

(1958) 07 CAL CK 0008
In the Calcutta High Court
Case No : A.F.O.O. No. 144 of 1957

Suresh Chandra Dam

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Defence of India Rules, 1939 — Rule 75A, 75A(4)

Independence (Rights, Properties and Liabilities) Order, 1947 — Article 1, 10, 9

Citation : AIR 1959 Cal 94

Hon'ble Judges : P. Chakravartti, C.J.; S.C. Lahiri, J

Bench : Division Bench

Advocate : Satish Chandra Majumdar, Noni Kumar Chakravarti and Arunendra Nath Basu, for the Appellant; Prafulla Kumar Roy and Amiya Kumar Mukherjea, for the Respondent

Final Decision : Dismissed

Judgement

P. Chakravartti, C.J.—A preliminary objection has been taken in this appeal that it is ineffectively constituted and that even if the appellant succeeds in making out a case on the merits, no relief can be given to him by making any order on any of the respondents. The appellant is asking for a writ of mandamus in respect of a claim of money which he says he has against the Union of India on account of compensation for lands acquired from him under the Defence of India Rules before India's Independence. It is pointed out that respondents Nos. 2 and 3 who were impleaded as holders of certain posts under respondent No. 1, the Union of India, had ceased to hold those posts even before the trial Judge made his order and that the appellant, instead of amending his petition, elected to proceed against the Union of India alone. He lost before the trial Judge and having lost appealed, but in the appeal he again impleaded respondents Nos. 2 and 3. They have appeared before us by a learned Advocate, but only to say that they have no longer any concern with the appellant's claim and that no direction given with regard to that claim could now be carried out by them, as they are

holding other posts. It is not disputed that against respondents Nos. 2 and 3, no writ of mandamus, directing them to do what the appellant wants to be done can any longer be issued. There remains the first respondent, the Union of India. With regard to that respondent, it is contended by Mr. Roy that the Union does not reside within the jurisdiction of this Court and is not also otherwise within its jurisdiction and, therefore, if the Court were to issue a writ on the Union of India, there would be found no one within the Court's jurisdiction on whom the writ could be served. He states that the Pre-Partition Compensation Claims (Defence Services) Committee for East Bengal no longer exists and the Office of the Deputy Director, Lands and Hirings, has also been abolished. Only a skeleton Office is said to be now functioning at New Delhi and it is only that Office which is dealing with outstanding questions regarding payment of compensation for properties acquired during the time of the War. The appellant does not admit that all the offices of the Government of India, dealing with claims for compensation, have now been removed from the jurisdiction of this Court, and contends that some offices are still located in Calcutta and the Court could well direct the Union of India through them. If it were necessary to decide the preliminary point, we would have directed respondent No. 1 to file an affidavit as to the actual position regarding the present location of the relevant offices and would also have to go into the rather difficult question as to whether, where the Union of India was the sole party-respondent in an application under Article 226 of the Constitution, this Court could in any case entertain the application and make an effective order. As, however, we think that the appeal cannot succeed on the merits, we do not find it necessary to deal with the preliminary point.

2. Turning now to the merits, the appellant's case is that during the year 1942-43, extensive landed properties of great value situated at Kurmitola in the District of Dacca were requisitioned from him by the then Government of India for the construction of an aerodrome and for other military purposes. They were kept under requisition till July, 1945, and then permanently acquired. The acquisition having been made under Rule 75A of the Defence of India Rules, the appellant's case is that he had become entitled to compensation under Sub-rule (4) of the Rule. He estimated the amount to which he was entitled at Rs. 10,19,875/- and lodged his claim with the then Government of India sometime in 1948. Receipt of his claim was acknowledged and he was informed that his claim for the period prior to 15-8-1947, had been referred to the Lands, Hiring and Disposal Services Directorate, New Delhi, for necessary action and that he was to address any further communication he desired to make to that body. A considerable volume of correspondence followed without any tangible result. At last, by a letter dated 7-5-1951, the appellant was informed that his claim had been referred to the Pre-Partition Compensation Claims (Defence Services) Committee for East Bengal and that the decision of that body was to be awaited. Nothing, however, followed and after a fruitless waiting for two more years, the appellant moved this Court under Article 226 of the Constitution against the Union of India, Sri M. N. Anand, Deputy Director, Land and Hirings and Sri N. C.

Sen, Chairman, Pre-Partition Compensation Claims (Defence Services) Committee for East Bengal, for a writ of mandamus, directing them to pay him compensation and damages, as claimed, or to determine the amount payable or appoint an arbitrator, as contemplated by Section 19 of the Defence of India Act, 1939, without any further loss of time. A Rule was issued on that application by Sinha J., but at the final hearing, Bose J., discharged the Rule. Thereafter, the present appeal was preferred.

3. Before the learned trial Judge, the appellant appears to have based his case on a number of documents as also the Indian Independence (Rights, Property and Liabilities) Order, 1947. His claim was resisted by the Union of India who contended that neither the documents referred to, nor the Rights, Property and Liabilities Order entitled the appellant to make the claim he was making. Other objections, quite a good many in number, of a technical character were also taken on behalf of the Union of India. The learned Judge rejected the contentions of both the appellant and the Union of India and while holding that the technical objections put forward by the Union had no substance, held that equally had the appellant's case none.

4. Before us, the appellant's case has been based on a single document, dated 22-5-1948 and described as a Press Communique and Article 9 (a) of the Indian Independence (Rights, Property and Liabilities) Order, 1947. It has been contended: that by the press Communique, the then Government of India bound itself to pay compensation to persons in the position of the appellant and that upon the attainment of full Independence, the obligation had attached to the Union of India. The Communique was also relied upon as indicating, according to the appellant, that an agreement had been arrived at between the Dominions of India and Pakistan that compensation to persons in the position of the appellant would be paid by the Dominion of India. It was lastly contended that the liability to pay compensation for the lands acquired from the appellant was a financial obligation of the Governor-General-in-Council, outstanding immediately before the Appointed Day, that is 15-8-1947, and, consequently, the liability having become the liability of the Dominion of India under Article 9 (a) of the Indian Independence (Rights, Property and Liabilities) Order, 1947, had now become the liability of the Indian Union.

5. Logically, it seems to me that the argument based upon the Rights, Property and Liabilities Order should have come first and that based on the Press Communique thereafter. If the appellant is entitled to sustain his claim by virtue of anything contained in the Rights, Property and Liabilities Order, he does not require any promise made by the former Government of India or any agreement between the Dominions of India and Pakistan. He would require a promise or an agreement only if, under the provisions of the Order, he could make no claim against the Union of India and he might then try to show, if he could, that although the Rights, Property and Liabilities Order did not lay on the Union of India any obligation to pay compensation to him, nevertheless, such an

obligation had been created either by a promise or by an agreement between the two Dominions. I shall, however, take the arguments in the order in which they were advanced.

6. The first contention is that by the Press Communique, the then Government of India undertook an obligation to pay commendation for lands acquired under the Defence of India Rules. This contention can succeed only if it can be shown that the Press Communique was a declaration by the Government of India, acting as the Government, and that the payments, undertaken thereby to be made, included payments of compensation for lands acquired. In my view, the Press Communique does not satisfy either test. The Communique appears merely to have been a handout issued by the partition Secretariat to the Press Information Bureau. It bears no signature and it is certainly not a resolution of the Government of India or a notification issued by Government. Indeed, it does not even purport to be a declaration of a direct nature. Its object is to prescribe the procedure for the collection, check and payments of the claims to which it refers and elaborate directions in that behalf are contained in it. By way of a preamble to the rules of procedure, it is stated that the Government of India have decided that they should undertake the initial liability for the payments with which the Communique deals. So far as the decision of the Government of India is concerned, it is thus in form only a second-hand statement, made by the partition Secretariat and not a statement by the Government of India at all, not to speak of its being a notification or a resolution which could be treated as an official declaration made by the Government. I must mention, however, that the respondent did not contend that the issue of the Press Communique was not an act of the Government of India, but, on the other hand, stated in paragraph 8 of the counter-affidavit that the Communique had been issued by the Government for a speedy payment of outstanding claims only in respect of supplies made and services rendered to the undivided Government of India and not for the payment of any other claim. The respondent's objection, therefore, was not that the Communique did not bind the Government of India or was not issued by it, but that its subject-matter did not include claims such as the claim of the appellant. That objection also appears to me to be valid, because the Communique expressly states that Government were undertaking the initial liability of certain payments "to avoid hardships to the suppliers and contractors" and then it proceeds to say that all bills and claims "in respect of supplies and services rendered to the late Government of India up to and inclusive of 14-8-1947" should be submitted by a certain date. Only claims in respect of supplies and services were thus going to be entertained and some relief or accommodation was going to be provided only for suppliers and contractors. I consider it wholly impossible to hold that the appellant's claim is a claim in respect of either supplies made or services rendered to the Government. A person whose land was compulsorily acquired by the Government did not make any supply or render any service; and no one whose land was requisitioned and then acquired can be said to have been a supplier or a contractor. Indeed, it seems to be clear from the

terms of the first paragraph of Rule 75A of the Defence of India Rules that the Communique took the expression "supplies and services" from that rule. Rule 75-A provides that the Central or the Provincial Government might by order in writing requisition any property, movable or immovable, and make such further orders as appeared to the Government concerned to be necessary or expedient, if they considered it necessary or expedient to do so,

"for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community."

It seems to be fairly obvious that of the various persons whose properties, movable or immovable, might be requisitioned under the provisions of Rule 75A or who might be affected by orders made under the Rule, only those who had helped in "maintaining supplies and services essential to the life of the community" were intended to be accommodated by the Government of India in respect of payment of their claims, although the Government might not be legally liable for those payments. They only could be said to have helped in maintaining supplies and services who had made provisions and other essential commodities available and who had contributed directly or indirectly to the maintenance of communications and public utility organisations. I am, accordingly, of opinion that, assuming that the Communique can be read and taken as a declaration by the Government of India themselves, it cannot be read as covering claims for compensation in respect of lands compulsorily acquired under the provisions of the Defence of India Rules.

7. The Communique was sought to be laid under service in another way. It was said that there were indications in it that there had been an agreement between the Dominions of India and Pakistan and it was under the terms of such an agreement that the Government of India was undertaking the liabilities mentioned in the Communique. If the liabilities mentioned in the Communique do not cover the appellant's claim, this argument even if it succeeds, would avail him nothing, but I am of opinion that the argument cannot possibly succeed and the meaning sought to be extracted from the Communique cannot be found in it. This contention was obviously advanced in view of Article 3 of the Rights, Property and Liabilities Order which lays down that the provisions of the Order shall have effect "subject to any agreement between the two Dominions or the Provinces concerned." The appellant apparently wanted to make out that even if he could make no claim under the provisions of the Order, as they were, still, those provisions were not the last word, because if there was an agreement between the two Dominions, under which the Dominion of India took upon itself some liability which the Order did not lay upon it, such liability would take effect and would be enforceable, despite the provisions of the Order. Such undoubtedly would be the consequence, if any agreement at variance with the provisions of the Order could be made out in any particular case, but so far as the case before us is concerned, the Communique, instead of disclosing an agreement between

the two Dominions, discloses a disagreement. Paragraph 2 of the Communique refers first to the fact that a large number of claims, particularly those relating to areas which had fallen to Pakistan, were still outstanding and then it says that they remained outstanding for several other causes and also "owing to a difference of opinion between the two Governments about the liability for these payments." This statement does not certainly indicate that an agreement had been reached between the two Dominions that the payments would be made by the Government of India. It is also to be noticed that the Government of India was not undertaking an absolute liability for those payments, but only the initial liability, which it was doing for the purpose of giving some relief to the suppliers and contractors whose bills had already remained long unpaid and the Communique states expressly that the Government of India would "recover Pakistan's share through the debt settlement." If there had been an agreement between India and Pakistan that these payments would be made by India, there could have been no question of India trying to recover Pakistan's share after having initially made the payments herself. In view of the contents of the Communique, to some of which I have just referred, it seems to me plainly impossible to say that it discloses an agreement between the two Dominions that India would pay claims like those of the appellant, or any other agreement at all.

8. Both the arguments based on the Press Communique must, therefore, fail.

9. The other contention of the appellant was that the liability to pay him compensation for his lands was a liability in respect of a financial obligation of the Governor-General-in-Council, outstanding immediately before 14-8-1947 and that, therefore, under the provisions of Article 9 (a) of the Rights, Property and Liabilities Order, 1947, it came to be a liability of the Dominion of India and had since become a liability of the Indian Union. The respondent's contention is that this matter is concluded by authority. According to a large body of decisions, a non-contractual liability and particularly a liability for compensation in respect of lands acquired under the Defence of India Rules, is not a financial obligation, as contemplated by Article 9 (a) of the Order, but it is a "liability in respect of an actionable wrong other than breach of contract", as contemplated by the residuary Article 10. The respondent, the Union of India, accordingly, contends that the appellant's contention is not only unsound in itself, but that in view of the uniform current decisions, it cannot also reopen the question to any purpose,

10. The true meaning of the expression "financial obligations" in Article 9 of the Rights, Property and Liabilities Order has been the subject-matter of many decisions, one of which is a decision of the Supreme Court. Principal among the decided cases are-- Province of West Bengal Vs. Midnapore Zemindary Co. Ltd., (Harries C. J. and Sarkar 10, a case of rent for a house; Iswar Madan Gopal Jiu and Others Vs. Province of West Bengal, (Sen and Chunder JJ.), a case of compensation for land acquired under the Land Acquisition Act; Hindusthan Housing and Hindusthan Housing and Land Development Trust Ltd. Vs. State of West Bengal, (Bose J.), a case of compensation for land acquired under the

Defence of India Rules; State of West Bengal Vs. Brindaban Chandra Pramanik and Another, , (P. N. Mookerjee and Sen JJ., on difference between them. Lahiri J.), a case of compensation for paddy requisitioned under the Defence of India Rules and lastly The State of West Bengal Vs. Shaikh Serajuddin Batley, , (Patanjali Sastri C. J., Mahajan, Das, Ghulam Hasan and Jagannadhadas, JJ.) a case of rent under a lease. It will be noticed that at least two of the cases are cases of compensation for lands acquired, in one instance under the Land Acquisition Act and in the other under the Defence of India Rules, and another is also a case of requisition and acquisition under the Defence of India Rules, though it was requisition of moveable property.

11. In all these cases, certain principles have been laid clown. It has been held that the expression "financial obligations" in Article 9 (a) of the Order is to be "ejusdem generis" with the words "loans and guarantees" preceding it. The result of so construing the expression has been held to be that it must be taken as limited to obligations of a contractual character and, secondly, to such obligations relating to State finance. The Rights, Property and Liabilities Order which provides for the initial distribution of rights, property and liabilities consequential on the setting up of Dominions of India and Pakistan, has been held to be exhaustive and to provide for a distribution of all rights, all property and all liabilities. The various Articles of the Order are, therefore, to be construed in such manner that room can be found in one or other of them for each right, each property and each liability. It has next been held that leaving aside Arts. 4 and 5 which deal with land, Article 6 which deals with goods, coins, bank notes and currency notes and Article 7 which deals with property of other kinds, subject to the provisions next following relating to contractual rights, Arty. 8 and 9 are both concerned with contracts--Article 8 providing for contractual rights and liabilities in general and Article 9 providing for contractual liabilities of certain special kinds. The whole area of contracts and contractual rights and liabilities is thus covered by those two Articles. Last comes the residuary Article 10 which provides for liabilities other than those arising from a breach of contract and described as liabilities "in respect of an actionable wrong." A liability which is not a contractual liability and which has no relationship to public finance has thus been held not to be a financial obligation within the meaning of Article 9, but to be a liability in respect of an actionable wrong, other than breach of contract, within the meaning of Article 10.

12. It is clear that on the above principles laid down in the cases, a statutory obligation to pay compensation for lands compulsorily acquired cannot be one of the financial obligations contemplated by Article 9 (a) of the Order. So it was directly held in Hindusthan Housing and Land Development Trust Ltd. Vs. State of West Bengal, and also in Iswar Madan Gopal Jiu and Others Vs. Province of West Bengal, , although the acquisition there was not under the Defence of India Rules, but none-the-less was compulsory. The decision in State of West Bengal Vs. Brindaban Chandra Pramanik and Another, , is also a direct decision, although the property requisitioned was not land. There is no decision at all

which has taken a contrary view or even sought to express a doubt as to the soundness of the view taken in the above decisions, except the dissenting judgment of Sen J., in *State of West Bengal Vs. Brindaban Chandra Pramanik and Another*, . The Supreme Court in the case of *The State of West Bengal Vs. Shaikh Serajuddin Batley*, , has expressly approved of the view that the expression "financial obligations" should be construed "ejusdem generis" with "loans and guarantees." Whether it has gone further seems to be a little doubtful. The actual decision of the Court is that whatever liabilities may or may not come within the expression "financial obligations", the liability to pay rents under a lease does not. Das J., as he then was, who delivered the judgment of the Court had, however, occasion to refer to Section 178 of the Government of India Act of 1935, to which Chunder and Sen JJ., had traced the origin of the expression in the case of *Iswar Madan Gopal Jiu and Others Vs. Province of West Bengal*, . The learned Judge observed that "loans, guarantees and other financial obligations", as contemplated by Section 178, did not and could not refer to all and sundry pecuniary obligations of the State arising out of contracts of every description. "Loans and guarantees", he proceeded to observe, "would seem to mean special kinds" of contracts relating to State loans and State guarantees", and then he added that

"in that context "financial obligations" would mean obligations arising out of arrangements or agreements relating to State finance, such as distribution of revenue, the obligation to grant financial assistance by the Union to any State or the obligation of a State to make contributions and the like."

It is not very clear whether in that passage the learned judge was interpreting the expression "financial obligations", as occurring in Section 178 of the Government of India Act, 1935, or he was interpreting it as occurring in Article 9 of the Rights, Property and Liabilities Order. If he was referring to the expression as appearing in the Order, the question before us is concluded by a decision of the Supreme Court. It would seem, however, that the Supreme Court did not desire to express any final opinion, for it proceeded to say that the Court would have to consider in each case whether a particular obligation fell within the expression "financial obligations" in Article 9 of the Order or not. Except that the expression has to be construed "ejusdem generis" with "loans and guarantees", which the Supreme Court also has ruled, the matter seems still to rest with the decisions of this Court.

13. I confess to a feeling that the decisions to which I have referred and the reasons given there do not clear the matter of all difficulties. It is not difficult to agree that the expression "financial obligations" should be construed ejusdem generis with "loans and guarantees," but it does not seem to follow necessarily therefrom that the obligations must be of a contractual character or that they must be limited to matters of State finance. For the first proposition, reliance has largely been placed on the provisions of Article 8 (6) of the Order which says that its provisions shall have effect, "subject to the provisions of Article 9 of this

Order." It is true that Article 8 is wholly concerned with contractual rights and liabilities and if its provisions are to be subject to those of Article 9, it certainly follows that there must be some provision in Article 9 relating to contracts. But it does not seem to my mind to follow necessarily that all the provisions of Article 9 must relate to contractual liabilities. Even if only some of the provisions of Article 9 relate to contractual liabilities and they lay down some special rules, it will be equally appropriate to say of Article 8 that its provisions shall have effect, subject to the provisions of Article 9 although there may be other provisions in the latter Article which do not relate to contractual liabilities. Again, with respect to the proposition that "financial obligations" must relate to State finance or matters of revenue, support is sought to be drawn from the provisions of Section 178 of the Government of India Act, 1935, where the loans, guarantees and other financial obligations, referred to, were those secured on the revenues of the Federation and of all the Provinces and were, therefore, obviously obligations relating to State finance. It is, however, noteworthy that Article 9 has omitted the qualification which occurs in Section 178 of the Government of India Act, 1935, and does not speak of the loans, guarantees and financial obligations as being charged on the revenues of the State. If the framers of Article 9 (a) of the Order went to Section 178 of the Government of India Act, 1935, for their model and they yet refrained from reproducing a qualification occurring there, it is legitimate to think that they did so deliberately and must have had a reason for doing so. I am mentioning this circumstance only for the purpose of showing, if I may do so with respect, that the mere fact that Article 9 (a) appears to be a lineal descendant of Section 178 of the Government of India Act, 1935, or at least an analogous provision, does not by itself indicate that the financial obligations contemplated by Article 9 (a) are also limited to obligations relating to State finance. I may add here that the illustrations given by the Supreme Court as to what kind of obligations were covered by the expression "financial obligations" include obligation to grant financial assistance by the Union to any State which, I venture to think, cannot be said to be a contractual obligation. Besides holding that "financial obligations" must be construed ejusdem generis with loans and guarantees, the Supreme Court does not seem also to have held that the obligations contemplated are contractual obligations. If it has not, we are not debarred from giving expression to the doubts we feel about the correctness of that interpretation.

14. Equally do I feel some difficulty about Article 10 (1). Its language, inter alia, is: "Where immediately before the appointed day, the Governor-General in Council is subject to any liability in respect of an actionable wrong other than breach of contract." That language seems to me to presuppose that before the appointed day, something has been done which is wrong, that the wrong is actionable and that a liability has accrued as a consequence of that wrong. Sen, J., in his dissenting opinion observed that in a case of requisition, and acquisition under the Defence of India Rules, the requisition itself could not amount to an actionable wrong, because it was a requisition in accordance with law and under

the authority of a statute. Section 299(2) of the Government of India Act, 1935, undoubtedly provided that no Legislature would be entitled to make any law authorising the compulsory acquisition for public purposes of any land, unless the law provided for the payment of compensation for the property acquired. But the Defence of India Rules did provide for payment of compensation and, therefore, compulsory acquisition of land for public purposes under the Defence of India Rules could not in itself be an actionable wrong. As against that view, it has been said that the actionable wrong in such a case would not be the requisition itself, but refusal to pay compensation or delay in paying it, where such refusal or delay occurred. With respect, I feel some difficulty in accepting that meaning of "actionable wrong" in the context of such facts, because the words "is subject to any liability in respect of an actionable wrong" seem to me to imply that the liability is created by the wrong or is a consequence of it. If refusal to pay or delay in paying compensation is an actionable wrong, the liability to pay the compensation is not created by such refusal or delay, but it exists otherwise and has arisen out of the act of the acquisition itself. Another difficulty also strikes me. If refusal to pay or delay in paying is the actionable wrong and the liability is a liability in respect thereof, no liability can arise till there has been refusal or delay. To take then a case where a requisition was made one or two weeks or say a month prior to the Appointed Day and no refusal to pay compensation or delay in paying it had occurred, it is clear that the obligation to pay compensation for the property, so acquired, would not come under Article 10 (1), but I do not see under which other Article it could come, if it did not also come under Article 9 (a). Mr. Roy, who appears on behalf of the Union of India, said that, in such a case, there would be no difficulty at all, because the actionable wrong, if any, would arise only when any refusal or delay occurred, which would be after the Appointed Day and, consequently, such a case would be outside the ambit of the Order altogether. This view, although it appears to be plausible at first, seems to me to run counter to the view that the Rights, Property and Liabilities Order makes provision for all rights and liabilities which were in existence immediately before the Appointed Day. In the hypothetical case which I have taken, an obligation to pay compensation for the property acquired undoubtedly had arisen and was outstanding immediately before the Appointed Day, but if it could not come under Article 9 (a), not being a contractual obligation and could not also come under Article 10, there being no actionable wrong yet, it would be quite impossible to find any place for it, although its existence could not possibly be denied.

15. On the other hand, although the expression "financial obligations" in Article 9 (a) of the Order is to be read *eiusdem generis* with loans and guarantees, the genus need not be liabilities of a contractual character, but may well be monetary liabilities incurred by Government *qua* Government, in the performance of its administrative functions. If such be the genus, a statutory liability to pay compensation for land acquired for purposes of defence may not unreasonably be taken as a financial obligation of the same class as the liability to repay with

interest a loan raised for public purposes.

16. There are some of the difficulties which appear to me still to require solution. On behalf of the Union of India Mr. Roy admitted their existence, but said that no wholly satisfactory or perfectly consistent view of a measure like the Rights, Property and Liabilities Order could be expected and that any adjustment of the component provisions was bound to leave some rough edges. He I also recalled that the Order was drafted and promulgated in a hurry during a period of stress and strain and, therefore, he submitted that a construction which provided a workable scheme for applying the Order should be accepted, although it might not be strictly logical in all respects. I think this view advanced by Mr. Roy is right and, therefore, in spite of certain difficulties which I have felt, I do not think that we ought to go against the uniform current of decisions and try to re-open the question for giving effect to the appellant's contention. The decisions have held, as I have already said, that Article 9 (a) is limited to contractual obligations and obligations relating to State finance and if that be the true meaning of "financial obligations" as contemplated by Article 9 (a), the appellant's claim is clearly outside it.

17. It was also contended on behalf of the Union of India that even assuming that the liability to pay compensation to the appellant was a "financial obligation"" within the meaning of Article 9 (a), the appellant could not still succeed on an application under Article 226, because the liability had arisen long before the commencement of the Constitution. In support of that contention, reliance was placed on the decision of the Supreme Court in *State of U. P. v. Mohammad Nooh* (1958) SCA 73 : (AIR 1958 SC 86) (F). In that case, a Government servant had been dismissed in 1948 and the Supreme Court held that he could not obtain any relief by an application under Article 226, although an appeal from the order of dismissal and a subsequent application for revision had been disposed of after the Constitution had come into force.

"That order of dismissal," observed Das, C, J., "having been passed before the Constitution and rights having accrued to the appellant State and liabilities having attached to the respondent before the Constitution came into force, the subsequent conferment of jurisdiction and powers on the High Court can have no retrospective operation on such rights and liabilities."

On the strength of these observations and the actual decision in the case, it has been contended that since the appellant's right to get compensation and the Government's obligation to pay it arose long before the commencement of the Constitution, he could not enforce such liability by means of a procedure which was not in existence before and which the Constitution only had created. It was said in reply by Mr. Majumdar, who appears for the appellant, that the Government's liability was a continuing liability and that the delay or refusal to pay the compensation had in this instance, occurred after the commencement of the Constitution. But so had the appellate order and the revisional order been passed in the case before the Supreme Court after the Constitution had come

into force and, on the other hand, the liability in the present case had arisen wholly in 1945, as soon as the lands were acquired, just as the liability in the case before the Supreme Court was held to have arisen when the initial order of dismissal was passed. But I do not find it necessary to consider whether the principle of the Supreme Court decision would apply in the facts of the case, because the appellant, for the reasons I have already given, fails on the merits.

18. The appeal is, for the foregoing reasons dismissed, but there will be no order for costs.

S.C. Lahiri, J.

19. I agree with the conclusion, but for different reasons.

20. As I was a party to the decision in the case of State of West Bengal Vs. Brindaban Chandra Pramanik and Another, , I desire to add a few words. In my view the expression "financial obligations" occurring in Article 9 of the Indian Independence Rights, Property and Liabilities) Order is not wide enough to include a statutory liability to pay compensation for land requisitioned under Rule 75-A of the Defence of India Rules and subsequently acquired. In the case of State of West Bengal Vs. Brindaban Chandra Pramanik and Another, , I held that that expression is limited to contractual liabilities only. The reason why I so held in that case is that under Article 8 (6) the provisions of that Article have to be read subject to the provisions of Article 9. In Article 9 three classes of liabilities are dealt with, namely, "loans, guarantees and other financial obligations" and it has now been held by the Supreme Court in the case of The State of West Bengal Vs. Shaikh Serajuddin Batley, , that the expression "financial obligations" has to be construed ejusdem generis with the two expressions which precede it. In working out the rule of ejusdem generis construction, Das, J., as he then was, observes as follows at p. 40 (of SCA) : (at p. 194 of AIR) of the report:

"It implies an obligation in the nature of an obligation in respect of loans and guarantees incurred or undertaken by the State."

From this passage it appears that the decision of the Supreme Court was that the words "financial obligations" would be limited to contractual liabilities only. It is true that in a subsequent passage, in giving an illustration, it is stated that:

" financial obligations" would mean obligations arising out of arrangement or agreements relating to State finance such as distribution of revenue, the obligation to grant financial assistance by the Union to any State or the obligation of a State to make contributions and the like."

This passage occurs by way of an illustration. In my view, upon a true construction of the decision of the Supreme Court, in this case the words "financial obligations" must be held to be limited to a case of contractual liabilities only. "Loans" and "guarantees" which precede the expression "other financial obligations " are contractual obligations and for that reason if the rule of ejusdem generis construction is to be applied, there is no escape in my view,

from the conclusion that the expression "financial obligations" must also be limit to contractual obligations.

21. With regard to the interpretation of the expression "liability in respect of an actionable wrong," occurring in Article 10, my opinion is that this liability is a liability arising from refusal or delay in making payment, as has been pointed out by my Lord the Chief Justice. But I think that this liability is simultaneous with the delay or refusal in making payment. In the case before us there was a delay of many years in making payment of compensation to the appellant. It is, However, possible to conceive of a case where there was no delay in making payment of compensation, for example, in a case where the acquisition was made within one week before the Appointed Day. In Such a case I would accept the contention of Mr. Roy that such a case would fall outside the purview of the Indian Independence (Rights, Property and Liabilities) Order. "Actionable wrong" no doubt means a wrong in "respect of which an action lies, but liability in respect of actionable wrong accrues as soon as the wrong has taken place. So in this case I have no doubt in my mind that the case clearly comes under Article 10 of the Indian Independence (Rights, Property and Liabilities) Order.