
(1919) 02 CAL CK 0028
In the Calcutta High Court

Sarat Chandra Ghose

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 10-02-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 49

Citation : (1919) ILR (Cal) 861

Hon'ble Judges : Greaves, J;Beachcroft, J

Bench : Division Bench

Judgement

Beachcroft, J.—The first question that arises for our decision in this appeal, is one that is not likely often to arise but is of considerable public importance. The question is whether an appeal lies to this Court against an order made by the Judge u/s 49 of the Land Acquisition Act (I of 1894). The matter arises in this way. The appellant was the owner of a brickfield a small portion of which has been acquired under the Land Acquisition Act. The owner applied that the whole should be acquired, alleging that his brickfield was a "manufactory" within the meaning of Section 49, of the Act. The Judge decided against him and the matter has been brought here on appeal. The question is whether an appeal lies against the Judge's order and that depends on the meaning which is to be given to the term "award" in Section 54 of the Act, which provides that an appeal shall lie to this Court from the award or any part of the award of the Court in any proceedings under the Act.

2. There is no direct authority of this Court as to whether an appeal does lie against, an order u/s 49. The question was raised in the case of Dalchand Singhi v. Secretary of Slate, for India ILR (1916) 665. The learned Judges who heard the case remarked that appeals had been entertained against such orders in the Allahabad and the Madras Courts, and they might also have added in this Court, without objection having been taken. But they did not decide the question definitely, because they were of opinion that in any event they ought to deal with the matter u/s 115 of the Civil Procedure Code. That case is, therefore, not an

authority on the question which we have to decide. On the respondent's side, we have been referred to two authorities in the Bombay and Madras Courts *Mulraj Khataav Vs. The Collector of Poona*, and *Seddon v. Deputy Collector of Madras* (1912) 17 I.C. 117.

3. The term "award" has not been defined in the Act. But, if the sections in which the word occurs are referred to, it is noticeable that in all cases the word is used with reference to compensation in some form or other--whether it be the amount of the compensation or the disposal of compensation. Our attention has been drawn to other sections of the; Act, namely, Sections 30 and 35 where the matter is referred for the "decision" of the Court and to Section 49 itself where the matter is referred for the "determination" of the Court, and it has been argued that the use of these words suggests that decisions under, those sections are not "awards" within the meaning of Section 54. I do not think any sound conclusion can be drawn from the use of such words as "decision" or "determination" in the sections referred to, because it has been held in this Court, in this case of *Balaram Bhramaratar Ray v. Sham Sunder Narendra I.L.R.* (1898) 526 that an apportionment of compensation under Section 30 comes within the term "award". Similarly in the case of *Trinayani Dassi v. Krishnalal De* 17 C.W.N. 933, both in the main case and in the case reported in the footnote, it has been held that a decision u/s 32 of the Act is an "award" within the meaning of Section 54 and, therefore, an appeal lies in such a case. In those cases, however, the view taken could obviously be supported on the ground that the orders of the Court dealt with the disposal of the compensation money.

4. The first formal order to which the term "award" is applied in the Act is that of the Collector u/s 11, and Sections 26 and 27 provide for the form of award to be made by the Judge. As I have said in both cases there is a question of the amount of compensation or of the disposal of compensation. But, on a reference u/s 49 of the Act, the point which has to be decided by the Court is a preliminary point and it has to be decided before any of the matters into which the Collector has to enquire for the purpose, of making his award u/s 11 can be investigated. It seems to me that the decision of a preliminary question like this can in no sense be termed an "award " within the meaning of Section 54.

5. It was strongly urged for the appellants that parties would suffer great hardship if an, appeal were not allowed against orders of the Court on references u/s 49. I am not at all impressed by this argument. If the statute does not give a right of appeal, there is an end of the matter. It is possible the right of appeal was not given advisedly, for a question u/s 49 is essentially one for speedy disposal and, further, if the land taken is reasonably required for the full and unimpaired; use of a house, manufactory or building, the owner would be entitled to substantial compensation for severance. I am of opinion that no appeal lies and that we ought to dismiss the appeal with costs--five gold mohurs--to be paid only to the Secretary of State for India.

6. A Rule was also obtained in this connection in case it was held that no appeal

lay. We can only interfere in our Revisional Jurisdiction u/s 115 of the CPC if the learned Judge acted without jurisdiction. The question of jurisdiction is raised in this way. It is said that after the party had applied for a reference u/s 49 of the Land Acquisition Act, he put in a petition before the: Collector stating that possession had been taken of the whole of the land and asking for the reference to be withdrawn. The Collector had meanwhile made the reference u/s 49. It is argued, and the question also appears to have been raised before the Judge, that in view of the fact that possession of all the lands had been taken, the learned Judge had no jurisdiction to deal with the question u/s 49. It may be mentioned here that on behalf of the Secretary of State it is denied that possession was taken of any thing more than 2 1/2 bighas. Now, it is quite clear that, if the parties were at one as to the fact of the whole land having been acquired or as to the intention of acquiring the whole land, there would be no proceedings u/s 49. The reference was made on the footing that it was not intended to acquire the whole and the Judge was bound to deal with it on that footing. The learned Judge has come to the conclusion that the portion comprising 2 1/2 bighas could be acquired apart from the rest of the land taking the view that the whole was not a manufactory. Whether the learned Judge made a mistake of fact or whether he made a mistake of law is immaterial, as u/s 115 of the CPC we can only interfere in a case of improper exercise of jurisdiction. That being so, the Rule must be discharged with costs--payable only to the Secretary of State.

Greaves, J.

7. I agree.