Privy Council Appeal No. 41 *of* 1926.

Bengal Appeal No. 53 *of* 1925.

Narayan Das Khettry, since deceased (now represented by Musammat Panno Bibi) - - - - - - *Appellant*

v.

Jatindra Nath Roy Chowdhury and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1927.

Present at the Hearing:

LORD PHILLIMORE.
LORD DARLING.
MR. AMEER ALI.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is the plaintiff's appeal against the decision of a Division Bench of the High Court of Judicature at Fort William in Bengal, given on the 12th March, 1925, which reversed a judgment and decree dated the 24th August, 1922, of the learned Subordinate Judge of the 24 Perganas.

The material facts are as follows:—

Satyendra Nath Roy, who was the predecessor of the defendants, was the proprietor of the holding in question.

The holding was sold in December, 1919, under the provisions of Act XI of 1859 for arrears of the Government Revenue of Rs. 2 annas 8 and pie 1.

The plaintiff purchased the holding at the sale for the sum of Rs. 2,900. Application was made to the Divisional Commissioner by the defendants or their predecessor to have the sale set aside, but the application was refused.

On the 5th July, 1920, a sale certificate was issued to the plaintiff by the Collector of the 24 Perganas, certifying that the plaintiff had purchased, under Act XI of 1859, the mahal, which was specified in the certificate and which was situate in the Touzi of the district of the 24 Perganas.

It appears from the copy of the certificate which is before their Lordships that it was therein stated that the purchase took effect on the 1st day of May, 1919.

At the hearing of the appeal by their Lordships there was a dispute as to the correctness of the last-mentioned date.

Walmsley, J., in his judgment referred to this date as the 1st May, 1920, while Mukherji, J., referred to it as the 1st May, 1919.

If it becomes necessary to ascertain the correct date, a reference will be necessary for that purpose.

On the 2nd August, 1920, a declaration was made under the provisions of the Land Acquisition Act, viz., Act I of 1894, in respect of the holding, and on the 11th March, 1921, the Deputy Collector made his award. The total amount of the award was Rs. 14,569 (omitting annas and pies).

The sum awarded in respect of the land and trees, and the additional compensation under section 23 (2), was Rs. 2,181, and the amount in respect of "Structures" and the additional compensation was Rs. 12,388.

The "structures" consisted of a residential house which had been erected by Satyendra Nath Roy, and it was standing on the land at the time of the plaintiff's purchase.

The plaintiff's name had been registered under Act VII of 1876 (B.C.), and he claimed the whole amount of the compensation money, viz. Rs. 14,569. The collector decided that it was necessary for the plaintiff to produce an order of a competent Court, before the money could be paid to him.

Accordingly, the plaintiff instituted the present suit, in which he claimed that his right title and interest to the holding in question and to the whole of the compensation money should be established and declared. He prayed for a further declaration that he was entitled to withdraw the compensation money deposited in the Alipore Collectorate.

It was urged on behalf of the defendants in the Trial Court that the sale was not valid or binding on them. The learned Subordinate Judge found against the defendants on this issue, and this finding was not disputed in the High Court or on the appeal to this Board.

Assuming the sale to be valid, it was not disputed that the plaintiff was entitled to the compensation money awarded in respect of the land and trees.

It was, however, urged on behalf of the defendants that the plaintiff had not acquired any title to the building on the land by his purchase at the above-mentioned sale, and consequently that he was not entitled to any of the compensation money awarded in respect thereof.

The learned Subordinate Judge held that the building on the land passed with the holding to the auction purchaser (*i.e.*, the plaintiff) by the revenue sale, and that the plaintiff was entitled to recover the entire compensation money.

On appeal to the High Court, the learned Judges held that the ownership of the building did not pass to the plaintiff on the above-mentioned sale, but that the defendants remained the proprietors thereof.

The learned Judges then proceeded to the consideration of the question whether the defendants were entitled to the whole of the compensation money awarded in respect of the building, and for the reasons set out in the judgments of the learned Judges they decided that the defendants were entitled to the whole amount awarded for the building, less a sum of Rs. 2,300. The sum of Rs. 2,300 was awarded by the learned Judges as compensation to the plaintiff at the rate of Rs. 100 per month in respect of 23 months, which period was calculated from the 1st May, 1919, to the 11th March, 1921, when the Collector took possession of the premises.

From this decision the plaintiff has appealed. The first question is whether the learned Judges of the High Court were right in holding that the title to the building did not pass to the plaintiff by reason of his purchase at the revenue auction sale.

It was not disputed that if the plaintiff's case was based upon a conveyance by the late proprietor of the land, the house would pass with the land to the purchaser; but it was argued on behalf of the defendants that as the sale in question was under the Act XI of 1859 it was merely a sale by the Collector of the Government's interest.

This part of the defendants' contention is, in their Lordships' opinion, correct; for in *Maharaj Surja Kanta Acharjya Bahadur* v. *Sarat Chandra Roy Chaudhuri* (18 Cal. W.N. 1281, at p. 1285) the Judicial Committee held that on the failure of an owner to pay the Government assessment, his estate or interest in the land is forfeited or rather determined, and that by a sale held under Act XI of 1859, what was sold was not the interest of the defaulting owner, but the interest of the Crown, subject to the payment of the Government assessment.

It is therefore necessary to ascertain what was the interest of the Crown which was subject to the Government assessment.

The preamble to Act XI of 1859 recites that it is desirable, among other things, to improve the law relating to sales of land for arrears of revenue in the provinces of Bengal, Behar and Orissa.

Section 3 provides for the sale of the "estates in arrear" in the payment of revenue at public auction to the highest bidder.

There is no definition of the word "estates" in the 1859 Act, but in the Bengal Act VII of 1868, which is to be read with and taken as part of the said Act of 1859, provision is made that in that Act and the Act XI of 1859 the word "estate" means any land or share in land subject to the payment to the Govern-

ment of an annual sum in respect of which the name of a proprietor is entered on the Register known as the General Register of all Revenue-paying Estates, or in respect of which a separate account may, in pursuance of Section 10 or Section 11 of the said Act XI of 1859, have been opened.

It was argued on behalf of the defendants that it was the land so entered on the register, and not the building on the land, which was subject to the payment of the Government revenue and which passed to the purchaser at the auction sale held under the provisions of Act XI of 1859.

The property in question lies in the 24 Perganas, outside the boundaries of Calcutta, and it was conceded that the maxim, which is found in English law, viz., " quicquid plantatur solo, solo cedit," has at the most only a limited application in India.

The case of *Thakur Chandra Poramanick* v. *Ram Dhone Bhuttacharju* (6 W.R. 228), to which reference was made in the High Court's judgment, differs materially from the present case in its facts, and the decision itself is not applicable.

The following statement, however, is to be found in the judgment of the Full Bench which was delivered in 1866 : " We have not been able to find in the Laws or Customs of this country any traces of the existence of an absolute Rule of Law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself."

Their Lordships, therefore, are of opinion that in construing the provisions of the above-mentioned Acts it is necessary to bear in mind the statement made by Sir Barnes Peacock in the above-mentioned case, which seems to have been accepted for many years as a correct pronouncement.

This being so, the word " estate " must be taken to have a more limited meaning than it would have in English law and the Government's power of sale for arrears of revenue *prima facie* is limited to the land, which is subject to the payment to the Government of the annual revenue, and in respect of which the proprietor is entered in the General Register of Revenue-paying Estates, and having special regard to the view held in India respecting the separation of the ownership of buildings from the ownership of the land, and to the recognition by the Courts in India that there is no rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself, their Lordships are of opinion that in order to make a house erected upon the land, as well as the land itself, subject to the Government power of sale for arrears of revenue, special words indicating the intention of the Legislature to make the building subject to sale would be necessary.

No such special words are to be found, and their Lordships are of opinion that the conclusion at which the learned Judges of the High Court arrived, viz., that the ownership of the building did not pass to the plaintiff by reason of the revenue sale, was

correct, although they are not prepared to adopt all the reasons which were advanced for that conclusion.

The question then arises whether the defendants are entitled to the compensation money which was awarded in respect of the building, or to what, if any, portion of such money.

Their Lordships are not prepared to adopt the basis on which the learned Judges of the High Court acted in this respect. Their Lordships are of opinion that, in order to arrive at a decision on this part of the case, it is necessary to consider what would have been the position and the respective rights of the parties after the sale, if no acquisition had taken place under the Land Acquisition Act.

In such a case it would be reasonable that the parties should arrive at an arrangement as to what should be done, and their Lordships therefore suggested that learned counsel appearing for the appellant and respondents should enquire whether any arrangement could be made.

Their Lordships have been informed that it has not been found possible to arrive at any arrangement or to agree upon a sum to be paid to the defendants, and their Lordships have, therefore, to deal with this part of the case.

It is difficult to lay down any principle upon which the compensation money awarded in respect of the house should be apportioned, but the position seems to their Lordships to involve certain matters which should be taken into consideration by the Court which makes the apportionment.

After the sale the plaintiff would have been the owner of the land and the defendants would have been the owners of the house.

The plaintiff would have had the right to call upon the defendants to remove the house. If the defendants did remove the house, the value to them would be small, and in the ordinary course would be no more than what has been called " demolition value," viz., the value of the materials less the cost of removal; and if the defendants did not remove the house they would lose it.

There is, however, the possibility that (if the land had not been acquired under the Land Acquisition Act) the owner of the land would not have desired or required the removal of the house, and he might have been willing to pay to the defendants, the owners of the house, more than the mere demolition value of the house.

In other words, the owner of the land would be a possible purchaser, who might be willing to give more for the house than anyone else, as he was the owner of the land.

It is also to be remembered and taken into consideration that if the defendants were called upon to remove the house they would be entitled to a reasonable time for such removal, and that during such time the plaintiff would be kept out of enjoyment of the land.

All the above-mentioned matters will have to be taken into consideration in assessing what portion of the compensation money awarded in respect of the house should be paid to the defendants.

Their Lordships are not in a position to make the apportionment, and as the parties have not been able to agree upon an amount, it is necessary to remand the case to the learned Subordinate Judge in order that he may decide to what portion of the Rs. 12,388 the defendants are entitled, having regard to the matters which are mentioned in this judgment.

Their Lordships have been informed that the balance of the compensation money, ordered by the High Court's decree to be refunded, has not yet been refunded.

Their Lordships therefore will humbly advise His Majesty that the appeal should be allowed, that the case should be remanded to the learned Subordinate Judge for the above-mentioned purpose, and that the decree of the High Court should be varied as follows:—That it be declared that out of the total compensation money, *i.e.*, Rs. 14,569 . 9 . 6, the plaintiff is entitled to Rs. 2,181 . 9 . 2 and such further sum as the learned Subordinate Judge on remand may find due to him in respect of his share of the sum of Rs. 12,388 . 0 . 4 awarded by the Collector in respect of the house, and that the plaintiff do refund to the defendants the sum which the learned Subordinate Judge may find due to the defendants as their share of the said sum of Rs. 12,388 . 0 . 4.

In their Lordships' opinion, the plaintiff was compelled to bring the suit, and though he claimed more than he should have done, he was entitled to a substantial amount of the compensation money, and their Lordships think that the defendants should pay the plaintiff the costs incurred by him in respect of the trial in the learned Subordinate Judge's Court. With respect to the subsequent appeals to the High Court and to His Majesty in Council, the claims of both parties were in excess of their rights, and such claims were persisted in to the end. Their Lordships therefore are of opinion that the plaintiff and the defendants should bear their own costs in respect of the appeals to the High Court and to this Board.

The costs of the hearing on remand will be in the discretion of the learned Subordinate Judge.

Their Lordships will advise His Majesty accordingly.

In the Privy Council.

NARAYAN DAS KHETTRY, SINCE DECEASED (NOW REPRESENTED BY MUSAMMAT PANNO BIBI)

v.

JATINDRA NATH ROY CHOWDHURY AND OTHERS.

DELIVERED BY SIR LANCELOT SANDERSON.

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