
(1970) 06 CAL CK 0009

In the Calcutta High Court

Case No : A.F.O.D. No's. 326 and 336 of 1955 (with Cross-objection) and
Revision Case No's. 2535, 2562, 3006, 3007, 3010 to 3013, 3423,
3425 to 3431 and 3809 of 1955

Sailaja Kanta Mitra and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-06-1970

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 115, 141, 4
Defence of India Act, 1939 — Section 19, 19(1)

Citation : AIR 1971 Cal 137 : 75 CWN 804 : (1971) 1 ILR (Cal) 256

Hon'ble Judges : Bagchi, J; Amaresh Roy, J

Bench : Division Bench

Advocate : N.C. Chakraborty and Tarak Nath Roy, for the Appellant; Hemendra Chandra Sen and Nani Gopal Das, Revn. Cases Nos. 2535, 3007, 3010 to 3013 and 3429 to 3431 of 1955, P.K. Sen Gupta and Nani Gopal Das, for the Respondent

Judgement

This Judgment has been overruled by : Manohar Lal Vs. Vinesh Anand and Others, AIR 2001 SC 1820 : (2001) 2 ARBLR 160 : (2001) 2 CompLJ 207 : (2001) CriLJ 2044 : (2001) 2 Crimes 202 : (2001) 4 JT 573 : (2001) 3 SCALE 270 : (2001) 5 SCC 407 : (2001) 2 SCR 1036 : (2001) AIRSCW 1590 : (2001) 3 Supreme 279

Bagchi, J.—The two appeals and seventeen revisional applications arise out of the awards passed by Arbitrator, Shri P. N. Lahiry, appointed under Clause (b) of Sub-section (1) of Section 19 of the Defence of India Act (XXXV of 1939) read with Sub-section (4) of Section 1 of the said Act and with the relevant Government of India, Defence Department Notification No. 1365 Order Rule 42 dated the 19th September, 1942.

2. A group of 52 cases were referred to at the instance of the appellant. Sailaja Kanta Mitra and others by Special Land Acquisition Collector, Burdwan regarding

the question of valuation as a basis for fair compensation to be determined by an Arbitrator, appointed under the Defence of India Act, 1939 in regard to lands acquired, situated in Mouza Kot; Chandipur and others, P. S. Ausgram, District Burdwan. All those cases related to the same category of lands, viz., paddy lands, that were requisitioned for a Military purpose viz., the installation of a Reserve Base at Panagar in September, 1943. Initially vast areas comprising not only Kota Chandipur but also several contiguous Mouzas were requisitioned. Portions were de-requisitioned subsequently. By a Notification, published in the Calcutta Gazette, dated 2nd May, 1946, an area of 768 acres approximately was finally acquired by the Bengal Government in exercise of the powers conferred by Rule 75-A of the D. I. Rules. By an amended Notification, dated 24-7-46 (Published in the Calcutta Gazette of 18-7-46) the Central Government became substituted for the Bengal Government as the acquiring authority. The lands involved in all these cases are comprised in the area of 768 acres. Since requisition of the lands in dispute was in September, 1943 crop compensation was paid to the respective owners on a diminishing scale for a period of three years preceding the final acquisition- The rates per annum per acre were Rs. 174/- in 1350 B.S. (1943-44), Rs. 144/- in 1351 B.S. (1944-45) and Rs. 98/- in 1352 B. S. (1945-46). After the final acquisition in 1946, the Collector offered compensation to the claimants before the Arbitrator at the rate of Rs. 300/- per acre. This assessment was made in 1950 and it purported to proceed on the basis of the market value which obtained in September 1943 i.e., the date of initial requisition. The 1943 basis was adopted on the authority of Section 19 of the D. I. Act, as amended by Ordinance XLV of 1945. The Government offer of Rs. 300/- per acre on the 1943 basis was not acceptable to the referring claimants. They filed applications before the Collector soliciting a reference to the Arbitrator. The contention of the referring claimants was that the assessment of compensation should have been made on the basis of the market value prevailing at the date of acquisition in 1946 and the amounts of crop compensation paid for the lands upto 1352 B. S. (1945-46) should have been taken into consideration for the purpose. According to the referring claimants the proper compensation of the lands could not be less than Rs. 930/-per acre. The references were received by the Arbitrator in August, 1951. Thereafter the referring claimants filed statements of claim u/s 19(1) (d) of the D. I. Act demanding fair amount of compensation at the rate of Rs. 2,690/-per acre. They have also claimed an additional allowance of 15 per cent and interest at 6 per cent per annum from 2-5-46. It was alleged by the referring claimants that through inadvertence the rate per bigha was noted as the rate per acre in the petitions filed before the Collector.

3. In their written statements filed in all the cases, Government adhered to their original position viz., Rs. 300/-per acre as representing the fair compensation.

4. Before the learned Arbitrator three points for determination were formulated viz. :--

1. What should be the proper amount of compensation for the lands involved in all these cases?

2. Whether the market value should be augmented by 15 per cent as solicited by the referring claimants.

3. What interest and costs, if any, should the referring claimants recover?

5. On a preliminary point, as to the market value of the lands, the claimants, now the appellants, contended before the learned Arbitrator that the rate prevailing in 1946 when the property was finally acquired by the Government should be the basis for such valuation, while the Government contended that the price ruling in September, 1943 i.e., the date of the initial requisition would be the proper basis. Construing Section 19 of the Defence of India Act along with the Ordinance XLV of 1945 which introduced a proviso, as it were, to Section 23, Sub-section (1) of the Land Acquisition Act, in the light of the contentions, put forward by the claimants" learned Advocate and the learned Govt. Pleader, the learned Arbitrator held:--

"It will thus appear that in declaring the land values in these cases we must guide ourselves by the terms of the Defence of India Act as amended by Ordinance XLV of 1945. We must make the assessment on the 1943 basis and not on 1946 basis."

The learned Arbitrator relied on and accepted Exts. A. A(1) and A(2) of the year 1943, relating to the prices of lands prevailing in the locality in that year as relied upon by the State, and rejected kobalas. Exts. 1, 1(a) and 1(b) of 1045-49 relied upon by the claimants, holding that the establishment of the Military base in the year 1943 must have had affected considerably the prices of the lands in the vicinity. So, he rejected the kobalas executed in 1945 and later years holding that those could not be accepted as providing a good criterion for determining the prices of the lands, acquired in the year 1943.

6. The claimants moreover referred to the compensation paid by the Government in respect of contemporary acquisitions in the adjoining moujas of Maro, Arjunpur and Hansua abutting on the mouzas of Kota Chandipur wherein the acquired lands are situated. After considering the rates of compensation paid for the acquired lands appertaining to those mouzas of Maro, Arjunpur and Hansua the learned Arbitrator held:--

"The compensations paid by the Government for contemporary acquisitions in the neighbouring mouzas of Arjunpur, Maro and Hansua furnished a good basis for working out the market value of the disputed lands. In the result I would award compensation in all these cases at the average of the two rates, viz, the rate of Rs. 200/- per acre as worked out from Government kobalas and Rs. 600/- as awarded in the contiguous mouzas. The rate of compensation payable for the lands in dispute will be, therefore. Rs. 400/- per acre."

On that finding the learned Arbitrator disposed of the Issue No. 1.

7. On the Issue No. 2, regarding payment of additional allowance of 15 per cent, the learned Arbitrator found:--

"In my view Section 19 of the Defence of India Act by an express mention of Sub-section (1) of Section 23 of the Land Acquisition Act indirectly excludes Sub-section (2) (vide also the observation in 50 C.W.N., 825, at p. 828). I will not, therefore, sanction any additional allowance over and above the market value. The point is found accordingly."

8. On the Issue No. 3 relating to the claimants' claim for interest at the rate of 6 per cent per annum . on the total amount of compensation with effect from 2nd May, 1946 the date on which notices of acquisition were served upon them, the learned Arbitrator held:--

"In 54 C.W.N. page 801, their Lordships awarded interest at 5 p. c. p. a on the compensation awarded by the Arbitrator, I will, therefore, allow interest in all these cases at the rate of 5 p. c. p. a. on the award money with effect from 1st August, 1946."

Finally the learned Arbitrator observed as follows :--

"In accordance with the foregoing findings I pass the following awards in the respective cases. In working out the amounts I have principally relied on the chart furnished by the Government Pleader in terms of my Order dated 27th May, 1955."

Along with the awards the learned Arbitrator appended a Schedule mentioning the number of each of the cases, the area of the lands acquired, the sum awarded with the relevant remarks against each item of the schedules. He awarded interest at 5 per cent per annum on the award moneys from 1st August, 1946 till realisation, and made it payable by the Government to the respective claimants within a period of two months from 28-6-55, the date on which the learned Arbitrator signed the awards. He made no order as to costs.

9. The claimants in the Misc Judl. Case No. 976 of 1951 of the Court of the Arbitrator being dissatisfied with the award passed by the learned Arbitrator came up in appeal to this Court which was registered as appeal from the Original Decree No. 326 of 1955. The claimants in Misc. Judl. Case No. 982 of 1951 of the Court of the Arbitrator being dissatisfied with his award came up in appeal to this Court which was registered as appeal from Original Decree No 326 of 1955. The respective claimants in Misc. Judl. Cases Nos. 933, 977, 912, 913, 911, 935, 936, 937. 947, 949, 950, 975, 995 1017, 1021, 1035, 1018 of 1951 of the Court of the Arbitrator came up in revision before this Court u/s 115 of the Code of Civil Procedure, being respectively Civil Rules Nos. 2535, 2562, 3006, 3007, 3010, 3011, 3012. 3013. 3423, 3425, 3426, 3427, 3428. 3429 3430, 3431 and 3809 of 1955 (17 revisional applications). In Appeal No. 326 of 1955, the State of West Bengal presented a memorandum of cross-objection against the award of the Arbitrator, so also, in Appeal No. 336 of 1955.

10. The two appeals and the two cross-objections and 17 Civil Rules mentioned above arise out of the relative reference cases in which the learned Arbitrator made the awards upon common grounds and reasons. Accordingly, the two appeals and the relative cross-objections and the 17 Civil Rules were heard analogously and shall be governed by this one and the same judgment.

11. In both the appeals Mr. Nirmal Chandra Chakraborty, the learned counsel appeared and argued for the appellants, while Mr. Hemendra Chandra Sen and Mr. N. G. Das. learned counsel opposed the Appeal No. 326 of 1955 and supported the cross-objections filed therein for the Government. Mr. P. K Sengupta. senior Government Advocate with Mr. N. G. Das. learned counsel opposed the Appeal No. 336 of 1955 and supported the relative cross-objections for the Government. The 17 Civil Rules were argued for the relative petitioners by Mr. Nirmal Chandra Chakraborty, the learned counsel. Rules Nos. 2562 and 3006 of 1955 were opposed by Messrs P. K. Sengupta and N. G. Das. learned counsel, Rule No. 3007 of 1955 was opposed by Mr. Hemendra Chandra Sen. learned counsel with Mr. N. G. Das.-learned counsel, so also the Rules Nos 3010. 3011, 3012, 3013 of 1955 respectively The Rules Nos. 3423 and 3425 to 3431 and 3809 of 1955 were opposed by Messrs P. K. Sengupta, senior Govt. Advocate with Mr. N. G. Das, learned counsel, respectively.

12. In both the appeals and in Civil revision cases Mr. Chakraborty, the learned counsel for the appellants contended that the learned Arbitrator should have awarded market price in 1943 for the acquired lands at Rs. 900/- per acre and that the principle of valuation accepted and followed by the learned Arbitrator was wrong in law.

13. In support of the cross-objections in both the appeals and in reply to Mr. Chakraborty, the learned counsel appearing in the appeals and the cross-objection for the respondent-State, urged that the Collector's offer of Rs. 300/- per acre of the acquired lands should have been awarded by the Arbitrator.

14. In support of each of the Civil Rules, Mr. Chakraborty, the learned counsel for the respective petitioners in the Civil Rules, contended that the Arbitrator was a Court subordinate to the High Court and as such Section 115 of the Code of Civil Procedure, 1908 was attracted, while the learned counsel, opposing the respective Civil Rules on behalf of the State, contended that an Arbitrator was not a Court subordinate to the High Court and as such Section 115 of the Code was not attracted and that each of the revisional applications should be rejected.

15. We shall first deal with the proposition as to whether an Arbitrator, appointed u/s 19 (under section 19-A) inserted by the Defence of India (Fourth Amendment) Ordinance, 1945 (Order XLV of 1945) and by or under any rule made under the Defence of India Act, 1939 read with the rules regarding arbitration for settlement of compensation payable u/s 19 of the Defence of India Act, 1939, framed by the Governor of Bengal by Notification No. 4933 L.A, dated 30th March. 1943 published in the Calcutta Gazette of the 8th April, 1943, para

1, page 654 is a court "subordinate to the High Court", as appearing in Section 115 of the Code of Civil Procedure, 1908. Section 19 of the Defence of India Act, 1939 provides for compensation to be paid in accordance with the certain principles for compulsory acquisition of immovable property, while Section 19-A added by the Defence of India (Fourth Amendment) Ordinance XLV of 1945 provides power to acquire requisitioned property. The relevant provisions of Section 19, Sub-section (1) and Clauses (b), (e), (f) and (g) and Sub-sections (2) and (3) read as follows:--

"19 (1). Where u/s 19-A or by any rule made under this Act any action is taken of the nature described in Sub-section (2) of Section 299 of the 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 :--

(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.

(e) The arbitrator in making his award shall have regard to-

(i) the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable; and

(ii) whether the acquisition is of a permanent or temporary character:

Provided that where any property requisitioned under any rule made under this Act is subsequently acquired u/s 19-A or any such rule, the arbitrator in any proceedings in connection with such acquisition shall, for the purpose of the provisions of the said Section 23, take into consideration the market value of the property at the date of its requisition as aforesaid and not at the date of its subsequent acquisition.

(f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

(G) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe-

(a) the procedure to be followed in arbitrations under this section:

(b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;

(c) the maximum amount of an award against which no appeal shall lie.

[Under Section 19-A inserted by the Defence of India (Fourth Amendment) Ordinance (Order XLV of 1945)].

16. Along with those relevant provisions of the Defence of India Act, 1930 relevant Rules regarding arbitration for settlement of compensation, payable u/s 19 of the Act, framed by the Governor of Bengal, in exercise of the powers conferred by Sub-sections (2) and (3) of the Act, read with the Government of India Defence Department Notification No. 1365-OR/42 dated 19th September, 1942 shall have to be read and considered in order to get a complete picture regarding the powers that the Arbitrator shall have and the procedure the Arbitrator shall follow as the Court has and follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. These rules are to be considered as if enacted in the Defence of India Act itself and shall have the same effect in law as the Act has. The relevant Rules are now quoted below:--

"Rule 5. Where the amount of compensation payable u/s 19 of the Act cannot be fixed by agreement within three months of the receipt of application for compensation or within such further time as the Provincial Government may in any particular case allow, the person " or persons to be compensated shall submit an application to the Collector for referring the case to arbitration with necessary written statements of his or their claims. The Collector shall refer the case with all relevant papers to the Arbitrator and give notice of such reference having been made to the person or persons to be compensated, and inform the Provincial Government.

Rule 6. The Arbitrator shall have the 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.

Rule 11. On receipt of the reference the Arbitrator shall inform the person or persons to be compensated as also the Collector, of the place and time of meeting and such other particulars relating to the appearance of the parties to the reference and their witnesses and lawyers, as may be deemed necessary by the Arbitrator. The Arbitrator shall also issue such instructions to the parties to the reference, from time to time, as he may consider necessary.

Rule 12. The parties may appear either in person or by their authorized agents and may produce such evidence as they desire to adduce in support of their respective cases and which the Arbitrator considers to be relevant and necessary for the purpose of making an award.

Rule 13. The parties to the reference and all persons claiming under them shall submit to be examined by the Arbitrator on oath or affirmation in relation to the matters in difference and shall produce before the Arbitrator all books, deeds, maps, plans, papers, accounts, writings and other documents within their possession or power respectively, which may be required or called for, and do all

other things which, during the proceedings on the reference, the Arbitrator may require.

Rule 14. The Arbitrator shall keep a record of the proceedings but such record need not be a verbatim record.

Rule 15. Every party to a reference shall do all the acts necessary to enable the Arbitrator to make a just award and shall not wilfully do or cause or allow to be done any act to delay or to prevent the Arbitrator from making an award.

Rule 16. After taking into consideration all the relevant matters with regard to a reference the Arbitrator shall make his award. Such award shall be made within such time as may be fixed in this behalf by the Provincial Government:

Provided that the Provincial Government, if it thinks fit in any particular case, extend the said time.

Rule 17. When the Arbitrator has made his award, he shall sign it and shall give notice in writing to the parties to the reference of the making and signing thereof. He shall also send to the Collector as well as to the person or persons to be compensated a copy of the award with a note appended thereto setting forth the grounds on which the award is based and shall also forward to the Collector the award in original together with records of the proceedings.

Rule 18. The costs of the arbitration shall be in the discretion of the Arbitrator who may direct, to and by whom and in what manner, such costs or any part thereof shall be paid.

Rule 19. Any appeal against the award of the Arbitrator shall be preferred within six weeks from the date of receipt by the Collector or the party by whom the appeal is preferred of the copy of the award sent under Rule 17.

Provided that any such appeal may be admitted even if preferred after the said period of six weeks when the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within the said period.

Provided further that no appeal shall lie against an award made under these rules where the amount of compensation awarded does not exceed Rs. 5,000/- in lump or Rs. 250 per mensem.

Rule 20. The award of the Arbitrator shall be enforceable in the same manner and to the same extent as a decree of a Civil Court and the Arbitrator shall be deemed to be a Court.

17. Section 141 of the CPC reads as follows:--

"The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."

The Rule 6 invests the Arbitrator with powers as the Court has and directs that the Arbitrator, having like powers as the Court has, shall follow the like procedure

as the Court follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. The Arbitrator has in the proceedings of arbitration therefore the like powers as the Court has, and shall follow, having the powers like a Court, the procedure the Court follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. u/s 141 of the Code of Civil Procedure, in all proceedings in any Court of civil jurisdiction the procedure to be followed shall be as provided for by the Code of Civil Procedure, 1908 in regard to suits as far as it can be made applicable in the proceedings. The proceedings in any Court of civil jurisdiction spoken of in Section 141 of the CPC refer to original matters in the nature of suits such as proceedings in probates, guardianships, and so forth, and do not include execution, and other proceedings which do not originate in themselves but spring out from a suit or from some other proceedings or which arise in connection therewith. On a careful perusal of the rules relating to the powers and the procedures to be followed by the Arbitrator it would appear that the claimant's statement of claim for compensation which is referred to the Arbitrator by the Collector is in the nature of a plaint in a suit. The Arbitrator on receiving the reference with the claim-statement of the claimant from the Collector is to issue notice to inform the claimant and the Collector of the place and the time of meeting and such other particulars relating to the appearance of the parties to the reference and their witnesses and lawyers. If the offer of the Collector for compensation payable u/s 19 of the Act is not accepted by claimant, the record of the Collector's proceedings shall be forwarded to the Arbitrator by the Collector. As soon as the Arbitrator receives the reference papers and the records he calls upon the claimant and the State to submit their statements in support and in opposition of the claim respectively and at that stage there is the "lis", the claimant claiming compensation according to his estimate and the State opposing it according to its estimate. In determining the fair compensation i.e., the "lis" between the parties i.e., the claimant and the State, the Arbitrator shall have powers like the Court and shall like the Court follow the procedure, in the arbitration proceedings, as a Court follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. The points at issue between the parties arising out of the claim statement of the claimant and the State's statement in opposition to such claim are to be decided on oral and documentary evidence as would be presented by either party before the Arbitrator. The evidence of witnesses produced by the parties and examined before the Arbitrator shall be taken on oath, although Section 3 of the Indian Evidence Act, while interpreting the word "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence. The statutory Arbitrator, appointed under the Defence of India Act has, however, been legally authorized to take evidence on oath under the Rules and does not, therefore, fall within the exception in the inclusive definition of "Court" in Section 3 of the Indian Evidence Act. So, the Arbitrator, under the Defence of India Act, authorized by the Rules to take evidence of witnesses on oath and admit documents in evidence if proved by witnesses does not fall within the

exception in the inclusive definition of "Court" in Section 3 of the Indian Evidence Act. After taking into consideration all the relevant matters with regard to a reference case the Arbitrator, under the D. I. Act shall make an award. In the award the Arbitrator shall append a note setting forth the grounds on which the award is based and shall also forward the award with the grounds upon which the award is based to the Collector in original with the records of the proceedings with notice to the claimant to be compensated under the award. The costs of the proceedings of the Arbitrator shall be in the discretion of the Arbitrator who may direct to and by whom and in what manner such costs or any part thereof shall be paid. Thus the Arbitrator decides the "lis" before it, having the powers like a Court, following the procedure as a Court has to follow in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. The award of the Arbitrator, so far as the parties to the award are concerned, if not appealed against, shall be final. In the appeal by either party to the award against the Arbitrator's award direct to the High Court a time limit has been prescribed for preferring such appeal which may also be admitted beyond the prescribed period if the High Court is satisfied about the grounds of the delay. An appeal to the High Court against the award shall not lie only where the amount of compensation awarded does not exceed Rs. 5,000 in lump or 250 per mensem. The dispute between the claimant claiming the compensation and the State resisting such claim is certainly a civil dispute and the "lis" between the parties is of a civil nature. The arbitration proceedings before the Arbitrator, originating on a reference at the instance of the claimant by the Collector before the Arbitrator under the p. I. Act and the Rules mentioned above in relation to such a civil dispute are proceedings which refer to an original matter in the nature of a suit. The Arbitrator in such arbitration proceedings which refer to an original matter in the nature of a suit shall have the like powers and 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. So, the Arbitrator under the Defence of India Act and the Rules discussed above in the proceedings of an arbitration before it, is a Court of civil jurisdiction, and it follows the procedure that a Court of civil jurisdiction follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. The Arbitrator, under the Defence of India Act, 1939 and the Rules regarding arbitration for settlement of compensation payable u/s 19 of the Defence of India Act, 1939 so far as Bengal, now West Bengal, is concerned, is, therefore a Court of civil jurisdiction, and follows the procedure in arbitration proceedings before it, as provided for by the Code of Civil Procedure, 1908 in regard to suits since the Arbitrator under Rule 6 quoted above shall have the powers like the Court and shall follow the like procedure as the Court follows in the exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure, 1908. So, the combined effect of Section 141 of the CPC read with Section 19, Sub-section (1). Clauses (b), (e), (f), (g). Sub-sections (2) and (3) of the Defence of India Act, 1939 and the Rules regarding Arbitration for settlement of compensation payable u/s 19 of the Defence of India Act, 1939, framed by the Governor of Bengal as already

discussed, is to make an Arbitrator under the D. I. Act, 1939 so far as Bengal now West Bengal is concerned, a Court of civil jurisdiction that shall have the 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. Mr. Sen for the State attempted to impress upon us that the Arbitrator under the Defence of India Act was not a Court of civil jurisdiction. He submitted that the words "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" in Rule 6 did not make an Arbitrator either a Court, or a Court of original civil jurisdiction within Section 141 of the CPC 1908. He contended that by Rule 6, the Arbitrator acquired some trappings of a Court but not the full status of a Court. We have already discussed how a "lis" of a civil nature is to be decided on evidence in the arbitration proceedings by the Arbitrator by an award, supported by reasons or grounds for such award. The award once made, unless appealed against, shall be binding both on the claimant and the State. So, the Arbitrator, as we are of the view, is neither a quasi-judicial body nor a tribunal. The Rules referred to above and the Code of Civil Procedure, 1908 are to be followed by the Arbitrator, as the Court follows the CPC in the exercise of its ordinary original, civil jurisdiction, in deciding the lis in between the parties to the arbitration in the arbitration proceedings. Section 19. Sub-section (1), Clause (g) of the Defence of India Act says that except as provided in Section 19 and the Rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations u/s 19 of the Defence of India Act. The Rule 6, as we have already discussed, brings in the entire Civil Procedure Code, 1908, and makes it applicable in the arbitration proceedings just as a Court applies the said law in the exercise of its ordinary original civil jurisdiction under that law. Section 9 of the Code of Civil Procedure, 1908 has been clearly excluded by the operation of Section 19, Sub-section (1), Clauses (b) and (g) of the Defence of India Act, 1939 and the Rules framed by the Governor of Bengal as discussed above. The dispute in the arbitration proceedings before the Arbitrator u/s 19 of the Defence of India Act, 1939 and the Rules made thereunder, is a dispute of a civil nature and would have been triable, if a suit upon such a dispute could be filed before a Civil Court of competent jurisdiction u/s 9 of the Code of Civil Procedure, but for Section 19, Sub-section (1), Clause (g) of the Defence of India Act, 1939. The Arbitrator u/s 19 of the Defence of India Act, 1939 read with the Bengal Rules made thereunder as already discussed, must, therefore, be held to have been discharging the duties which would otherwise have fallen on the ordinary civil Court of the land. The Arbitrator has not merely the "trappings of a Court", but he "shall have the 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 in the Arbitration proceedings before it. The expression "shall have the 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 CPC 1908" in Rule 6 has made, in addition to the Rules, the entire CPC except Section 9, C. P. Code applicable in

the arbitration proceedings before the Arbitrator who shall have the 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. Besides the power of summoning and examining witnesses on oath, the power to order inspection of documents, to hear parties after framing issues, to make a binding award, supported by reasons therefore to review its own order or an award, the Arbitrator is also authorised to exercise the inherent jurisdiction of a Court of ordinary original civil jurisdiction u/s 151 of the CPC in view of the Rule 6 of the Rules quoted above. All those powers as discussed above that are to be exercised by the Arbitrator in these cases, were found in the case of a Registrar of Co-operative Societies of Sitamarhi to whom a dispute was referred u/s 48 of Bihar and Orissa Co- operative Societies Act (6 of 1935) for arbitration, in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . In that context at page 1499 of the report after reviewing the powers of the Registrar of Co-operative Societies of Sitamarhi as discussed above given under the Act and Rules framed thereunder in regard to arbitration proceedings u/s 48 of the Bihar and Orissa Cooperative Societies Act, 1935, their Lordships of the Supreme Court were pleased to observe:

"In such a case there is no difficulty in holding that in adjudicating upon a dispute referred u/s 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."

The Rule 6 of the Bengal Rules and the other Bengal Rules we have extracted in this judgment and discussed above and the principle of law laid down by the Supreme Court in Jugal Kishore Sinha's case convince us that the Arbitrator under the Defence of India Act is not only a Court but is also a Court of civil jurisdiction as the Arbitrator shall have the 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 in deciding the matters referred to him for arbitration in the arbitration proceedings. The expression "some of the trappings of a judicial tribunal" used by Mr. Sen in his submission before us could not impress us in view of the Bengal Rules, we have discussed the Supreme Court in Jugal Kishore and the law as has been laid down by Sinha's case. The Rule 6 and Rule 20 of the Bengal Rules as Mr. Sen submitted, did not invest the Arbitrator with a full status of a Court but clothed him with some of the trappings of a Court. In Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, after reviewing all the relevant judgments their Lordships of the Supreme Court extracted a paragraph from the judgment in Cooper v. Wilson (1937) 2 KB 309 which runs as follows;

"It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the

essential tests of a judicial pronouncement." As we have discussed the Bengal Rules particularly the Rules 6, 15, 16, 17, 18, 19 and 20, the Arbitrator under the Defence of India Act, 1939 so far as Bengal is concerned, now West Bengal, falls clearly within the dicta in the observation in Cooper's case extracted above. The Supreme Court in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, after considering the Kapur's case. (AIR 1951 Punj 49) and *Brajnandan Sinha Vs. Jyoti Narain*, extracted a passage from *Brainandan's* case. The discussion in the passage would show that the Rules framed under the Bihar and Orissa Co-operative Societies Act invest the Assistant Registrar with almost all the powers which an ordinary civil Court of the land has under the C. P. Code. The Rule 20 of the Bengal Rules, says that the award of the Arbitrator shall be enforceable in the same manner and to the same extent as a decree of a Civil Court and the Arbitrator shall be deemed to be a Court. In the passage at page 1500 of the *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, while considering the effect of the award made by the Registrar of Co-operative Societies in the arbitration proceedings their Lordships observe.

"The result is the same as if a decree was pronounced by a Court of law. The adjudication of the Assistant Registrar was not based upon a private reference nor was his decision arrived at in a summary manner, but with all the paraphernalia of a Court and the powers of an ordinary civil Court of the land."

The Rule 20 of the Bengal Rules makes the award of the Arbitrator enforceable as a decree of a Civil Court. The Rule also makes an Arbitrator a Court. Mr. Sen for the State submitted that Rule 20 spoke only as to the enforceability of the award and in that context, the award enforceable as a decree of a Civil Court was to be construed as if it had been made by a Civil Court. Mr. Sen, however, did not perhaps notice that the Rule 20 is divided into two parts. The first part is as follows: "The award of the Arbitrator shall be enforceable in the same manner and to the same extent as a decree of a Civil Court" and the second part is joined with "and" and runs as "the Arbitrator shall be deemed to be a Court". The second part is quite independent of the first part of the Rule. Moreover the Arbitrator does not decide the lis referred to it for arbitration on a private reference, nor in a summary fashion. We have discussed the relevant Rules and we have pointed out with reference to Rule 6 that the Arbitrator shall have the 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. We have found that the Arbitrator is a Court of original civil jurisdiction within Section 141, C. P. Code read with Rule 6, and we find also that the Arbitrator is a Court within Rule 20. We also find that its award shall be enforceable as if it were a decree of a Civil Court. We most respectfully follow the principles laid down in the decision of *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, and apply the same in the case of an Arbitrator under the Defence of India Act, 1939 so far as Bengal, now West Bengal, is concerned. In our view, the Arbitrator is a Court of civil jurisdiction

within Section 141 of the Code of Civil Procedure. It shall have the 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. Its award is binding on the parties unless appealed against and it is enforceable in the same manner and to the same extent as a decree of a Civil Court and it shall be deemed to be a Court. We are not unmindful of a single Bench decision in C. Abboy Reddiar Vs. Collector of Chingleput at Saidapet and Others, , Chandra Reddi, J. held:

"No revision can be entertained by the Court against the award of the Arbitrator appointed u/s 19, Sub-section (2), Defence of India Act as the Arbitrator was appointed to act merely as a "persona designata", and therefore not as a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure."

His Lordship further observed:--

"The conferring of the right of appeal to the High Court on an aggrieved party against the award of a tribunal does not convert the tribunal into a Court."

With respect we are not prepared to agree with his Lordship's view and we cannot follow his decision for the reasons as detailed below. The Central Government delegated its rule making powers to the various Provincial Governments. Under Sub-sections (2) and (3) of Section 19 of the Defence of India Act, 1939, the Governor of West Bengal and the Governor of Madras made Rules under the delegated powers applicable to the then respective provinces. At pp. 45-46 of the reports C. Abboy Reddiar Vs. Collector of Chingleput at Saidapet and Others, his Lordship Chandra Reddi, J. quoted the relevant Madras Rules, being Rules 10 and 11, In that context his Lordship at p. 46 observed:--

"None of the provisions extracted above seems to indicate that a person appointed under Clause (b) of Sub-section (1) of Section 19 of the Act, acts as a Court. On the contrary all the provisions seem to point in the opposite direction."

18. In the Madras Rules, as quoted by his Lordship in his judgment there Is no such Rule like the Rules of Bengal particularly, the Rules 6, 19 and 20. A Division Bench decision of the Calcutta High Court speaking through his Lordship Mr. Justice Edgley in a near similar context in regard to a revisional application arising out of an award of the President of the Calcutta Improvement Trust Tribunal, while considering the Calcutta Improvement (Appeals) Act, 1911, repelled the argument of the learned counsel and observed at p. 248 of the report (Province of Bangal Vs. Ram Chandra Bhotika and Others,);

"I am not prepared to accept this argument, as it is clear that Act 18 of 1911 by allowing an appeal from the tribunal to the High Court had the effect of making the tribunal a Court subordinate to this Court within the meaning of Section 115, Civil P. C."

Under Rule 19 of the Bengal Rules, as we have discussed, no appeal against an

award of the Arbitrator shall lie under the Rules where the amount of compensation awarded does not exceed Rs. 5000/- in lump or Rs. 250/- per mensem. In the Calcutta Improvement Act, 1911, amended by the Amending Act of 1955 (West Bengal Act, XXXII of 1955), Section 77-A was inserted in that Act substituting Section 3 of the Calcutta Improvement (Appeals) Act, 1911. Section 77-A of the Calcutta Improvement Act, 1911 runs as follows :--

"77-A. (1) An appeal shall lie to the High Court from an award under this Chapter, in any of the following cases, namely:--

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of Clause (b) of Section 77;

(b) where the decision is that of the Tribunal, and

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the High Court grants special leave to appeal:

Provided that the High Court shall not grant such special leave unless the President of the Tribunal has refused to grant a certificate under Sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under Clause (b) of Sub-section (1) shall only lie on (one or more of) the following grounds, namely:

(i) the decision being contrary to law or to some usage having the force of law;

(ii) the decision having failed to determine some material issue of law or usage having the force of law;

(iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

(3) Subject to the provisions of Sub-sections (1) and (2), the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall so far as may be, apply to appeals under this section.

(4) An appeal under this section shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Indian Act, 1908.

(5) The Chief Judge of the Court of Small Causes of Calcutta shall on application, execute any order passed by the High Court on appeal under this Act as if it were a decree made by himself."

19. This Section 77-A is more or less the replica of the old Section 3 of the Calcutta Improvement (Appeals) Act, 1911. In considering the old Section 3 of that Act their Lordships of the Division Bench of the Calcutta High Court made

the observations which we have already extracted. The limited right of appeal u/s 77-A of the Calcutta Improvement Appeals Act, 1911 is there, so also the limited right of appeal In Rule 19 of the Bengal Rules made under the Defence of India Act, 1939. So, on a parity of reason we hold that the right of appeal conferred by Rule 19 of the Bengal Rules, though limited, makes the Arbitrator a Court, as also a Court of civil jurisdiction, subordinate to the High Court, and the High Court in the exercise of its revisional power, u/s 115 of the Code of Civil Procedure, may interfere with the Arbitrator's award if the matter falls within the ambit of Section 115. So, the single Bench decision of Chandra Reddi, J. where his Lordship observed that the right of appeal did not make a Tribunal "a Court subordinate to the High Court" could not impress us when our Division Bench decision in a near similar context held otherwise. Moreover, the Bengal Rules are quite different from the Madras Rules and the specific provisions in the Bengal Rules discussed by us are conspicuous by their absence in the Madras Rules. Therefore, the Madras decision has no bearing on the question now before us in these two appeals and in the 17 revisional applications. While arguing on Rule 20 Mr. Sen for the State submitted that the expression "shall be deemed to be a Court" in Rule 20 in relation to the Arbitrator did not make the Arbitrator a full-fledged Court and that the Arbitrator was for a limited purpose a Court. We may profitably refer in this context to two decisions, one in the case of the AIR 1930 54 (Privy Council) , and the other, in the case of East End Dwellings Co. v. Finsbury Borough Council 1952 App Cas 109 : 1951 2 All ER 587. In the Privy Council case, the words "deemed to be" occurring in Section 42. Sub-section (1) of the Indian Income Tax Act was explained at p. 55 of the report as follows :--

"When a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were."

In 1952 AC 109, corresponding to 1951-2 All ER 587 (House of Lords) Lord Asquith of Bishopstone at p. 599 of the All-E. Reports observes:--

"If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

That observation explains the expression "shall be deemed to be a Court" in Rule 20 of the Bengal Rules. Since the Arbitrator under the Defence of India Act, 1939 read with Rule 20 of the Bengal Rules "shall be deemed to be a Court," this Court in interpreting the expression "shall be deemed to be a Court" cannot cause or permit its imagination to boggle En coming to the inevitable corollaries of the state of affairs, as expressed in the specific provisions made in the Bengal Rules, more particularly in Rr. 6 and 20. Therefore, the expression "shall be deemed to

be a Court" invests the Arbitrator under the Defence of India Act, 1939 in view of Rules 6 and 20 of the Bengal Rules, with the full status of a Court of civil jurisdiction.

20. We, therefore, cannot persuade ourselves to accept Mr. Sen's argument that the Arbitrator under the Defence of India Act, 1939 and the Bengal Rules is not a Court of civil jurisdiction.

21. Rule 19 of the Bengal Rules already discussed lays down the procedure for filing an appeal against the Arbitrator's award before the High Court. That Rule debars an appeal to the High Court under certain circumstances. If the award is Rs. 5,000 in lump or Rs. 250 per mensem there would be no right of appeal against such award before the High Court under Rule 19 of the Bengal Rules. So, the right of appeal to the High Court under Rule 19 of the Bengal Rules against the Arbitrator is limited to certain circumstances. We have already observed that u/s 77-A of the Calcutta Improvement Act which substituted the relative provisions in the Section 3 of the Calcutta Improvement Appeals Act, 1911, a limited right of appeal has been given against the award of the President of the Improvement Trust Tribunal.

22. Section 115 of the CPC reads as follows:--

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears:

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction Illegally or with material irregularity, the High Court may make such order in the case as it thinks fit." The right of appeal under Rule 19 of the Bengal Rules under the Defence of India Act, 1939, is limited, as we have already discussed. When there is no right of appeal a revision lies before the High Court in any case which has been decided by "any Court subordinate to the High Court". In regard to the awards which are the subject-matter of 17 revisional applications u/s 115 of the CPC before us, the right of appeal is barred by Rule 19 of the Bengal Rules as already discussed. The Arbitrator, according to our view, is a Court of original civil jurisdiction that follows the procedure under the Code of Civil Procedure, 1908.

23. We have already referred to and followed the decision in AIR 1944 Cal 247 in another context. There the question was whether, under the Calcutta Improvement Appeals Act, 1911 when certain decisions of the Calcutta Tribunal were subject to an appeal to the High Court, and certain decisions were not, the High Court, against the decisions in which appeal did not lie to the High Court, u/s 3 of the Calcutta Improvement Appeals Act, 1911 (now Section 77-A of the Calcutta Improvement Act, 1911), can entertain a revision against such a decision u/s 115 of the Code of Civil Procedure. The Division Bench held that the

provision for allowing an appeal from the Tribunal to the High Court had the effect of making the Tribunal a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure. Under Rule 19 of the Bengal Rules, framed under the Defence of India Act, 1939, there is no right of appeal in regard to the awards which are the subject-matter of the 17 revisional applications. But there is the right of appeal in regard to two awards which exceed Rs. 5,000/-and in regard to which two appeals have been preferred and are now being heard by us. We have found that the Arbitrator under the Defence of India Act, 1939, is a Court and nonetheless a Court of original civil jurisdiction. Against the award of the Arbitrator there is the limited right of appeal under Rule 19 of the Bengal Rules. u/s 3 of the Calcutta Improvement Appeals Act, now Section 77-A of the Calcutta Improvement Act, 1911, the right of appeal against the decision of the President of Improvement Tribunal is also limited. When a right of appeal is created by a statute against the decision either of a Tribunal or a Court of original civil jurisdiction to the High Court, the Tribunal or a Court of original civil jurisdiction becomes "a Court subordinate to the High Court" within Section 115 of the Code of Civil Procedure. For the State, Mr. Sen submitted that in view of the provisions of Section 3 of the CPC the Arbitrator under the Defence of India Act, 1939 read with Bengal Rules discussed above, was neither a District Court subordinate to the High Court, nor a Civil Court of a grade inferior to that of a District Court, and as such was not "a Court subordinate to the High Court". The object of Section 3 of the CPC is not to define or enumerate Courts which are subordinate to the High Court, but simply to declare the order of subordination, for the purpose of the Code, as respects the ordinary hierarchy of Courts established under the Civil Courts Act (Khetridas Gangaram v. First Land Acquisition Collector AIR 1946 Cal 508 (FB)). A Court, being not a "Civil Court" as enumerated in Section 3 of the Bengal, Agra, Assam Civil Courts Act, 1887 may be a Court and a Court of original civil jurisdiction, but not "a Civil Court" within Section 3 of the Bengal, Agra, Assam Civil Courts Act, and such a Court, being other than a Civil Court within Section 3 of the Bengal. Agra. Assam Civil Courts Act may be a Court, and a Court of original civil jurisdiction, as well, and as such, subordinate to the High Court, in spite of the provisions of Section 3 of the CPC (AIR 1946 Cal 508 (FB) *ibid*).

24. It is true that the Arbitrator under the Defence of India Act, 1939 read with the Bengal Rules is not a Civil Court within the categories of Civil Courts u/s 3 of the Bengal, Agra, Assam Civil Courts Act, 1887. It is a Court exercising original civil jurisdiction, but still it is a Court, and as such falls within the expression "any Court" in Section 115 of the Code of Civil Procedure. Within the expression "any Court" in Section 115 of the CPC read with Section 141 of the CPC and the relevant Bengal Rules already discussed, comes the Arbitrator, which is a Court and nonetheless a Court of original civil jurisdiction, but not a "Civil Court" within Section 3 of the Bengal, Agra, Assam Civil Courts Act, 1887 and not even "every Civil Court of a grade inferior to that of a District Court" within Section 3 of the Code of Civil Procedure. Even though "any Court" in Section 115 of the Code of

Civil Procedure, or "any Court of civil jurisdiction" in Section 141 of the CPC is not a "Civil Court", either within Section 3 of the CPC or within Section 3 of the Bengal Agra, Assam Civil Courts Act, 1887, still "any Court" in Section 115 of the Code of Civil Procedure, or "any Court of civil jurisdiction" in Section 141 of the CPC may be and is "a Court subordinate to the High Court" within Section 115 of the Code of Civil Procedure. We have analysed the constitution and functions of the Arbitrator and the procedure to be followed in the arbitration proceedings by an Arbitrator appointed under the Defence of India Act, 1939 and the Bengal Rules made thereunder, and we have found that the Arbitrator is a Court. We have already found that against the Arbitrator's award Rule 19 of the Bengal Rules creates a limited right of appeal to the High Court. Therefore, the Arbitrator is "a Court" subordinate to the High Court for the purpose of appeal. If it is subordinate to the High Court for the purpose of the appeal being "a Court", it is also subordinate to the High Court for the purpose of revision within Section 115 of the Code of Civil Procedure, in view of the principles laid down in the case reported in AIR 1944 Cal 247 *ibid*.

25. Section 4, Sub-section (1) of the CPC runs as follows:--

"In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force."

This Section is required to be read with Section 115 of the Code of Civil Procedure. Section 4 of the CPC does not mean that the Code does not apply to proceedings under the special or local law but only enacts that where there is an inconsistency, the Rules of the Code do not prevail. The provisions of the Code will apply to all matters on which the special or local law is silent. Rule 19 of the Bengal Rules speaks nothing about revision u/s 115 of the CPC to the High Court. It speaks only of appeal. The Section 77-A of the Calcutta Improvement Act which substituted. Section 3 of the Calcutta Improvement Appeals Act, 1911 gives only right of appeal to the High Court, but speaks nothing of the right of revision u/s 115 of the Code of Civil Procedure. Section 93 of the Bengal Village Self-Government Act of 1919 provides that the provisions of the Civil Procedure Code, would not apply to any suit before the Union Court. It does not speak anything about the applicability of Section 115 of the CPC in the High Court in a matter arising out such a suit under the Bengal Village Self-Government Act, 1919. In the case of *Khudiram Kundu Vs. Surendra Mohan Chakraborty and Another*, , his Lordship S. K. Ghose, J., at p. 667 of the report observes :--

"This provision (Section 93 of the Bengal Village Self-Government Act (1919)) however does not affect the powers of the High Court as derived from Section 115, Civil P. C. and Section 107, Government of India Act. 1919."

With respect, we follow the principle enunciated in that decision. Section 19, Sub-section (1), Clause (g) of the D. I. Act, 1939 and the Rule 19 of the Bengal

Rules, read with Section 4, Sub-section (1) of the Code of Civil Procedure, do not affect the powers of the High Court as derived from Section 115 of the Code of Civil Procedure.

26. The two decisions of the Calcutta High Court discussed above clearly lay down that although the Improvement Trust Tribunal, under the Calcutta Improvement Act, 1911, and the Union Court, under the Bengal Village Self-Government Act, 1919 are not Civil Courts, either within Section 3 of the Bengal, Agra, Assam Civil Courts Act, 1887 or within Section 3 of the Code of Civil Procedure, they fall within the expression "any Court subordinate to the High Court" within Section 115 of the Code of Civil Procedure. So, we find that the Arbitrator appointed u/s 19, Sub-section (1). Clause (b) of the Defence of India Act and the Bengal Rules made thereunder already discussed is a "Court", nonetheless, it is a Court of original civil jurisdiction, and being thus a Court, it falls within the expression "any Court subordinate to the High Court" as occurring in Section 115 of the Code of Civil Procedure. So, in our view, in regard to the 17 awards rendered by the Arbitrator the relative revisional applications can lawfully be entertained by this Court u/s 115 of the Code of Civil Procedure.

27-35. Now, we come to the merits of the two appeals and 17 revisional applications. (Then after discussing the evidence on record with reference to the observations made by the Arbitrator, his Lordship proceeded.) From the evidence that we have reviewed coming from the claimant's witnesses and from the Government, we find no material to arrive at a market value per acre of the acquired land at Rs. 900 as was contended by Mr. Chakraborty. If the Government paid for the lands in the Mouzas contiguous to the Mouzas of the acquired land at Rs. 600 per acre as the market value in the year 1943 while awarding compensation to the persons entitled thereto for the lands acquired situated in the Mouzas contiguous to the Mouzas of the acquired lands and such rate was not challenged, we hold that such rate should be the market value of the acquired lands in the year 1943. To substantiate that the market value of the acquired land per acre in 1943 exceeded Rs. 600, no kobala either of 1942 or of 1943, or even of 1944, was proved by the claimants. Therefore, we are not prepared to accept Mr. Chakraborty's contention that the learned Arbitrator should have fixed Rs. 900 per acre of land as the market value of the acquired land in all the 19 cases, two under appeal and 17 under revision. In our view, the appellants and the petitioners in the appeals and in the revisional cases shall not get more than Rs. 600 as the market value per acre of the acquired land in the year 1943.

36. Mr. Sen for the Government did not press the relative cross-objections in the appeals. The Government by awarding compensation per acre of land situated in Mouzas contiguous to the Mouzas of the acquired land at Rs. 600 cannot be heard to say that the market value per acre of the acquired land should have been assessed by the learned Arbitrator at Rs. 300 per acre. On merits also the cross-objections in the relative appeals do not stand.

37. In the result, the two appeals are allowed in part so also the 17 revisional applications, arising out of the awards given by the learned Arbitrator upon common grounds. We accordingly modify the awards relative to the appeals and the revisional applications holding that the market value per acre of the acquired land in 1943 should be assessed in modification of the learned Arbitrator's awards, at Rs. 600 per acre of the acquired land in each of the cases under appeal and revision. The learned Arbitrator rightly rejected 15% allowance and rightly allowed interest at 5 p. c. on the sums awarded in each case. We allow interest at 5 p. c. in all the cases on the amount of each of the relative modified awards. The interest at 5 p. c. on each of the award moneys shall run from 1st August 1946 till realisation. The cross-objections in the relative appeals fail without costs. The appellants in the two appeals shall Ret proportionate costs.

The petitioners In each of the revisional applications shall get costs, hearing fee assessed at 3 (three) Gold mohurs in each of the revisional cases. The learned Arbitrator's awards relative to the appeals and the revisional cases so far as the market value per acre of land only is concerned, be modified in terms of this judgment which governs both the appeals and the 17 revisional cases.

Amaresh Roy, J.

38. I agree.