
(1948) 01 CAL CK 0006
In the Calcutta High Court

Pashupati Roy and Others

APPELLANT

Vs

Province of Bengal

RESPONDENT

Date of Decision : 22-01-1948

Acts Referred:

Defence of India Act, 1971 — Section 19
Land Acquisition Act, 1894 — Section 23(1)

Citation : (1948) 01 CAL CK 0006

Hon'ble Judges : Sharps, J;Sharpe, J;R.C. Mitter, J

Bench : Full Bench

Judgement

R.C. Mitter, J.—An area of land recorded in settlement dags Nos. 519 and 521 of mouza Bhatapara in 24 Parganas was acquired under Rule 75(A), Defence of India Rules. Those lands were tenanted lands. The landlords are the petitioners before us and the tenants are Srijib Bhattacharjee and others. The Collector assessed the total compensation of the land so acquired at the figure of Rs. 10,886-11-7. He proposed to give out of this amount Rs. 10,845-8-0 to the tenants and Rs. 41-3-7 to the landlords. The landlords took up the position that the amount awarded to them out of the total compensation was not adequate compensation for their interest. They accordingly applied to the Collector to send the matter for arbitration. The material portions of their application to the Collector are as follows: After giving the number of the land acquisition case they say: "In the matter of an application for apportionment of compensation." Then in para 1 they say that an award u/s 19, Defence of India Act, read with Rule 96, Defence of India-Rules (the reference to Rule 96 is obviously a mistake; it ought to be 75 (A)), was made with regard to the above plots, Nos. 519 and 521 in which a sum of Rs. 10,845-8-0 was awarded to tenants Srijib Bhattacharjee and others of Bhatpara. It does not mention in the body of the petition what is the actual amount awarded to them. Then the grounds are set out. In the first ground it is stated that the tenants hold the land as sthitiban raiyats as recorded in the khatian paying nominal rent to the landlords. In ground No, (b) the same fact is repeated, namely, that the tenants were paying nominal rent and the

reason is given why nominal rent is still being realised from them at the date of the acquisition. Then in ground No. (c) the mode of compensation as made by the Collector is set out. It is stated there that the Collector capitalised the existing rent at 20 years purchase but that was quite unjustifiable inasmuch as the rent was abnormally low. Then in para. (d) they set out that on a comparative standard of the prevailing rate of rent with regard to contiguous plots and with regard to the present enhanced market-value of land, the Collector ought to have made an apportionment of compensation on the basis of 2/5ths ratio to the landlords and 3/5ths ratio to the tenants. Clause (e) deals with a claim for statutory allowance at 15 per cent, which is admittedly not admissible in an acquisition u/s 19, Defence of India Act, inasmuch as only Sub-section (1) of Section 23 and not the other sub-section, namely, Sub-section (2), Land Acquisition Act, is referred to in that section for the purpose of determining the amount of compensation. The prayer is:

Under the circumstances your petitioners pray that your Honour will be pleased to send the matter to the Special Land Acquisition Judge, 24 Parganas, Alipore, for arbitration with regard to apportionment and to stop payment to the said Srijib Bhattacharjee and others till the final disposal of the case.

The Collector, sent this petition together with the valuation sheet to the District Judge of 24 Parganas who had been, nominated to be an arbitrator to arbitrate on matters mentioned in Section 19, Defence of India Act. The petitioners before us filed a statement of claim before the District Judge. There also they accepted the total amount fixed by the Collector to be fair but they stated that out of that sum they are entitled to get more and the tenant less. In view of these facts we hold that the scope of the reference to arbitration was apportionment of the total amount of compensation, namely compensation for the property paid, between the petitioners and their tenants. The learned District Judge has said so and we agree with him. The question therefore that arises is whether seeing that the acquisition was not under the Land Acquisition Act but under the provisions of the Defence of India Act, the learned District Judge as arbitrator appointed u/s 19, Defence of India Act, had jurisdiction to entertain the reference which was a reference asking the arbitrator to apportion the compensation offered by the Collector between them, the landlords, and their tenants, namely, Srijib Bhattacharjee and others. The learned District Judge has held that he has no jurisdiction to entertain that reference because under the Defence of India Act the arbitrator has not been given the power to entertain cases of apportionment between persons having different interests in the property acquired under the Defence of India Rules. The question, in our opinion, depends solely upon the interpretation of Section 19, Defence of India Act. The rules may be utilised as giving an indication but it would not be right to proceed upon the rules themselves apart from the statutory provisions of Section 19 of the Act. We therefore propose to deal with Section 19 of the Act only. The relevant portions of that section are as follows:

Where by or under any rule made under this Act any action is taken of the nature described in Sub-section (2) of Section 299, Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance) with the principles, hereinafter set out, that is to say: (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement, (b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under Sub-section (3) of Section 220 of the abovementioned Act for appointment as a Judge of a High Court, (c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to... (d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation, (e) The arbitrator in making his award shall have regard to the provisions of Sub-section (1) of Section 23, Land Acquisition Act, 1894, so far as the same can be made applicable;....

2. Section 299, Government of India Act, says: "(1) No person shall be deprived of his property in British India save by authority of law." That sub-section has been complied with because requisitions or acquisitions under the Defence of India Rules are made by the authority of law, namely, of the Defence of India Act. Sub-section (2) of Section 299, Government of India Act, enacts that:

neither the Federal Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

Section 19 refers to Sub-section (2) of Section 299, Government of India Act, and in conformity with the provisions of that sub-section of the Government of India Act specifies the principles on which and the manner in which the compensation for the property to be acquired is to be assessed. It does not contemplate cases where the property acquired is held in several interests by different sets of persons. The Government of India Act does not require that separate interests are to be valued separately and the amount of compensation divided and paid to the respective parties separately. It only contemplates that compensation for the property is to be paid and the Act which authorises the acquisition must either fix the compensation for the property, that is to say, of all the interests taken together or lay down the principles on which compensation for the property is to be determined. This is made quite clear in the Defence of India Act itself, for, it says that the amount of the compensation, obviously meaning thereby, of the property acquired?shall be determined in the manner and in accordance with the principles laid down in the section. The first is that if

there is an agreement as to the amount of compensation between the representative of the Government and the owners and persons having interest in the property, the amount of compensation should be paid in accordance with that agreement. Where, however, no such agreement is reached, the amount of compensation of the property acquired shall be determined by an arbitrator having the qualifications of a Judge of a High Court to be appointed by the Central Government. Clause (d) indicates also that the Legislature contemplates a dispute as to the amount of compensation between Central Government on the one part and the person to be compensated on the other. Where there is no dispute as to the total amount of compensation offered by the Central Government or its representative, but the dispute is amongst the persons having different interests in the property, the Central Government would not come into the picture at all. Clause (d) would have been inappropriate if a case of apportionment was intended to be also the subject-matter of arbitration by an arbitrator appointed under Clause (b) of that section. Clause (e) says that the provisions of Section 23 (1), Land Acquisition Act, may only be utilised for the purposes of assessing the compensation of the property. Having regard to these provisions our view is that the arbitrator appointed under Clause (b) of Section 19, Defence of India Act, has the jurisdiction to determine the amount of compensation in a dispute between the Central Government on the one hand and the owner or owners of the property acquired on the other. A dispute regarding compensation awarded by the acquiring authority in which the Central Government is not interested is, in our opinion, a dispute which does not come within the scope of arbitration by an arbitrator appointed u/s 19(b), Defence of India Act. We, therefore, hold that the District Judge was right in holding that the reference, being only with regard to apportionment of compensation between the landlord and the tenant, he had no jurisdiction to entertain it as an arbitrator appointed under that provision of Section 19, Defence of India Act.

3. In view of the observations which we have made the Collector ought not to have divided the amount of compensation as he did in this case between the landlords and the tenants. That is probably the reason which led the petitioners before us to ask for a reference in the form they have done. We may point out that in the case of requisition or acquisition under the Defence of India Rules what the Collector has to do is not to value the separate interests in the property separately but to assess one single amount as compensation for the property requisitioned or acquired. It is not his business to apportion the amount between the holders of different interests in the property. In view of this fact we think that the Government appearing through the Senior Government Pleader before us ought not to be awarded costs of this Rule. The learned District Judge has directed each party to bear his respective costs and we think it would be fair if we direct each party to bear his respective costs in this Rule also.

4. These observations do not apply where the persons holding different interests in the property appear before the Collector and agree, all of them to the Collector apportioning the amount as between them and accept the amounts fixed by him

on apportionment. The Rule is disposed of accordingly.

Sharpe J.

5. I agree.