
(1933) 03 CAL CK 0026
In the Calcutta High Court

Kalipada Banerji

APPELLANT

Vs

Charubala Dasee

RESPONDENT

Date of Decision : 29-03-1933

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1933 Cal 887

Hon'ble Judges : Mallik, J; Jack, J

Bench : Full Bench

Judgement

Mallik, J.—This Rule is directed against an order of the President of the Calcutta Improvement Tribunal, by which he rejected an application of the petitioner, Kalipada Banerji, for stay of hearing of a reference made to him u/s 18, Land Acquisition Act. The principal facts, which led up to this application, were these: On 17th February 1930, the petitioner, Kalipada, instituted a suit in the Court of the Subordinate Judge at Alipore, being Title Suit No. 39 of 1930, for a declaration of title to and recovery of possession of some lands, among which there was a property, item 5(1) with an area of one bigha and seven cottas odd. There were as many as 108 defendants in the suit at that time. Shortly after the institution of this suit, proceedings were taken for acquisition of an area of land measuring 4 bighas and 18 cottas odd and the land was ultimately acquired under the Land Acquisition Act. The opposite party before us, Charubala Dasee, on 8th December 1930, filed her claim to the compensation money before the Land Acquisition Collector as the sole owner of the property acquired and, about ten months later, the petitioner, Kalipada, also filed before the said Collector his claim to the compensation money, claiming it as the owner of the land acquired. On 23rd February 1932, the Collector made an award in favour of Charubala and, about a month later, namely, on 24th March 1932, Kalipada applied to the Court at Alipore to have Charubala made a defendant in his Suit No. 39 of 1930 and Charubala was added as a defendant accordingly. On 1st April 1932, at the instance of Kalipada, a reference was made to the President of the Calcutta Improvement Tribunal u/s 18, Land Acquisition Act, for valuation as well as for

apportionment and, on 4th April 1932, a similar reference was made u/s 18, Land Acquisition Act, at the instance of Charubala Dasee. On these facts, on 23rd November 1932, Kalipada applied to the President of the Calcutta Improvement Tribunal u/s 10, Civil P.C., for stay of hearing of the reference case until the disposal of the civil suit at Alipore and it was the refusal of this application on 16th January 1933, that has given rise to the present Rule.

2. I am of opinion that the President of the Improvement Tribunal was right in refusing the application for stay of hearing, though all the grounds on which he passed that order are not, in my opinion, correct. The three essential conditions, that are necessary for bringing in the operation of Section 10, Civil P.C., are: (1) that the matter in issue in the second suit is directly and substantially in issue in the previously instituted suit, (2) that the parties in the two suits are the same, and (3) that the Court, in which the first suit is instituted, is a Court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit. More than one of those essentials however were wanting in the present matter before us. In the first place, the parties in the two suits were not the same. It is true that both Charubala and Kalipada are parties in both the civil suit and the reference case. But, in the civil suit, there are, as observed before, as many as 108 defendants other than Charubala, who have nothing to do with the reference case, and, in the reference case, the tenants, who had been on the land acquired, are parties, though they were not impleaded in the civil suit at Alipore.

3. Then the matters in issue in the second suit are valuation of the land acquired and apportionment of the compensation awarded, not only as between Kalipada and Charubala, but also as between Charubala and the tenants and Kalipada and the tenants. But no relief under either of these two heads could possibly be given by the Court at Alipore. The Alipore Court could not go into the question of valuation, nor could it, on the basis of the plaint as it stands now, give any decree as to the payment of the compensation money. Kalipada's case in the Alipore Court is for a declaration of title to and recovery of possession and not for obtaining any money, being the price of the land acquired. It is significant that, although Kalipada applied for the amendment of his plaint on 14th September 1932, he did not ask for any additional relief for payment of any money to him.

4. The grounds indicated above would be sufficient for holding that Kalipada's application u/s 10, Civil P.C., was fit to be rejected. But there were, in the present case, some further reasons for doing so. The property in the second suit was not exactly the same as in the first. The area of the property acquired is four bighas odd, whereas the property No. 5 (1) of schedule ka to the plaint in the Alipore suit, which according to the plaintiff, was the property in which Charubala was interested, measured only one bigha odd. The application made by Kalipada to amend his plaint, apparently with the intention of showing that the land acquired was included in item 5 (1), was rejected by the Subordinate Judge.

5. As I have said before, one of the essential conditions necessary before the

hearing of a suit can be stayed u/s 10, Civil P.C., is that the first Court must be a Court competent to grant the relief asked for in the second suit. But, according to a decision of this Court in the case of Saibesh Chandra v. Bejoy Chand AIR 1922 Cal 4-a decision which we are bound to follow-the Calcutta Improvement Tribunal is a Court of special and exclusive jurisdiction. That being so and especially when both parties sought the Tribunal as the forum for the determination of the question of value and apportionment, the civil Court, in my opinion, ceased to have any jurisdiction in the matter.

6. On behalf of the opposite party, our attention was drawn to two other decisions of this Court: Bhandi Singh v. Ramadhin Roy 10 CWN 991 and Syed Abdul Alim Abed Vs. Badaruddin Ahmed and Others, . In Syed Abdul Alim Abed Vs. Badaruddin Ahmed and Others, , the validity of a will was in question and the proceedings in the Tribunal were stayed because it was thought that a more comprehensive investigation on the point would be made in the High Court in its testamentary jurisdiction than in the Improvement Tribunal. Then, as regards the case of Bhandi Singh 10 CWN 991, the observation of Mookerjee, J., in that case that the question as to the persons to whom compensation is payable or its apportionment among persons interested may be determined either under a reference as contemplated u/s 18, Clause (1), Land Acquisition Act, or by a suit at the instance of a person lawfully entitled to it as against another who has drawn the compensation money, is, as observed by the learned Judges in the case of Saibesh Chandra Sarkar AIR 1922 Cal 4, only an obiter, and an observation made without any consideration of what their Lordships of the Judicial Committee of the Privy Council had observed in Nilmoni Singh Deo v. Ram Bandhu Rai (1881) 7 Cal 388. Then, it is to be observed that Mookerjee, J., in the same case also observed that an objection as to the measurement of the land or the amount of compensation payable therefor must be determined exclusively by a reference to the civil Court u/s 18, Clause (1), Land Acquisition Act. In the present case, as I have said before, the question for determination before the President of the Improvement Tribunal was not only a question of apportionment, but a question of valuation of the land as well. Section 10, Civil P.C., was therefore in my judgment, of no help to the petitioner.

7. On the ground of convenience also, the petitioner, in my opinion, had no case. If the reference case is heard and disposed of first, the petitioner, no doubt, will, at the time of the hearing of the civil suit at Alipore, have to adduce some evidence over again. But that is no reason why other people should be kept away almost indefinitely from the money which may legitimately be theirs within a short time, only to save the petitioner from some trouble and inconvenience.

8. Having regard to the valuation of the suit at Alipore and the number of persons involved in it, it cannot reasonably be expected that suit will be finally disposed of in anything less than eight or ten years. The order refusing to stay the hearing of the reference case was in my judgment, a right order and I would accordingly, discharge the Rule with costs, hearing fee two gold mohurs.

Jack,J.

9. I agree. I would rest my decision mainly on the ground that Section 10, Civil P.C., is not applicable, inasmuch as the subject-matter of the civil suit and the proceedings before the Tribunal is not the same. The learned Subordinate Judge, in rejecting the petition for the amendment of the plaint, found that only a small portion on the north-west of the plot of the land included in the Tribunal proceedings was included in the plaint originally filed, In the argument before us, it has not been made clear (although this is alleged) that the subject-matter of the original plaint in the civil suit is identical with the subject-matter of the Tribunal proceedings and therefore Section 10 having no application, the learned President was not bound to stay the proceedings before the Tribunal.

10. It must be remembered that the civil suit as against Charubala was instituted before the proceedings u/s 18, Land Acquisition Act, and this is a case, in which I hold, following the authority of Syed Abdul Alim Abed Vs. Badaruddin Ahmed and Others, , the Court has inherent power to postpone the hearing of the proceedings before the Tribunal. There would be much to be said in favour of the prior disposal of the civil suit, if it could be disposed of finally, within a short time, but in all the circumstances the argument on the ground of convenience is not so strong as to justify an interference with the order passed by the learned President of the Improvement Tribunal.