

# CALCUTTA HIGH COURT

Comilla Electric Supply Ltd

Vs.

East Bengal Bank Ltd

(B.K. Mukherjea, J.)

06.06.1939

## JUDGMENT

### **B.K. Mukherjea, J.**

1. This rule is directed against an order dated 24th March 1939 by which the District Judge of Tipparah exercising the functions of the Court under the Land Acquisition Act, rejected a reference made to him by the Collector of Tipperah under Section 18, Land Acquisition Act, on the ground that the reference was incompetent in law. The material facts are not in controversy and may be shortly stated as follows: A quantity of land measuring "595 acres situated in mouza Dharampur, in the district of Tipperah, was acquired under the Land Acquisition Act at the cost of the Comilla Electric Supply Ltd., who are the petitioners before us, for the purpose of construction of a power house at Dharampur. In the land acquisition map the area acquired was shown as divided into 15 plots and in some of the plots the petitioner company themselves claimed to have tenancy and revenue-free rights. The Collector made his award on 8th June 1938 and compensation was given to the petitioner company in respect of some of the plots acquired, though in respect of others to which also the company laid claim, compensation was allowed not to them but to opposite party No. 1. The petitioner company thereupon prayed for reference under Section 18, Land Acquisition Act, and the Collector did make reference to the Court for determination of the questions as to whether the petitioner was entitled to compensation in respect of plot 13 and also in respect of the alleged revenue free rights in respect of plots 13 and 14. The District Judge has not decided the case on its merits but has rejected the reference on\* the ground that the reference was incompetent by virtue of the provision contained in the proviso to Section 50, Clause (2), Land Acquisition Act, according to which the company or the local authority for whose benefit the acquisition is undertaken is not entitled to demand a reference under Section 18 of the Act. It is the propriety of this view that has been challenged before us by the learned advocate who appears before us in support of the rule.

2. It cannot be disputed that in the present case not only was the acquisition made at the instance, and for the benefit of the petitioner company, but they were claimants also who admittedly had

some interest in some of the plots which were the subject-matter of acquisition. It has been held by this Court in *Babujan v. Secy. of State*<sup>1</sup> that in such cases all the provisions of the Land Acquisition Act are applicable and the Collector would have to acquire the aggregate of rights in the land including the interest which is claimed

<sup>1</sup>(1906) 4 C.L.J. 256

by the company or local authority at whose cost the acquisition is made. The petitioners therefore are persons interested within the meaning of Section 3, Clause (b), Land Acquisition Act, and they would have a right to demand a reference under Section 18 of the Act unless that right has been taken away by some other provisions in the Act. The contention of the Advocate-General who appears on behalf of the opposite party is that Section 50, Clause (2) proviso, does take away the right and makes it incompetent for such local authority or company to demand a reference under any circumstance whatsoever under Section 18, Land Acquisition Act. In my opinion this contention cannot be accepted. Section 50, Clause (2) obviously contemplates a case where acquisition is undertaken by the Government at the cost of any company or local authority. The mere fact that acquisition is made for their benefit would not bring such a company or local authority within the purview of the definition of "persons interested" as given in Section 3, Clause 2, Land Acquisition Act, and consequently they would not have the right ordinarily of appearing before the Collector or the Court or adducing any evidence in the land acquisition proceedings.

3. Section 50, Clause (2) purports to remedy this disability and it lays down that in any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation. The reason is plain. It is the company or the local authority who has got to pay the money in such cases and it would be unjust to deny them, the right to appear and adduce evidence-which would have a bearing on the amount of the compensation money. The proviso, in my opinion, makes it clear that although they can appear before the Collector and the Court they would not have the right of demanding a reference and in this respect their position is the same as that of the Government itself. This, in my opinion does not affect their rights as claimants in the land acquisition proceedings. There are no express words in Sub-section 2 of Section 50 which\* would take away the rights which the company or the local authority might enjoy as claimants or persons interested under Section 18, Land Acquisition Act. The application of the proviso must be held limited to cases where the provisions of the sub-section itself, which in one sense are qualified by the proviso, are applicable and it is a well established canon of interpretation that a proviso shall not be construed so as to enlarge the scope of the enactment when it can fairly and properly be construed, so as not to attribute to it this effect.

4. In this view of the case I do not think it necessary to express any opinion on the other point raised by Mr. Gupta as to whether or not the reference could be treated as one made by the Collector under Section 30, Land Acquisition Act. In my opinion, the rule must be made absolute with costs. The order of the District Judge is set aside and the case sent back in order

that it may be heard and decided on its merits. The hearing-fee is assessed at three gold mohurs.

**Roxburgh, J.**

5. This rule has been issued in respect of an order of the District Judge of Tipperah refusing to consider a reference purporting to have been made to him under Section 18, Land Acquisition Act, 1894, by the Land Acquisition Collector at the instance of the Electric Supply Company, Comilla. Certain land is being acquired by Government on behalf of this company for the purpose of its power house and it appears that the company itself is interested as a tenant in certain of the lands to be acquired. The Land Acquisition Collector had made an award, and the company, being dissatisfied in respect of the manner in which its rights in certain plots had been dealt with, moved the Collector to make a reference, which he did. The learned Judge has held that the provisions of Section 50, Sub-section 2 of the Act are a bar to the reference being made at the instance of the company, and further that the reference could not be treated as one made by the Collector by virtue of his powers under Section 30 of the Act. For the petitioner it is contended before us that the company is a person interested within the meaning of the definition in Section 3(b) of the Act and is entitled under Section 18, as such, to require a reference to be made. It is urged that the proviso to Section 50(2) of the Act relates to the terms of Sub-section 2 itself by which a special right is given to a company on whose behalf land is being acquired to appear and "adduce evidence for the purpose of determining the amount of compensation." It is contended that the proviso merely makes it clear that the grant of this right does not itself include a right to demand a reference under Section 18, and that it is not intended by the proviso to restrict any right which a company may otherwise have as an 'interested person.' It is further urged for the petitioner that the learned Judge should at any rate have dealt with the matter as on a reference made under Section 30 of the Act. The opposite party No. 1, who is interested as a mortgagee, contends that the proviso to Section 50(2) should be treated as a full substantive provision barring in all respects a right to require a reference, and that Section 30 has no application. It is also contended that this is not a proper case for action under Section 115, Civil Procedure Code. The other opposite parties adopt the same arguments.

6. There are two main questions for decision, first whether a company on whose behalf land is being acquired is a 'person interested' within the meaning of Section 3(b) of the Act if it has an interest in the lands that are the subject of acquisition, and secondly whether the proviso to Section 50(2) takes away in respect of such a company the right given to persons interested to require a reference to be made. The correct procedure to be followed in a case where land is being acquired on behalf of a local authority or company which itself has some interest in the land to be acquired has been laid down in *Babujan v. Secy. of State*<sup>2</sup> where it is pointed out that the Act cannot be employed in order to acquire only part interests, but that all the interests in the land in question must be acquired. The learned Judges in deciding that case expressly used the argument that the municipality ought to have a right of reference in respect of a dispute as to apportionment if they failed before the Collector and that they must have this right as persons

interested. They also relied on an examination of the provisions of the Act to show that the land was in the first instance acquired by Government, that it vested in Government and that there was nothing to prevent Government from acquiring the land and then dealing with it in any manner it chose. Thus the first question for decision is clearly settled by the above decision and there can be no doubt that in the circumstances at present being considered the company is a person interested, as defined in the Act, and is entitled to require a reference under Section 18 unless that right is restricted by the terms of the proviso to Section 50(2).

7. The proviso in question was not referred to in *Babujan v. Secy. of State*<sup>3</sup> as the case came up on appeal from an award; but, as has been stated, the learned Judges founded

<sup>2</sup>(1906) 4 C.L.J. 256

<sup>3</sup>(1906) 4 C.L.J. 256

their decision in part on an argument that the municipality could have demanded a reference if the case had been determined against them by the Collector. The right given by Section 50(2) to the company to appear and adduce evidence for the purpose of determining the amount of compensation is one quite independent of any right they may have as persons interested; ordinarily, the acquiring authority will probably not be a person interested. A proviso to a clause is inserted to restrict the full operation of that clause; if it is intended to affect other provisions elsewhere in the Act we may expect it to contain some reference to them; if it is intended to be of general effect covering the whole Act we may expect it to, be inserted as a separate substantive provision. In my opinion, the proper interpretation of the proviso to Sub-section 2 of Section 50 of the Act is that it relates only to that sub-section and makes it clear that a company or local authority has not been granted a power to demand a reference as to compensation, by virtue of the power given therein to appear and adduce evidence before the Collector or Court on the subject. It is suggested that the intention of the Act was to put companies and local authorities on the same footing as Government in this matter. It is not necessary here to consider whether the Secretary of State (or now, the Province) could be a 'person interested' but it is sufficient to refer to the reasoning adopted in *Babujan v. Secy. of State*<sup>4</sup> with reference to the provisions of the Act, to emphasize that the position of a company Or local authority is different from that of Government. The land acquired vests in Government and is transferred in accordance with the terms of the agreement made under Section 41 of the Act.

8. It may be noted however that the terms of Section 5-A of the Act which allow a person interested to object to acquisition proceedings are rather inappropriate in respect of a company or local authority for whom the land is being acquired, but this is no more than saying that there is an infelicity in the drafting of the Section. The Section itself was inserted in 1923 by an Amending Act to meet a defect in the original Act. In the view taken of the matter, it is not necessary to decide whether the learned Judge should have in any event treated the case as one of a reference under Section 30. In my opinion, even on the view taken by the learned Judge of the effect of the proviso to Section 50(2) it would have been a proper exercise of his jurisdiction to have treated the reference as one under Section 30 which the Collector was competent to make. It has been held in *Satish Ch. Singha v. Ananda Gopal*<sup>5</sup> that such a reference can be made even

after the compensation money has been paid (which is not the case here). As respects the contention that this is not a fit case for action under Section 115, Civil Procedure Code, it is sufficient to say that the decision of the learned Judge amounts to a decision on a preliminary point of law that he had no jurisdiction to entertain the reference. I consider that he was wrong in that view, and that therefore he has failed to exercise a jurisdiction vested in him. I agree that the rule should 'be made absolute.

<sup>4</sup>(1906) 4 C.L.J. 256

<sup>5</sup>3 A.I.R. (1916) Cal. 514