
(1952) 12 CAL CK 0020
In the Calcutta High Court
Case No : Civil Revn. Case No. 2860 of 1951

Satish Chandra De and Another	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 22-12-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1953 Cal 392

Hon'ble Judges : Renupada Mukherjee, J; Guha, J

Bench : Division Bench

Advocate : Purushottam Chatterjee and Rameswar Saha, for the Appellant; J. Majumdar, Asst. Govt. Pleader, for the Respondent

Judgement

Guha, J.—This is an application u/s 115, C. P. C., at the instance of certain claimants directed against an order of Mr, N. K. Ghose who was appointed an Arbitrator under orders of Government dated 31-7-50, The subject matter of dispute is portion of 3 C.S. plots which had been requisitioned by Government under Rule 75A, . Defence of India Rules, on 2-11-43. It appears that subsequently these lands were acquired by Government. In the order of Government dated 31-7-50 mentioned above it was mentioned "inter alia" that the said properties were requisitioned u/s 8, Requisitioned Land (Continuance of Powers) Ordinance, 1946, (Ordinance 19 of 1946) and u/s 3, Requisitioned Land (Continuance of Powers) Act, 1947, and have been acquired. It appears further that there was also a Notification published in the Calcutta Gazette on 17-7-47 stating inter alia that the disputed lands had in supersession of previous orders been acquired u/s 5 (1) Requisitioned Land (Continuance of Powers) Act, 1947. It appears that before the Arbitrator the present petitioners claimed compensation on the basis of the Requisitioned Land (Continuance of Powers) Act, 1947, i.e. under Sub-section (2) of s. 6 of that Act. It was argued, however, before the Arbitrator on behalf of the Government that the acquisition of the lands was really on 24-9-46 under Sub-rule (2) of Rule 75A, Defence of India Rules. This contention on behalf of the Government found favour with the Arbitrator and he

awarded compensation on the footing that the acquisition was really on 24-9-46 under the Defence of India Rules and not on 17-7-47 under Requisitioned Land (Continuance of Powers) Act, 1947. The Arbitrator has accordingly held that the petitioners before us are entitled to compensation on the basis of Section 19(1) (e), Defence of India Act, 1939, and he has assessed compensation in respect of the disputed lands at Rs. 4060/3/6.

2. On behalf of the petitioners it has been contended before us that the Arbitrator was wrong in holding that the acquisition of the disputed land was under the Defence of India Rules and not under the Requisitioned Land (Continuance of Powers) Act, 1947, It has, therefore, been argued that the fundamental basis of the decision of the Arbitrator in regard to the assessment of compensation is erroneous.

3. On behalf of the State it has been argued before us, as it was argued before the Arbitrator, that the acquisition was really under the Defence of India Rules and not under the Requisitioned Land (Continuance of Powers) Act, 1947, and that the decision of the Arbitrator on the point is quite correct and that the Arbitrator was right in holding that the Collector must have acquired the land again under the Requisitioned Land (Continuance of Powers) Act 1947 under some misconception.

4. It has been pointed out before us on behalf of the petitioners that in view of the order of Government dated 31-7-50 whereby authority was given to Mr. N.K. Ghose to act as an Arbitrator in this case it was not within his powers, in view of the clear terms of that order, to assess compensation on the basis that the acquisition was not under the Requisitioned Land (Continuance of Powers) Act, 1947, but under the Defence of India Rules.

It appears to us that there is much substance in this contention. Under the Government order in question the Arbitrator was called upon to assess compensation on the footing that the acquisition had been made under the Requisitioned Land (Continuance of Powers) Act, 1947, and if on a consideration of all the circumstances the Arbitrator came to the conclusion that the acquisition was not under that Act but under the Defence of India Rules under which no reference had been made to him, he could not assess compensation on the footing that the acquisition was really under the Defence of India Rules, In making assessment of compensation on that basis the learned Arbitrator has obviously acted beyond the scope of his authority and as such his order assessing compensation at Rs. 4060/3/6 has got to be set aside on that ground alone. His order dated 30-7-51 must accordingly be vacated.

5. If it be the stand of the State that the acquisition in the present case was really under the Defence of India Rules and not under the Requisitioned Land (Continuance of Powers) Act, 1947, under which it purported to be, a fresh reference to an Arbitrator under the appropriate law will have to be made by Government.

6. With these observations the Rule, is made absolute and the order of the Arbitrator dated 30-7-51 is set aside.

7. The parties will bear their own costs in this Rule.

8. We express no opinion on the point whether the acquisition in the present case was under the Defence of India Rules or under the Requisitioned Land (Continuance of Powers) Act, 1947.

Renupada Mukherjee, J.

9. I agree.