

(1968) 03 CAL CK 0024
In the Calcutta High Court
Case No : Civil Revn. Case No. 3941 of 1967

Smt. Narayani Debi Sureka	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 26-03-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Defence of India Act, 1962 — Section 30
Defence of India Rules, 1962 — Rule 113

Citation : AIR 1969 Cal 286

Hon'ble Judges : P.N. Mookerjee, J; A.K. Dutt, J

Bench : Division Bench

Advocate : Bhabani Prasun Chatterjee, for the Appellant;

Judgement

1. This Rule was obtained by the claimant petitioner in a requisition proceeding. The property requisitioned was the top-floor flat and ground-floor garage at Premises No. 23A/95N, Diamond Harbour Road, Calcutta. The flat was requisitioned on December 4, 1963, and possession was taken on December 19, 1963, and the garage was requisitioned on February 23, 1964 and possession was taken on February 25, 1964.

2. The First Land Acquisition Collector assessed the monthly compensation of the flat at Rs. 465/- and of the garage at Rs. 35/-. The claimant petitioner, feeling aggrieved, asked for a reference and she claimed a rate of Rs. 1,100/- for the flat and Rs. 60/- for the garage as monthly compensation.

3. The matter was, accordingly, referred to arbitration and the learned Arbitrator eventually upheld the offer of the Land Acquisition Collector and fixed the monthly compensation for the requisitioned flat and the garage at the respective rates of Rs. 465/- and Rs. 35/-.

4. From the above award of the learned Arbitrator, it is clear that he was of the opinion that his power of assessing monthly compensation was controlled by

Section 30 (i) of the Defence of India Act, 1962.

5. In making this approach, he obviously misdirected himself because Section 30, in its main part, provides only a guidance for the Collector in the matter of assessment of compensation. The Arbitrator's power of making his award for compensation is dealt with under the proviso to the said section, which leaves the same unfettered and this is also evidenced and emphasised by the Rules, framed under the above Act (Vide Rule 113), which, obviously, contemplates a just award by the Arbitrator after necessary enquiries and consideration of all relevant matters.

6. It is clear, therefore, that the claimant must have an opportunity of placing materials before the Arbitrator for the assessment of a just compensation. This, in the facts of this case, appears to have been denied to the claimant. In view of the wrong approach, made by the Arbitrator, as aforesaid.

7. In the above view, we make this Rule absolute, set aside the impugned order and send the matter back to the tribunal below for a proper assessment of the disputed compensation in the Instant case in accordance with law in the light of the observations made in this judgment.

8. There will be no order for costs In this Rule.