

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaja Luchmeswar Singh v. The Chairman of the Darbhanga Municipality, from the High Court of Judicature at Fort William in Bengal; delivered 25th April 1890.

Present:

LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this appeal is whether a piece of land, which was the property of the Appellant and is now in the possession of the Darbhanga Municipality, represented in the suit by their Chairman the Respondent, has been validly acquired by the Municipality under the provisions of "The Land Acquisition Act, 1870." On the 26th of August and 2nd and 9th of September 1874 a declaration was published in the Calcutta Gazette, in accordance with Section 6 of the Act, that the land in question was required to be taken by Government, at the expense of the Darbhanga Municipality, for a public purpose, viz., construction of a public ghat or landing-place in the town of Darbhanga. At this time the Appellant was a minor, under the care of the Court of Wards of the Province of Bengal, and he remained a minor until the 25th of September 1879. The Court of Wards for the district of

60498. 135.—4/90.

Darbhanga was the Commissioner of Patna, and the representative of the Commissioner in Darbhanga was the Collector for the time being of Darbhanga, who was also *ex officio* Chairman of the Darbhanga Municipality. The Court of Wards has power to appoint a manager of the estate of a minor who is under its care, and at this time the manager appointed was Colonel J. Burn.

On the 10th May 1875 the officiating Collector of Darbhanga wrote to the manager a letter, in which, after referring to a petition which had been presented by the manager's mokhtar, claiming rent for the land at the rate of Rs. 16. 5. 3 pie per annum, he says, "Permit me to invite your attention to the last clause of Section 3 of the Act. From this it appears that you, as far as acquisition of land under this Act is concerned, are as competent to act for the minor Maharaja as he himself would be were he of age. This being so, I trust you will favour me with the expression of your consent to the sale of the land. The object in view is to benefit the town, and I am confident that this object will have weight with you in making your claim for compensation." The clause referred to says, under the description of persons deemed entitled to act, "the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted." These words must be read with reference to the obligations and duties of guardians and committees, which appear to have been entirely overlooked in this and his subsequent proceedings by the officiating Collector, who was the representative of the Court of Wards, the guardian of the minor. On the 12th May 1875, the manager wrote to the

Collector :—“ Sir, with reference to your letter
 “ No. 49, of 10th instant, I have the honour to
 “ represent that, from the tenor of Section 68 of
 “ Act 4 of 1870 (B.C.), you will perceive that
 “ the Court of Wards has not power to alienate
 “ raj land except for the purposes mentioned in
 “ that section; but I beg the matter be sub-
 “ mitted to the Court of Wards for orders. I
 “ have no objection to present the land in
 “ question to the town, but doubt my power to
 “ do so.” The Collector appears to have written
 to the Commissioner of Patna, who represented
 the Court of Wards, on the 19th of May. This
 letter is not in the proceedings, but its contents
 may be inferred from the notice of it in the reply
 of the Commissioner on the 2nd June. That is,
 “ Sir, I have the honour to acknowledge the
 “ receipt of your letter, No. 62, dated the 19th
 “ ultimo, regarding the land belonging to the
 “ Darbhanga raj made over to the Municipality,
 “ free of cost, for the construction of a bathing
 “ ghat. In reply, I beg to state that Act X. of
 “ 1870 came into force on the 1st June 1870,
 “ while Act IV. (B.C.) of 1870, though it purports
 “ to have come into force on the same date, does
 “ not appear to have been sanctioned until the
 “ 17th June 1870. As regards the procedure to
 “ be observed in the case, you should offer the
 “ manager one rupee compensation, and allow
 “ the manager to refer the point to the Board of
 “ Revenue, with whose sanction the award can
 “ undoubtedly be accepted, and acceptance of
 “ the award will act as a valid conveyance.”
 The words “ made over to the Municipality free
 of cost,” in their Lordships’ opinion, show that
 the matter submitted to the Commissioner was
 the presenting the land to the town, which was
 in accordance with the manager’s letter of the
 12th May. Their Lordships feel compelled to
 state their opinion that the direction or suggestion

to offer one rupee compensation was a colourable way of doing indirectly what it was seen could not be done directly, viz., the guardian making a present to the town of the land of his ward.

The procedure referred to is contained in Sections 11 and 13 of the Land Acquisition Act. On a day fixed the Collector, who, after the declaration, is by Section 7 to take order for the acquisition of the land, is to proceed to inquire summarily into the value of the land, and to determine the amount of compensation which, in his opinion, should be allowed for it, and to tender such amount to the persons interested. And in determining the amount of compensation, he is ordered to take into consideration the matters mentioned in Section 24, one of which is the market value, at the time of awarding compensation, of the land. It is obvious that the offer of one rupee compensation was not in accordance with the duty of the Collector under these sections, and it would be altogether wrong to treat one rupee as the amount of compensation determined under Section 13. Section 14 says that if the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same. This was never done. On the 14th July 1875 the Collector wrote to the manager enclosing a copy of the Commissioner's letter, and saying, "I hereby offer you one rupee as compensation for the land in question, and request you to refer the point to the Court of Wards, with a view to obtaining sanction for the acceptance of the offer." Upon which, on the 16th July, the manager wrote back to the Collector asking him to obtain the authority of the Board of Revenue to accept the one rupee as compensation. This letter appears to have been sent by the Collector to the Commissioner of Patna,

and by him to the Board of Revenue. On the 4th August 1875 the officiating Secretary of the Board of Revenue wrote to the Commissioner that the member in charge had no objection to the manager of Darbhanga estate accepting the compensation of one rupee which had been awarded by the Collector of Darbhanga for the land belonging to the estate which had been taken up by the Darbhanga municipality for the construction of a ghat on the Bhagmati river. On the 19th August 1875 the rupee was paid by the Collector, and the manager gave a receipt for it, describing it as a nominal compensation for the raj land taken up by the Darbhanga Municipality. The land was thereupon taken possession of by the Municipality, a bathing ghat was erected upon a portion of it, and the rest has been used by the Municipality as a market.

On the 11th February 1886 the Maharaja brought a suit to recover possession of the land, and for mesne profits and damages. The District Judge of Mozufferpore on the 1st September 1886 made a decree in his favour, which has been reversed by the High Court, and the suit has been dismissed. Although the Court of Wards had not power to alienate the land for the purpose for which it was required possession might have been lawfully taken of it if the provisions of the Land Acquisition Act had been complied with. But they were not. The Collector made no inquiry into the value of the land. He was the Chairman of the Municipality, and his sole object appears to have been to benefit the town, forgetting that, as the representative of the Court of Wards, it was his duty to protect the interests of the minor, and to see that the provisions of the Act were complied with. It is not true, as the High Court seems to have thought, that, as the Maharaja, if

he were of age, might waive the right to compensation, his guardian might do so. The Maharaja, if of age, might have made a present of the land to the town, and probably, if it was only to be used for a bathing ghat, would have done so, but it was known by all parties that the manager had no power to do this. The offer and acceptance of the rupee was a colourable attempt to obtain a title under the Land Acquisition Act without paying for the land, and their Lordships have felt some surprise at the direction which originated it having come from the Commissioner. It is, however, to be observed that the letter of the 2nd June is signed by a subordinate officer.

The 16th section of the Act says that when the Collector has made an award under Section 14 or a reference to the Court under Section 15, he may take possession of the land, and it has been argued that there was a reference which authorized him to take possession although he had not made any award. This appears to have been the view of the High Court. Section 15 says that if the Collector considers that further inquiry as to the nature of the claim should be made by the Court, or if he is unable to agree with the persons interested as to the amount of compensation to be allowed, he shall refer the matter to the determination of the Court in manner after appearing. A reference to the Civil Court was made by the Collector on the 7th February 1876, months after the rupee had been paid and accepted. That acceptance as compensation is stated in the reference, and it is also stated that all the claimants for compensation except four had agreed to the Collector's award and accepted the compensation tendered to them. Then facts are set forth as to the four claimants and the amounts of compensation tendered to them. The document then concludes,—“As they have

“ refused to accept this compensation, and as it
 “ appears to the officiating Collector that their
 “ claims are preposterously high and there is no
 “ chance of their coming to terms, the matter is
 “ referred to the District Judge for decision
 “ under Sections 15 and 18 of the Land Acquisition
 “ Act.” This cannot be held to be a reference
 of a claim to compensation by the manager of
 the Darbhanga estate, his claim being treated as
 settled.

The claims of the four who had refused to
 accept the compensation tendered to them are
 the matter referred, and their Lordships can see
 no ground for the opinion of the High Court
 that on this reference the whole matter was
 open to the District Judge, and that “ he could
 “ inquire, and possibly he did inquire, whether or
 “ not the consent was binding on the minor.” The
 Collector had not said that an inquiry ought to
 be made, and there is no trace in the proceedings
 of the District Judge having made such an in-
 quiry. Their Lordships are clearly of opinion
 that the reference had not the effect which has
 been given to it by the High Court, and that
 the decree reversing the decree of the District
 Judge cannot be supported. But the latter
 decree must be modified. The District Judge,
 in allowing mesne profits, has taken the income
 for the three years 1883 to 1885, and has set
 that off against the Rs. 5,000 which it was ad-
 mitted by the Plaintiff he was bound to pay to
 the Defendant for the money expended on the
 land. This income was received by the muni-
 cipality after the expenditure of a considerable
 sum of money on the land. It is not the
 measure of the damages sustained by the Maha-
 raja by being out of possession. The rent which
 could have been obtained for the land if the
 Maharaja had been in possession during those
 years is the fair measure of the mesne profits.

And it appears from the Collector's letter of the 10th May that the manager had claimed rent for the land at the rate of Rs. 16. 5a. 3p. per annum. Their Lordships therefore think that Rs. 50 will be a proper sum to allow for mesne profits for the three years. That sum only must be deducted from the Rs. 5,000.

Their Lordships will therefore humbly advise Her Majesty to reverse the decrees of the High Court and the District Judge, and to make a decree that, on payment to the Defendant of Rs. 4,950, the Plaintiff recover possession of the land claimed in the plaint, and that he recover the costs of the suit in both the lower Courts. The Respondent will pay the costs of this appeal.
