

# CALCUTTA HIGH COURT

Iswar Madan Gopal Jiu

Vs.

Province of West Bengal

Civil Rules Nos. 2027 to 2030 of 1949

(Sen and K.C. Chunder, JJ.)

04.05.1950

## JUDGMENT

### **K.C. Chunder, J.**

1. These four revision cases arise out of the Land Acquisition proceedings in Mouza Hirapur within the sub-division of Asansol in the district of Burdwan. Notification for acquisition of land was issued on 29th April 1940. The Land Acquisition Collector gave his award on 10th February 1945 and on 1st April 1945, the Province of Bengal took possession. Then on the application of the petitioners before us the Collector made a reference under Section 18 to the District Judge of Burdwan on the question of valuation of the land, and this gave rise to Land Acquisition case No. 9 of 1946. On 15th August 1947 the Indian Independence Act came into force and from that day the Province of Bengal was divided into two provinces of West and East Bengal. On 13th August 1949 the province of West Bengal now represented by the State of West Bengal objected before the District Judge of Burdwan that in view of the Indian Independence Order Rights of Properties, etc., of 1947 the liability now was that of the province of East Bengal or the Eastern Pakistan and the Province of West Bengal was no longer liable to pay the compensation which may be determined for the land. By his order dated 21st November 1949 the District Judge gave effect to this contention and held that the liability was that of the province of East Bengal and not of West Bengal. The present Rules were issued on 22nd December 1949 and the new Constitution of the Republic of India came into force from 26th January 1950. The only question which arises in all these Rules is whether the liability to pay any additional compensation for the value of the land which may be determined by the District Judge was that of the West or of the East Bengal Government. Ordinarily as the land is within West Bengal and the acquisition has been wholly for the purpose of West Bengal the liability would be of that Government to pay adequate compensation as determined by the District Judge to the parties whose lands were acquired, Mr. Chandra Sekhar Sen appearing on behalf of the State of Bengal has contended first that in view of Section 9, Indian Independence Order of 1947 these cases come within "other

financial obligations" mentioned in this section and therefore the liability is that of the Province of East Bengal and not of West Bengal. On this point there is a decision of a Divisional Bench of this Court in the case of the *Province of West Bengal v. Midnapore Zamindari Co. Ltd.*<sup>1</sup>, that the expression "and other financial

<sup>1</sup>(AIR 1950 Cal 159)

obligations" as used in Article or para. 9, Indian Independence Order, 1947, must be given a restricted meaning and construed ejusdem generis with the words 'loan and guarantees' used in that article. It appears that no reasons were given for this construction and it also further has been contended that this is merely an obiter dictum as it was not necessary to decide this point in that case. It was in connection with a legal proceeding respecting rent payable and the Divisional Bench pointed out that rent arose out of a contractual obligation and contractual obligation was dealt with in Article or Para. 8 and therefore under that Article the liability was that of the West Bengal Government. In view of that decision it was unnecessary really to decide about "other financial obligations".

2. Mr. Sen's second contention is that even if it be held that Article 9 did not apply and the liability was not of East Bengal under this Article, as no provision has been made as to which of the two successor Governments namely the East Bengal or West Bengal is to be substituted in place of the now non-existent province of Bengal, the province of West Bengal cannot be substituted in place of the previous province of Bengal and cannot be made liable. There is no question that under Section 4 of the Legal Proceedings Order the District Judge's Court at Asansol is the proper Court in which the present proceedings are to continue. Mr. Sen's contention is that Article or para. 12 of the Indian Independence Order 1947 does not apply to the present proceedings before the District Judge and therefore there is no other provision for substitution and the petitioners before us who have obtained these Rules are not entitled to proceed against the State of West Bengal even if they cannot also proceed against East Bengal. It is to be pointed out that by the Constitution Act of 1950 the State of West Bengal is the successor to the province of West Bengal. It is also to be pointed out that in view of Section 6, General Clauses Act accrued rights and liabilities and proceedings in that connection are not affected by the repeal of Independence Act, 1947.

3. As regards the first contention relating to the interpretation of Article 9 of the Indian Independence Order 1947, it is clear that that Article has some reference to Section 178, Government of India Act, 1935, where the same words "loans, guarantees and other financial obligations" are also used. It would appear from the Government of India Act in the subsequent sections that obligations considered in that connection are obligations which are charged upon the revenue or which are in the nature of grants etc. The word 'financial' in 'financial obligation' has got to be given its technical meaning which it has in connection with matters of revenue and it cannot be given the wide meaning as equivalent to any kind of pecuniary liability. Farther, it would appear that pecuniary liabilities arising out of different kinds of transactions have already been provided in the Act and if 'financial obligations' were not taken in a restricted technical

sense, it would have been more appropriate to mention pecuniary liabilities except those already provided for in the other sections. We are therefore of opinion that ejusdem generis meaning is to be preferred in the present case and the interpretation put upon the Article previously by the Divisional Bench was the correct interpretation.

4. The Indian Independence Order, 1947, proceeds to assign rights and liabilities between the different provinces created as a result of partition of Bengal and the Punjab and between the other Governments and in that connection it deals first with property in which connection it makes provisions for land, bank notes, coins etc. and then as regards other properties. It next goes on to deal with contractual rights and liabilities. Then it deals with liabilities which are connected with revenue matters, namely, loans, guarantees and other financial obligations and finally it deals with liabilities arising out of Tort or Wrongs done. After making these broad divisions and assigning rights and liabilities under different heads, in Article 12 it provides for substitution in pending proceedings in connection with different kinds of rights and liabilities and again mentions all the broad heads we have pointed out. The broad head under which, it is contended by Mr. Chatterjee appearing on behalf of the petitioners, we should consider the present case is legal proceeding with respect to property." We have already pointed out that property has been taken to include land and other kinds of properties mentioned in the previous Articles. The question of compensation for acquisition of land is a question with respect to the value of land and therefore it is a legal proceeding with respect to land or with respect to property. "Legal Proceeding" and "with respect to land" must be given a wide interpretation, and therefore under Article 12 of the Indian Independence Order of 1947 the liability was of the successor Government which has obtained that property on partition. There can be no doubt that the lands in West Bengal in the sub-division of Asansol in the District of Bardwan have fallen within the Province of West Bengal and therefore in the present case the Province of West Bengal now represented by the State of West Bengal was to be substituted in place of the previous Province of Bengal and the District Judge was therefore not right in holding that the Land Acquisition proceedings could not continue against the Province of West Bengal.

5. The Rules are made absolute. The Province of West Bengal in all these proceedings is to be substituted in place of the previous Province of Bengal.

6. The petitioners will get their costs of these Rules. Leave to appeal is refused.

**Sen, J.**

7. I agree.

Rule made absolute.