

Sri Kanchumarti Venkata Krishnayya Garu - - - - *Appellant*

v.

The Secretary of State for India in Council, represented by the Sub-
Collector of Godavari - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH JANUARY, 1931.

Present at the Hearing :

LORD TOMLIN.

LORD MACMILLAN.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

[*Delivered by* SIR JOHN WALLIS.]

This is a land acquisition case and comes before the Board on appeal from a judgment of the High Court at Madras varying the judgment of the District Judge of Godavari at Rajahmundry on a reference under Section 18 of the Land Acquisition Act as to the amount of compensation payable for land taken up for the new buildings to be erected for the Arts College and the Training College at Rajahmundry. The land, which is situated on the outskirts of the town and within the municipal limits, lies between two roads leading out of Rajahmundry, and now has a frontage to both roads. Survey Nos. 123 and 124, which cover 49·24 out of the 50·70 acres taken up, formerly had a frontage to only one of these roads and were separated from the other road by Survey No. 119 B₂. A few years before the acquisition the present appellant, K. V. Krishnayya, who was the registered owner of Survey Nos. 123 and 124, acquired Survey No. 119 B₂ from the Government, and thus obtained for his property a frontage to both roads, thereby enhancing its value as building land.

Prior to the 7th July, 1921, the date of the Notification under the Act, K. V. Ramachandra Rao, a cousin of the appellant, had filed a suit against him to recover possession of all three survey numbers, and had obtained a decree as to Survey Nos. 123 and 124 in the Court of the Subordinate Judge, but had failed as to the recently-acquired Survey No. 119 B₂, and the defendant had preferred an appeal to the High Court.

On the 6th November, 1921, the Collector made his award, and, having notice of the dispute, on the same day made a reference to the District Court under Section 30 of the Act as to the persons to whom the compensation was payable.

The amount of the compensation awarded can only be questioned on a reference under Section 18 which the Collector is required to make on the application within the prescribed time of anyone interested; and the main question in this appeal is, was there any such reference in respect of Survey No. 119 B₂?

Under Section 12 (1) of the Act the Collector is required to give immediate notice of the award to such of the persons interested as were not present personally or by their representatives when the award was made.

It does not appear whether the appellant, K. V. Krishnayya, was present when the award was made or not; but, if not, he would have been entitled under Section 18 of the Act to require the Collector to make a reference to the District Court about the amount of the compensation within six months of the award; that is to say, before the 6th May, 1922, unless he had been served with notice of the award, in which case the application must have been made within six weeks of the date of the notice.

The appellant, K. V. Krishnayya, did not make any application for such a reference under Section 18 as to the amount of compensation, but on the 12th January, 1922, such an application was made by K. V. Ramachandra Rao, the plaintiff in the suit already mentioned, with reference not only to Survey Nos. 123 and 124, as to which he had succeeded, but also as to Survey No. 119 B₂, as to which his suit had been dismissed.

As the District Judge disposed of the references under Section 30 and under Section 18 together, it may be taken that the Collector duly made the reference to the District Court under Section 18 on the application of K. V. Ramachandra Rao of the 12th January, 1922; and it then became the duty of the District Court under Section 20 to issue notice to the appellant, K. V. Krishnayya, specifying the day on which the Court would deal with the objection under Section 18 to the amount of the award, and directing his appearance on that day before the Court.

As early as the 19th December, 1921, as appears from the Diary, the District Court had directed notice of the reference under Section 30 to be given to both parties for the 12th January, 1922, but that notice was not served on the appellant, K. V. Krish-

nayya. On the 23rd February, 1922, fresh notice to him was ordered for the 24th March, 1922, and on that day he appeared by his *vakil*. The diary contains the further entry, "Adjourned to 21st July, 1922, for inquiry."

As the Diary contains no mention of any separate notices of the reference under Section 18, it may be taken that the appellant in both references was treated as having entered an appearance. Had the objection then been taken that there was no reference before the Court under Section 18 as to 119 B₂, as K. V. Ramachandra Rao, on whose application the reference had been made, had no interest in it, the appellant, K. V. Krishnayya, unless he had been present or represented before the Collector at the time the award was made, would have been still in time, as already shown, to require the Collector to make a fresh reference in regard to it. No such question was raised, and the reference was allowed to proceed as to all three Survey Numbers and judgment was given on the 16th October, 1924.

The appellant, K. V. Krishnayya, preferred an appeal from this judgment, and when the appeal came before the High Court the Government pleader for the first time raised the objections that the appellant was not entitled to be heard at all, as he had not himself made an application under Section 18 requiring the Collector to make a reference to the District Court, and, secondly, that he was not entitled to appeal as to the amount of compensation for Survey No. 119 B₂, as the other claimant, K. V. Ramachandra Rao, who made the application, had no interest in it, as his suit as regards this Survey Number had been dismissed by the judgment of the Subordinate Judge, and he had not appealed from that judgment.

The High Court, in their Lordships' opinion, rightly disallowed the first objection, but they sustained the second, and held that the appellant was not entitled to appeal as to the valuation placed by the District Judge on Survey No. 119 B₂, as there had been no reference in regard to it.

In their Lordships' opinion, the highly technical objection that the application requiring the Collector to make a reference with regard to Survey No. 119 B₂ should have been made by the appellant, K. V. Krishnayya, and not by the other claimant, K. V. Ramachandra Rao, should have been taken at the first opportunity when, as already shown, it might possibly have been met by making a fresh application, and not having been so taken must be considered to have been waived. Secondly, their Lordships are of opinion that the objection, when taken, should have been overruled. Though the second claimant, who was plaintiff in the suit before the Subordinate Judge, had not preferred an appeal from the decree dismissing his suit as to Survey No. 119 B₂, it was still open to him to file a memorandum of objections with regard to it in the appeal which had been preferred by the defendant, K. V. Krishnayya, and he had consequently an interest in that Survey Number entitling him to make an application with regard to it under Section 18 of the Act.

Objection has, also, been taken to the methods of valuation adopted in the lower Courts, and it has been argued that the appellant has been seriously prejudiced by the fact that the three Survey Numbers were valued separately and not as constituting one area in single ownership, and that, as owing to the purchase by the appellant of Survey No. 119 B₂ before the date of the acquisition, Survey Nos. 123 and 124 were no longer cut off from access to the road by a narrow strip of land forming part of 119 B₂, some part of them at least became just as available for building as Survey No. 119 B₂ itself and should have been so valued.

In their Lordships' opinion, so far as the award of the Collector and the judgment of the District Judge are concerned, the objection is well founded, and they should have considered whether those portions of Survey Nos. 123 and 124 which now have access to the road should not be valued as building instead of agricultural land. It is, however, in their Lordships' opinion, by no means made out that the learned Judges of the High Court fell into the same error. Whilst holding themselves precluded from reviewing the valuation of 119 B₂, they have held that 16 acres out of the 49.24 acres in Survey Nos. 123 and 124 should be treated as building land and not as agricultural land, and have placed on them a higher valuation than had been placed by the District Judge on Survey No. 119 B₂, treating it as building land.

As, however, the case has to go back with reference to the valuation of 119 B₂, their Lordships think it will be more satisfactory not to tie the hands of the High Court when the case goes back by confining the remittal to Survey No. 119 B₂; and they will accordingly humbly advise His Majesty to discharge the order of the High Court and remit the case back to the High Court with a direction that they take into consideration the appeal to them from the District Court in relation to Survey No. 119 B₂ as well as Survey Nos. 123 and 124, and that, in considering to what extent they should be valued as building land, regard should be had to the fact that at the date of acquisition they constituted a single area of land held in one ownership. The respondent must pay the appellant's costs of the appeal to His Majesty in Council. The costs of the previous hearing in the High Court and of any further hearing will be dealt with by the High Court.

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