

(1945) 01 CAL CK 0007
In the Calcutta High Court

Keshab Chandra Pal

APPELLANT

Vs

Governor-General of India in Council and Another

RESPONDENT

Date of Decision : 03-01-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Defence of India Act, 1971 — Section 19

Citation : AIR 1945 Cal 294

Hon'ble Judges : Blank, J;Akram, J

Bench : Full Bench

Judgement

Blank, J.—This Rule arises from the following facts. It is said that on 7th April 1942, the petitioner, along with other inhabitants of his village in P. S. Mograhat, District 24-Parganas, was compelled to remove himself from his dwelling house on 48 hours' notice, the land being requisitioned under the Defence of India Act. The petitioner contends that he left behind a number of bricks and some bamboos growing in a clump covering an area of about 9 cottas. Further, since the occupation of his land by the military authorities, the dwelling house had been demolished and his bricks and bamboos removed and used by the military authorities. The petitioner filed a claim for compensation before the Land Acquisition Collector at Alipur who awarded Rs. 628 in respect of the dwelling house and a periodical payment in respect of the temporarily occupied lands, but did not make any award on account of the bricks and bamboos. The petitioner moved the Land Acquisition Collector for re-consideration of the award and eventually obtained an award of Rs. 900 for the bricks and Rs. 100 for the bamboos. The petitioner considered the award to be inadequate and moved the Land Acquisition Collector to refer the matter to the arbitrator appointed u/s 19, Defence of India Act, claiming ES. 4600 in place of the aggregate of Rs. 1000 previously awarded. The reference was made and registered under the Defence of India Act in the Court of the arbitrator, the Special Acquisition Judge at Alipur. On 8th June 1944 when the case was taken up for hearing by the arbitrator the opposite party, that is, the Province of Bengal, raised a preliminary objection as

to jurisdiction, which prevailed. Hence the present rule.

2. Turning to the order of the learned arbitrator, we find that the Province of Bengal contended that the arbitrator was not vested with jurisdiction to adjudge the compensation due to the claimant as a result of loss sustained by him on account of the compulsory evacuation of the area affected under the Defence of India Act. The learned arbitrator recorded that he had been appointed arbitrator u/s 19, Defence of India Act, read with Defence of India Rule 75A. Having been appointed u/s 19, Defence of India Act, he held that he could not adjudge the claim for compensation in respect of loss sustained by acts done under Defence of India Rule 49. It was common ground before the learned arbitrator that no arbitrator or other authority had been appointed in terms of Defence of India Rule 96. The learned arbitrator therefore ordered the record to be sent back to the Land Acquisition Collector for being re-submitted to the arbitrator or other authority appointed by the Provincial Government under the provisions of Rule 96, Defence of India Rules. It will be seen that the material part of the order is the order that the record is to be sent back to the Land Acquisition Collector to be re-submitted to the arbitrator to be appointed under Defence of India Rule 96. The only question before us is whether the learned arbitrator was right or wrong. A preliminary question has been raised whether the rule is competent in terms of Section 115, Civil P. C., but on the view we take it is not necessary to enter into this matter.

3. To consider the question whether the learned arbitrator was right or wrong in ordering the record to be returned to the Land Acquisition Collector in order that the case might be placed before an arbitrator vested with the requisite competence it is necessary to consider briefly the relevant provisions of the Defence of India Act and Rules. u/s 19, Defence of India Act, compensation is to be paid, in accordance with certain principles, for the compulsory acquisition of land and so on. Among these principles are that the compensation is to be paid, if possible, by agreement and that when agreement is not possible it is to be settled by an arbitrator. Defence of India Rule 49 provides for the evacuation of areas in specified circumstances and this rule is one of those referred to in Defence of India Rule 96. Rule 96 provides inter alia that when property is affected, in various specified ways, by action taken in pursuance of Rule 49, among other rules, the owner is to be paid compensation and in default of agreement between the owner and the Government the compensation is to be settled by an authority or person specified by order. The cause of the trouble in the present instance is that Rule 96 explicitly provides that it is attracted where "the circumstances are not such as to render the provisions of Section 19, Defence of India Act, 1939, applicable." Thus, broadly speaking Rule 96 refers to moveable property and Section 19 refers to land, so far as now material. A copy of the Revenue Department notification empowering the learned Arbitrator has been placed before us. It is headed:

Government of Bengal, Revenue Department, (Requisition), No. 7365 Regr.

and dated, Calcutta, 15th April 1944. It runs: "In exercise of the power conferred by Clause (b) of Sub-section (1) of Section 19, Defence of India Act Department Notification.... The Governor is pleased to appoint.... as an Arbitrator for the determination of compensation under the said section....

It is not clear why the learned Arbitrator referred to Defence of India Rule 75A in his order, but the point does not appear to be material for the present purpose. On the face of the order appointing the arbitrator it appears that his powers are derived from Section 19, Defence of India Act. Section 19 incorporates a reference to Section 299 (2), Government of India Act, 1935. That is, Section 19 refers, so far as material in the present context, to land. From the facts already recited, it appears that compensation was being claimed for bricks and bamboos as having been removed and used by the Military Authorities. Therefore, the learned arbitrator was evidently right in holding that he had no power to deal with the subject-matter sought to be placed before him so long as he was acting under an authorisation limited to Section 19, Defence of India Act. On that view, the learned arbitrator cannot be said to have committed an error in law by ordering the record to be sent back to the executive authorities for re-submission to an arbitrator to be authorised thereafter to deal with the subject-matter of the contest. On the above consideration we discharge the rule with costs. We assess the hearing fee at two gold mohurs.

Akram, J.

4. I agree.