

(1943) 03 CAL CK 0012
In the Calcutta High Court
Case No : Civil Revision Case No. 726 of 1941

Surjya Singh

APPELLANT

Vs

Golamjat Singh and Others

RESPONDENT

Date of Decision : 04-03-1943

Acts Referred:

Citation : (1943) 03 CAL CK 0012

Judgement

Henderson, J.—This Rule has been obtained by the principal Defendant. The Plaintiff's claim depends upon an alleged agreement made by the Petitioner to reconvey a certain land to the Plaintiff and five other persons provided that Rs. 350 was paid within three years. The property has been acquired by the Government under the provisions of the Land Acquisition Act. The Defendant was not satisfied with the compensation awarded and filed a reference against the award. The Plaintiff and two of the other persons interested put in a claim to the money on the basis of this agreement. The learned Judge hearing the Land Acquisition Reference made some confusion between the question whether these persons were entitled to make a reference and whether they were entitled to share in the compensation money. The fact remains that they had made a reference which was forwarded by the Collector. The learned Judge refused to give any of them the compensation money and left the question of their right open. The Plaintiffs did not appeal against his order but subsequently instituted the present suit.

2. The present Rule was issued on the ground that the Court had no jurisdiction to entertain the claim.

3. The question depends upon whether the case comes within the third proviso to sec. 31 (2) of the Land Acquisition Act which is in these terms:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

4. There has been a difference of judicial opinion as to the interpretation to be given to this proviso. It was however held by the Privy Council in the case of Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai ILR 7 Cal. 388 (1881) that this proviso applies only to persons whose rights have not been adjudicated upon in pursuance of the special procedure. The concluding words are these:

Their Lordships are of opinion that the provisions in this Act for the settling of compensation are intended to be final; and that the amount and distribution of the compensation having been settled in this case by a competent Court, and the decision not having been appealed against, the settlement is final, and the present Suit cannot be maintained.

5. If the Plaintiffs were not satisfied with the decision of the Judge, they should have appealed against it. In this connection I would merely refer to the decisions of this Court in the cases of Shaibesh Chandra Sarkar v. Sir Bejoy Chand Mahatap Bahadur 26 C.W.N. 506 (1921) and Bhandi Singh v. Ramadhin Rai 10 C.W.N. 991: s.c. 2 C.L.J. 359 (1905).

6. In opposing the Rule Mr. Ghose contended that the suit is really not one to recover a part of the compensation money but damages for breach of contract. It is clearly not regarded as a suit of that nature in either of the Courts below. The Munsif says "the Plaintiffs had in my opinion a lien on the money on the basis of equity, justice and good conscience. The District Judge says: "By the present suit 10 out of 15 persons in whose favour the ekrarnama was executed, claimed compensation due to them out of the amount awarded.

7. Then in the second place Mr. Ghose asked me to refuse to interfere on the ground that substantial justice has been done. That of course assumes that if there had been a damage suit the award of this sum by way of damages would do substantial justice. It is quite impossible for me to say anything of the kind. Mr. Ghose's contention is that the tender was made before the land was acquired. The case of the Petitioner however is that the tender was made after when the contract had already become incapable of performance. On the scanty materials available the case of the Petitioner appears to be much more probable

8. Then in the next place different considerations will arise with regard to the measure of damages. The Plaintiffs are not satisfied with the sum awarded by the Collector which is very little more than the price to be paid by them. The enhancement was obtained by the exertions of the Petitioner. He would therefore be entitled to show what he had actually spent in obtaining the enhancement and a mere fancy sum arbitrarily selected by the Court as costs and interest, whatever may be meant by the latter, would be beside the point.

9. Then again another question would arise as to what damages the 10 Plaintiffs have suffered by the failure of the Petitioner to convey the property to them and 5 other persons. The Rule is accordingly made absolute, the decrees of the Courts below are set aside and the suit is dismissed with costs in all Courts--hearing-fee in this Court, two gold mohurs.