

(1955) 03 OHC CK 0013

In the Orissa High Court

Case No : First Appeal No's. 20, 22 and 23 of 1953 with Civil Ref. No. 2 of 1953

State of Orissa

APPELLANT

Vs

Bharat Chandra Nayak

RESPONDENT

Date of Decision : 17-03-1955

Acts Referred:

Constitution of India, 1950 — Article 31(2), 31(6)

Land Acquisition Act, 1894 — Section 23

Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 7(1)

Citation : AIR 1955 Ori 97

Hon'ble Judges : Panigrahi, C.J; Mohapatra, J

Bench : Division Bench

Advocate : Government Advocate and S. Acharya, for the Appellant; B. Dube, B. Mohapatra and C.K. Misra, for the Respondent

Judgement

Mohapatra, J.—The two First Appeals are by the State of Orissa under the provisions of the Orissa Development of Industries Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition Act (Orissa Act 18 of 1948), hereinafter called "the Act", against the awards dated 20-2-1953, passed by Sri B. C. Das, Arbitrator, Hirakud Dam project, Sambalpur, arising out of Arbitration Cases Nos. 182 and 183 of 1951. The Civil Reference has been made by Sri S. K. Mohapatra, Subordinate Judge of Sambalpur, u/s 113, Civil Procedure Code, arising out of Title Suit No. 13 of 1952 in which the plaintiff (Bharat Chandra Nayak) prays for a declaration that the first proviso to Section 7(1)(e) of the Act is ultra vires.

2. Under the provisions of the Act, several plots of cultivated and waste lands in village Larpank were acquired by the Government Plaintiff-respondent Bharat Chandra Nayak is the sole Gountia of the said village Larpank. Out of 13.66 acres of respondent's lands which were acquired under the provisions of the Act by the Government, 10.62 acres are Bhogra and 3.04 are gaonti-raiyati lands. There were quite a number of trees, standing on these lands, acquired under the

provisions of the Act, such as, Mango, Tamarind, Mahul, Char, etc. The Government offered a sum of Rs. 4044-8-6, as compensation for the land and trees, but the respondent having objected to the amount of compensation laid his claim at Rs. 38,305/-. In these circumstances, the matter was referred to the Arbitrator for fixation of compensation under R. 9 of the Rules framed under the Act. In the present case the notifications of acquisition were made on 22-9-1948, 21-2-1949 and 12-3-1949.

3. The main point for determination in the present cases is the quantum of compensation and the principles under which the quantum is fixed. The State strongly relies upon the first proviso to Section 7(1)(e) of the Act as laying down the guiding principles for the determination of the quantum of compensation. On the contrary, it is contended on behalf of the objector-respondent that the said proviso is ultra vires as offending against the provisions of Article 31 of the Constitution. The Act received the assent of the Governor of Orissa on 8-1-1949 and was first published in an extraordinary issue of the Orissa Gazette dated 11-1-1949. It extends to the whole of the Province of Orissa. Sub-section (3) of Section 1 of the Act lays down that it shall come into force on such date or dates and in such areas as the Provincial Government may, by notification, appoint. It came into force on 25-1-1949 and was extended to the district of Sambalpur on 28-1-1949.

In Clause (c) to Section 2, "development of industries" has been defined to mean and include

"construction of the Hiralcud Dam and other dams and reservoirs, Hydro-Electric projects and such other schemes or projects as the Provincial Government may, by notification from time to time, specify in this behalf.

It is in connexion with the construction of the Hirakud Dam that the lands in dispute were acquired by the Government of Orissa by notification above referred to.

It would be pertinent to quote the relevant portion of the impugned proviso to Section 7 of the Act:

"Section 7. (1) Where any land has been acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say -

(a)

(b)

(d)

(d)

(e) the arbitrator in making his award, shall have due regard to the provisions of Sub-section (1) of Section 23, Land Acquisition Act 1894, (Central Act No. 1 of

1894).

Provided that the market value referred to in Clause (1) of Sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice u/s 3, or as the case may be, the preliminary notification under Sub-section (1) of Section 4, Land Acquisition Act, 1894, referred to under Sub-section (2) of Section 3 or on the first day of September, 1939 with an addition of fifty per cent, whichever is less;

X X X X X ".

Under this proviso, the owner of lands to be acquired under the provisions of the Act will be entitled to receive compensation on the market value of the lands on the date of the notification of acquisition, or the market value of the lands acquired on the first day of September, 1939, with an addition of fifty per cent, whichever is less.

It is needless to say, so far as the present acquisitions are concerned, that the value of the lands and the trees on the dates of acquisition must be several times more than the value on the first day of September, 1939, that is, the pre-war valuation. It is a notorious fact that the market value of the lands in the year 1939 was just a small fragment of the value of the year 1949 which must be at least five times the value of the lands in 1939. The manifest position, therefore, is that the value of the lands acquired in the years 1948 and 1949, according to the rate prevailing in 1939, can never be taken to be reasonable and just compensation. Compensation must always necessarily mean "a just, reasonable and equivalent price" of the land acquired,

4. We will now take up Article 31 of the Constitution which runs as follows;

"31. (1) No person shall be deprived of his property save by authority of law,

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or, such acquisition unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3)

(4)

(5) Nothing in Clause (2) shall affect : (a) the provisions of any existing law other than a law to which the provisions of Clause (6) apply."

The present case comes within the language of Clause (6) as the impugned provision of the section of the Act was enacted not more than 18 months before the commencement of the Constitution. Clause (6) of Article 31 runs thus :

"Any law of the State enacted " not more than eighteen months before the commencement of this constitution may within three months from such commencement be submitted to the President for his certification; and thereupon if the President by public notification so certifies, it shall not be called in question in any Court on the ground that it contravenes the provisions of Clause (3) of this Article or has Contravened the provisions of Sub-section (2) of Section 299, Government of India Act, 1935."

The present Act did not receive the certificate of the President as contemplated under Clause (6). It is therefore open for the respondent to object as to the constitutionality of any of the provisions of the Act.

5. The Act is a permanent Act of the State. The fixation of compensation is at the market value of the land to be acquired under the Act; but the fixation at the rate prevailing in the year 1939 with an addition of fifty per cent, is manifestly an arbitrary one and can never be taken to be a fair, just and equivalent price of the land which may be acquired at any time. Indeed the State Legislature is given discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the acquisition of his property; but the position is equally clear that such principles must ensure fixation of just and fair valuation of the appropriated property. Far from conforming to the above standard the principles laid down by the State Legislature will entitle the Government to acquire lands at a merely nominal value.

Without discussing the matter any further, we will observe that the matter has been concluded by the decision of the Supreme Court in the case of -- The State of West Bengal Vs. Bela Banerjee and Others, . There the impugned Act (The West Bengal Land Development and Planning Act (21 of 1948)) lays down the principle for fixation of compensation in the following terms :

"provided that * * * (b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in Clause (1) of Sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification under Sub-section (1) of Section 4 for the notified area in which the land is included subject to the following condition, that is to say,

if such market value exceed by any amount the market value of the land on 31-12-1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration."

There also the West Bengal Act came into force within 18 months before the commencement of the Constitution and the requisite certificate of the President was not obtained. Their Lordships observed as follows :

"Article 31(1)(6) is intended to save a State law enacted within 18 months before

the commencement of the Constitution provided the same was certified by the President while, Article 31(5) saves all existing laws passed more than 18 months before the commencement of the Constitution. Reading the two clauses together, the intention is clear that an existing law passed within 18 months before 26-1-1950, is not to be saved unless it was submitted to the President within three months from such date for his certification and was certified by him."

On the provision of the impugned West Bengal Act that the compensation should not exceed the value of the land on 31-12-1946, their Lordships observed as follows :

"Turning now to the provisions relating to compensation under the impugned Act, it will be seen that the latter part of the proviso to Section 8 limits the amount of compensation as not to exceed the market value of the land on 31-12-1946, no matter when the land is acquired. Considering that the impugned Act is a permanent enactment and the lands may be acquired under it many years after it came into force, the fixing of the market value on 31-12-1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Article 31(2). The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later, cannot but be regarded as arbitrary."

6. The observations made and the principles laid down in *tin's* case by the Supreme Court apply in full force to the impugned provisions of the Orissa Act. We will, therefore, unhesitatingly declare that the first proviso to Section 7(1)(e) of the Act is ultra vires as contravening Article 31(2) of the Constitution. The decision on this point will dispose of Civil Reference No. 2 of 1953 wherein learned Subordinate Judge of Sambalpur by his judgment dated 29-4-1953 made a reference u/s 113, Civil P. C.

7. Now, therefore, the compensation is to be fixed on the principles laid down u/s 23, Land Acquisition Act (Central Act No. 1) of 1894, that is to say, according to the market value of the acquired land on the date of acquisition.

8. We will now take up the valuation of the Bhogra lands. Out of 10.62 acres of Bhogra land acquired by Government, 2.78 acres are Bahal (first class), 85 Berna (second class), 1.64 Mal (third class) and nearly half of the area of the total acre age, that is, 5.34 acres are Atta (dry land of the worst class). It is the settled law that the Gountias have free right to transfer their proprietary interest as well as all their rights. There is no challenge to this position. On the Government side no witness had been examined as to the market value of these lands in the years 1948 and 1949, The Government also had not produced any

sale-deed; but nevertheless the learned advocate appearing for the State before the Arbitrator filed a petition for accepting as evidence certified copies of some sale- deeds from the register kept in the Sub-Registrar's office under Sections 51 and 57, Registration Act. There was no attempt to prove them formally. The parties to the documents were also not examined to state before the Arbitrator as to the nature of the transactions. The Arbitrator was, therefore, justified in not placing any reliance upon these copies.

On the side of the objector was produced Ex. D, a registered sale-deed dated 23-6-1934 on the basis of which the objector purchased the sixteen annas gaontiahi right in respect of the village. The total extent of Bhogra lands attached to the village is 71.03 acres. Besides the Bhogra lands, the objector, by this purchase acquired right over the trees and Waste lands etc. It was not possible therefore from this document to ascertain the market value of Bhogra lands and particularly as this is a document of the year 1934 it is of no benefit for our purpose. The Arbitrator, therefore, rightly proceeded to determine the compensation on the basis of annual net profits on account of the absence of any reliable documentary evidence as to the prevailing rate of sales and purchases of Bhogra lands in the years 1948 and 1949.

9. Exactly a similar case from the district of Sambalpur came up before their Lordships of the Patna High Court while they were holding their circuit sitting at Cuttack. In the case of -- "Secy. of State v. Bodh Ram AIR 1931 Pat 131 (B) their Lordships have laid down as a safe guide for the purpose of ascertaining the market value of Gountia's Bhogra land for the purpose of payment of compensation under the Land Acquisition Act, 1894. Usually it is safe to pay as compensation 16 to 20 years' purchase of the annual net produce of the land acquired. On the question of annual profits from out of Bhogra lands, the objector had examined himself and a few other witnesses. The Arbitrator acted wisely in not placing any reliance on the oral evidence of this witness when he (the objector) is a retired Deputy Collector and has taken agriculture as his occupation. On a perusal of the entire evidence of this witness, we are of the view that he is a failure in the matter of agricultural operation and if we take his evidence as a guide the annual produce of this land will practically be nil.

The other witnesses also do not improve the case. The evidence of these witnesses were also placed before us and we are of the view that it is absolutely unsafe to be guided by their evidence. The Arbitrator therefore, having rightly discarded the oral evidence on record, had, no other alternative but to fall back upon Hamid's Settlement Report of 1926 in order to get at the annual gross produce of the Bhogra lands in village Larpank. In para. 47 at p. 49 of the Report, the cultivated land in the district of Sambalpur is divided into 30 classes. In para. 24 at p. 21, the estimate of the gross yield of each variety of land is given. To our mind, in the absence of any other evidence as to the annual yield of the Bhogra lands, this Settlement Report which is an authorised one may be accepted as a safe guide.

On the basis of the figures available from this Report, the annual gross yield of the objector's Bhogra lands is as follows:

Area of land acquired. Average gross Produce per acre acc. to Hamid Settlement report. Actual produce per acre based On soil fac-tor & soil unit rate. Gross produce from the acres acquired. Quantity of straw at 1? time the weight of paddy.

Acres Md. Srs. Md. Srs. Md. Srs. Md. Srs.

Babal I P 2.18 22-0 24-17 53-10

Bahal 11 P 0.60 22-0 20-5 12-8

Berna I P 0-10 18-0 19-21 1-38 152-7

Berna 11 P 0.75 18-0 17-3 12-32

Mal Saman 0.12 15-0 9-15 10-20

Mal Tikar 0.52 8-0 6-9 13-10

Atta (ordinary) 535

1-17 1-17 7-25

10.62 101-18 152-7

The annual gross yield of the paddy and straw is thus 101 mds. 18 srs. and 152 mds. 7 srs. respectively. There is no dispute regarding the sale rate of paddy which was Rs. 6/8 per maund in 1948. Regarding the value of straw the Arbitrator has rightly fixed it at Rs. 2/- on the basis of Ex. 1(a) which shows that the Government had estimated at that rate the value of straw of the paddy crops which were standing on some portion of the objector's acquired land in 1948-49. The total value of the paddy on this basis is Rs. 659/7 and the value of straw is Rs. 304/6, in all the net produce is Rs. 963/13. Regarding the costs of cultivation, as it is notorious that they have gone up considerably on account of the rise of prices since after the last settlement, half of the gross produce may be deducted on that account. The net produce therefore comes upto Rs. 481/14/6 and the adequate compensation will be represented by a sum sixteen times the annual yield as found by the Arbitrator.

The compensation in respect of these 10.62 acres of Bhogra lands, therefore is Rs. 7,710/8/-. The Arbitrator has rightly deducted from this amount twenty times the deduced rent as the land-lord's share out of which fifteen times would go as the Government's share and five times as Gountia's share. The deduced Dharja-jama being Rs. 5/-/8, the landlord's share is Rs. 80/10/8, out of which the Government's share is Rs. 60/8/- and the Gountia's share is Rs. 20/2/8. Deducting the Government's share from out of the total compensation therefore the respondent is entitled to get Rs. 7,650/- as compensation for the acquisition of Bhogra lands of 10.62 acres in village Larpank.

10. We will now take up gounti-raiyati lands. The main question in this connexion is whether these lands are saleable or not. If they are saleable, the compensation for these lands should be Valued exactly as the Bhogra lands, that is, sixteen times the net produce of the lands. But if they are non-saleable, the Gountia is only entitled to five hundred times of the deduced rent as agreed upon by the parties in respect of the non-saleable lands. The Gountia possesses these lands on account of surrender of the raiyats of the village, or the Gountia having cultivated some waste lands. There is no special class of tenant known, as Gountia raiyati tenancy in the Sambalpur tenancy law. Indeed in the present cases the objector-respondent is the sixteen annas Gountia of the village. The admitted position is that the Gountia holding raiyati land pays rent to the Government as other occupancy raiyat. It is indisputable that such lands cannot be Bhogra lands of the Gountia. It appears, in respect of these lands the Gountia is nominally his own tenant but in reality is the tenant of the Government as in the case of all tenants in the gounti-village.

We may quote in this connexion Note No. 8 appearing at p. 24 of the Sambalpur Manual, 1950 Edn. Vol, 1:

"The remaining kind of "sir" to be considered is the bhogra land of Sambalpur. With the exception of the zamindars and a few re venue-free grantees who have been declared proprietors of their estates, the malguzars, or gaontias (as they are locally termed) of the Sambalpur district are not proprietors of their villages, but only of their bhogra lands. The bhogra in Sambalpur, which is declared to be "sir" in Clause (c) of the Sub-section (1), Section 4A, is therefore synonymous with proprietary land in the gaontiahi villages of that district. It cannot be increased or diminished. If the gaontia cultivates any waste land or land surrendered by a tenant he takes it simply as a raiyat and becomes in respect of it a tenant, nominally of himself, but in reality (as is the case with all tenants in the gaontiahi villages) of Government. The bhogra of Sambalpur is the only land of "sir" to which Section 45, Tenancy Act does not apply (Sub-section (8) of that section)."

11. The contention on the part of the respondent is that it is only the occupancy right which is made non-transferable under the provisions of Section 46, C. P. Tenancy Act and the land in question not being an occupancy right is not hit by the said provisions and therefore be deemed as transferable. There are five classes of tenants under the C. P. Tenancy Act: (i) absolute occupancy tenants; (ii) occupancy tenants; (iii) village-service tenants; (iv) sub-tenants; and (v) ordinary tenants. We are not to consider here the village service tenants and sub-tenants. The highest class of tenancy rights are those of absolute occupancy tenants. The heritability and transferability of such rights are provided for u/s 41. The incidents of other two kinds of tenants, that is, occupancy tenants and ordinary tenants, are provided for under Sections 46 and 71 of the Act. If they are not occupancy tenancy rights they are to be governed according to the incidents of ordinary tenants which are still more non-transferable.

Indeed there are some decisions to show that a gaontia cannot be a tenant under himself, but nevertheless he is a raiyat under the Government and is a holder of a survey number like other raiyats of the village and is subject to the provisions of revenue law governing such raiyats. u/s 67-E, C. P. Land Revenue Act it is provided that the right of a Government raiyat in a survey-number held by him shall devolve as if it were land, but is not transferable except to a person who, if he survived the raiyat, would inherit his right, or to a co-sharer in such right, or, with the permission of the Deputy Commissioner, by a lease to a sub-tenant cultivating under the raiyat. There is no provision either in the Land Revenue Act or in the Tenancy Act to make such right transferable and we are not prepared to accept the position that such right can be placed at higher level than an occupancy raiyat's right.

12. It is to be observed in this connexion that the objector has not been able to produce a single transaction of sale of such right. On the contrary, the position is clear that such rights have been the subject-matter of leases and not of sales. On the above consideration therefore, we are of the view that these rights are non-transferable, and, as such, the requisite compensation as agreed upon by the parties regarding non-saleable land is five hundred times of the deduced rent which is (Rs. $1/6/3 \times 500$) Rs. 695/5/-. Out of this amount fifteen years' rental amounting to Rs. 16/11/- will be deducted as Government's share. The total amount on this account therefore comes to Rs. 678/10/-.

13. The next item is compensation regarding trees standing on the tenant's occupancy holdings -- Bhogra lands and gaonti -- raiyati lands and waste lands. The Government's contention that the objector has no right to claim a share in the compensation payable or paid to the tenants for the trees on their holdings has been accepted by the Arbitrator and there is no challenge to this position. There is no dispute with regard to the number and kinds of trees which the objector had lost as a result of acquisition. They are as follows : Bhogra and Gaonti-raiyati Mango 6, Tamarind 20, Mahul 2, Char 8, Khajuri 1, Bahada 2 and Palasa 22. Waste land-- Tamarind 1, Char 463 (including 221 which have not home fruits), Mahul 28, Bahada 2, Sahaj 9, Rohen 1 and Bara 1. .

According to Wajib-ul-arz for gaontiahi-villages of Sambalpur. district as given in Appendix II, P. 343 of the Sambalpur Manual Vol. I, the fruit and timber of selfgrown trees are to be enjoyed by the persons on whose lands they stand and by the gaontias in case of those standing on waste lands. The Arbitrator has rightly found that in fact the trees on the waste lands are self-grown, and as such, the objector is entitled to the full value of the self-grown trees on the waste land as compensation. But we find, on a perusal of the award of the Arbitrator regarding the fixation of the value of the trees, that the Arbitrator's valuation is highly exaggerated, and particularly with reference to Mango, Tamarind and Mahul.

The Arbitrator has fixed the valuation as follows:

Description & No. of trees. Rate per tree. Total value.

Bahada (2?) 8/- 32-0-0

Tamarind (20?) (1") 35/- 735-0-0

Char (8?) (463") 3/- 1413-0-0

Mahul (2?) (28") 35/- 1050-0-0

Mango (6?) 40/- 240-0-0

Khajuri (1?) 10/- 10-0-0

Palasa (22?) - 6-9-0

Sahaja (9") - 12-12-6

Rohen (1") - 4-4-6

Bara (1") - 1-4-0

According to us, the fair and equitable value should be at the following rate :

Bahada (2?) (2") 4/- 16-0-0

Tamarind (20?) (1") 10/- 210-0-0

Char (8?) (463") 1/- 471-0-0

Mahul (2?) (28") 10/- 300-0-0

Mango (6?) 10/- 60-0-0

Khajuri (1?) 3/- 3-0-0

Paksa (22?) 5/- 110-0-0

Sahaja (9") 10/- 90-0-0

Rohen (1") 10/- 10-0-0

Bara (1") 10/- 10-0-0

(?) indicates trees on Bhogra & gaonti-raiyati lands. (") indicates trees on waste lands.

On the basis of the above calculation, therefore, the trees on Bhogra and gaonti-raiyati lands are valued by us at Rs. 409/- as against Rs. 1066/9/-and Rs. 394/- fixed by the Arbitrator and the Land Acquisition Officer respectively and the trees on waste lands are valued by us at Rs. 871/- as against Rs. 2438/5/- and Rs. 645/8/- fixed by the Arbitrator and the Land Acquisition Officer respectively. The total compensation on account of the trees, according to our calculation, thus comes to Rs. 1,280/-.

14. We accept the Arbitrator's finding that the objector as Gaontia, is entitled to

Rs. 44/13/6 as the Gaontia's share in the compensation given to the occupancy tenants for possession of their occupancy holdings. In the result, the objector Bharat Chandra Nayak (plaintiff-respondent) is entitled to get compensation of Rs. 9,662/8/11 as detailed below:

For 10.62 acres Bhogra lands ... Rs. 7,650/-

For 3.04 acres graonti-raiyati lands ... Rs. 678/10/-

For trees ... Rs. 1,280/-

Gaontia's share in compensa-tion paid for raiyati lands acquired in the village ... Rs. 44/13/6

Gaontia's share in the com-pensation payable to Manorama Devi ... Rs. 9/1/5

Total ... Rs. 9,662/ 8/11

15. The only point in respect of cross-appeals filed in F.A. Nos. 22 and 23 of 1953, pressed by the learned advocate for the respondent, is regarding the costs of cultivation. The Arbitrator has deducted half of the gross-produce as the costs of cultivation whereas the objector-respondent contends that one-third of the gross-produce is sufficient to meet the costs of cultivation and relies upon some observations in the Settlement Report of the year 1926. As we have already found, on account of extraordinary rise in the costs of cultivation after 1942 the Arbitrator was perfectly justified in deducting half of the gross-produce towards costs of cultivation. There is therefore no point in the cross-appeals which are accordingly dismissed without costs.

Regarding First Appeal No. 20/1953.

This First Appeal is in respect of 1.88 acres of raiyati land in village Larpank, acquired by the Government under the provisions of the Act (Orissa Act No. 18 of 1948), belonging to Shrimati Manorama Devi, the respondent. As agreed upon by the State of Orissa, the appellant, the respondent's compensaion is fixed at 500 times of the deduced rent. The Arbitrator has allowed compensation on that basis and the award for Rs. 879/11/- for the aforesaid land passed by the Arbitrator carrying interest at the rate of six(6) per cent, per annum from 11-2-49 (date of possession) till the date of payment stands confirmed.

16. In conclusion, therefore, Civil Reference No. 2 of 1953 is answered thus that the provisions of First Proviso to Section 7(1)(e) of the Act (Orissa Act No. 18 of 1948) is "ultra vires" as we have discussed above. Hearing fee is assessed at Rs. 100/-(rupees one hundred).

First Appeals Nos. 22 and 23 of 1953 are partly allowed with proportionate costs and the award is modified to the extent that- the objector-respondent (Bharat Chandra Nayak) is entitled to get Rs. 9,662/8/11 instead of Rs. 14,620/1/11 as fixed by the Arbitrator with interest at the rate of six(6) per cent. per annum from the date of possession till the date of payment. The amount, if not paid

already, is to be paid forthwith. The connected cross-appeals are also dismissed without costs; and First Appeal No. 20 of 1953 is dismissed with costs.

Panigrahi, C.J.

17. I agree.