
(1902) 08 CAL CK 0010
In the Calcutta High Court
Case No : Original Civil Suit No. 349 of 1901

Ezra	Vs	APPELLANT
The Secretary of State and Others		RESPONDENT

Date of Decision : 22-08-1902

Acts Referred:

Citation : (1902) 08 CAL CK 0010

Final Decision : Dismissed

Judgement

Ameer Ali and Stephen, JJ.—The Plaintiff is the owner of certain premises in Calcutta, which have been acquired by Government under the provisions of Act I of 1894 (the Land Acquisition Act) and he seeks in this action to have it declared that all the proceedings taken by the Local Government in the matter of such acquisition should be declared void and of no force or effect and to obtain a mandatory injunction restraining the Government as well as the Bank of Bengal, for whom the land is purported to be acquired, from taking any step whatsoever towards taking possession of the said premises.

2. He also claims damages for the costs incurred by him in the conduct of the proceedings before the Land Acquisition Collector.

3. In order to understand the contentions raised on his behalf, it is necessary to set forth in some detail the circumstances under which the Land Acquisition proceedings were instituted.

4. The Bank of Bengal, which is a Company incorporated under Act XI of 1876, appears to have been in need of extending its premises for the purpose of providing improved accommodation for the Public Debt Office and the Government Accounts Department.

5. The premises in question being adjacent to the Bank, it attempted, in the first instance, to obtain the same by private purchase from the Plaintiff.

6. Upon the evidence we have no doubt that the solicitor for the Bank broached

the subject first to the Plaintiff's agent on the 5th of July 1900. The conversation on the subject is detailed by Mr. McNair, who states that Mr. Cohen then told him the Plaintiff would not take even four lacs for the property, upon which Mr. McNair replied that in that case there was nothing for it but to acquire the land through the Government. There was a subsequent interview between the Bank's solicitor and the Plaintiff's agent, when (he latter informed Mr. McNair that he was not going to take even four lacs. The Bank considering the demand as exorbitant and unreasonable applied to the Government on the 19th of July 1900 for the acquisition of the premises in question under the Land Acquisition Act. In their letter to the Chief Secretary they mentioned the circumstances which compelled them to make the application and expressed their willingness to enter into the agreement with Government required by the Act and they prayed that the necessary steps as required by the law might be taken for the acquisition of the premises.

7. On the 30th of July the Government of Bengal by their letter No. 2726, addressed to the Secretary to the Board of Revenue, Lower Provinces, requested the Board to depute their Secretary to make the necessary enquiry u/s 40 of the Act and to report the result to Government as quickly as possible.

8. At that time Mr. Carlyle, who has given his evidence in this case, was acting as Secretary to the Board and it would appear that, in accordance with the Government's request, he was deputed to make the enquiry.

9. There is a note on the margin of exhibit B proved to be in Mr. Carlyle's handwriting in these terms--"I will go to the Bank to-morrow as arranged yesterday."

10. On the following day (1st of August) Mr. Carlyle proceeded to the Bank and after ascertaining the facts, which he details in his evidence, he submitted a report embodying the result of his enquiry for the information of Government. The original report has been put in and marked as exhibit 5 (the draft is marked as exhibit 4). A great deal of time has been spent in discussing this draft; with what object it is difficult to understand. It appears from the evidence of the Plaintiff's attorney that he had obtained a copy of exhibit 4, which was the only report then in the possession of the Government Solicitor; he found several mistakes in his copy and went to the Government Solicitor's office to compare it with the original and apparently to obtain inspection of other documents. Exhibit 4 was shown to him when he mentioned to Mr. Sowton, an assistant of the Government Solicitor, that it appeared to be a draft (which in fact it is), to which Mr. Sowton replied that that was the only report they had in their possession.

11. Mr. Gregory admits that Mr. Sowton did not tell him that that was the report submitted to Government or that there was no other report. It is not suggested, nor could it be suggested, that exhibit 5 is a subsequent concoction for the purposes of this suit; nor has our attention been drawn to any points of difference between exhibits 4 and 5.

12. A great deal of public time, however, has been taken up in the examination and cross-examination of witnesses with Regard to the first document.

13. To proceed with the narration of facts,--from the note made on the draft, as also from Mr. Carlyle's evidence, it is clear that the original document and the plan were handed over personally by this officer to the Secretary to the Government of Bengal in the Revenue Department.

14. On receipt of Mr. Carlyle's report the Government of Bengal, by its letter No. 2826, dated the 3rd of August 1900 (exhibit No. 3), informed the Board of Revenue that it was satisfied that the proposed acquisition was for the construction of a building and that such building was likely to prove useful to the public. The Government at the same time asked the Board to call upon the Bank to submit a draft deed for the approval of Government. We shall refer, later on, to certain correspondence which passed about this time between the Bank's solicitors and the Government Solicitor, upon which the Plaintiff has placed reliance in support of his allegation that the Government was colluding with the Bank in the matter of this acquisition.

15. A draft agreement appears to have been submitted by the Bank of Bengal and on the 14th of August 1800 (see exhibit 7) the Local Government communicated its approval of the draft to the Board of Revenue.

16. In the same letter a direction was given for the preparation of an estimate of cost for acquiring the land. In accordance with this direction a preliminary estimate was made by P.C. Mitter, Land Acquisition Act Collector at the time and submitted on the 22nd of August 1900 (exhibit D).

17. This estimate showed the probable costs, inclusive of the statutory allowance, as Rs. 2,63,949.

18. On the 27th of August the estimate was returned to the Collector for the correction of certain mistakes and at the same time the plan of the land was called for.

19. On the 31st of August the Board re-submitted the estimate prepared by the Collector for the sanction of Government with a revised declaration.

20. In this letter (exhibit F) the Board pointed out the difference between the Bank's estimate, which was Rs. 2,42,000 and the estimate prepared by the Collector.

21. On the 3rd of September the Government issued for general information a notification embodying the terms of the agreement entered into on the 31st of August between the Secretary of State for India in Council and the Bank. This notification was published in the local Gazette on the 5th of September 1900 and refers in express terms to the premises, 1, Esplanade, West and 1 and 2, Strand.

22. On the same date the Government issued its declaration u/s 6, which was published in the Calcutta Gazette of the 5th of September 1900.

23. The agreement was also published in accordance with the requirements of the Act in the Gazette of India of the 8th of September.

24. On the 3rd of September Ganga Charan Chatterjee was appointed Land Acquisition Collector for the districts of Nuddea, Jessore, Faridpur and Calcutta and was posted to the headquarters station of the 24-Pergunnahs.

25. On the same date (exhibit H) the Local Government communicated its sanction of the estimate of costs submitted by the Collector of the 24-Pergunnahs and requested that the necessary steps might be taken for acquiring the lands in question.

26. On the 5th, pursuant to the direction contained in Government letter of the 3rd of September, Mr. Carlyle, the Secretary to the Board, instructed Ganga Charan Chatterjee to make the necessary arrangements for starting the land acquisition proceedings at once, as the matter was very urgent.

27. This communication was in accordance with Section 7 of the Act. u/s 8 Ganga Charan Chatterjee made on the 7th of September the following order: - "Issue general notice at once. Surveyor will please measure land at once and submit measurement papers to this office."

28. On the same day u/s 9 of the Act a notice was issued on the Plaintiff signed by the Collector. On the 23rd another notice u/s 10 was issued upon the Plaintiff to make or deliver a statement as required under the Act.

29. A fresh special notice was also issued on the same date u/s 9, Clause 5 (exhibit M).

30. Ganga Charan Chatterjee commenced his proceedings as shown above on the 7th of September and concluded the same on the 23rd of December. He made his award, as it is called in the Act, on the last mentioned date, fixing the value of the property, including the tenants' interest and the statutory allowance, at Rs. 2,63,313-4.

31. On the 8th of January he gave notice to the Plaintiff u/s 12, Sub-section 2 of the Act, tendering the amount to which the Plaintiff was entitled, viz.,--Rs. 2,54,213-4.

32. On the 16th of January the Plaintiff's solicitors notified to the Land Acquisition Collector that he would not accept the amount awarded.

33. We are passing over for the present certain correspondence which appears to have taken place about this time between the Land Acquisition Collector and the Bank's solicitors, as it will be dealt with under another branch of the case.

34. On the 22nd of January 1901 the case which had proceeded so far in the manner above described entered upon a new phase. Mr. Cohen, the Plaintiff's agent, states that the Plaintiff had spent a sleepless night thinking over this award and that on the 22nd he obtained advice from a Counsel, whom he names

and then for the first time became aware of what he describes as his rights. Thereupon on the same day the Plaintiff's solicitors wrote to the Land Acquisition Collector, informing him of the advice they had obtained that the Government were not authorised under the Land Acquisition Act, to acquire the premises in question for the Bank of Bengal and that their client was prepared to take the necessary steps to prevent their proceeding further to do so and asking him (i.e., the Land Acquisition Collector) in the meanwhile not to take possession of the premises.

35. On the 5th of February, however, the Plaintiff applied for a reference to the Civil Court under the provisions of the Act and that reference is still pending.

36. On the 31st of February the Board, in view of the objections of the Plaintiff's solicitors, directed the Deputy Collector to defer taking possession.

37. On the 19th of March the Plaintiff's solicitors wrote to the Chief Secretary to the Government of Bengal, enquiring what Government was going to do and threatening to file a suit and on the 28th, Government replied telling them that proceedings would remain in abeyance for the present. On the 29th, Messrs. Gregory and Jones addressed a more peremptory letter to Government calling upon them to withdraw at once from the acquisition, otherwise a suit would be filed.

38. On the 3rd of May the Board of Revenue directed the Commissioner of the Division to resume the proceedings and on the 17th of May Messrs. Gregory and Jones wrote to the Chief Secretary warning Government against taking any action and saying that "they were acting in concert with Morgan and Co."

39. On the 30th of May 1901 the Under-Secretary to the Government of Bengal informed the Plaintiff's solicitors that Government intended to proceed with the land acquisition and referred further communication on the Plaintiff's behalf to the Board of Revenue.

40. This suit was filed on the 15th of May in the same year. The Defendants are the Secretary of State, the Bank of Bengal and Mohanundo Gupta, the present Land Acquisition Collector. He was added as Defendant in place of Ganga Churn Chatterjee on the Plaintiff's application and at his risk by an order made on the 20th of June 1901. The Plaintiff obtained a further order on the 30th of June last for amendment by the insertion of certain matters, which are embodied in paras. 22 to 26 of the plaint. He alleges that the proceedings taken by the Government are from their inception not in compliance with the Act; that the Government has no power to acquire the premises for the Bank; that no enquiry was held or consent given in fact, as required under the Act; that he had no notice of any such enquiry and that the enquiry is therefore bad and of no effect; that the agreement entered into between the Bank and the Government is illusory for various reasons, which we shall discuss later on; that the declaration is not in accordance with the law and that the words "for a public purpose" mentioned therein were inserted "fraudulently and falsely;" that the proceedings before the

"Land Acquisition Collector were illusory and in fraud of the Act; that he proceeded on the estimate sanctioned by the Government and did not form his judgment on the evidence before him; that as a judicial officer he was confined to the evidence given in Court; and generally he charges, if words have any meaning, that the proceedings taken by Government were collusive, fraudulent and illusory. This in substance represents his allegations.

41. As we shall deal seriatim with his objections, it is not necessary to do more than indicate at present the nature of his contentions.

42. The principal Defendants, the Secretary of State for India in Council and the Bank of Bengal, traverse in toto the allegations made in the plaint and the insinuations contained therein; they assert that all the proceedings taken by Government were in strict conformity with the provisions of the Act and the rules framed thereunder; and that there is absolutely no ground for charging fraud against either of the Defendants; they deny that the Plaintiff was entitled to any notice of the enquiry held by Mr. Carlyle, or that it is bad, because the Plaintiff had no notice; they assert that the declaration is in conformity with the law and they deny that the words "for a public purpose "were inserted "falsely or fraudulently;" they deny also that the proceedings Before the Collector were illusory or a fraud upon, or an evasion of the Act. They further contend that this Court is not competent to enquire into or determine the questions raised by the Plaintiff; that the proceedings under the Act taken by the Local Government, as well as before the Collector, were of a ministerial character and cannot be reviewed by the Civil Court. They further contend that the suit is not maintainable in the absence of a proper notice u/s 424 of the CPC and Section 52 of the Land Acquisition Act. When the case came on for trial certain issues were suggested by learned Counsel on both sides. We did not, however, accept their suggestions, but settled separate issues, which appear to us to cover all the questions raised in the case. The suggestions of the parties, however, have been allowed to remain on the record to indicate their respective contentions.

43. We propose to deal first with the objections of the Defendants relating to the notices u/s 424 of the CPC and Section 52 of Act I of 1894. It is contended by the learned Advocate-General that, although a notice of action had been given to the Secretary of State as provided for under the section of the CPC in respect of the allegations contained in the original plaint, the Secretary of State is entitled to a further notice with regard to the cause of action disclosed in the amendments made under the order of the 30th of June last; he contends that the amendments allege an entirely new cause of action, based upon an allegation of fraud; and he refers to the case of the Secretary of State for India in Council v. Rajlucki Debi ILR 25 Cal. 239 in support of his proposition that the provisions of Section 424 must be strictly complied with. Section 424 relates to the institution of a suit against the Secretary of State for India in Council. There is nothing in the law to show that in case of any amendment necessitated by the alleged discovery of facts previously unknown to the Plaintiff, the Secretary of

State should have a further notice of two months. Although the Appellate Court has laid down that the section should be literally construed and strictly applied in favour of the necessity for notice, we are not disposed to extend its operation beyond the actual words used. In the case before us the relief asked for is not altered by the amendments, which only embody certain further materials in support of the Plaintiff's contention. It was also urged by the learned Advocate-General that notice not having been served on Mohanundo Gupta, the suit against him is bad and ought to be dismissed. He is not sued for any act done by him independently of the Government and no separate relief is asked for against him. He is joined in the action in order that he may be restrained by an order of this Court from giving effect to the instructions received by him. Under these circumstances we do not think notice of action is required in his case.

44. With respect to the objection u/s 52 of the Land Acquisition Act, which applies chiefly to the Bank of Bengal, we are of opinion that the section in question refers to a tortious act done under the enactment. It is not alleged that save and except the proceedings taken there has been any act done in pursuance thereof. We think, therefore, that the objections in bar, so to speak, taken on behalf of the Defendants must be overruled.

45. We now come to the contentions of the Plaintiff which appear to us to group themselves under four heads:

(1) As regards the sufficiency and legality of the proceedings under Part VII of the Act.

(2) As to the legality of the proceedings taken before the Collector and the validity of the award made by him.

(3) As regards the charge that the whole proceeding was collusive and illusory and a fraud upon the Act.

(4) As regards the jurisdiction of the Land Acquisition Collector to deal at all with the matter.

The fourth objection may be disposed of in a few words.

46. It is suggested that as the premises in question are situated in Calcutta, the Collector sitting at Alipore had no jurisdiction to deal with the matter.

47. It appears to us that there is no substance or force in this contention.

48. The officer in question was posted to the Sudder station of the 24-Pergunnahs, namely, Alipore. His office was located there. His jurisdiction under the Act extended over several districts, including Calcutta. He held his sittings at the office to which he was posted. No authority has been pointed out to us in support of the proposition that he could not hold his enquiry at this office with respect to property situated in any portion of the area over which he had been invested with the power of acquiring the land. Admittedly this is the first time that an objection of this kind has ever been put forward; and although that is no

ground for holding that it has no force, it seems to us that it lies on the Plaintiff to substantiate his objection by some authority.

49. We have not been referred to any law or principle or precedent in support of the extraordinary proposition put forward on his behalf. We accordingly overrule this objection.

50. In order to determine the questions summarised under the first three heads, it is necessary to examine the provisions of the law. We may observe that previous to the enactment of Act I of 1894, the law in force was Act X of 1870. The present Act differs in material particulars from the former Act, although in its main features it proceeds upon the same lines. It is an Act authorising the Local Government to make compulsory acquisition of lands for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition. In making the acquisition the wishes of the owner of the land are wholly irrelevant under the Act. It does not contain any provision for any objection on the part of the owner to the acquisition itself. All his objections are limited to the amount of compensation and matters connected therewith, such as measurement and area. In the case before us the acquisition purported to be made by the Local Government was for a company, namely, the Bank of Bengal. A Company is defined to mean a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council or by Royal Charter or Letters Patent. The Bank of Bengal admittedly is a Company within the meaning of the Act; and although it has been contended that, inasmuch as the Bank had the power under its own Act of 1876 to acquire land, the Local Government could not take steps under the Land Acquisition Act to acquire lands for the Bank, no authority has been cited to us nor has any provision of the law been referred to, to justify the contention that the Local Government could not in this instance take the action it has done. Section 6 provides that, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorised to certify its orders. This provision is subjected to those of Part VII of the Act and to the proviso that no such declaration shall be made, unless the compensation to be awarded for such property is to be paid by a Company or wholly or partly out of public revenues or some fund controlled or managed by local authority. It is unnecessary at present to refer to sub-ss. 2 and 3 of a. 6. Part VII, to which the provisions of Section 6 are subjected, deals with the acquisition of land for companies. Section 38 is immaterial for the purposes of this case, as the present proceedings were not taken u/s 4. Section 39 declare? that the provisions of Sections 6 to 37, both inclusive, shall not be put in force in order to acquire land for any Company, unless with the previous consent of the" Local Government, nor unless the Company shall have executed the argeement hereinafter mentioned. u/s 39, therefore, the proceedings under Sections 6 to 37 cannot be put in force without the previous consent of the Local

Government, nor unless the Company for which the land is going to be acquired shall have executed the agreement to which reference is made in Section 41. Section 40 declares that the consent provided for in Section 39 shall not be given, unless the Local Government be satisfied by an enquiry held as "hereinafter provided" (1) that such acquisition is needed for the construction of some work (sic) that such work is likely to prove useful of the public. Under Sub-section 2 the enquiry is to be held by such officer and at such time and place as the Local Government shall appoint. To the provisions of Sub-section 3 we shall refer presently. The enquiry which is required under Sub-section 2 is for the purpose of satisfying the Local Government. The application which is made to the Local Government is made by the Company on the allegation that the acquisition is needed for the construction of some work. The Company, therefore, has to satisfy the Local Government as to the reality and bona fides of the said allegation. It has also to satisfy the Government and the Government is to satisfy itself that the work which is proposed to be constructed is likely to prove useful to the public. The only parties concerned in this enquiry are the Government on one side, which has to be satisfied and the Company, which has to furnish materials for the purpose of satisfying the Local Government. There is no provision in this section that any other person should be summoned or required to attend at the enquiry contemplated.

51. It is contended, however, on behalf of the Plaintiff that, as under Sub-section 3 the officer appointed for the purpose of holding the enquiry is authorised to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as possible, in the same manner as is provided by the CPC in the case of a Civil Court, it is evidently intended that the enquiry should be a judicial enquiry and that all persons interested in the subject-matter of the enquiry should have an opportunity of attending and submitting their objections. In support of this contention an enormous number of cases have been cited, some of them being under the Land Clauses Consolidation Act, others relating to the right of a member of a club to be present at an enquiry held by the general body of the members with a view to his expulsion. There is no analogy between the latter class of cases and the question under discussion. There the "enquiry" is of a direct and personal character: u/s 40 the "enquiry" is of a special nature limited to a particular object.

52. As regards the cases decided under the English statutes, no useful purpose, in our opinion, is served by referring to them in construing Indian enactments; for, unless the English statute and the Act of the Indian Legislature are in *pari materia*, instead of affording any help, they only tend to confuse the consideration of the matters in issue. We do not therefore propose to burden our judgment with an examination of the mass of English cases cited at the bar, for in our opinion, the decision of the case before us must depend exclusively on the construction of Act I of 1894, which is *sui generis* in its character and which vests the Local Government with absolute discretion in the matter of acquisition, irrespective of any consideration of the willingness or unwillingness of the owner

to part with his property. Nor do we think it necessary to examine the provisions of the earlier Acts in order to apprehend the meaning or to construe the law now in force.

53. An appeal has been made to the principles of natural justice that a person whose property is going to be taken should be allowed a hearing in the matter. When the provisions of the law are clear, it seems to us it is not competent to Courts of Justice to enter into questions of "natural justice." If, however, it is open to us to express an opinion, we think that, having regard to the economic and social conditions of the country, the provision that the Government should be the sole judge of what is likely to prove useful to the public is both expedient and reasonable. It is easy to conceive the paralysis which may overtake the Administration, if we were to give effect to the present contention.

54. There is no definition of "a public purpose" in the Act, nor any limitation regarding what is likely to prove useful to the public. For obvious reasons both matters are left to the absolute discretion of the Local Government; and it seems to us it is not competent to this Court to assume to itself the jurisdiction to impose restrictions on this discretion by holding that at an enquiry u/s 40, the person whose land is intended to be acquired should have an opportunity to appear and object--a course wholly contrary to the policy of the Act.

55. In our opinion Section 40 constitutes the Government, as the custodian of the public interests, the sole judge of the two facts mentioned therein, namely, whether the land is required for the construction of some work and secondly, whether that work is likely to prove useful to the public. The only other person concerned in the matter is the Company which makes the application for the land. The officer deputed to make the enquiry is to give that Company notice and if necessary, to take evidence from the Company regarding the questions on which he is to report. Sub-section 3, in empowering the said officer to summon witnesses, etc., contemplates only the possibility of his having to take evidence on behalf of the party, who is principally concerned in that particular enquiry, namely, the Company. The time and place which are appointed are for the purpose of enabling the Company to produce its evidence or to place materials for the satisfaction of the officer. Nowhere in the Act is there any provision that the owner of the land should appear before the officer deputed u/s 40, or at all, until the service upon him of the notice u/s 9. Had the intention of the Legislature been that the owner of the property should be required to be present at the enquiry u/s 40, we have no doubt that it would have expressly provided for that purpose. In this case we find as a fact that an enquiry was held by an officer deputed for the purpose by the Board, at the instance of the Government. Some question was raised that, if the enquiry had been entrusted to anybody else, it would have been perhaps more satisfactory. We consider that wholly immaterial. The Act requires that the enquiry should be held by such officer as the Local Government shall appoint. It is clear, therefore, that the enquiry must be by some officer of the Government itself. In the second place, we find that in

this case an officer was appointed by the authority to which the Local Government delegated its power of appointment. It is not open to us, as we apprehend the law, to discuss either his qualifications or the sufficiency of the enquiry held by him. In our opinion the Local Government is the sole judge of those matters. So long as it is satisfied upon the two matters which are made conditions precedent to its according its consent to the acquisition of the land, this Court in our judgment is not competent to question the validity of the proceeding u/s 40.

56. In this view we overrule the objection urged against Mr. Carlyle's enquiry. Section 41 provides that after the enquiry directed by Section 40 the officer in question shall report to the Local Government the result of such enquiry; and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council providing, to the satisfaction of the Local Government, for the several matters which are set forth specifically in that section.

57. A report, as we have already seen, was submitted by Mr. Carlyle embodying the result of his enquiry. Upon that report the Local Government was in fact satisfied that the proposed acquisition was needed for the construction of the work and that such work was likely to prove useful to the public. We find also that after being so satisfied, it called upon the Bank to enter into an agreement as required u/s 41.

58. It is contended on behalf of the Plaintiff that the consent required u/s 39 should have been given after the agreement had been executed and that such consent should have been notified by a resolution in the Gazette. We do not understand upon what data these contentions are based. There is no provision in the Act itself that the consent should be notified in the form or in the manner contended for by learned Counsel appearing for the Plaintiff, nor do the provisions of the section indicate that the consent should be express and must be formulated in terms. What the section requires is that, upon being satisfied of the facts to which reference is made in Section 40, the Government should call upon the Company to enter into an agreement. That was done in the present case. As a matter of fact by letter No. 2823 the Government expressly gave its consent to the acquisition of the land and the application of the provisions of the Act.

59. It is contended further that the agreement is illusory, (1) on the ground that there is no substantial provision regarding the user by the public under Clause 5 of Section 41(2) because the arrangement by which the Bank of Bengal carries on the work of the Government is terminable at the end of ten years from 1898. Under the provisions of Section 42 the agreement entered into between the Secretary of State and the Bank was published in the local Gazette and the

Gazette of India and by virtue of the enactment it has become a part and parcel of the law. Section 41 makes the Government the sole judge of the manner in which the public are to have the use of the land taken up. The agreement provides that the public, subject to the Act constituting and the bye-laws regulating the Bank, shall be entitled to the said building or buildings in relation to the said Government business so far as the same may be utilized by the Bank for the purposes of such business. We are asked to hold that the latter part of Clause 5 renders the whole provision nugatory. We are not prepared to accept this view. In the first place, the Local Government, which is vested with absolute discretion in this matter and which is the sole custodian of the public interest in this country, made that provision in relation to the transaction of the Government business by the Bank in the proposed new buildings. The acquisition was needed for the purpose of constructing new buildings to afford better accommodation for the transaction of the public business. The rights of the public generally are dependent upon the Government business and the Government has considered the conditions therein inserted as sufficiently safeguarding its interests. This Court, in our opinion, has no power to enter upon a consideration of the question, how far that provision sufficiently safeguards the interests of the Government or of the public, of which it is the custodian.

60. As regards the second point, we think that it is equally untenable. "When the lands are acquired under the provisions of the Land Acquisition Act, save and except under Part VI, they are acquired permanently and the compensation which is paid to the owner is awarded on the basis of its absolute value. The Act nowhere says that, whether land is acquired for a public purpose or for a Company, it should be for a permanent public purpose or for a permanent Company. If the contention of the Plaintiff is given effect to, it would render it impossible for the Government to acquire lands for any Company under any circumstance, because there is always the possibility of the Company being wound up. The question whether the contract between Government and the Bank of Bengal is terminable at the end of ten years is a matter with which, in our opinion, the Plaintiff has no concern, for he obtains the absolute value of the property and is not concerned any further with any question relating to the permanency or otherwise of the purpose for which it is acquired.

61. It has also been urged on the Plaintiff's behalf that the declaration issued by the Local Government was not in compliance with the Act.

62. If we have fully apprehended the argument on the point, the contention seems to be this: Section 6 provides that "whenever it appears to the Local Government that any particular land is needed for a public purpose or for a Company, a declaration should be made to that effect." The words "public purpose" and "Company" are used disjunctively and if the land is required for a Company, it must be so stated without any reference to a public purpose. In the present case the declaration is in these terms:

Whereas it appears to the Lieutenant-Governor of Bengal that land is required to

be taken by Government at the expense of the Bank of Bengal for a public purpose, viz, for the extension of the Bank of Bengal's premises," it is therefore bad. In our opinion this argument proceeds upon a fallacy. The law requires that when any particular land is required for the two purposes for which the Local Government is authorized by the Legislature to put the Act into operation, a declaration to that effect should be previously made. It does not require that the intention of Government should be declared or notified in any particular form; nor has it been pointed out to us that any form has been presented by the Act or the rules framed under the Act for such declarations. The use of the words "to that effect" indicate to our mind that it may be made in any form so long as the object is patent. In the present case it is clear that the purpose for which the land was needed was for the extension of the premises of the Bank of Bengal, a company within the meaning of the Act. There is no vagueness in the description or the object of the declaration.

63. It maybe that the use of the words "public purpose" was superfluous, but upon a careful consideration we are of opinion that there is no reason for holding that the declaration is not in compliance with the Act.

64. Section 6 further provides that "the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company." of course if the requirements of Part VII, to which the application of Section 6 and the subsequent section is subjected, are not complied with, the declaration will not have that effect. But in this case we have already found that the provisions of Part VII were complied with before the declaration was made and issued. It seems to us, therefore, that the Plaintiff is not entitled to question the validity of the declaration, nor is it open to this Court to enter upon its determination.

65. There can be no doubt upon the materials on the record, that after the declaration the notices required under the Act were duly issued. The Plaintiff appeared before the Land Acquisition Collector pursuant to such notices. His objections were enquired into and an award was made in the terms of Section 11. The Plaintiff contends that the whole proceeding before the Collector was bad and that the award is illusory, "a fraud upon and an evasion of the Act," and consequently of no effect. The grounds upon which this contention is based are of a somewhat peculiar character. First, it is said that the Land Acquisition Collector is a judicial officer and as such, he was bound to base his judgment as to the value of the property upon the evidence given before him in open Court in the presence of the parties that he was not entitled to refer to the preliminary estimate prepared by P.C. Mitter or the statements and documents forwarded to him by the Bank's solicitor; that he acted improperly in making references to his superior officer and allowing himself to be practically guided by that officer in his decision and that he, like the Government was in concert or collusion with the Bank's solicitors. In support of this last allegation special reference is made to exhibit P, a letter from Gunga Churn Chatterjee, the Land Acquisition Collector, to the Bank of Bengal, in which, after informing them of the day fixed for the

hearing of the Land Acquisition case, he states as follows: "As the compensation to be awarded is payable by the Bank of Bengal, I beg that you will, if you think fit, depute an agent of yours to watch the proceedings on behalf of the Bank and to contest any unreasonable claim that may be made on behalf of the parties interested." This, according to the Plaintiff, shows the "illusory" character of the proceedings.

66. We may observe here that whilst Mr. Pugh, in answer to questions put by the Court, repudiated, in express terms, any charge of "personal" fraud against the Land Acquisition Collector or the other officers of Government concerned in the matter, the cross-examination of the Defendant's witnesses by his learned junior conveyed distinct suggestions of collusion and bad faith on their part.

67. u/s 50, Sub-section 2 the Company concerned is entitled to appear in any proceeding before a Collector or Court and to adduce evidence "for the purpose of determining the amount of compensation." The reason of this is obvious; for the Company has to pay the compensation. To give effect to this provision of the law, the Board of Revenue has framed a rule (p. 36, Rule 21), which is in these terms: "When he (the Collector), issues notices on the persons interested ... he shall at the same time inform the Municipal body, Railway, or any other Company, who have u/s 50(1) to defray the charges of the Land Acquisition, of the day on which the enquiry u/s 11 is to be held, or to which it may be postponed and to give such body or company an opportunity of contesting the claims of the claimants to compensation and of adducing evidence on their part as to the proper amount payable before he make his award."

68. Babu Gunga Churn Chatterjee has stated in his evidence that it was under this rule that he gave the Bank the notice to which reference has just been made. It appears to us that in calling upon the Bank, if it thought fit, to depute a person "to contest any unreasonable claim," he acted in accordance with the law and the rule framed by the Board to give effect to the same and that the suggestion of improper motive is wholly unfounded.

69. The next question we have to consider is whether, as the Plaintiff contends, the Land Acquisition Collector is a judicial officer. He is a gazetted officer of Government appointed for the purpose of acquiring land for the State. It is in evidence that Land Acquisition proceedings are under the control and in the charge of the Board of Revenue as a department of Government. The Board has accordingly issued certain general rules (among them the one referred to above) for the guidance of the officers to whom the work of acquisition is, from time to time, entrusted. If those rules or instructions are in contravention of the express provisions of the law, they cannot make an act done by such officers valid. For example, if the rules were to say that no enquiry need be held under Part VII, or that the formalities prescribed, should be ignored or treated as superfluous, any proceeding taken pursuant to that direction would be invalid. But where the rules are in furtherance of the provisions of the Act, in order to better enable the officers of Government to carry out the requirements of the law, it seems to us

no question of ultra vires arises. It is admitted that if, in the case before us, the officer concerned acted in accordance with the rules prescribed by the Board, that would be evidence of his bona fides. On that narrow ground alone the Manual containing the rules tendered by the Advocate-General was admissible in evidence. It has been accordingly admitted and marked exhibit 10.

70. It must be noted that the Land Acquisition Collector cannot take any action under the Act, until he has received the directions of the Local Government or some officer authorized by the Local Government in that behalf (Section 7).

71. In this case Babu Gunga Churn Chatterjee received instructions from the Secretary to the Board of Revenue (Mr. Carlyle), to make necessary arrangements for starting proceedings for the acquisition of the land (exhibit I).

72. After receipt of the directions provided for in Section 7 the Collector has to have the land measured and a plan prepared (Section 8). He has then to issue notices to all persons interested to state the nature of their respective interests and the amount and particulars of their claims to compensation in respect of such interest and their objections to the measurement, if any [Section 9(2)]. He is also authorized to require any person to make or deliver to him, at a time and place mentioned, the name of every other person possessing any interest in the land. Any person disobeying the requisition of the Collector makes himself liable under Sections 175 and 176 of the Indian Penal Code (Section 10). The Collector has then to enquire into the objections of the persons interested regarding the measurement and the value of the land and also into the respective interests of the persons claiming the compensation and then to make an award regarding the following particulars:

First, the true area of the land; secondly, the compensation which in his opinion should be allowed for the land and thirdly, the apportionment of the said compensation among all other persons who are known or believed to be interested in the land of whom, or of whose claims, he has information whether or not they have respectively appeared before him (Section 11). The award so made has to be filed in the Collector's office and he has to give immediate notice of the same to all the persons interested (Section 12). For the purpose of his enquiries the Collector is empowered to summon and enforce the attendance of witnesses, including the parties interested or any of them and to compel the production of documents by the same means (and so far as may be) as is provided in the case of a Civil Court under the CPC Section 14.

73. Although he has the power of summoning witnesses in the same manner as is provided in the case of a Civil Court, there is no provision that any person making a false statement before him would make himself liable for giving false testimony. So far as we can see, the only liability is for disobedience of orders. Throughout the proceedings the Collector acts as the agent of Government for the purposes of acquisition, clothed with certain powers to require the attendance of persons to make statements relevant to the matters, which he has

to enquire into. He is, in no sense" of the term, a judicial officer, nor is the proceeding before him a judicial proceeding. In this view we are supported by the decision of this Court in *Durga Das Rukhit v. Queen-Empress* ILR (1900) Cal. 820. The award which he makes does not possess any finality so far as the persons interested are concerned, for u/s 18 any person interested, who has not accepted the award, may, within a certain time, by written application to the Collector, require a reference of the matter for the determination of the Court. This shows that so far as the Collector is concerned, he is not a Court. In the present case the Plaintiff has applied for and obtained a reference. The Government or the Company at whose instance the land is being taken up is not entitled to demand a reference (Section 50, proviso). The reason of this is plain. The Collector acts as the agent of the Government or of the Company for which the Government takes up the land and they are accordingly bound by the award of their agent. But the Government, except in the special case provided for in Section 36, is at liberty to withdraw from the acquisition of any land, of which possession has not been taken (Section 48).

74. The circumstances under which the Government may withdraw are explained by the Board in their Rule 19. This rule, after stating that too great care cannot be taken in making the examination, proceeds to say "the same course should be followed, if at any time before an award or reference to the Civil Court the Collector has reason to believe that the cost of acquisition will considerably exceed the estimate." Therefore until the reference to the Civil Court, it is open to the Local Government or the Company to withdraw from the acquisition and the award has no binding effect. Should the Government persist in going on with the acquisition, the amount of the compensation fixed by the Collector is binding upon the Government, but not on the persons interested, for under no circumstance can the Civil Court award less than the amount fixed by the Collector. These considerations show to us that the award of the Collector is in nonsense a judicial award. A great deal has been attempted to be made out of the fact that in the Act the term "award" has been used both in the case of the determination by the Collector as also by the Civil Court. Any inference from that circumstance appears" to us to be fallacious. The meaning to be attached to the word "award" u/s 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances, but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government or the Company at whose instance the Government is acquiring the land is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded. His enquiry and his valuation are departmental in their character for the purpose of enabling the Government to make a tender through him to the persons interested. Such tender once made is binding on the Government and

the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court.

75. But it is contended that, whether the Collector was a judicial officer or not and whether the proceeding before him was a judicial proceeding or not, he was not entitled to base his determination upon evidence other than that produced before him in the presence of parties. This argument again appears to us to beg the question. If the proceedings were judicial in their character, the Collector in arriving at his conclusion would, no doubt, be confined to such materials. But if he was acting as a mere, departmental officer or an agent of the Government for the purpose of ascertaining the value of the property to enable a tender to be made, it would be open to him to consider all available information on the point. Babu Gunga Churn Chatterjee has sworn that he took into consideration the sworn testimony and the exhibits placed before him, but "could not attach much importance to the evidence." If his determination or conclusion is wrong, it can be questioned before the Civil Court," whose duty it is," as the learned Judges point out in the case of *Durga Das Rukhit v. Queen-Empress* ILR (1900) Cal. 820, "to settle the matter in dispute judicially." But we feel bound to observe that, in view of the evidence in this Court, which clearly indicates that immediately on learning of the Bank's desire to acquire the land, the Plaintiff's agent (Mr. Cohen) tried to run up the price, We are not prepared to hold that Gunga Churn Chatterjee acted improperly in discounting the materials on which the Plaintiff's valuation was based. The entry of the 27th of August 1900 in the day-book of Messrs. Gregory and Jones (as appearing in their bill of costs, exhibits M.M.M.) and the statements of Mr. Cohen, coupled with his prevarications, leave no doubt in our mind that on being apprised of the Bank's necessity for increased accommodation, he set to work to show "the best result," as his attorney (Mr. Gregory) calls it. Mr. Gregory proceeded to add "by result I mean the best return for the support of my claim." Asked "before the Collector," he answered "yes, before the person appointed." The correctness of Gunga Churn Chatterjee's valuation is a matter for the consideration of the Court before which the reference is pending; the propriety of his conduct in discarding the Plaintiff's evidence and forming his opinion on other materials, the only question on which we can express an opinion in this case is, in our judgment, under the circumstances mentioned, not open to any valid criticism. But his conduct is attacked not only on the ground indicated above, but on several others set forth more or less specifically in the plaint. It is urged that he had a sanctioned estimate before him and that therefore his own "award" was "illusory;" that he was in communication with his Collector and acted in obedience to orders from the superior authorities. Similar suggestions are made on the basis of letters addressed to him by the Bank's solicitors or by him to them in the course of the proceedings and it is contended that his "award" is a fraud upon and a colorable evasion of the Act. To our mind this contention is wholly groundless. As the determination of the officer is conclusive against the Local Government or the Company at whose instance the Act is put in force, the Board, which has charge

of, the Land Acquisition Department, has issued the general instructions to which reference has already been made. The rules, in force in 1900 are contained in the Manual published under the Board's authority (exhibit 10). They contain minute directions regarding the mode in which the work is to be done by the Land Acquisition Collector, how the measurement should be made, estimates prepared and so forth. That the proceedings taken under the Act are subject to "the departmental rules" in respect to estimate, &c., appears from the rules framed by the Government of India under Act I of 1894 and notified by its Resolution No. 2209A, dated the 10th of May 1895 (Appendix XII of the Manual").

76. The Board's instructions require, in the first instance, a preliminary estimate (Rule 10). That estimate has to be sanctioned by the Government when issuing the declaration (Rule 15). As a safeguard against mistake or improper conduct on the part of the officer appointed to acquire the land, the rules provide that when, the proceedings are conducted by an Assistant or Deputy Collector, if the intended award be within "the sanctioned estimate," he may (subject to certain exceptions) make the award without further reference. But if the intended award be beyond the amount of the sanctioned estimate, or if the amount of the compensation, which it is proposed to tender, exceeds in any one case Rs. 10,000, he must consult the Collector of the district demi-officially and will make his final award according to the instructions received from that officer--in our opinion a most wholesome provision. In the present case the preliminary estimate was sanctioned by exhibit N. As the amount of compensation proposed to be tendered exceeded Rs. 10,000, the Deputy Collector, Gunga Churn Chatterjee, was bound under the rules to refer the matter to the Collector. In taking the sanctioned estimate into consideration and in communicating with the Collector, he acted in conformity with the general rules issued for the guidance of Land Acquisition Collectors. His determination was not a judicial act he was acting merely as an agent of the Government to ascertain the value and to make a tender. He was, therefore, not only competent, but bound to comply with the rules.

77. Reference has also been made to his letter (exhibit T) dated the 14th of January 1901, addressed to Messrs. Morgan and Co., asking them, if the matter should go into Court, whether they would conduct the case or leave him to do so. If we have rightly apprehended learned Counsel, for the arguments on this branch of the case were not by any means clear, the suggestion is that this also shows collusion. Again, it seems to us there is some mis-conception. When a reference is made to the Civil Court, the claimant is to be regarded as the Plaintiff and the Government as Defendant. This is the invariable practice and the duty of the Collector in such cases is pointed out in clear terms in Rule 45, which provides that when a reference to the Court has been made by the Collector u/s 18, on the ground of an objection to the measurement of the land or to the amount of the compensation * * *, the Collector should defend the case exactly as he would a Government suit. The claimant in such cases is to be regarded as the Plaintiff and the Government as Defendant; and it is the duty of the Collector

to see that evidence is forthcoming to show the fairness of the amount, which he has given as compensation. The Collector must remember that the Court will decide on the evidence before it what amount of compensation should be given and he must, therefore, be prepared with reliable evidence at the trial." In the present case the Bank was to pay the compensation and in our opinion, it was only right and proper that Gunga Churn Chatterjee should consult its solicitors, whether they would defend the action or leave it to him.

78. It is not necessary in our judgment to dwell on the suggestion of collusion based on the correspondence between Messrs. Morgan and Co. and the Government Solicitor about a copy of a draft declaration, for we hardly think it could have been seriously advanced. Under Rule 10 the Bank had to supply the particulars to be embodied in the declaration and its solicitors naturally applied to the Government Solicitor for a form.

79. We have been asked to treat the settlement of Messrs. Sanderson and Co.'s claim at a higher figure than the amount allowed by the Land Acquisition Collector as one of the indications of the illusory character of his award. With regard to this, we have only to observe that it was open to the Bank to settle the claim for any amount it liked, but it does not show that the Collector's award was erroneous--much less "illusory." If it is an element for consideration in determining the compensation, the Court dealing with the reference will give it such weight as it deserves.

80. Great reliance has been placed on the case of Maharaja Luchmeswar Singh v. The Chairman of the Darbhanga Municipality (1889) L.R. 17 IndAp 90. The facts of that case, in our opinion, have not the remotest analogy to those of the one before us, as will be seen from the following summary. The Collector of Darbhanga wanted a piece of land for the use of the Municipality. At that time the owner was a minor under the Court of Wards and he remained a minor for several years after. The Court of Wards for the district of Darbhanga was the Commissioner of Patna acting under the Board of Revenue 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 Collector asked the Manager appointed by the Court of Wards of the minor's estate to consent to the sale of the land. The Manager replied that he had no objection to present the land in question to the town, but doubted his power to do so and requested the matter be submitted to the Court of Wards for orders. The Collector thereupon appears to have written to the Commissioner, who represented the Court of Wards. In his reply this officer, acknowledging the Collector's letter "regarding the land belonging to the Darbhanga Raj made over to the Municipality free of cost for the construction of a bathing ghat," said as follows:

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 Collector thereupon offered the Manager one rupee as compensation for the land in question. The Manager asked the sanction of the Court of Wards to accept the offer. Ultimately the Board of Revenue as the Court of Wards gave its sanction and the Manager accepted the rupee paid by the Collector and gave a receipt for it, describing it as a nominal compensation for the Raj land taken up by the Municipality. After attaining majority the Maharajah brought a suit to recover possession of the land. The first Court made a decree in his favour, which was reversed by the High Court. On appeal to the Privy Council their Lordships, with reference to the Commissioner's letter, said as follows: - "Their Lordships feel compelled to state their opinion that the direction or suggestion to offer one rupee compensation was a colorable 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." Dealing with the duties of the Collector under the Land Acquisition Act, they point out that one of the matters he was to consider was the market value at the time of awarding compensation of the land and they observe that "it is obvious that the offer of one rupee 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 u/s 13" (of the old Act). And they go on to say "although the Court of Wards had no 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 enquiry 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." And further on their Lordships add: The offer and acceptance of one 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." And they pointed out that there was no reference, as the High Court thought, of the minor's claim to the Civil Court under the Act.

81. The suggestion that there is any analogy between that case and the present is, in our opinion, of no force, for, as we have already stated, we consider that the enquiry by the Collector in this case was conducted and the award made in accordance with the Act and was therefore not an evasion of the law.

82. For the foregoing reasons we are of opinion that neither the enquiry held by Mr. Carlyle nor the proceedings before the Land Acquisition Collector are invalid as contended for by the Plaintiff and that this suit should be dismissed.

83. A large mass of correspondence has been put in on behalf of the Plaintiff which took place between the solicitors on the two sides after the institution of the suit. These letters are relevant only to the question of costs. The Plaintiff's attorneys called upon the solicitors for the Defendants to admit the documents

disclosed in their affidavit, in order to prepare a brief for the use of Court. The latter expressed their inability to comply with the request. We cannot help thinking the Defendant's attorneys are to blame in not endeavouring to meet the request of the Plaintiff's attorneys even partially. They could easily have obtained advice on the relevancy of the documents. As it was, the best part of a day was lost in wrangling over them. Had the matter rested there, we should have certainly disallowed the Defendants at least one day's costs. But so much time has been occupied on behalf of the Plaintiff in repeated attempts to introduce irrelevant documents on the record and in irrelevant cross-examination that we think we should not depart in this case from the usual rule, viz., that costs should follow the result.

84. The suit is accordingly dismissed with costs.