

(1909) 11 CAL CK 0025

Calcutta High Court

Case No: None

Nanhilal Agrari

APPELLANT

Vs

Secretary of State for India

RESPONDENT

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**Date of Decision:** Nov. 23, 1909

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**Judgement**

1. We are invited in these Rules to revise an order for costs made by the District Judge of Hooghly in five cases under the Land Acquisition Act. The claimant applied for leave to withdraw the cases; he was allowed to do so by the District Judge; but was directed to pay full costs to the Government. It has been argued before us that as the cases were withdrawn and as in fact they never came to be heard, an order for payment of full costs should not have been made. In our opinion, this contention is well-founded. Rule 36(6) of Chapter VI of the Rules and Circular Orders of this Court provides that "cases under Part III of the Land Acquisition Act shall be deemed to be suits and the fees allowable therein may be calculated either on the amount of compensation decree in excess of the sum tendered by the Collector or on any smaller amount which the Court in its discretion may think proper." Rule 37(b) then provides that "if a suit be dismissed for default, the amount of the fee to be paid to the defendant's pleader shall be left to the discretion of the Court, provided that such fee shall not exceed the moiety of the fee calculated on the whole value of the suit under Rule 35." The learned District Judge, however, appears to have applied Rule 37(a) and allowed full costs. But full costs can be allowed only if a suit has been dismissed on the merits. It is obvious, therefore, that in no event should an order for costs have been made in excess of half the full fees of the suit. We, therefore, direct that, so far as Rule No. 1462 is concerned, the order for costs be modified to this extent, namely, that the claimant do pay to the Government half the full pleader's fees payable. As regards the other Rules, we are of opinion that even half the full fees should not be allowed; as the cases were analogous, the ends of justice would be met by allowing one gold mohur, as the hearing fee in each of the cases out of which Rules Nos. 1460, 1461, 1463 and 1464 of 1909 arise. The Rules are, therefore, made absolute to this extent. The petitioners are entitled to their costs in this Court.

We assess the hearing fee at one gold mohur in each case, to be paid by the Secretary of State, and not by the Railway Company who have not resisted these applications.