

BOMBAY HIGH COURT

The Special Officer

Vs

Dosabhai Bezonji Motivala

(Batchelor and Heaton, JJ.)

04.10.1912

JUDGMENT

Batchelor, J.

1. This is an application for leave to appeal to the Privy Council in the matter of an award made by this Court on appeal from the Court of the District Judge. The proceedings were taken under the Land Acquisition Act (I of 1894), and the question raised was as to the value of certain land acquired under that Statute by the Government. It is admitted that the value of the property involved in this application exceeds Rs. 10,000, and it is also admitted that a substantial point of law is involved in this Court's judgment with reference to the position occupied by the Special Collector under the Land Acquisition Act. The difficulty, however, in the way of the applicant is furnished by the judgment of their Lordships of the Privy Council in *The Rangoon Botatoung Company Limited v. The Collector, Rangoon*¹ Prima facie, as the learned Advocate General admitted, this decision seems to bar the applicant's right to appeal to the Privy Council. It was sought, however, to escape from the effect of the decision by the argument that in that case the Privy Council were dealing with the Chief Court of Lower Burma, a Court which is constituted under an Act of the Indian Legislature and not under the Letters Patent; whereas, the argument runs, this Court is constituted under the Letters Patent, and although the applicant may have no right of appeal under the Civil Procedure Code, he should be considered to have that right under Clause 39 of the Letters Patent. It appears that in the argument before the Privy Council in *The Rangoon Company's* case there was no reference to this clause of the Letters Patent; and indeed any such reference would have been irrelevant.

2. The question we have to decide is whether the existence of this clause gives the applicant a right of appeal, which otherwise he would not have. The words of the clause upon which reliance is placed are these :-"And we do further ordain that any person or persons may appeal to Us Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court." It is urged that

this Court's award, in the appeal from the District Judge, is, if not a decree or order, at least a final judgment within the meaning of the clause. It appears to me, however, that this view cannot be held consistently with the judgment of the Privy Council.

3. As I read that judgment, it proceeds upon the footing that the Land Acquisition Act is a special Statute enacted to deal with a certain special class of cases, that orders made thereunder are outside the ordinary course of the Civil Court's jurisdiction, and that, since the Act itself gives no right of appeal to the Privy Council, no such right exists. The High Court is referred to by their Lordships as the ultimate umpire in a series of arbitration proceedings; and the judgment, after referring to Section 54 of the Land Acquisition Act, as authorizing an appeal to the High Court but not beyond it, goes on : " Their Lordships cannot accept the argument or suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in course of its ordinary jurisdiction." This passage shows that it is a mistake to suppose that the award made in such a case by the High Court is a decree within the ordinary jurisdiction to which the Civil Procedure Code refers ; and it seems to me it would be equally erroneous to regard such an award as a final judgment or order within the meaning of Clause 39 of the Letters Patent. I am of opinion, that it follows from the judgment of the Privy Council that such an award as this is as much outside the purview of Clause 39 of the Letters Patent, as it is outside the provisions of the Civil Procedure Code. For the Letters Patent, like the Code, make provision for appeals from such judgments, decrees and orders as are passed by this Court in the exercise of its usual civil jurisdiction ; and they cannot, I think, be invoked to sustain an appeal from a determination which must be regarded as a mere award by a final arbitrator under a Special Act, which does not confer any such right of appeal. In any event, and putting the matter on its lowest footing, I think, that after the judgment by the Privy Council in the Rangoon case the only safe position for us now is to refrain from presuming to grant the certificate applied for, and to leave it to their Lordships of the Privy Council to admit the appeal, if it is to be admitted, upon the somewhat fine distinction which the learned Advocate General has contended for. So far as we are concerned I think we ought to say that Clause 39 of the Letters Patent does not avail to take the case out of the general rule laid down by the Judicial Committee.

4. On these grounds, I am of opinion, that the Rule should be discharged with costs.

5. At the Advocate General's suggestion we note that he applied for leave to put in an affidavit in reply to an affidavit recently filed by the respondent.

Heaton, J.

6. I am of the same opinion.

Cases Referred.

1(1912) 14 Bom. L.R. 833