

# CALCUTTA HIGH COURT

Manjur Ahmed

Vs.

Rajlakshmi Dassi

Civil Revn. Case No. 2782 of 1953

(Bachawat and Guha Ray, JJ.)

13.02.1956

## JUDGMENT

### **Bachawat, J.**

1. This dispute relates to Apportionment Case No. 49 of 1948, now pending before the President, Calcutta Improvement Tribunal. The dispute relates to premises Nos. 2 and 2/1/1, Deb Lane, of one Raj Ballav was admittedly the original owner. These properties are the subject-matter of acquisition and there have been numerous conflicting claims to this property. The Collector made a joint award in favour of Raj Lakshmi Dassi and several persons collectively known as the Dasses as also the Corporation of Calcutta.

Raj Lakshmi Dassi claimed as the representative of Jogendra said to be the adopted son of Raj Ballav and by virtue of the provisions of the will of Raj Ballav and decrees passed in several suits. The Dasses claimed title as mortgagees. The Corporation claimed charge on account of arrears of taxes. The claims of the other claimants including Tulsi Manjuri Dassi, Bonamali Sen, Manjur Ahmed and Bechu Lal Shaw were disallowed. Tulsi Manjuri Dassi claimed title to a half share of the two premises as the representative of her husband Kalidas Sen by virtue of the will of Raj Ballav and on the ground of adverse possession. Banomali Sen claimed that a Receiver appointed in Title Suit No. 59 of 1944 had executed a mortgage of Tulsi Manjuri's share in premises No. 2 Deb Lane that in proceedings for execution of the final decree passed in a suit for enforcement of that mortgage Manzur Ahmed and Bechulal Shaw had purchased the half share belonging to Tulsi Manjuri in the premises, and that they subsequently sold half share of their interest in that property to Banomali Sen. Banomali Sen claimed half of all the compensation For the land and structures belonging to Tulsi Manjuri Dassi. In the petition filed before the Collector Banomali Sen prayed that half of the compensation may be awarded separately to him. Manjur Ahmed repeated the allegations of Banomali Sen and alleged further that by deed dated 5-8-1946, Bechulal sold his interest in the premises to Manjur Ahmed and that Manjur Ahmed had become owner of the half share of premises Nos. 2 and 2/1/1 Deb Lane. Dissatisfied with the award some of the claimants including Tulsi Manjuri Dassi and Banomali Sen obtained a reference to the President, Calcutta Improvement Tribunal, under Section 18, Land Acquisition Act. The objections of Tulsimanjuri and Banomali Sen together with several other objections have been marked as one apportionment case No. 49 of 1048.

In this Apportionment Case issues have been raised and settled. One issue is whether Tulsi Manjuri Dassi had any interest in the acquired premises and was her interest sold and purchased by Manzur Ahmed and Bechulal Shaw in the execution sale. Manzur Ahmed did not apply for and did not obtain a reference under Section 18, Land Acquisition Act. The award was made on 21-1-1947. It is admitted that by virtue of the proviso to Section 18, Land Acquisition Act his right to apply for a reference has been barred. Manjur Ahmed made an application before the learned President under Section 5, Land Acquisition Act read with Order 1, Rule 10, Civil Procedure Code praying that he be added as a party to the apportionment case and that he be permitted to file his written statement in the case. The learned Judge dismissed the application. Manzur Ahmed moved this Court against this order of dismissal. Manzur Ahmed has since died and his representatives have been substituted in his place.

2. Manzur Ahmed alleged that with the outbreak of the Calcutta riots in August, 1946, he fled from Calcutta; that he did not come back till after a year; that he did not receive any notice of the award and that he did not know of the award until 27-5-1953. The learned Judge has disbelieved the allegation that he did not know of the award till 27-5-1953. The petition was not supported by an affidavit. It is difficult to believe that Manzur Ahmed did not know of the award until May 1953 though on his own case, he had returned to Calcutta within about a year of August, 1946. His petition also does not state from whom and under what circumstances he came to know of the award in 1953. The learned Judge had ample materials to disbelieve the allegations made by Manzur Ahmed. If and in-so-far as the application was an application for addition of a party under Order 1, Rule 10, Civil Procedure Code read with Section 53, Land Acquisition Act was a matter of discretion, the learned Judge in his discretion was entitled to refuse the application on the ground that a proper case had not been made out in support of this application.

3. Manjur Ahmed could not be added as a party on a much more fundamental ground. The jurisdiction of the Court trying the reference under Section 18, Land Acquisition Act is strictly circumscribed by the Act. The reference is made on the application of any person interested that is to say, any person claiming an interest in the compensation.

The person interested may 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 compensation, the person to whom it is payable or the apportionment of the compensation amongst persons interested. The application must state the grounds on which the objection to the award is taken. The application must be made within the time prescribed. By Section 20 the Court is required to determine the objection and to summon all persons interested in the objection. By Section 21 the scope of the enquiry is restricted to a consideration of the interest of the persons affected by the objection. In '*Pramatha Nath v. Secy. of State*', at p. 65 their Lordships of the Judicial Committee held that where the objection taken was to the amount of compensation the Court could not consider an objection to measurement. Sir George Lowndes observed thus :

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of this section. It only arises when a specific objection has been taken to the Collector's award and it is confined to a consideration of that objection. Once, therefore, it is ascertained that the only

<sup>1</sup> AIR 1930 PC 64

objection taken is to the amount of compensation that alone is the matter referred and the Court has no power to determine, or consider anything beyond it".

It is settled law that the Court cannot go into a question raised for the first time by a party who had not referred any question to the Court under Section 18 of the Act (vide '*Abu Bakar v. Peary Mohan Mukerjee*<sup>2</sup>', '*Secy. of State v. Manohar Mukherjee*<sup>3</sup>', (1) and '*Mahananda Roy v. Srish Chandra Tewari*<sup>4</sup>', In view of the lapse of time the representatives of Manzur Ahmed cannot now obtain a reference. What they cannot do directly they cannot do indirectly. They cannot be added as a party in a reference pending at the instance of other parties in order that the nil award against Manzur Ahmed may be reversed and in order that they may be awarded a share of the compensation money, (Vide '*Govinda Kumar v. Debendra Kumar*<sup>5</sup>', and '*Mahammad Safi v. Haran Chundra*<sup>7</sup>', The last two decisions relate to references under Section 18, Land Acquisition Act. The principle of these decisions has been extended to references under Section 30, Land Acquisition Act in '*Prabal Chandra v. Raja Peary Mohun*<sup>6</sup>', and '*Sm. Indumati Debi v. Tulsi Thakurani*<sup>8</sup>', Where, however, the applicant desires to be added as the representative of the party who had obtained the reference the position is entirely different and the applicant may be added as a party Vide '*Promotha Nath Mitra v. Rukhal Das*<sup>9</sup>', '*Golab Khan v. Bholanath*<sup>10</sup>', and '*Venkata Krishnaya v. Secy. of State*<sup>11</sup>',

4. In the apportionment case now pending before the learned President he has to determine whether Tulsi Manjuri and Banomali Sen are entitled to any interest in the properties acquired and to any share of the compensation. In determining these questions the President has to enquire whether Tulsi Manjuri had any interest in the properties and whether Manjur Ahmed and Bechulal Shaw obtained any interest in the properties by virtue of the execution sale in the mortgage suit. To that extent the scope of the inquiry will not be enlarged if the representatives of Manjur Ahmed are added as parties. The representatives of Manjur Ahmed, however, seek determination also of the questions whether Manzur Ahmed by a subsequent deed purchased the interest of Bechulal Shaw and whether they are now entitled to an interest in the premises and to a share in the compensation money. These questions are new questions not covered by the reference made at the instance of Tulsi Manjuri and Banomali Sen. Manzur Ahmed was not a person interested in the objection of Tulsi Manjuri and Banomali Sen. Neither the success nor the failure of these objections affected the interest of Manzur Ahmed. Clearly Manzur Ahmed was not affected by the objection. The scope of the enquiry now pending before the learned President cannot extend to determination of the question whether the representatives of Manzur Ahmed are entitled to an interest in the properties acquired and to a share in the compensation money.

5. The learned Advocate For the petitioner relied upon the decision in '*Nagendra Nath v. Bhagwati Prasad*<sup>12</sup>', In that case there was a contest between the proprietor and three mokararidars with regard to their respective interest in the compensation money. The Collector disallowed the claim of the mokararidars. The proprietor obtained a reference on the question of inadequacy of valuation. One of the mokararidars also obtained a reference on that question as also on the question of his title

<sup>2</sup>34 Cal 451

<sup>4</sup>7 Ind Cas 10 (Cal)

<sup>6</sup>12 Cal WN 987

<sup>3</sup> AIR 1919 Cal 524

<sup>5</sup>12 Cal WN 98

<sup>7</sup>12 Cal WN 985

<sup>8</sup> AIR 1942 Cal 53

<sup>10</sup>12 Cal LJ 545

<sup>12</sup> AIR 1946 Pat 447

<sup>9</sup>11 Cal LJ 420

<sup>11</sup> AIR 1928 Mad 89

to the compensation money. The other mokararidars applied for a reference, after the time

prescribed by 8. 18. Although their applications were barred the Collector in fact made a reference. In these circumstances the Patna High Court held that in the pending reference the Court had power to investigate the claims of the two mokararidars who had applied for reference after the time prescribed. This finding was not strictly necessary For the decision as the High Court held that the mokararidars were in fact not entitled to any share in the compensation. It is also to be noticed that a reference had in fact been made at the instance of the two mokararidars although their application had been made after the time prescribed. We respectfully disagree with the decision if and in so far as it holds that the claims of the two mokararidars could be enquired into by the Court although they did not obtain a reference under Section 18.

6. The learned Advocate For the petitioner relies upon the decision in '*Hashim Ibrahim Saleji v. Secy, of State*<sup>13</sup>', In that case one of the mutwallis representing a wakf estate had obtained a reference on the question of valuation. This Court decided that other mutwallis of the wakf estate could be joined as parties in the pending reference. Their joinder did not raise any new questions. The applicants were added as parties representing the wakf estate which was already before the Court so that the wakf estate could more effectively place before the Court materials on the question of valuation in respect of which the reference was made. This decision is entirely distinguishable.

7. The learned Advocate For the petitioner relies upon the decision in '*Bejoy Chand v. P.K. Mozumdar*<sup>14</sup>', In that case there was a dispute between the raiyats on the one hand and the superior landlords namely the *Zemindars* and the Patnidars on the other. The two landlords were jointly allowed by the Collector compensation on the basis of 20 years purchase of the raiyati jama. The patnidars applied for and obtained a reference under Section 18 on the question of apportionment between the landlords and the raiyats. The *zemindars* did not make a similar application. The raiyats compromised the matter and agreed to. he payment of all increased sum to the landlords as their share of the compensation money. The question then arose as to the mode in which this sum should be apportioned between the *zemindars* and the patnidars. It was held that the *zemindars* could claim an apportionment of this sum as between them and the patnidars though the *Zemindars* had not applied for a reference. It is to be observed that the Collector had made no apportionment whatsoever between the *zemindars* and the patnidars. The award was in favour jointly of the *zemindars* and the patnidars. There was no question of addition of a party before the Court. The question as to whether the *zemindars* and the patnidars jointly should be allowed an increased share in the compensation money was not litigated adversely as between them and the raiyats and the matter was settled by a compromise. The only question before the Court was as to the manner in which the amount of compensation payable to the superior landlords jointly was to be apportioned between the *zemindars* and the patnidars. That decision is entirely distinguishable and is of no assistance to the petitioners.

8. With regard to the objections of Banomali Sen and Tulsi Manjuri the real matter in dispute is as to their respective title in the properties acquired. It is not necessary For the determination of that dispute that Manzur Ahmed or his representatives should be added

<sup>13</sup> AIR 1927 Cal 352

<sup>14</sup>13 Cad LJ 159

as parties to the apportionment case. Furthermore Order 1, Rule 10, Civil Procedure Code must be read subject to the provisions of Section 20, Land Acquisition Act. Manzur Ahmed and his representatives are not affected by the objection and the scope of the enquiry cannot be extended

so as to cover the consideration of their interest by their addition as parties to the pending apportionment case.

9. In our judgment the order complained of was rightly made.

10. I should mention that pending the reference and pending this petition some of the parties including Tulsi Manjuri and Manzur Ahmed have died and are now represented by their legal representatives. Raj Lakshmi Dassi is now represented by the Dhars in whose favor Raj Lakshmi Dassi is said to have surrendered her interest.

11. We, therefore, pass the following order.

12. We discharge the Rule with costs. Let the records be sent down as soon as possible.

**Guha Ray, J.**

13. I agree.

Order accordingly.