

# CALCUTTA HIGH COURT

Karuna Sindhu Dhar

Vs.

Panna Lal Paramanik

Appeals from Original Decree Nos. 121 and 122 of 1954

(Renupada Mukherjee, J.)

21.01.1960

## JUDGMENT

### **Renupada Mukherjee, J.**

1. These two appeals have arisen out of an order passed by the learned District Judge of Howrah in connection with two land acquisition cases. It would appear from the judgment of the learned Judge that the Land Acquisition Collector of Howrah made some awards in two land acquisition cases, namely, L. A. Case No. 2/2 of 1944-45 and L. A. Case No. 2/3 of 1944-45 in favour of four persons jointly. These four persons were Karuna Sindhu Dhar, Anantalal Chunder, Pannalal Paramanik and Rajmohan Mukherjee. The awards do not make any mention about the shares of the parties and so the normal result would be that each of the above-mentioned four persons would be entitled to get the award monies to the extent of one-fourth share. Karuna Sindhu and Anantalal were not satisfied with the awards and they applied to the Collector for making a reference under Section 18 of the Land Acquisition Act. Their case was that they were entitled to get the award amounts in their entirety and the other two awards were not entitled to get anything. It is admitted that Pannalal and Rajmohan did not raise any objection to the award before the Collector. Evidently they accepted the awards made by the Land Acquisition Collector. They, however, entered appearance before the learned Land Acquisition Judge and contested the claim of the claimants. Their case before the learned Judge was that Rajmohan alone was entitled to receive the entire amounts of the awards. Evidence was adduced by the rival claimants before the Land Acquisition Judge and he came to the conclusion that the two claimants of the two cases had no title to the award amounts and Rajmohan Mukherjee was alone entitled to receive the amounts. In view of this finding the miscellaneous cases which arose out of the two references were dismissed by the learned Judge and he gave a further direction that the award monies would be paid to Rajmohan Mukherjee alone and not to the three other awardees.

2. These two appeals were filed by the claimants of the court below. As they arose out of

connected matters they were heard analogously and they were disposed of by one judgment.

3. Mr. Ghosh who argued these appeals on behalf of the appellants submitted before us that he is not in a position to challenge that portion of the judgment of the learned Land Acquisition Judge in which the respective titles of the parties to the properties which were the subject-matter of acquisition have been discussed. He, however, contended that it was not open to the learned Land Acquisition Judge to make a declaration that Rajmohan Mukherjee alone was entitled to receive the entire compensation money of the awards inasmuch as he had accepted the awards as made by the Collector and no reference under Section 18 of the Land Acquisition Act was made by the Collector at his instance. Mr. Ghosh further submitted that in making the joint awards in the names of four persons the Collector had virtually given a moiety share of the award amounts to the two claimants. By asking for a reference to the Land Acquisition Judge and by claiming the entire compensation amounts, the two claimants, who are appellants in this appeal, were merely claiming something in excess of what had been given to them by the Collector. Mr. Ghosh submitted that this excess claim of the appellants might have failed before the Land Acquisition Judge, but that failure would not entitle Rajmohan to get anything in excess of what had been given to him by the awards in the absence of a reference at his instance.

4. In support of the above proposition of law Mr. Ghosh relied on certain previous decisions of this Court. One such case is reported in (*Gobinda Kumar Ray Chowdhury & ors. v. Debendra Kumar Ray Choudhury & Ors*<sup>1</sup>). It has been held in that case that in a reference under Section 18 of the Land Acquisition Act, it is not open to the Special Judge to enter into question raised by parties who did not object to the award and apply for a reference. In another case which is reported in (*2 (Abu Bakar v. Peary Mohan Mukherjee*<sup>2</sup>), it has been held that under secs. 18, 20 and 21 of the Land Acquisition Act, all that the court can deal with is the objection which has been referred to it; he cannot go into a question raised for the first time by a party who had not referred any question or any objection to it under Section 18 of the Land Acquisition Act. The cases reported in (*3 (Maharaja Sasi Kanta Acharyya Bahadur v. Abdur Rahman Sarkar and others*<sup>3</sup>) and (*4 (The Secretary of State for India in Council v. Manohar Mukherjee and Ors*<sup>4</sup>.) are authorities for the proposition that a party who has accepted an award and has not applied for a reference under Section 18 of the Land Acquisition Act is not entitled to a share of any compensation money which may be allowed in excess of the award amount by the Land Acquisition Judge on a reference by any other party. The question of law involved in the present appeals appears to us to be covered by the above decisions. By the awards out of which these proceedings have arisen the Collector had given a half share of the compensation monies to the two appellants. It is true that by applying for a reference the appellants wanted the other half of the compensation monies. That claim of theirs failed before the learned Land Requisition Judge. Such a failure would not be a ground to give the half share of the appellants in the compensation monies awarded by the Collector to Raj Mohan, who never asked for it.

5. Mr. Guha who argued the appeal on behalf of the respondents submitted before us that the

reference made by the Collector to the Land Acquisition Judge involved only one question, namely, who was entitled to get the entire compensation money and that being the scope of the reference the learned Land Acquisition Judge acted within his jurisdiction in making a declaration that Raj Mohan Mukherjee was alone entitled to get the compensation monies in their entirety.

<sup>1</sup>12 C.W.N. 98

<sup>3</sup>38 C.L.J. 265

<sup>2</sup>I.L.R. 34 Cal 451

<sup>4</sup>23 C.W.N. 720

6. We do not agree with Mr. Guha that the above was the scope of the reference, as we have already indicated, was whether the appellants were entitled to get the additional half share of the compensation amounts besides the half share given to them by the awards. In this connection Mr. Guha drew our Attention to a case reported in (5) (*Surendra Nath Tagore v. K.S. Bonnerjee and Ors*<sup>5</sup>). That case may, at best, be an authority for the proposition that there may be a reference of the claim of a particular claimant under Section 30 of the Land Acquisition Act although he may not formally apply before the Collector for a reference. In that case the claimant who put forth his claim before the Land Acquisition Judge, had also put forth his claim before the Collector and in the letter of reference which was drawn up at the instance of another party, the claim of that person was also mentioned. It was, therefore, held by the learned Judges that mention of the claim of such a person who may not formally apply for a reference under Section 18 of the Land Acquisition Act amounts to a reference under Section 30. In the particular cases with which we are dealing, Raj Mohan Mukherjee never claimed the entire compensation monies before the Collector and the letters of reference do not indicate that such was his claim. That being the case, the learned Land Acquisition Judge was not entitled to vary the awards by a declaration that Raj Mohan Mukherjee was entitled to get the entire compensation monies.

7. Mr. Guha also drew our attention to a case reported in (6) (*Manjur Ahmed and on his death his heirs and legal representative, Akhtari Bibi and others v. Rajlakshmi Dassi and others*<sup>6</sup>). We have gone through the entire case but we do not find anything therein which supports the contention advanced on behalf of the respondents by Mr. Guha. In our opinion Raj Mohan having accepted the award and not having raised any objection to the same up to the time of the making of the reference by the Collector, the learned Land Acquisition Judge should not have made a declaration that he alone is entitled to receive the entire amounts of the awards.

8. In the result, we allow these two appeals in part. The decrees passed by the learned Judge of the court below by which the two miscellaneous cases were dismissed are affirmed but the decrees are set aside to the extent they contain the declaration that Raj Mohan Mukherjee will be paid the entire award-amounts of L.A. Case No 2/2 of 1944-45 and L.A. Case No. 2/3 of 1944-45. In view of the circumstances of the case we direct that parties will bear their own costs in these two appeals.

<sup>5</sup>29 C.W.N., 340

<sup>6</sup>A.I.R. 1956, Cal. 263