

(1959) 02 CAL CK 0024
In the Calcutta High Court
Case No : A.F.O.D. No"s. 6 to 9 of 1955

State of West Bengal

APPELLANT

Vs

Kesson Chand Kocher and Others

RESPONDENT

Date of Decision : 03-02-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 23 Rule 3
Land Acquisition Act, 1894 — Section 12, 20, 21, 30

Citation : AIR 1960 Cal 506 : (1960) 1 CALLT 374 : 64 CWN 514

Hon'ble Judges : S.C. Lahiri, J;A.N. Ray, J

Bench : Division Bench

Advocate : Prafulla Kumar Roy and Sushil Chandra Banerjee, for the Appellant; P.N. Mitter, Nagendra Mohan Saha (in Nos. 6-9), Mohanlal De (in No. 6), Somendra Chandra Bose (in No. 7) and Guru Prosad Ghose (in No. 8), for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—The decision of these four appeals turns on a single question and that is whether the State of West Bengal is bound by four compromise decrees passed by the Supreme Court on the 2nd March, 1954, although it was not a party to any of them. The facts upon which this question arises are not in dispute and are as follows:

2. On divers dates in the years 1938 and 1939, certain plots of land together with structures and trees standing thereon were acquired by the Land Acquisition Collector for the Calcutta Improvement Trust. Four land acquisition cases were started for the acquisition of these four plots of land. There were two grounds of rival claimants for compensation: (a) the landlords who may be collectively described as the Kochers and (b) the tenants who may be collectively described as the Mitras. In respect of the lands which formed the subject-matter of the acquisition the Collector made joint awards in favour of the landlords and tenants. Against the awards of the Collector the Kocher landlords filed

applications for references disputing the amount of compensation and also claiming the entire amounts for themselves to the exclusion of the tenants. Those applications gave rise to four references which were cases Nos. 33, 61, 87 and 93 of 1939. The State of West Bengal was a party to all these valuation references. Besides the above four valuation references, four apportionment cases were also started upon the landlords' plea that they were exclusively entitled to the entire amount of compensation, and these apportionment cases were Nos. 117, 118, 119 and 123 of 1941 in which the State of West Bengal was not impleaded as a party. The Mitra tenants did not file any effective application challenging the amount of compensation awarded by the Collector and confined their claim to the shares they were entitled to get in the apportionment cases. In the valuation references made at the instance of the Kocher landlords the Calcutta Improvement Tribunal enhanced the valuation in the following manner:

(1) In F. A. 6 of 1955, corresponding to apportionment case No. 117 of 1941, the Collector awarded Rs. 13,627-8-0 as the value of the land and this amount was increased by the Tribunal by Rs. 652-10-0 with costs and interest at the rate six per cent per annum.

(2) In F. A. No. 7 of 1955, corresponding to apportionment case No. 123 of 1941, the Collector awarded Rs. 4,140/- as the value of the land which was enhanced by the Tribunal by Rs. 1,384-5-0 with costs and interest at the rate of six per cent per annum.

(3) In F. A. No. 8 of 1955, corresponding to apportionment case No. 118 of 1941, the Collector awarded Rs. 11,063/- as the value of the land which was enhanced by the Tribunal by Rs. 2,598-10-9 with costs and interest at the rate of six per cent per annum.

(4) In F. A. No. 9 of 1955, corresponding to apportionment case No. 119 of 1941, Collector's award of Rs. 48,012-8-0 was increased by the Tribunal by Rs. 11,199/- with costs and interest at the rate or six per cent per annum.

3. It is common ground that since the Mitra tenants did not file any application challenging the Collector's valuation they were not entitled to any part of the enhancement allowed by the Tribunal. This proposition follows from the provisions of Sections 12, 20(b) and 21 of the Land Acquisition Act and also the decisions of the Judicial Committee and of this Court referred to in the judgment of the Tribunal and is not disputed before us. In the apportionment cases to which the State of West Bengal was not a party the Tribunal held that the Kocher landlords were entitled to 13% annas of the compensation and the Mitra tenants to the remaining 2 1/2 annas share. Against the order of the Tribunal the Mitra tenants filed four First Appeals to this Court which were registered as First Appeals Nos. 91, 93, 94 and 242 of 1945. By a judgment delivered in First Appeal No. 91 of 1945, which was to govern the other three appeals, this Court held on the 14th March, 1950, that the Kocher landlords were entitled to get only thirty times the annual rent as compensation and the entire balance was to go to

the Mitra tenants. Against the decrees of this Court the Kocher landlords filed four appeals to the Supreme Court which were decreed on compromise on the 2nd March, 1954. The material provisions of the compromise decree passed by the Supreme Court are as follows :

(a) That the judgment and decree dated the 14th March, 1950, of the Calcutta High Court be set aside and the corresponding judgment of the President, Calcutta Improvement Tribunal in the corresponding apportionment case be restored;

(b) That out of the Collector's award the Kocher landlords be paid Rs. 3,200/- in one appeal and Rs. 3,500/- in each of the other two appeals and Rs. 800/- in the fourth appeal and the balance of the amount in deposit with the Collector be paid to the Mitra tenants together with interest accrued thereon;

(c) That the enhanced award together with all costs and interest be paid to the landlords-appellants. These compromise decrees were filed by the Kocher landlords before the Calcutta Improvement Tribunal together with applications for withdrawing the money to which they were entitled under the compromise decrees. The Kocher landlords claimed in their petitions that under the terms of the compromise they were entitled to withdraw the entire amounts of the enhancements made by the Tribunal in the valuation references. This claim was resisted by the State of West Bengal on the ground that under the High Court judgment they had lost their right to get any portion of the enhancement and that right could not be revived by a compromise to which the State of West Bengal was not a party. The President of the Improvement Tribunal took the view that the judgment of this Court had been superseded by the compromise decrees passed by the Supreme Court and, therefore, the Kocher landlords were entitled to withdraw 13 1/2 annas share of the enhancement made by the Tribunal in the valuation references. Against this order of the Tribunal the State of West Bengal has brought the present appeals. On behalf of the appellant it has been contended that under the judgment of this Court the appellant was absolved from all liabilities to pay any part of the enhanced compensation to the Kocher landlords. The position is this. The judgment of the High Court did not allow any fraction of the compensation to be paid out to the Kocher landlords but directed that the landlords would be entitled to a specific sum, that is thirty times the annual rent.

4. Mr. Roy appearing for the appellant states that the entire area which formed the subject matter of the four land acquisition cases, was held under a single tenancy at a consolidated annual rent of Rs. 22/14/-. Thirty times of this amount would yield the figure of about a little less than Rs. 690A. Consequently, out of the award of the collector, the Kocher landlords would be entitled to get only a sum of a little less than Rs. 690/- and no question would arise of any claim in respect of the enhancement allowed by the tribunal. I have stated the sums which were allowed by the collector by his award jointly in favour of the landlords and the tenants. It is quite clear that the landlord's dues under the judgment of

this Court, would be completely satisfied out of the amount which was awarded by the Collector. The liability of the State of West Bengal to pay the enhanced compensation to the Kocher landlords was consequently completely extinguished by the judgment of this Court. Against that judgment the Kocher landlords filed appeals to the Supreme Court without impleading the State of West Bengal as a party and the State of West Bengal was not also a party to the applications for compromise which were filed in the Supreme Court. As a result of the compromise effected in the Supreme Court, however, the liability of the State of West Bengal to pay the enhanced compensation, revived. The question is whether the State of West Bengal is bound under the compromise decrees to pay the amounts agreed between the parties under the compromise decrees made by the Supreme Court.

5. After hearing the learned advocates on both sides I have come to the conclusion that the State of West Bengal is not liable to pay any part of the enhanced compensation to the Kocher landlords for the following reasons:

Any right which accrues in favour of a litigant, cannot be varied or modified by any contract or agreement to which he is not a party and consequently, the compromise between the Kocher landlords and the Mitra tenants in the Supreme Court did not, in any way, affect the liability of the State of West Bengal.

6. Mr. Mitter appearing for the Kocher landlords has contended before us that the State is not a necessary party in an apportionment case and any! decision given in an apportionment case is binding upon the State even if the State is not a party thereto. He has drawn a distinction between a case where the total valuation fixed by the tribunal is sought to be enhanced and a case where, without challenging the valuation made by the tribunal, the parties agree to adjust their mutual rights. His argument is that since in the Supreme Court appeals and in the appeals before this Court there was no question of increasing the total valuation fixed by the tribunal, the State was not a necessary party. This argument, though plausible, does not bear scrutiny. It has undoubtedly been held in some cases that the State is a necessary party only when the total valuation as fixed by the Improvement Tribunal or by the Land Acquisition Collector is sought to be enhanced but not in a case, where, without any attempt to increase the valuation, the parties litigate their mutual rights and reliance has been placed on a decision of this Court in the case of *Kanti Bhusan Sarkar v. Province of West Bengal* (59 C W. N., 297), decided by Mookerjee and Renupada Mukherjee JJ. It is true that more often than not no question of valuation is involved in apportionment cases and strictly speaking, an apportionment case started on the Collector's reference u/s 30 of the Land Acquisition Act, proceeds on the basis that the compensation settled by the Collector u/s 11 of the Land Acquisition Act is to be accepted as final. In such cases, of course, the State is not a necessary party but the facts of the present case are somewhat different. In these cases, the judgment of this Court is inextricably bound up with the liability of the State of West Bengal to pay compensation to the Kocher landlords.

If the judgment of this Court stands, there is no obligation on the part of the State of West Bengal to pay any part of the enhanced compensation to the Kocher landlords and that liability cannot, in my opinion, be revived, enlarged or enhanced by a compromise to which the State of West Bengal is not a party. It is not necessary for us in the present cases to enter into the question whether the State of West Bengal would have been bound by the decision of the Supreme Court if that Court had decided the appeals on the merits and had adjudicated on the rights of the parties without any agreement between the Kocher landlords and the Mitra tenants. The decrees made by the Supreme Court were not based on any adjudication of the rights of the parties, but were only based upon an agreement between the appellant and respondents in the Supreme Court to which the State of West Bengal was not a party. The decree based on such an agreement cannot, in my opinion, be enforced against the State of West Bengal which did not join in that compromise. The true test, in my opinion, is this. Was the State of West Bengal liable to pay the whole or any part of the enhanced compensation to the Kocher landlords under the judgment of this Court? If it was not, the liability could not be enlarged by any agreement to which the State of West Bengal was not a party. A compromise decree has the effect of an agreement between the parties with the command of the court super-added to it and it can be challenged on any of the grounds on which an agreement can be challenged under the Indian Contract Act. In this view of the matter the conclusion is irresistible that the right accrued in favour of the State of West Bengal under the judgment of this Court could not in any way, be affected by the compromise decrees passed by the Supreme Court.

7. The second point raised by Mr. Mitter is to the effect that if the, State of West Bengal is a necessary party, all that it can claim is that the question of apportionment of the enhanced amount should now be decided in its presence, and in support of this proposition he has relied on another decision of this Court in the case of Secretary of State Vs. Shyamapada Banerjee, , decided by Nasim Ali and Rau JJ. In that case a reference on the question of valuation was obtained by a claimant who was found by the Collector to have no title to the land. In the reference case a compromise was arrived at between the referring claimant and the non-referring claimant to the effect that the referring claimant would get the entire amount of compensation which would be determined by the tribunal and to this compromise the Province of Bengal, as it then was, was no party. The question arose whether the Province of Bengal was bound by that compromise. Upon the above facts their Lordships observed as follows:

"The question then, is in whose presence this determination is to be made. The only person who will be affected by this determination is the appellant (Province of Bengal), because, he will have to pay the enhanced amounts. In the determination of this question in view of the facts of the present case the persons interested are the respondent who claims money and the appellant against whom money is claimed In the events that have happened in this case, the appellant is not only a proper party but is also a necessary party." Upon

these observations their Lordships set aside the decision of the tribunal so far as it declared the right of the referring claimant to get the enhanced amounts and directed that the question as to whom the enhanced amounts are payable be decided in the presence of the Province of Bengal. This decision, closely examined, supports the appellant. In that case, as the objection was raised in the reference case itself, the court directed it to be heard in the presence of the Province of Bengal. In the cases before us the State of West Bengal was not a party to the apportionment cases at any stage either before the tribunal or before this Court or before the Supreme Court. The State of West Bengal, had, therefore, no opportunity to take the objection at any stage and the apportionment cases have now been finally determined by the compromise decrees passed by the Supreme Court and they cannot now be reopened. If we give full effect to the proposition laid down in the case of *Secretary of State Vs. Shyamapada Banerjee*, the result will be that any decision as to the liability of the State of West Bengal to pay the enhanced compensation to any person will not be binding upon the State if the State is not a party thereto. It seems to me, however, that the principle that the State is not a necessary party in apportionment cases is not an absolute proposition of law. but it is a rule of convenience: There may be cases of apportionment where there is neither any question of enhancement of the valuation made by the Collector, nor any question as to the liability of the State to pay enhanced compensation to anybody. If there is no challenge to the compensation determined by the collector, nor any challenge to the liability of the State to pay the enhanced compensation to anybody, the state is certainly not an interested party in the apportionment cases, but where without any dispute as to the total amount of the compensation payable by the collector, the liability of the State to pay compensation to any person is enlarged or enhanced, the State, in my opinion, seems to be a necessary party. We cannot in the present cases reopen the question of apportionment because that question has now been finally determined. We have only to work out the result of the final decrees made in these cases by the Supreme Court. As the State of West Bengal was not a party to any of the applications for compromise in the Supreme Court, we are of opinion that nothing in those decrees can revive the liability of the State of West Bengal which was completely extinguished by the Judgment of this Court.

8. The third point argued by Mr. P. N. Mitter in support of the judgment of the tribunal is that under the compromise decrees passed by the Supreme Court the judgment of this Court, has ceased to exist and the State of West Bengal cannot base any claim on the basis of that judgment. This is also the ground upon which the President of the Calcutta Improvement Tribunal decided in favour of the Kocher landlords. The compromise decree no doubt expressly states that the decrees made by this Court be set aside in their entirety, and that the judgment of the President of the Improvement Tribunal in the corresponding apportionment cases be restored. As I have said, this provision in the compromise decree was based upon an agreement to which the State of West Bengal was no party and

consequently the judgment of this Court in so far as it determined the liability of the State of West Bengal to pay the enhanced compensation, still subsists and I cannot agree with the contention that some of the parties to a litigation, can, by an agreement between themselves, affect rights which accrued in favour of another party without joining that party whose interest is sought to be affected in the agreement.

9. For the reasons given above I would allow these four appeals and set aside the order of the President of the Tribunal to the effect that the Kocher landlords may withdraw 13 1/2 annas shares of the enhanced compensation and direct that the enhanced compensation be refunded to the Land Acquisition Collector. The appellant will have its costs of these appeals but there will be only one set of hearing fee. which is assessed at fifteen gold mohurs.

Ray, J.

10. I agree.