
(1941) 05 CAL CK 0004
In the Calcutta High Court
Case No : Civil Revision Case No. 919 of 1939

Upendra Nath Rai Chowdhuri

APPELLANT

Vs

Province of Bengal

RESPONDENT

Date of Decision : 01-05-1941

Acts Referred:

Citation : (1941) 05 CAL CK 0004

Judgement

Henderson, J.—This is a Rule calling upon the Province of Bengal to show cause why an order of the Land Acquisition Collector of 24-Parganas should not be set aside and the Petitioner's petition of reference should not be forwarded to the Court for decision in accordance with law. In view of the conflict of decisions it is only natural that the Assistant Government Pleader should have raised a preliminary objection that this Court has no jurisdiction to deal with the matter. The Rule was issued by Mr. Justice Ghose as long ago as 13th of June, 1939. It came on for hearing before my learned brother Edgley who decided that it should stand over until the point was decided by a Full Bench. The position now is that the parties to the Full Bench Reference settled the matter out of Court and we are now where we were before. The decision upon which the Petitioner mainly relies is of a Division Bench of this Court and it was made as long ago as the year 1905. [Administrator-General of Bengal v. Land Acquisition Collector, 24-Parganas 12 C.W.N. 241 (1905)]. It was apparently accepted by the Revenue Authorities. At any rate orders were frequently made on the strength of it and no attempt was made to have the Act amended so as to prohibit interference by this Court. Then in the year 1937 the correctness of the decision was questioned by a Division Bench in the case of Bhagaban Das Shah v. The First Land Acquisition Collector 41 C.W.N. 1301 (1937). In view of the fact that the earlier decision had been followed and acted upon for so many years, I cannot help a feeling of regret that it was necessary to cast a doubt upon it. There is, however, a clear conflict in view of the decision of another Division Bench of this Court in the case of Gopinath Shah v. The First Land Acquisition Collector, Calcutta 42 C.W.N. 212 (1937).

2. Sitting alone, I am not called upon to express any opinion as to the merits of the question. I am merely to decide which of these decisions I shall follow. As I indicated in the course of the argument, I propose to follow the old decision. In that decision the learned Judges made the Rule absolute and I can see no escape from the conclusion that they intended to hold that this Court has jurisdiction to interfere. In my view that decision should be accepted as a correct statement of the law in this Court until it is overruled by a decision of a Full Bench.

3. Turning to the facts, the Land Acquisition Collector refused to make a reference because he thought that it was barred by limitation. The correctness of his decision depends upon whether the notice of the* award was properly served on the Petitioner. The method of service is laid down in sec. 45 of the Act. The service was effected by handing over the notice to a Darwan of the City College where apparently the Petitioner delivers some lectures. Under the terms of sec. 45 that could not possibly be a good service unless the Darwan is an adult male member of the Petitioner's family residing with him. No attempt was made to establish such a proposition.

4. The result is that serious injustice has been done to the Petitioner and I shall have no hesitation in sending his case before the Court.

5. I cannot part with this case without emphasizing the desirability of speedy legislation. I do not suppose that any body would contend that it is a proper thing that a party, who may have a claim involving thousands of rupees, should be debarred from contesting it in Court because of an improper order by the Collector. It appears to me that the only satisfactory solution is for the legislature to provide a remedy in clear and unambiguous language. It has, I know, been suggested that the difficulty might be got over by rules framed by the Local Government under sec. 55 of the Act. I am extremely sceptical whether such a remedy would be effective. I very much doubt whether by a rule the Local Government can create an Appellate Tribunal, able to compel the Land Acquisition Collector to make a reference. Anything less than this would be useless. Ex hypothesi there is an officer who, either deliberately for reasons best known to himself, or through misappreciation of the facts and the law relating thereto, has discharged (?) the provisions of the statute itself. It is hardly likely that such an officer would obey a mere rule made by the Local Government.

6. The Rule is accordingly made absolute. I set aside the order of the Land Acquisition Collector refusing to refer the Petitioner's petition to the Court and I direct him to refer it to the Court in accordance with law. Costs of this Rule will be costs in the Reference--hearing-fee, three gold mohurs.