

CALCUTTA HIGH COURT

Bhagaban Das Shah

Vs

First Land Acquisition Collector

(Costello ,C.J.)

22.07.1937

JUDGMENT

Costello, Ag. C.J.

1. This matter arises out of a petition affirmed by one Bhagaban Das Shah on 22nd April 1937 which was entitled "In the matter of an application under Section 115, Civil P.C., and under Section 107, Government of India Act, and in the matter of Bhagaban Das Shah of 169 Ahiritola Street, Calcutta, Petitioner v. The First Land Acquisition Collector, Calcutta of 5 Bankshall Street, Calcutta, opposite party." At the outset it may be said that one is surprised to find that the petition was headed with a reference to a section of a Government of India Act which had ceased to exist. One can only imagine that the petition as regards its captions had been drafted in the old common form, that the author of the petition was extremely dubious from the very commencement as to whether Section 115, Civil P. C, would be of any assistance to him. The petition was a belated one which again raises some doubt in the mind of the Court as to whether the petitioner had any real faith in his own case. It was endorsed by an officer of the Court as having been moved on 30th April, 1937, presumably in order to save limitation, for, the petition was directed against an order made by the First Land Acquisition Collector, Calcutta dated 1st February 1937. The prayer in the petition upon which that order was made was to this effect:Your petitioner prays that your Honour may be pleased to refer the matter to the Calcutta Improvement Tribunal in the above terms.

2. The "above terms" were these:

1. That your petitioner is dissatisfied with the award of valuation in the above case and begs that the matter be referred to the Calcutta Improvement Tribunal under Section 18, Land Acquisition Act for a proper determination of the amount of compensation payable to your petitioner on account of loss of earnings, damages to business and costs of removal.

2. That your petitioner has got an extensive and well established business in the above premises and has also got an Electric Dal Mill in a portion of the adjoining premises No. 107 Ahiritola Street which is held by your petitioner under a lease having 6 years to run.

3. That a sum of Rs. 7,500(Rupees seven thousand and five hundred) ought to have been

awarded in favour of your petitioner on account of damages to business, loss of earnings and costs of removal in consequence of the acquisition of the above premises.

3. The "above premises" are described as being No. 9 Ahiritola 2nd Lane. It appears that the petitioner was the owner of a business or (possibly, in a sense, two businesses) carried on in the adjoining premises being No. 107 Ahiritola Street as well as in No. 9 Ahiritola 2nd Lane, An award had been made whereby in respect of premises No. 107 compensation was allowed under the heads of "Machinery," "Statutory Allowance" "Removal" and "Loss of earnings". There was also an award in respect of premises No. 9 in this form:

For lease-hold interest	...	Nil
Structure	5,000
Statutory allowance	750
Total	...	5,750

4. It is clear therefore that as regards the award in respect of premises No. 9 Ahiritola 2nd Lane, no compensation was allowed for "loss of earnings" over and above what had already been awarded in respect of No. 107 Ahiritola Street. It is on that ground that the petition which I have read was put forward. Presumably the petition should be regarded as being dated 12th October 1936. We find on the petition this endorsement:

0-12-0 annas C.F. Stamp (Sd.) J. De First Land Acquisition Collector, Calcutta dated 12th October 1936.

There is also endorsement:

Refer if no objection (Sd.) J. De.

Collector, 12th October 1936.

5. and in the order sheet kept by the Collector in pursuance of the provisions of Rule 129 of the Records Manual, 1917, there is this entry: 12th October 1936. Petition of reference filed on behalf of Bhagaban Das, Refer if no objection.

(Sd.) J. De. Collector.

6. The matter came before the Collector on 1st February 1937, and this order was then recorded: A petition for reference was filed on 12th October 1936 on behalf of Bhagaban Das Shah claiming for damages etc. As it appears that payment of compensation awarded to him was received on 3rd September 1936 without protest, I refuse to make any reference.

7. It was against that order that the petition to which I referred at the outset-the petition which was affirmed on 22nd April 1937 and presented to the Court on 30th April 1937-was directed. That petition was considered by a Bench of this Court consisting of M.C. Ghose and Khundkar, JJ. on 30th April 1937. On that date they made an order in these terms: Let the record be sent for and a rule issue calling upon the opposite party to show cause why the order complained of in the petition should not be set aside or such other or further order made as to this Court may seem fit and proper.

8. Mr. Rama Prosad Mukerjee, appearing on behalf of the petitioner has argued and argued very strenuously and cogently that this matter may properly be said to fall within the purview of Section 115, Civil P.C. Mr. Mukerjee agrees that Section 107 of the defunct Government of India

Act can have no bearing on the matter whatever; still less, indeed, can its successor S, 224, Government of India Act, 1935, in any conceivable manner apply. We are therefore left in this position that we have to determine whether we can interfere, and whether we ought to interfere under the provisions of Section 115, Civil P. C, with the order made by Mr. J. De on 1st February 1937.

9. Mr. Mukerjee has contended that when making that order Mr. J. De was functioning as a Court, and not only as a Court, but as a Court subordinate to this High Court. Therefore, this Court is in a position or rather is empowered to revise the order made by Mr. J. De if it thinks fit so to do. Mr. Rama Prosad Mukerjee bases his contention on the fact that there is in existence one or two, or possibly more decisions of this Court which say that a Land Acquisition Collector when functioning under the provisions of the Land Acquisition Act as contained in Part 3 of the Act is functioning in a judicial capacity and not merely in an administrative or ministerial capacity Mr. Mukerjee relied upon the case in Administrator-General of Bengal v. Land Acquisition Collector, 24-Perganas (1908) 12 C W N 241 in which at p. 245 we find these observations of the Court which consisted of Henderson and Mitra, JJ. speaking in the year 1905: The... question... is whether this Court has jurisdiction under Section 622, Civil P.C., or Section 15 of 24 & 25 Vict. C. 104 to interfere. It is admitted that up to and including the time of making his award the Collector was in no sense a judicial officer and that the proceedings before him were not judicial proceedings, Ezra v. Secretary of State (1905) 32 Cal 605, and however irregular his proceedings were, we cannot interfere with his award made under Section 11 of the Act. But when an application is made to the Collector requiring him to refer the matter to the Civil Court, the Collector may have to determine and, it seems to us, determine judicially whether the person making the application was represented or not when the award was made, or whether a notice had been served upon the applicant under Section 12(2) and what period of limitation applies and whether the application is under the circumstances made within time. The Collector's functions under Part 3 of the Act are clearly distinguishable from those under Part 2. Part 3 of the Act relates to proceedings in Court. In our opinion the Collector in rejecting the application was a Court and acting judicially and his order is subject to revision by this Court. To hold otherwise would be to give finality to an award under Section 11 even in cases in which the Collector acts irregularly and contrary to law and then refuses on insufficient grounds to make a reference under Part 3 of the Act. The party aggrieved may be left without remedy which is implied by a judicial trial before the Judge.

10. It is to be seen that Henderson and Mitra, JJ. drew a distinction and set a definite dividing line between the functions which are exercisable by a Collector under Part 2 of the Act and those exercisable by him under Part 3 of the Act. Mr. Rama Prosad Mukerjee has pressed that view upon us. It is in my opinion extremely difficult to understand on what basis any such distinction can be made. It becomes all the more difficult to understand too when one looks at the precise language of Section 18 itself, which is of course the section under which these proceedings were taken. Section 18 is in these terms:

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. (2) The application shall state the grounds on which objection to the award is taken.

11. Then follow certain provisos which we need not consider for our present purpose. It is to be observed therefore that there is in the section itself a clear contrast, a definite antithesis, between the Collector on the one hand and the Court on the other, and when one refers to the definition section in the Act, namely Section 3, that opposition becomes all the more marked. For Section 3(c) says: The expression 'Collector' means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act;

12. while 3(d) says; The expression 'Court' means a principal civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act.

13. It is agreed that as regards Calcutta, the Improvement Trust Tribunal falls within that definition of the expression "Court". The position therefore was that the aggrieved party was petitioning the Collector to refer the matter of compensation to a Court. In this connection, one should bear in mind the provisions of Section 55 of the Act which in Sub-section (1) provides: The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

14. There are further provisions in that section which we need not now consider. The materiality of that section is this that the Local Government has power to make rules guiding and indeed, controlling the Collector as regards matters touching the enforcement of the Act. It is extremely difficult to see how in such circumstances it could ever have been thought that when functioning under the provisions of Section 18 of the Act the Collector was acting in a judicial capacity. Another case to which we were referred by Mr. Rama Prosad Mukerjee is that of Leath Elias Joseph Solomon v. H.C. Stork . It is reported in 38 C W N 844 and also in 61 Cal 1041. This case is even more difficult to understand than the case I have just mentioned. Indeed in my mind it is almost impossible to understand the basis on which the decision was arrived at. This decision is stated in the head-note in these terms: Although the Land Acquisition Collector is not a Court (I emphasize the word not) within the meaning of Sec 115, Civil P. C, or Section 107, Government of India Act, and consequently that section does not strictly apply to an order by the Collector refusing to make a reference to Court under Section 18, Land Acquisition Act, still there being no other remedy outside the jurisdiction of chartered High Court, the High Court has power to revise such an order.

15. The judgment is that of Jack and Khundkar, JJ. At p. 846 of the report in the Calcutta Weekly Notes, we find this passage:

There can be no question that the act of the Collector in refusing to make a reference under Section 18, Land Acquisition Act, is a judicial Act. The petition of reference corresponds to the plaint in a suit. It initiates judicial proceedings in the Land Acquisition Court which by virtue of Section 54, Land Acquisition Act, is a Court subordinate to the High Court, and the petition for reference is practically a part of those proceedings. Though, therefore, technically Section 115, Civil P. C, may not be applicable, it was hardly the intention of the Legislature that there should be no remedy against the wrongful rejection of an application for reference. It may be noted in this connection that no relief under Section 45, Specific Relief Act, could be obtained outside the

jurisdiction of the Chartered High Courts. In these circumstances and in view of the previous rulings of this Court, *Administrator-General of Bengal v. Land Acquisition Collector, 24-Perganas, Krishna Das Roy v. Land Acquisition Collector of Pabna*¹ we will not decide against the petitioner on the preliminary point.

16. I find myself quite unable to follow the reasoning upon which that decision purports to be based; one would have thought that it was trite learning that this Court cannot interfere in its appellate jurisdiction in revision or in a proceeding analogous to a revision unless the matter falls within the purview, and strictly within the purview of Section 115, Civil P.C. Why the learned Judges should have imagined that "it could hardly have been the intention of the Legislature" that the decision of the Land Acquisition Collector refusing reference under Section 18 should be final and one without a remedy, is difficult to understand. In my view however, that was in any case not the position in the present instance, seeing that the lands and premises in respect of which compensation was sought are situated within the original civil jurisdiction of this High Court. In such circumstances it well may be that there was some remedy available to the aggrieved party, the person interested, outside the four corners of the provisions of Section 115, Civil P. C, but tinder the original and not the appellate jurisdiction of the Court. Whether that is so or not, it seems to me quite wrong to purport to exercise a jurisdiction and to interfere with an order made by a particular functionary merely upon the supposition that the Legislature could hardly have intended his orders to be final and unchallengeable. With all possible respect to the learned Judges who decided the cases to which I have referred, I can only say that I cannot agree with conclusions at which they arrived.

17. Mr. Rama Prosad Mukerjee was really confronted with an extremely awkward dilemma. If the position really is that a Collector acting under the provisions of Section 18 is functioning in a judicial capacity, then it must inevitably follow, in my opinion, that he must have some measure of discretion as to whether or not he should make a reference under Section 18 and indeed it was entirely upon that basis, that is to say upon the basis that there must be some matters which have to be considered and decided before the Collector can make a reference, that the learned Judges in *Administrator-General of Bengal v. Land Acquisition Collector, 24-Perganas*² gave their decision. If therefore as Mr. Rama Prosad Mukerjee contends relying upon that case, the fact is that the Collector is functioning in a judicial capacity, then it is not within the power of this Court to interfere under Section 115, Civil P. C, provided the Collector acts in a regular and impartial manner. In other words, if the Collector is functioning as a Court, he has jurisdiction to decide matters which come before him in that capacity and this Court would, in my opinion, have no right to interfere with any order which the Collector saw fit to make. If, on the other hand, the Collector was not functioning in a judicial capacity at all (and that in my opinion is the true view), then he is acting in a purely ministerial or administrative capacity, and any order he makes in such capacity can by no logomachy or straining of language be said to be an order which is subject to review by this Court under the provision of Section 115, Civil P.C. If an officer acting in a ministerial or administrative capacity makes an order or does an act which is wrong, then some other remedy must be found.

18. In my opinion, the decisions upon which reliance has been placed are not warranted in law and when I intimated that to Mr. Rama Prosad Mukerjee he invited us to refer this matter for the decision of a Full Bench of this Court. I do not consider however that course is called for in the present instance, because it so happens that the Collector, in the order which he made on 1st

February 1937, has given the reason why he declined to make a reference and that reason is this: The payment of compensation awarded to him (that is to say the petitioner) was received on 3rd September 1936 without protest.

19. The Collector was referring to the fact that the compensation awarded in respect of No. 107 Ahiritola Street included an item 'loss of earnings'. That item according to the statement of the Collector included compensation for loss of earnings in respect of all the business carried on by the petitioner, that is to say not only the business carried on by him in premises No. 107 Ahiritola Street but also the business carried on in premises No. 9 Ahiritola 2nd Lane. After the Rule was issued and the Collector was called upon to show cause, he submitted this explanation of how he came to make the order now impugned. He says: Before I proceed to show cause on the grounds taken, I shall enumerate here certain facts to explain the position clearly: Premises No. 107 Ahiritola Street and 9 Ahiritola 2nd Lane adjoin, and the petitioner Bhagwan Das occupied contiguous rooms in the two premises where a Dal business was carried on by him. The business in the two premises was practically one and the same business and the income-tax receipt filed before me by the petitioner mentions premises No. 107 only. Compensation for removal and loss of earnings on account of the aforesaid business was accordingly awarded in the case of No. 107 with his consent. As however a separate claim was filed by the petitioner in the case of premises No. 9 on account of loss of earning and no award was made under that head in the case, he should have received the payment of compensation awarded in his favour under protest if he had really a grievance against the award. The payment having been received by him without protest, he is not entitled to make a reference under Section 18: vide Proviso 2 to Section 31(2), Land Acquisition Act.

20. That Proviso is in these terms: Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18.

21. In my view the explanation given by the Collector (which of course we must accept as being accurate) entirely concludes the matter against the petitioner, whether the Collector in making the order was functioning in a judicial capacity or only in a ministerial or administrative capacity. Directly it became clear that the compensation awarded while being outwardly connected only with the premises at No. 107 Ahiritola Street was really intended, with the consent or acquiescence of Bhagawan Das, to cover No. 9 Ahiritola Second Lane also, then the fact that Bhagawan Das made no protest against the method of dealing with his case precludes him altogether from availing himself of the provisions of Section 18 of the Act. Leaving aside therefore any question of law, we are able to dispose of this Rule upon the facts and circumstances of the case. The Rule is discharged with costs-three gold mohurs.

Edgley, J.

22. I entirely agree with the observations made by my Lord the Acting Chief Justice in discharging this Rule. According to the main scheme of the Land Acquisition Act (1 of 1894), there are certain executive and administrative functions of great importance which must be performed by the Collector. It may also be held that some of his functions, for instance his functions under Section 11 of the Act, are functions of a quasi-judicial character. The fact remains however that a very clear distinction has been drawn between the functions which the Collector is required to exercise under the Act and the duties of the Court, and this distinction is

emphasized by the language of Section 18, Land Acquisition Act, to which my Lord has referred. Even if it be admitted that certain functions of the Collector are of a quasi judicial character, this does not mean that a person exercising such functions should necessarily be regarded as a Court within the meaning of the Act and, in my view, it is quite possible for an official to exercise such functions without being a Court.

23. In any event, in order that Section 115, Civil P. C., should be applicable to a case of this kind, it is necessary that the Court should be subordinate to the High Court. Having regard to the provisions of the Land Acquisition Act, it cannot for a moment be contended, in my opinion, that the Collector is in any way subordinate to a High Court. According to the general scheme of the Act, if he is subordinate to anybody at all he must be subordinate to the Local Government, and in order to enable the Local Government to exercise effective control over the Collector, the Legislature have thought fit to provide by Section 55 of the Act that the Local Government should have power to make rules consistent with the Act for the guidance of officers in all matters connected with the enforcement of the Act. The Collector is clearly one of the officers to whom Section 55 applies, and the Local Government, therefore, have the power to make rules as they may consider necessary for controlling the action and procedure of the Collector, by rules made under that section, with reference to matters to which Section 18, Land Acquisition Act, relates. I also agree that the case in Administrator-General of Bengal v. Land Acquisition Collector, 24-Perganas (1908) 12 C W N 241 and the later ease in , have been wrongly decided. It is not however necessary to make a reference to the Pull Bench because owing to the peculiar circumstances of the case now before us, it would appear that even if the Collector were a Court subordinate to this Court, he must be held to have acted legally in the exercise of any jurisdiction which may have been conferred upon him. In these circumstances, I agree that the Rule must be discharged.

Cases Referred.

1(1912) 16 C W N 327

2(1908) 12 C W N 241