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**(1946) 01 CAL CK 0013**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 2114 of 1945**

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| Ram Brich Singh    | Vs | APPELLANT  |
| Province of Bengal |    | RESPONDENT |

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**Date of Decision :** 18-01-1946

**Acts Referred:**

**Citation :** (1946) 01 CAL CK 0013

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### Judgement

B. K. Mukherjea, J.—This rule is directed against an order of the Additional District Judge of Midnapore, dated 22nd September 1945, made as an arbitrator appointed under S. 19, Defence of India Act. The facts material for our present purposes may be shortly stated as follows : By an order, dated 20th June 1942, a large tract of land measuring about 1278.84 acres, situated in the district of Midnapore, and belonging to the petitioner and several other persons was requisitioned by the Central Government for the construction of an aerodrome, under R. 75A (1), Defence of India Rules. There were different classes of lands comprised in the requisitioned area, and they consisted of sal jungles, jhanti jungles, paddy fields, waste lands and also lands on which saboi grass was grown. A map of the entire area was prepared some time in 1943 and the area of the land growing saboi grass was shown in the map to measure 437.38 acres. Sometime after this, the Central Government decided to acquire these lands permanently under R. 75A (2), Defence of India Rules, and the notice of acquisition was served upon the petitioner on 20th August 1943. On 3rd September 1943, the Collector assessed the amount of compensation payable to the petitioner in respect of the various classes of land, and 75 per cent, of the compensation money was paid to the petitioners on different dates, the petitioner accepting the valuation made by the Collector with regard to all classes of land except those on which saboi grass was grown. The compensation allowed by the Collector in respect to the saboi grass lands was further reduced by the Central Government, and eventually, the rate fixed was RS. 39-6-0 per acre on the basis of an outturn of 35 maunds per year. The petitioner did not accept this valuation of the saboi grass land, and on 31st October 1944, the matter was

referred, on his application, for arbitration to the then Additional District Judge of Midnapore who was appointed an arbitrator under S. 19 (1) (b), Defence of India Act.

2. In the letter of reference written by the District Magistrate, it was stated that 437.38 acres of land belonging to the petitioner were acquired under R. 75A, Defence of India Rules in connection with an air-field project at Salbani, and as the petitioner was not satisfied with the rates of compensation offered for these lands, this reference was made. The Government notification appointing Mr. T. C. Banerjee, the present Additional District Judge of Midnapore as arbitrator under S. 19, Defence of India Act, was made on 19th May 1945. This notification did not give the area of saboi grass land acquired, but described them as arable lands growing saboi grass in seven mouzas the names of which were mentioned in the schedule to the notification. Both the parties appeared before the arbitrator in due course, and the case was fixed for hearing on 15th September 1945. On 14th September 1945, the Government Pleader of Midnapore wrote a letter to the arbitrator stating that it appeared from the evidence subsequently received by the Collector that the figures regarding the area of the land in question under saboi grass cultivation, and the outturn thereof given in the map and the schedules were incorrect and were based on wrong data, and it was prayed that the case might be sent back for fresh enquiry and fresh offer with the sanction of the Government. The petitioner filed a written petition pointing out inter alia that the area of the saboi grass lands as shown in the map was never disputed and that the only controversy was about the annual outturn of these lands and the rates of compensation to be allowed for the same. The arbitrator, it was said, had no jurisdiction to direct a fresh enquiry regarding the area of the land, and it was entirely beyond the scope of reference. The arbitrator overruled this objection, and by an order, dated 22nd September 1945, directed that the case should be sent back for the purposes of a fresh enquiry and for a fresh offer by the Government. It is against this order that the present rule has been granted. The contentions raised on behalf of the petitioner are of a twofold character. It is contended, in the first place, that the arbitrator had no jurisdiction to direct an enquiry on a matter which was wholly extraneous to the reference and in respect to which there was no dispute between the parties. It is argued in the second place that the order made by the arbitrator is illegal and improper and is not warranted by the Defence of India Act or the provisions of general law. We will take up these two points one after another.

3. Now, so far as the first ground is concerned, we are unable to accept the contention put forward by Dr. Sen Gupta that a reference to arbitration under S. 19, Defence of India Act is precisely of the same character and has the same legal implication as a reference to Court by the Collector under S. 18, Land Acquisition Act. Under S. 11, Land Acquisition Act, the Collector has to make an award determining the true area of the land and the compensation which, in his opinion, should be allowed for it and subject to the provisions for reference contained in the Act, such award is final and conclusive as between the Collector

on the one hand and the persons interested on the other as regards the true area and value of the land. Under S. 18, Land Acquisition Act, any person who has not accepted the award may by written application to the Collector require that the matter may be referred by the Collector for determination by the Court and the section specifies four different grounds of objection, namely (1) to the measurement of the land; (2) to the amount of compensation; (3) to the persons by whom it is payable; and (4) to the apportionment. By S. 20, Land Acquisition Act, the function of the Court on a reference being made is to determine the objection, and only persons interested in the objection are to be summoned before it, and by S. 21, the scope of the enquiry is to be restricted to a consideration of the interest of the persons affected by the objection. As was pointed out by their Lord-ships of the Judicial Committee in 57 I. A. 100 *Pramatha Nath v. Secretary of State* ("30) 17 A. I. R. 1930 P. C. 64 : 57 Cal. 1148 : 57 I A. 100 : 121 I. C. 536 (P. C.), the jurisdiction of the Court under the Land Acquisition Act is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to consideration of that objection only.

4. It is quite true that in assessing compensation for lands acquired under the Defence of India Rules, the Central Government adopts as its guide the main procedure laid down in the Land Acquisition Act, but the provisions of the Land Acquisition Act except in so far as they are expressly incorporated in the Defence of India Act or the Rules framed thereunder, do not in terms apply to any acquisition under the latter. In determining the validity or otherwise of an order made by an arbitrator under the Defence of India Act, we have got to look primarily to the provisions of the Act itself and the Rules framed there-under, and this can be supplemented by the provisions of general law with regard to matters on which the Act or the Rules are silent provided that they are not inconsistent with the latter. Section 19, Defence of India Act lays down that in a case of compulsory acquisition of immovable properties, compensation shall be paid, the amount of which will be determined in accordance with the principles set out in the section itself. The first provision is that when the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement. Where no such agreement can be reached, the Central Government is to appoint an arbitrator. Section 19 (1) (d) further provides that at the commencement of the proceeding 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. Clause (e) provides that the arbitrator in making his award shall have regard to the provisions of sub-s. (1) of S. 23, Land Acquisition Act, 1894, so far as the same can be made applicable. Lastly, cl. (g) lays down that save as provided in this section and in any rules made there-under, nothing in any law for the time being in force shall apply to arbitrations under this section. Sub-sections (2) and (3) empower the Central Government to make rules for the purpose of carrying into effect the provisions of this section. Rule 5, thus framed, indicates the manner in which a person to be compensated and who does not accept the

offer has got to apply for arbitration. He has to make an application to the Collector for referring the case to arbitration with necessary written statement of his case. Upon the application being made, the Collector shall refer the case with all relevant papers to the arbitrator and give notice of the reference to the person or persons to be compensated. Rule 6 contains a very important provision, and lays down that the arbitrator shall have like powers and shall follow the like procedure as the Court has and follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908.

5. From the provisions set out above, it is quite clear to our minds that if the person to be compensated prays for an arbitration on a specific ground, the Collector has not got to make a reference on that particular ground only. The entire question of compensation is referred to arbitration, and the arbitrator is to hear the matter in accordance with the provisions of the Defence of India Act, and follow, so far as practicable, the procedure laid down for suits of an original civil character in the Code of Civil Procedure.

6. The offer of compensation made by the Government under the Defence of India Act is not an award within the meaning of S. 11, Land Acquisition Act. It is not conclusive evidence of the area or value of the land as between the Collector and the person to be compensated as is the case under the Land Acquisition Act. A reference to arbitration made under S. 19, Defence of India Act, is different in material particulars from a reference to Court under S. 18, Land Acquisition Act, and the functions to be discharged by the arbitrator are not precisely the same that are exercisable by the Court under the provisions of the Land Acquisition Act.

7. The Collector, as said above, in referring the matter to arbitration has not got to specify any particular ground of objection, nor is the jurisdiction of the arbitrator confined to a consideration of the ground that has been taken by the claimant. The entire matter relating to the compensation of the land is referred to the arbitrator, and at the commencement of the proceedings, each party has to state what, in his opinion, is a fair compensation for the land acquired. These statements take up the position of pleadings before the arbitration Court and upon these pleadings, the arbitrator has got to determine the questions in issue following in substance the procedure laid down in the Code of Civil Procedure. We hold, therefore, that it is open to the Central Government to raise an issue before the arbitrator" relating to the measurement or area of the lands acquired as such matters are quite relevant for the purpose of determining the amount of compensation money to be paid for the land. The offer of the Collector which proceeded on the basis of certain measurements is not final on the point, and it is open to the Central Government to ask the arbitrator to investigate the matter on other and further evidence. The first point, therefore, raised by Dr. Sen Gupta fails.

8. We think that the second ground put forward in support of the petition is more substantial. It is quite open to the arbitrator, as has been said already, to enter into the question of measurement or the area of the lands acquired even if the

question was not raised at any earlier stage of the proceeding. But we do not and cannot approve of the procedure that has been followed or the order that has been made in this case. There can be no question of sending the case back on remand for further investigation by the Collector or for making a fresh offer to the claimant with the sanction of the Government. If a fresh offer is made which is not accepted by the claimant a fresh arbitration must necessarily follow, and the basis of the present arbitration proceeding will disappear altogether. The proper procedure for the arbitrator to follow, in our opinion, will be to ask the parties to file their respective statements as contemplated by S. 19 (1) (d), Defence of India Act. It will be open to the Central Government, if it so likes, to aver in its statement that the area of the saboi grass land is much less than what it was originally thought to be, and consequently the amount of compensation would be much less. The question of area will then be material issue in the case, and it will be open to the arbitrator to decide this question either by taking evidence himself or by directing a local investigation by a competent commissioner according to the provisions of the Code of Civil Procedure.

9. We may observe here that as the provisions of the CPC are to be followed, the petitioner will be entitled to inspect all the documents which the Central Government may file in support of its written statement. This rule, therefore, succeeds in part. The order made by the arbitrator is set aside and the case is sent back to be proceeded with in accordance with the directions given above. We make no order as to costs in this Court. Let the records be sent down as early as possible.

Blank, J.

10. I agree.