

(1934) 08 CAL CK 0014
In the Calcutta High Court

Rash Behari Sanyal

APPELLANT

Vs

Gosto Behari Goswami

RESPONDENT

Date of Decision : 28-08-1934

Acts Referred:

Calcutta Improvement (Appeals) Act, 1911 — Section 3(1)
Court Fees Act, 1870 — Section 5, 8
Land Acquisition Act, 1894 — Section 32

Citation : AIR 1935 Cal 243 : 155 Ind. Cas. 817

Hon'ble Judges : Costello, J

Bench : Division Bench

Judgement

Costello, J.—This matter arises in connection with an appeal sought to be filed by one Rash Behari Sanyal u/s 3(1), Calcutta Improvement (Appeals) Act 1911, from a decision of the President of the Calcutta Improvement Tribunal sitting alone by virtue of provisions of Section 77(1)(b), Bengal Act 5 of 1911. Of the parties to the appeal the appellant and the second and third respondents had been the claimants before the President of the Calcutta Improvement Tribunal in a case in which the question at issue was whether or not a sale which had been made by a lady Bhuban Mohini Debi of certain immovable property in Calcutta, had been made by her for legal necessity and so passed an absolute right in the property to the purchaser who was Gosto Behari Goswami, the first respondent to the appeal. The property which is the subject-matter of the proceedings had been acquired by the Calcutta Improvement Trust compulsorily and a sum of Rs. 6,339-6-0 had been awarded to Gosto Behari Goswami as the owner of the property at the time when it was acquired, as compensation. The Sanyals claimed in the proceedings before the President of the Tribunal that they were the reversioners of Bhuban Mohini's husband, and therefore entitled to the property in question, or to the proceeds of the sale of it after the death of Bhuban Mohini. Whether they were so entitled or not of course depended upon the question whether the sale made by Bhuban Mohini was made for legal necessity and whether it was of such a nature as to confer on the purchaser an

absolute interest or merely an interest for the duration of life of Bhuban Mohini.

2. The claimants in the proceedings before the President of the Calcutta Improvement Tribunal, asked for a declaration that they were in law the reversioners, and consequently that the amount of the compensation money ought not to be handed over to Gosto Behari Goswami, but should be invested by the President of the Calcutta Improvement Tribunal under the provisions of Section 32, Land Acquisition Act 1894. When the appeal was lodged a difference arose between the officer whose duty it is to see that the proper court-fee was paid, and the Advocate for the appellant upon the question of what the amount of that fee ought to be. The matter was then put before the Registrar of the Court in his capacity as Taxing Officer, and he was of opinion that it was of such general importance that he ought to refer it for the decision of the Chief Justice under the provisions of Section 5, Court-fees Act 1870. Under the provisions of this section it was open to the Chief Justice to decide a matter of this kind himself or to appoint another Judge of the Court in that behalf. It is in that way that the matter comes before me for final decision.

3. The officer concerned with the question of court-fees who is referred to in Letter of Reference by the Registrar as the Stamp Reporter, seems to have taken the view that the question of the amount of the fee to be paid on the filing of this appeal was affected by the terms of Section 8, Court-fees Act. That section provides that the amount of the fee payable under the Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant. I may say at once that, in my opinion, this is not a case of an appeal against an order relating to compensation under any Act. The appeal is really against the decision of the President of the Calcutta Improvement Tribunal whereby he held that the sale by Bhuban Mohini was made for legal necessity, and therefore Gosto Behari Goswami had acquired an absolute interest in the property and so was entitled to retain for his own use the whole of the compensation money which had been awarded, and the Sanyals had no interest whatever in that money. Accordingly the President had declined to invest the money under the provisions of Section 32 and was prepared to hand it over in its entirety to Gosto Behari Goswami. If it were held that the sale by Bhuban Mohini had only resulted in a transfer of a Hindu widow's interest, the position would seem to be that the money ought to be invested so that the purchaser of the property would enjoy the interest accruing thereon, for the period of life of Bhuban Mohini, and after that the principal sum would revert to the Sanyals. It is quite clear, in my opinion that the dispute between the Sanyals and Gosto Behari Goswami cannot in any sense be properly said to be concerned with the amount of compensation payable by reason of the compulsory acquisition of the property owned by Bhuban Mohini. The Sanyals in the proceedings before the President of the Improvement Tribunal were really asking for a declaration and some consequential relief, namely that the money should be invested instead of being

handed over to Goswami. In that view of the matter this would seem to be one of that unsatisfactory class of cases, which fall within the provisions of Section 7, Sub-section (4)(c) where the amount of fee payable is more or less left to the discretion of the plaintiff himself, in that the section provides that in suits brought to obtain a declaratory decree or order, where consequential relief is prayed, the plaintiff shall state the amount at which he values the relief sought." This provision has recently been discussed by a Full Bench of this Court in *Narayanganj Central Co-operative Sale and Supply Society Ltd. v. Maulvi Mafizuddin Ahmed* 1934 Cal 448.

4. Dr. Mukherjee who appears on behalf of the Crown in the matter now before me, was disposed to agree that it would not be easy to contend that in the present circumstances the matter is other than one within the ambit of the provisions of Section 7(iv)(c) to which I have referred. But on the other hand the learned Advocate appearing for the appellant has conceded that the matter is one which may well be treated as falling within the provisions of Schedule 2, Act 17(iii), Court-fees Act, which provides that a memorandum of appeal in connexion with a suit to obtain a declaratory decree when no consequential relief is prayed, must bear a definite fee of Rs. 20. One has only to put the provisions of Section 7(4)(c) and those of Schedule 2, Article 17(iii) in juxtaposition to show how unsatisfactory and anomalous some of the provisions of the Court-fees Act, are. I pointed out in the judgment which I gave in the Full Bench case already referred to, that it seems desirable that the legislature should put the provisions of this Act into a more satisfactory shape. If the property acquired by the Improvement Trust had not been sold by Bhuban Mohini, it is obvious that the only question which could have been agitated by the Sanyals was the question whether or not they were in fact the reversioners.

5. Upon the exact phraseology of Section 7(4)(c) and that of Schedule 2, Article 17(iii) respectively, I should be disposed to hold that this is a case where subject to the qualifications mentioned in the Full Bench case, the Sanyals as claimants and now as appellants could have assigned an arbitrary value to the proceedings. That is a highly unsatisfactory state of affairs for the reasons I gave in my judgment in the Full Bench case. In the present instance however having regard to the very reasonable and proper attitude taken on behalf of the appellant, I think the answer to the Reference should be that the court-fee to be paid on the memorandum of appeal is the sum of Rs. 20 as provided for in Schedule 2, Article 17(iii), Court-fees Act, both sides having agreed that Schedule 2, Article 17(vi) will not apply. The appellants have already paid a fee of Rs. 15. The deficit of Rs. 5 must be put in within a week.