

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ezra v. The Secretary of State for India in Council, the Bank of Bengal, and another, from the High Court of Judicature at Fort William, in Bengal; delivered the 3rd March 1905.*

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Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The Appeal before their Lordships is against the dismissal, by the High Court of Judicature at Fort William in Bengal, of a suit by the Appellant, in which he prayed that a certain Declaration by the Lieutenant-Governor of Bengal, and all proceedings thereunder, should be declared void and of no force or effect. The questions raised by the Appeal are as to the nature of certain procedure prescribed for the compulsory taking of land under the Land Acquisition Act 1894 (which extends to the whole of British India). The facts of the case are not in controversy.

The Appellant is owner of certain houses and premises adjacent to the office of the Bank of Bengal in Calcutta. The Bank, desiring to extend its office, negotiated with the Appellant for the acquisition of his property; but, failing to come to terms, it set in motion the machinery of the Land Acquisition Act 1894. The Bank is a Company in the sense of that Act; and it

applied for and obtained the Declaration (now sought to be set aside) that the Appellant's land was "needed" in the sense of the Act. The first of the two questions in controversy is whether, before this Declaration was issued, an enquiry had been duly held in accordance with the 40th Section of the Act. The general scheme of the Act is this: There is, first, to be an enquiry by a Government officer into the questions (1) whether the proposed acquisition is needed for the construction of some work, and (2) whether such work is likely to prove useful to the public. If the Government officer reports affirmatively on both points, then (in this case) the Lieutenant-Governor may issue a declaration that the land is required for the purpose stated; and, this being done, the sequel is the ascertainment of value in a second enquiry by the Collector. The decision of the latter official is conclusive of value as against the Government (and, in this case, the Bank); but the owner of land may, if dissatisfied, appeal to the High Court for its determination of the value.

The first of the Appellant's objections is to the procedure under the first enquiry, and his contention is that he ought to have received, and did not receive, notice of that enquiry, and that it was conducted behind his back. The section prescribing the enquiry is as follows:—

" 40. (1) Such consent shall not be given unless the Local Government be satisfied by an enquiry held as hereinafter provided—

" (a) that such acquisition is needed for the construction  
" of some work, and

" (b) that such work is likely to prove useful to the  
" public.

" (2) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

" (3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court."

Now, upon the face of this enactment, there is no provision requiring or implying the presence or the knowledge of the owner of the land. The theory of the section would seem to be that the Government, through its officer, is to direct its attention to public interests, and it is significant that neither promoter, on the one hand, nor possible objector, on the other, is mentioned in the section. This does not imply that the officer is to disregard the existence of adverse rights, and the word "needed" implies this. But the standpoint is that of public interest, and the Government is given control of the enquiry, for this is all that is meant by its being empowered to appoint time and place; and all this derives the more significance from the fact that the Act, both in this stage and in the subsequent enquiry into value, takes the initiative out of the hands of the Company and puts it in the hands of the Government.

That the nature of the first enquiry is in no sense litigious and that the owners of the land are purposely ignored, as parties, is strongly shown by the anxious provisions made as regards the second enquiry for which (Section 9) "public notice" is to be given calling for claims for compensation and requiring all persons interested in the land to appear at a time and place specified. The Section is as follows:—

" 9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

" (2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8.

“ The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

“ (3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

“ (4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address, or place of business and registered under Part III. of the Indian Post Office Act, 1866.”

No. XIV. of 1866.

The conclusion to which their Lordships come is that the Appellant's objections to the first enquiry are ill founded. What was in fact done was simply that, the Bank having applied for the acquisition of the land, the Government of Bengal requested the Board of Revenue to depute their Secretary to make the necessary enquiry, that the Secretary went to the Bank and examined into the facts and sent in (as the result of his enquiry) the very sufficient report which is set out in the Record. In the view of the true nature of the statutory enactment which their Lordships adopt, no exception can be taken to the adequacy of the proceedings at the first enquiry.

The remaining question relates to the second inquiry, which is as to the value of the land, now assumed to be “ needed.” Shortly stated, the Appellant's objection is that the Collector who conducted the inquiry and made the “ award,” availed himself of information supplied to him without the knowledge of the Appellant, and not disclosed at the enquiry. It is not suggested that there was in the proceedings anything corrupt or fraudulent, and the objection is based and depends upon the theory that the enquiry by the Collector was a judicial proceeding, and that the rules of judicial proceedings apply. The argument of the Appellant starts from the word “ award ” (which is used to describe the

conclusion of the Collector), and has nothing else to support it. When the sections relating to this matter are read together, it will be found that the proceedings resulting in this "award" are administrative and not judicial; that the "award" in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands; and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court. The sections directly relevant (besides the 9th already set out) are the 11th, 12th, 13th, 14th, 15th, and 18th. These sections, and the question as a whole, are very satisfactorily discussed in the Judgment under appeal, and their Lordships do not think it necessary to repeat the reasoning. It is, to say the least, perfectly intelligible that the expert official charged with the duty of fixing value should be possessed of all the information in the hands of the department, and should at the same time avail himself of all that is offered at the enquiry, his ultimate duty being not to conclude the owner by his so-called award, but to fix the sum which in his best judgment is the value and should be offered. It is not implied in this observation that the Collector would be precluded by anything in the statute from inviting at the enquiry the criticism of the owner on any information he had in his hands if he thought that in the circumstances this would advance knowledge; but this is for his discretion. Their Lordships have no occasion to review the proceedings of the Collector, which are before them solely in relation to a suit which prayed that the Declaration of the Government of Bengal (which initiated this enquiry) "and "proceedings thereunder . . . may be declared void." It was assumed by the Appellant, and not

contested by the Respondents at their Lordships' Bar, that the objection to the second enquiry was within the scope of the action, even if (as is the case) the objection to the first enquiry fails and the Declaration stands. But, while nothing in the second enquiry to which their Lordships' attention was called throws any doubt on the conclusion arrived at, they desire in no way to enter on considerations not within the scope of any tribunal other than the Court to which the Appellant has required the Collector to refer it.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Bank of Bengal, who alone appeared in the Appeal.

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