre. We do not think that this acquisition of such a small plot of land for which

only a small sum of money was paid can be made the basis of valuation for a large plot like the one now in question before us. It is impossible to say that such an acquisition stands on the same footing as the present acquisition, nor can we properly deduce the market value of the land from such an acquisition as that for when very small plots are acquired the actual rates at which they are acquired are not often properly scrutinised, the whole cost of the acquisition being small.

6. The appellant's next contention is that the 81/4 acres of land on which the buildings stand should be valued separately and that the buildings should also be valued separately and the two added together to get the total market value of the plots with the buildings standing thereon. That is hardly the way in which property consisting of a house and garden is valued in the market. We think that a plot consisting of a house and a garden is much more satisfactorily valued in the manner in which the District Judge has done by capitalizing the rental, in the absence of other evidence which would give a more satisfactory value. Taking the monthly rental in this case, viz., Rs. 75 and making allowance for the municipal tax payable on the land Rs. 150 and the payment to the Mittadar Rs. 20 a year, charged upon this land, and deducting also what one of the claimants who gave evidence in the case says he spent for the repairs and up-keep of this building, viz., Rs. 50 we get a net annual rent of Rs. 680. The learned District Judge has taken a month's rental as the cost of repairs. That will ordinarily be so, but here we have special evidence, and there is nothing to contradict it, that Rs. 40 or Rs. 50 were spent for repairs. Taking therefore Rs. 680 as the net annual rental and taking twenty years' purchase, which we think is a fair figure to adopt and a figure which is ordinarily adopted in most cases, the value of these two plots with the buildings on them will come to Rs. 13,600. This we think may well be accepted as the total value of these two plots.

7. It is in evidence that the building itself is separately valued at Rs. 6,300 and odd. Deducting that figure from this and taking the rest as the value of the land, the value of the land would work out to Rs. 850 an acre, which we think under the circumstances of the case, is not at all an improper value for evidence has been adduced on behalf of Government Exs. I, II and III, which would show that the value of the land in the neighbourhood would seem to have been Rs. 400 an acre.

It is quite true that those lands were lands of an inferior character being rather low in level and requiring to be raised for building purposes. That would of course account for the difference in the amount that we are now awarding for the land acquired under the Act and their market value.

8. It is also suggested that in taking this method of rental valuation for calculation of the value, we ought not to include the whole of the 8 12 acres as part of the property but should allot a certain proportion of the land to the bungalow reasonably sufficient for the comfortable occupation of the bungalow and take the value arrived at by the capitalisation method as the value of that portion of the land and the bungalow, valuing separately the rest of the land; because it is contended that this is a good building site and the rest of the land could be utilised for building purposes. There is in this case no evidence of the existence of any scheme for building on this property nor of any intention either by the owners or by others to build on it. Furthermore it is a matter for speculation as to how much of the land should be allotted to the bungalow and whether if such an allotment is made, the rent may not be affected. We do not think that we will be justified in making any speculation such as this and therefore we take it that the value arrived at correctly represents the market value of these two plots.

9. Turning now to plot No. 29 we think the value given by the lower Court is too low for this. It is not used at present as a building site but as a garden. The method of capitalisation of the rental value is not a proper method to use for ascertaining the value of such a land. We think it is much better to take the value of the land in the neighbourhood as proved by Government itself as the value of this land also. The Deputy Collector has arrived at the figure of Rs. 400 an acre. As regards this land also we do not think it necessary to reduce that figure at all. Taking the value then at Rs. 400 an acre, 3 acres and 15 cents will be worth Rs. 1,260. From this has however to be deducted a certain amount representing the capitalised value of the assessment payable to the Mittadar. The total assessment was Rs. 30 on these three plots. We have already given credit for Rs. 20 on the two plots Nos. 34 and 35 leaving Rs. 10 to be allowed for this plot. Taking twenty years purchase here also, we must deduct a sum of Rs. 200 as the capitalised value of the Mittadar's assessment leaving Rs. 1,060 as the value payable to the claimants.

10. The claimants have also been awarded the value of certain trees standing upon these lands, viz., Rs. 162 and this has also to be added to the price of the property. The total price according to us will therefore come to Rs. 14,822. To this must be added 15 per cent the statutory allowance under the Act, which comes to Rs. 2,223-4-9. Thus the total comes to Rs. 17,045-4-9 and this is our award in the place of that made by the District Judge.

11. The learned Advocate for the claimants claims that he should be given interest under Section 28 of the Land Acquisition Act on the excess awarded over the amount given by the Collector. We think he is justly entitled to this and we award him interest at 6 per cent from the date the Collector took possession of this land to the date of payment into Court of the excess which has been awarded to him by us.

12. The final question which we have to decide is as regards costs. The Government have filed a memorandum of objections claiming the costs in the lower Court. What the learned Judge did there was to refuse to give costs to the claimants because they have exaggerated their claim considerably. We do not think there is any ground for interference with that order. As regards the costs of this appeal we think a similar order will be the most proper in this case. There will therefore be no order as to costs either in the appeal or in the Memorandum of Objections.