(1946) 06 CAL CK 0008

In the Calcutta High Court

Case No : Reference in Tender Nos. 2623 and 2624 of 1945

Sohon Lal Bahety and others APPELLANT

Vs

Province of Bengal RESPONDENT

Date of Decision : 11-06-1946

Acts Referred:

Citation : (1946) 06 CAL CK 0008

Judgement

Lodge, J.—This is a reference under the provisions of S. 5, Court-fees Act, 1870.

2. The question for consideration is whether a memorandum of appeal from an award made by an arbitrator under the provisions of S. 19, Defence of India Act, is governed by S. 8, Court fees Act, and sch. 1, Art. 1 of the same Act, or by Sch. 2, Art. 11 of the Act.

3. On behalf of the appellant, Mr. A. C. Gupta has contended : (1) That the award of the arbitrator is not a decree or order having the force of a decree, and consequently sch. 2, Art. 11 is applicable; (2) that S. 8, Court-fees Act, is not applicable to orders relating to compensation for the acquisition of land under the provisions of S. 10, Defence of India Act, for the reason that the Defence of India Act is not "an Act.... for the acquisition of land, &c," as contemplated by S. 8, Court-fees Act; and (3) that temporary requisition of land under the provisions of S. 19, Defence of India Act, is not "acquisition of land" for the purposes of S. 8, Court fees Act.

4. The learned taxing officer in his order of reference has accepted the view that the award of the arbitrator is not a decree or an order having the force of a decree, but has held that S. 8, Court-fees Act, is applicable to such an award.

5. Mr. Lahiri for the Crown arguing in support of the recommendations of the learned taxing officer, has also contended that the award of the arbitrator is an order having the force of a decree and that for this reason also sch. 2, Art. 11 is not applicable.

6. It is necessary therefore to deal with all three of the arguments advanced by

Mr. Atul Gupta for the appellant.

7. Mr. Lahiri conceded that in view of the decision of the Judicial Committee in 39 I. A. 197 Rangoon Botatouug Co. Ltd. v. The Collector, Raggoon (''18) 40 Cal. 21 : 39 I. A. 197 : 16 I. C. 188 (P.C.) he could not argue that the award of the arbitrator was a decree; but be still contended that the award was an order having the force of a decree. He relied for this contention on the rules regarding arbitration for settlement of compensation payable under S. 19, Defence of India Act 1939. Rule 6 of those rules, reads:

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 CPC 1908....

8. Rule 20 reads.

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.

9. Mr. Lahiri argued that by virtue of these rules the award is an order having the force of a decree. I am unable to accept this contention.

10. In S. 19, Defence of India Act, it is clearly laid down that the arbitrator shall make an award; and that an appeal shall lie to the High Court against that award. There is nothing in the Act to indicate that the award is anything but the award of an arbitrator; and there is nothing in sub as (2) and (3) of S. 19 to suggest that the Government may make rules which would have the effect of altering the nature of the award. The provisions in the rules referred to above cannot therefore alter the nature of the award.

11. Further, inasmuch as an appeal lies under S. 109, Civil P. C., to His Majesty in Council against decrees and orders, it must be held that the decision in 39 I. A. 197 Rangoon Botatouug Co. Ltd. v. The Collector, Raggoon (''18) 40 Cal. 21 : 39 I. A. 197 : 16 I. C. 188 (P.C.) is conclusive on this point. The award is therefore neither a decree nor an order having the force of a decree.

12. For his second proposition Mr. Gupta relied on the words of S. 8, Court-fees Act. That section reads:

13. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

13. Mr. Gupta argued that this section applies only to acquisitions made under an Act whose main object is to make provision for the acquisition of land for public purposes, and has no application to acquisitions made under an Act which merely incidentally authorises the acquisition of land, but which for the most part deals

with other subjects not connected with the acquisition of land. In other words, the Act to which this section applies must be an Act whose principal object is to provide for the acquisition of land for public purposes.

14. In the first place I am not convinced that the words "for the acquisition of land etc." in the section are intended to qualify the words "Act for the time being in force." They may just as reasonably be intended to relate to the word ''compensation.'' If however this were the only reason I should have to accept Mr. Gupta''s contention on the principle that where a taxing statute is ambiguous, an interpretation favourable to the tax payer ought to be adopted. But in my opinion any Act which authorises the acquisition of land for public purposes and provides the machinery for assessment and payment of compensation, is an Act for the acquisition of land for public purposes even if the greater part of its provisions deals with other objects.

15. The tact that other provisions of the same Act deal with other subjects does not alter the nature of the provisions dealing with such acquisition. Whether provisions regarding acquisition are to be included in an Act dealing with other objects also or are to be made the subject-matter of a separate Act, seems to me to be merely a question of convenience for the legislature to consider. I am therefore unable to accept Mr. Gupta''s argument on this point.

16. The third argument urged on behalf of the litigant is that the acquisition referred to in S. 8, Court-fees Act is the permanent acquisition of land and does not include temporary acquisitions such as the requisitions with which we are concerned. In the present case, the property in question has been requisitioned, and compensation at a certain amount per month has been awarded by the arbitrator. The learned Taxing Officer held that S. 19, Defence of India Act applies both to permanent acquisitions and to temporary requisitions made under the provisions of R. 75A (1), Defence of India Rules. This view has been accepted by Mr. Gupta; and any other view would mean that persons whose property had been requisitioned might not be entitled to any compensation.

17. But, Mr. Gupta argued, the fact that the term ''acquisition'' in S. 19, Defence of India Act obviously includes requisitions for a limited period, is no reason for holding that the term ''acquisition'' used in S. 8, Court-fees Act has the same extended meaning.

18. Mr. Gupta based his argument on the obvious fact that S. 8, Court-fees Act contemplates a case of one payment being made as compensation, and not a case where periodical payments are to be made as compensation for the acquisition.

19. Though the ordinary acquisition of land contemplated by the Land Acquisition Act, 1894 was the acquisition of all rights in the land, other forms of acquisition were provided for in part VI of that Act. The phrase ''acquisition of land'' does not necessarily imply acquisition of all interests in the land. The phrase is equally applicable to the acquisition of a limited interest, e.g., an occupancy raiyat''s

interest in the land, or a tenure-holder''s interest together with the right to khas possession.

20. The mere fact that S. 8 obviously contemplated the case of one lump sum being paid as compensation does not seem to me conclusive, on the question whether the term ''acquisition'' in the section includes temporary requisition. One can easily imagine cases in which Government, for some reason, needs to requisition land for a public purpose for a definite limited period say for five years; and the legislature might provide for such requisitioning and might further provide that title should remain in the original owner and one lump sum be paid as compensation for the requisitioning. In such a case, though a case of temporary acquisition, it would be difficult to argue that S. 8, Court-fees Act did not apply.

21. Therefore, it seems to me that the term ''acquisition'' in S. 8, Court-fees Act, includes temporary acquisition for a limited period. If this is once conceded, there is no reason for assuming that it includes temporary acquisition for a fixed term of years, and not temporary acquisition limited by the happening of some future uncertain event, or that the meaning of the term ''acquisition'' in the section is to be determined by the method in which compensation is to be paid, and not by the nature of the interest acquired. I am therefore of opinion that this third argument is also unsound. The result is that I hold that S. 8, Court-fees Act is applicable in the case of requisitions under S. 19, Defence of India Act and that the Taxing Officer''s decision was correct.

