

(1970) 07 CAL CK 0017
In the Calcutta High Court
Case No : A.F.O.D. No. 559 of 1962

Satyanarayan Nathany and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-07-1970

Acts Referred:

Constitution of India, 1950 — Article 227
Defence of India Rules, 1939 — Rule 19

Citation : AIR 1971 Cal 167 : (1971) 1 ILR (Cal) 384

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : C.C. Ganguly and Ram Tirtha, for the Appellant; Provat Kumar Sengupta and N.K. Bhattacharya, for the Respondent

Judgement

P.N. Mookerjee, J.—This appeal arises under the following circumstances:

On March 12, 1942, the appellants premises No. 20, Dum Dum Road was requisitioned under the Defence of India Act (Rule 76) on and from March 16, 1942. On June 10, 1943, there was a further order of requisition in respect of the same premises with effect from June 11, 1943, and the monthly compensation for the above requisition or requisitions was fixed at Rs. 1,765/-. On November 12, 1946, the above property was derequisitioned. This was followed by a claim for terminal compensation, made by the appellant, in respect of damages, done to the above property by the Requisitioning Authority during the above period of requisition. The appellants' figure for the said claim was Rs. 4,37,106/-. The State's offer on the point was Rs. 44,355/-. The above claim was made on April 1, 1947, and the same was reiterated on March 23, 1954, As, however, the State did not agree to the appellants' above figure, there was the inevitable reference to arbitration. In September, 1957, the above property was acquired by the State Government under the Defence of India Act, read with Land Acquisition Act. Before this acquisition, however, an Arbitrator had already been appointed on June 19, 1957 in regard to the appellants' claim for terminal compensation and

the reference was before him for determination of the appellants' said claim.

2. Eventually, the learned Arbitrator dismissed the appellants' claim by his judgment, dated March 11, 1961, on the preliminary ground that, as the property in question had already been acquired by the State, as aforesaid, the appellants were not entitled to get any terminal compensation, as claimed by them. Against this order, which, in substance, was a "nil" award in favour of the appellants, the present appeal was filed by them on June 19, 1961.

3. At the hearing of this appeal, a preliminary objection was taken on behalf of the State, which was the Requisitioning Authority, and, against whom, the claim for terminal compensation was made, on the ground that the instant appeal would not be maintainable as it is directed against a "nil" award and, as such, would be barred by the proviso to Rule 19 of the Defence of India Rules, regarding arbitration for settlement of compensation, payable u/s 19 of the Defence of India Act, 1939. Rule 19, including the above proviso, reads as follows:

"19. Any appeal against the award of the Arbitrator shall be preferred within six weeks of the receipt by the parties of the notice referred to in Rule 17:

Provided 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,"

Admittedly, in the instant case, the appellants' claim for terminal compensation was refused by the learned Arbitrator, though on the preliminary ground of non-maintainability of such claim. That, however, would not really alter the position and it must be treated as a case of "nil" award for purposes of the above proviso. Upon that view, the instant appeal would not be maintainable and it must be dismissed on the said preliminary ground of incompetency under the law.

4. We would, accordingly, dismiss this appeal without costs.

5. That, however, in the circumstances of this case, would not put an end to the matter before us, as we feel that, in the facts and circumstances before us, It is pre-eminently a case for our interference under Art. 227 of the Constitution.

6. It is true that there was no application in the alternative in connection with the above appeal for the exercise of such powers but the absence of such application should not, in our opinion, prejudice the party concerned as the constitutional powers under that Article may well be exercised suo motu and do not require any application for the purpose. In this view, we gave time to the learned Senior Government Advocate to consider the matter and make his submissions, if any, against the exercise of our powers under Article 227 of the Constitution and the case stood adjourned from June 17, 1970.

7. We have now fully heard Mr. Sengupta on behalf of the State but, as we are satisfied that, in the instant case, on a wrong view of law or misconception of the

legal position, the learned Arbitrator has refused to exercise a jurisdiction, vested in him by law, and, as, by reason of such non-exercise of jurisdiction, there has apparently been grave or serious prejudice to the subject, we are Inclined to exercise our powers under that constitutional provision (Article 227 of the Constitution) in favour of the claimants. The learned Arbitrator was of the view that the claim for terminal compensation, even though it had accrued during the period of requisition or, to be exact, on the date of de-requisition, namely, November 12, 1946, was really a right,--though an inchoate right,--annexed to the ownership of the property, and, accordingly, in view of the subsequent acquisition of the immovable property in question, the same also passed on to the State with the result that the appellants became disentitled to claim the terminal compensation, even if the said claim could be established on the merits.

8. In our view, in coming to this above conclusion, the learned Arbitrator was labouring under a misconception. He was speaking of the appellants' right in the matter as an inchoate right, annexed to the ownership and inseparable from the same. This is, obviously, a misconception. The right on the date of de-requisition was an accrued right and, although, for such accrual the party concerned or the claimant to the same must be or must have been the owner on the date of such de-requisition, or, more accurately, at the time, when the damage in question was done, it was certainly not necessary that he should continue to be the owner, even after the de-requisition, to make his claim on the basis of this accrued right,

9. Indeed, the property, which was acquired, was the damaged property and the compensation, which was paid or would have been payable for the same by the State for such acquisition, would be the value of the said damaged property. In the said acquisition, the State would not pay compensation for the damages, if any, done to the property during the period of requisition, or, in other words, terminal compensation, as it is technically called. That compensation would be payable and claimable by the erstwhile owner at the date of the de-requisition notwithstanding the State's subsequent acquisition of the immovable property in question. It is obvious, therefore, that the learned Arbitrator, on a patent misconception of the legal position, refused to exercise a jurisdiction, vested in him by law, by holding that the reference had become incompetent and the claimants had no locus standi to claim the terminal compensation.

10. We would, accordingly, set aside the impugned order and, as the matter has not been considered on the merits by the tribunal below, it is necessary that the same should go back for fresh and further consideration by a new Arbitrator, to be appointed for the purpose, the previous Arbitrator having become functus officio after the making of his impugned award.

11. As the matter has been pending for about ten years, it is desirable that the new Arbitrator should be appointed as quickly as possible and the disposal of the appellants' claim according to law and in the light of this judgment should be made as expeditiously as possible.

12. There will be no order for costs in this Court, so far as the instant matter under Art. 227 of the Constitution is concerned.

13. Let the records go down as quickly as possible.

Amiya Kumar Mookerji, J.

14. I agree.