

(1912) 07 BOM CK 0001
In the Bombay High Court

The Rangoon Botatoung Company, Limited

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision : 16-07-1912

Acts Referred:

Land Acquisition Act, 1894 — Section 53

Citation : (1912) 14 BOMLR 833

Hon'ble Judges : Shaw, J;Macnaghten, J;John Edge, J;Ameer Ali, J

Bench : Full Bench

Judgement

Macnaghten, J.—In this case a preliminary objection was taken to the appeal. Having heard the point fully argued, their Lordships came to the conclusion that the appeal was incompetent and they intimated that on that ground they would humbly advise His Majesty that the appeal should be dismissed with costs.

2. The appeal purported to be an appeal as of right from an award of the Chief Court of Lower Burma. Some land belonging to the appellants had been taken for public purposes under the provisions of the Land Acquisition Act, 1894. In due course the Collector made his award. The appellants did not accept it. They were dissatisfied with the amount of the Collector's valuation. On that ground and on that ground only they demanded, as they were entitled to do, that the matter should be referred to the Court under the provisions of the Act. The expression "the Court" in the Act is defined as meaning "a principal Civil Court of Original Jurisdiction." The reference was taken by two Judges of the Chief Court. They sat as "the Court" and also as the High Court to which an appeal is given by the Act from the award of "the Court." The hearing of the reference occupied forty-five days. More than hundred witnesses were examined. A vast mass of documents was put in and the learned Judges at the request of the parties viewed the premises. Then they made an exhaustive award dealing minutely with the evidence, and they held that the award of the Collector had given the appellants "all and probably more than the full market value of their property," and so they dismissed the reference with costs. They were precluded by the Act from

awarding less than the amount awarded by the Collector.

3. It was admitted by the learned Counsel for the appellants that it was incumbent upon him to show that there was a statutory right of appeal. As Lord Bramwell, then Bramwell J. A., observed in the case of the Sandback Charity Trustees v. The North Staffordshire Railway Company (1877) 3 Q. B. D. 1 "An appeal does not exist in the nature of things. A right of appeal from any decision of any Tribunal must be given by express enactment." A special and limited appeal is given by the Land Acquisition Act from the award of " the Court " to the High Court. No further right of appeal is given. Nor can any such right be implied. The learned Counsel for the appellants relied both on Section 53 and Section 54 of the Act. Section 53 enacts that, " save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act." That enactment applies to an earlier stage in the proceedings and seems to have nothing to do with an appeal from the High Court. Section 54 is in the following terms :-

54. Subject to the provisions of the CPC applicable to Appeals from original decrees, an Appeal shall lie to the High Court from the award or from any part of the Award of the Court in any proceedings under this Act.

4. That section seems to carry the appellants no further. It only applies to proceedings in the course of an appeal to the High Court. Its force is exhausted when the appeal to the High Court is heard. Their Lordships cannot accept the argument or suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in course of its ordinary jurisdiction.

5. It is impossible to conceive anything more inconvenient than that a Court in this country should be called upon to review the determination of arbitrators as to the value of a piece of land in India-a mere question of fact-without the advantage of any local knowledge or the privilege, if it be a privilege, of seeing the cloud of witnesses who engaged the attention of two Judges of the Chief Court of Lower Burma for forty-five days, or even the opportunity and the interest of viewing a property the value of which seems so extraordinarily difficult to discover.