
(1965) 02 CAL CK 0019

In the Calcutta High Court

Case No : Civil Revn. Case No"s. 4156 to 4159 of 1960

State of West Bengal

APPELLANT

Vs

Kalicharan Mudi

RESPONDENT

Date of Decision : 17-02-1965

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 11, 12

Citation : AIR 1965 Cal 638

Hon'ble Judges : P. Chatterjee, J;A.C. Gupta, J

Bench : Division Bench

Advocate : B.C. Dutta and N.G. Das, for the Appellant; Murari Mohan Datta, Hari Narayan Mukherjee and Sib Kumar Majumdar, for the Respondent

Judgement

Chatterjee, J.—This is a petition under Article 227 of the Constitution against an order passed by the Land Acquisition Collector on the 28th May, 1960. The Land Acquisition Collector passed an award, then he modified it. Against that order, Civil Rule No. 659/58 was issued and the Rule was made absolute by J.P. Mitter, J. It was found that the Land Acquisition Collector had no powers to amend his original award and the Rule was made absolute. Thereafter, the matter went back to the Collector who restored his original award on the basis of the judgment of the High Court as he understood it. Mr. B. C. Dutt on behalf of the State has urged that he could not restore the original award and if he did so, he was mistaken. According to Mr. Dutt, the original award was set aside by the Land Acquisition Collector and an amended award was then passed. The amended award in its turn was set aside by the High Court. Hence, the position was that the original award stood set aside by the order of the Land Acquisition Collector dated the 16th September 1957 and the amended award was set aside by this Court by its order dated the 15th January 1960. Hence according to Mr. Dutt, there was no award and the Collector should have proceeded to make another award. Mr. M.M. Dutt on behalf of the opposite party has objected on twofold grounds. The first ground is that a petition under Article 227 of the

Constitution would not lie because the Collector, when he passed an award u/s 11 of the Land Acquisition Act, was no tribunal but merely an officer of the Government who offered compensation on behalf of the Government. Mr. Bankim Chandra Dutt on behalf of the State of West Bengal pointed out that the petitioner himself moved the High Court but it was pointed out by Mr. M. M. Dutt that they moved the High Court but under Article 226 of the Constitution. We would first consider whether the Collector, when he acts u/s 11 of the Land Acquisition Act, acts as a tribunal. Two decisions have been referred to--one is reported in *Bimala Prosad Ray and Another Vs. State of West Bengal*, and another in *Samanta Radha Prasanna Das Vs. The Province of Orissa*, . But there are decisions on this point of the Judicial Committee as well as of the Supreme Court and the decision of the Supreme Court is of a much later date than the decision of the Calcutta High Court in 1951 or of the Orissa High Court. The decision of the Supreme Court is reported in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . In paragraph 5 the Supreme Court held as follows:

"It (the award) is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition."

Having further considered the matter, their Lordships came to the conclusion as follows:

"It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance."

Their Lordships considered the decision of this Court in the case *Ezra v. Secy. of State*, reported in ILR 30 Cal 36 at p. 86 where it was held,

"The consideration to which we have referred satisfies us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded."

The Judicial Committee in *Ezra v. Secy, of State for India* ILR 32 Cal 605 (PC) expressly approved/ the observation made by the High Court and that is what the Supreme Court found in the aforesaid case and the Supreme Court further observed that

"it is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded."

The observation of the Division Bench of this Court in ILR 30 Cal 36 (86) referred

to above was accepted not merely by the Judicial Committee in ILR 32 Cal 605 (PC) but also approved by the Supreme Court in the aforesaid case. It is difficult therefore for us to say at the present stage that the Collector while making an award u/s 11 of the Land Acquisition Act was a tribunal. We have no doubts that he was not acting as a tribunal or a judicial officer but only as an officer of the Government who made offers on behalf of the Government. Hence, we agree with Mr. M.M. Dutt that the Collector passing an award u/s 11 is no judicial officer, no tribunal, but merely an officer of the Government who makes enquiries to determine what motley the Government would offer to the persons whose land is acquired.

2. It was suggested that the award of the Collector is executable as a decree. We have not been able to get any provision in the Land Acquisition Act to that effect that certainly applies to an award passed by the District Judge on reference; but there is no provision that the award made by the Collector would have the effect of a decree. On the other hand, Section 12 of the Land Acquisition Act makes it clear that the award should be final and conclusive evidence as between the Collector and the persons interested regarding the true area the value of the land and the apportionment of compensation. That award is not stated to become a decree but it merely becomes a final and conclusive evidence as between the Collector and a person whose land is acquired regarding the three matters referred to therein. The application under Article 227 is not maintainable.

3. In this view of the matter, we must discharge the Rules, but we make no order as to costs.