

(1973) 04 CAL CK 0029

In the Calcutta High Court

Case No : F. As. No's. 197, 288-291 of 1958 in Arbitration Cases No's. 51, 42, 97, 125 and 123 of 1957

Union of India (UOI)

APPELLANT

Vs

Tapendra Krishna Mondal

RESPONDENT

Date of Decision : 12-04-1973

Acts Referred:

Defence of India Act, 1939 — Section 19
Defence of India Rules, 1962 — Rule 19
Land Acquisition Act, 1894 — Section 23, 23(1), 23(2)

Citation : (1971) 1 ILR (Cal) 64

Hon'ble Judges : S.K. Datta, J; Gupta, J

Bench : Division Bench

Advocate : Bhabanath Dutia, in F.A. 197 of 1958, Krishna Mitra and Nirendra Krishna Mitra, in F. As. 288-291 of 1958, for the Appellant; Krishna Mitra, Nirendra Krishna Mitra for Respondent in F.A. 197 of 1958, P.K. Sen Gupta and Dhruba Kumar Mukherjee, in F. As. 288-291 of 1958, for the Respondent

Judgement

S.K. Datta, J.—These appeals arise out of a common award in connection with claims for compensation for lands acquired under the Defence of India Act, 1939. The lands were originally requisitioned in 1943 and they were thereafter acquired on April 12, 1946, without derequisition. The Collector assessed compensation at the rate of Rs. 500 per bigha in respect of firm lands of majority plots, Rs. 600 per bigha in respect of two such plots and Rs. 250 per bigha in respect of tanks and doba. The Collector also awarded compensation for trees at the rate of Rs. 50 per bigha in respect of some plots. The claimants being aggrieved filed applications for reference and the Arbitrator passed an award holding that the amount assessed by the Collector in respect of the lands and also tanks and doba was more than fair market price of the lands. About the bamboos in case No. 125 of 1957 the Arbitrator awarded an additional sum of Rs. 650. Except as aforesaid no other amount was awarded by the Arbitrator. Against this common award five appeals have been preferred, four by the claimant and one by the Union of India. The Union of India has preferred F.A. No. 197 of 1958 against the

award of Rs. 650 for bamboos, while F.A. No. 289 of 1958 had been filed in the same case claiming Rs. 8,283 for trees. In all the appeals the claimants have preferred it has been claimed in addition Rs. 1,500 per bigha by way of difference regarding the value of the suit land and for the tanks and doba the claimants claimed additional compensation at the rate of Rs. 750 per bigha, and in F.A. No. 288 of 1958 an additional amount of Rs. 3,960 was claimed for bamboos. In F.A. No. 290 of 1958 a sum of Rs. 800 was claimed for bamboos and fencing, while in F.A. No. 291 of 1958 a sum of Rs. 1,366 was claimed for trees and fencing.

2. Before we take the appeals for consideration regarding compensation, we shall discuss about the maintainability of F.A. No. 291 of 1958 as also F.A. No. 288 of 1958 on the ground that they are valued at below Rs. 5,000. It appears that under the relevant Rules an appeal can only be preferred against an award of Rs. 5,000 or more in lump. Mr. Dutta, learned Advocate for the Union of India, has drawn our attention to the decision in the case of Santi Devi and Another Vs. Province of West Bengal, in which it was held that the word "award" in proviso to Rule 19 of the Rules made under the Act prima facie refers to the entirety of the award made by the Arbitrator irrespective of the award to which the particular Appellant is entitled. As the Arbitrator, in the cases before us, had passed a common award covering all lands of different cases, it would appear that in respect of the claims for amounts less than Rs. 5,000 the award itself in its entirety had been challenged. Accordingly, the appeals on the authority of the above decision, even though valued below Rs. 5,000, would be maintainable. We, therefore, hold that F.A. No. 291 of 1958 as also F.A. No. 197 of 1958