

(1976) 08 CAL CK 0030**Calcutta High Court****Case No:** None

M/s. Haripur Farmers Syndicate
Ltd.

APPELLANT

Union of India

Vs**RESPONDENT****Date of Decision:** Aug. 26, 1976**Acts Referred:**

- Constitution of India, 1950 - Article 227

Citation: AIR 1977 Cal 12**Hon'ble Judges:** N.C. Mukherji, J; B.C. Roy, J**Bench:** Division Bench**Advocate:** Amarendra Nath Gupta and Sumit Ghosh, for the Appellant; Manan Kumar Ghosh, for the Respondent**Final Decision:** Allowed

Judgement

1. This revisional application under Article 227 of the Constitution of India is directed against the Order No.35 dated March 26, 1973 passed in Arbitration case No.7 of 1971 (valuation) by the Arbitrator, 24-Parganas and Calcutta.

2. C.S. Plots Nos.6, 9, 10, 11, 43 and 86 of Mouza Haripur, P.S. Habra, District 24 Parganas with standing structures and trees thereon had been requisitioned under Rule 75A of the Defence of India Rules made under the Defence of India Act, 1939 or on about April 25, 1942. The said plots of lands were subsequently acquired under S. 5(1) of the Requisition of Land (Continuance of Powers) Act, 1947 on October 16, 1947. The Collector of 24 Parganas (North) made assessment of compensation in respect of the acquisition of the said plots of land in the name of the recorded tenants. It has been stated by the petitioners that the Collector never communicated the said assessment of compensation in respect of the said acquisition of land to the petitioners, M/s. Haripur Farmers Syndicate Limited. The petitioners, however, on coming to know of the said assessment of compensation made in the name of

wrong persons applied to the Collector of 24 Parganas (North) for reference to arbitration for determination and apportionment of compensation payable for the acquisition of the said portions of the said lands with trees and structures thereon. The petitioners also stated therein that they took settlement of the said lands on the basis of three registered pattas dated 16.9.37, 21.3.38 and 12.5.38 from the landlords and they had been in possession of the same in Mourashi Mokarari right. The petitioners after taking settlement constructed one dwelling house with brick walls, pucca floors and corrugated roofing and also constructed a kitchen and one cow-shed. Sri S. S. Ganguly was appointed Arbitrator by the Government under S. 19(1)(b) of the Defence of India Act, 1939 for determination and apportionment of compensation in respect of the acquisition of the said plots of lands. The apportionment case was registered as case No. 8 of 1971(A) for the purpose of apportionment of the compensation and the arbitration case No.7 of 1971(Valuation) was started for the purpose of determination of the compensation. The apportionment case being Arbitration case No.8 of 1971(A) was heard ex parte first and the petitioners were held to have taken settlement of the said lands on the basis of the said three pattas (Exhibits 1 to 1(b)) and as such in accordance with the terms of those deeds the petitioners were entitled to six annas share of the compensation and landlord was entitled to ten annas share of the compensation to be awarded in respect of the said lands. Thereafter the valuation case being Arbitration case No.7 of 1971(V) was heard by the Arbitrator. In the said valuation case the Union of India, the opposite party filed a written statement stating inter alia that before having their title established in the civil court the referring claimants were not entitled to make the reference and initiation of those proceedings before the Arbitrator under the Defence of India Act, 1939 at the instance of the referring claimants was invalid. The learned Arbitration after hearing objection of the Union of India, the opposite party, passed order No.35 holding that the opposite party could challenge the title of referring claimants in the valuation case and the referring claimants should not get any award unless they would establish their title in the amount of compensation.

3. It is against this order this application in revision has been made and the instant rule and an interim order of stay of operation of the said order No.35 was made pending the disposal of this Rule.

4. Mr. Amarendra Nath Gupta, learned Advocate appearing on behalf of the petitioners has submitted that in the apportionment case the Arbitrator after considering the registered pattas (exhibits 1 to 1(b)), has held that the petitioners have acquired tenancy right to the plots in question. The said finding is conclusive and cannot be questioned in the valuation case.

5. It has next been submitted by Mr. Gupta that in the apportionment case the Union of India is neither a necessary nor a proper party. It is only the persons who are the contesting claimants in the apportionment of the compensation are

necessary and proper parties. Hence, the decision arrived at by the learned Arbitrator in the said apportionment case after considering the registered pattas is final and the Union of India is not competent to challenge the title of referring claimants to receive compensation in the valuation case on the mere plea that the said question was not decided in its presence. It has lastly been contended by Mr. Gupta that the same learned Arbitrator who decided the title of the referring claimants in the apportionment case being Arbitration case No.8 of 1971(A) was wholly in error in holding that in deciding the amount of compensation in the valuation case he has jurisdiction to decide the title of the referring claimants which is not the subject-matter of reference in the said valuation case. The impugned order, therefore, it has been submitted, is liable to be set aside.

6. Mr. Manon Kumar Ghosh, learned Advocate appearing on behalf of the opposite parties has submitted that the Collector did not assess compensation in the name of the referring claimants, that is, the petitioners, M/s. Haripur Farmer Syndicate Limited inasmuch as their names were not recorded in the finally published record of rights. The Union of India, the opposite party has challenged the title of the petitioners to get compensation in respect of the plots of the lands acquired and as such the State is vitally interested and also a necessary and proper party in whose presence the question of title of the petitioners to get compensation is required to be decided. It has also been submitted by Mr. Ghosh that in accordance with the provisions of Rule 6 of the Rules framed u/s 19 of the Defence of India Act, 1939 by the Government of West Bengal the arbitrator has been empowered to exercise the like powers of a civil court and also to follow the like procedure followed by the civil court in exercise of its ordinary original civil jurisdiction under the Code of Civil Procedure. The Arbitrator, therefore, has jurisdiction to decide the question of title of the referring claimants in deciding the valuation case.

7. It appears that the Collector made the assessment of compensation in the name of the recorded tenants and not in the name of the petitioners, i.e. the referring claimants. The petitioners, however, made an application under Rule 5 of the Defence of India Rules, 1939 to the Collector for referring the case to arbitration for apportionment of the compensation claiming that they were entitled to the entire compensation as they were tenants of the said lands and also praying for determination of the compensation in respect of the said lands acquired on the basis of the market value at the date of the requisition. The apportionment case being Arbitration case No.8 of 1971(V) was decided ex parte as the recorded tenants in whose names the award was made by the Collector did not appear at the time of hearing and petitioners were held to have title as tenants to the said lands and, therefore, to have been entitled to get 6 annas share of the compensation. In the said apportionment case the Government was not a party. In the valuation case being Arbitration case No.7 of 1971 (Valuation) the Union of India was a party and an objection was raised on its behalf as to the title of the petitioners to the compensation in respect of the lands acquired. Now the question is whether the

Arbitrator is legally competent or, in other words, has jurisdiction to decide this question in the valuation case.

8. In a Bench decision of this Court reported in Bharat Nath Mitra Vs. Ram Swarup Seraogi and Others, the fact in short was that certain plots of land were acquired under the Land Acquisition Act, 1894. On the objection of some of the parties in whose names the award was made the Collector made a reference both as regards apportionment and as regards valuation of the lands acquired. The question was whether the order of the Land Acquisition Judge in directing the hearing of the valuation of the lands acquired. The question was whether the order of the Land Acquisition Judge in directing the hearing of the valuation case first was correct or not. It has been held by this Court that there can be no possible injury to either the Government or the tenant, opposite party if the apportionment case is taken first. The Government obviously is not interested in the matter of apportionment at all, but the tenants opposite parties are. In another Bench decision of this Court reported in Naresh Chandra Bose Vs. State of West Bengal and Others, it has been held that the Government is neither interested nor is a property party in an apportionment reference or appeal therefrom in a Land Acquisition proceeding, but only the contesting claimants are. It is only in valuation reference that the Government is a necessary party. In this case the Government did not question the title of the referring claimants to receive compensation.

9. In 44 CWN 411 Province of Bengal v. Shyamapada Banerji the fact in short was that 5 persons including one Kalipada Banerji claimed interest in certain premises acquired under the Land Acquisition Act. The Collector did not make any award in the name of Kalipada Banerji. Application for reference for both apportionment of compensation as well as determination of compensation payable was made to the Collector and the Collector referred the same to the Tribunal whereon apportionment case and valuation case were started. Both the apportionment and valuation cases were, however, heard together. In the said proceedings a compromise was made amongst the contesting claimants to the effect that Kalipada would get the enhanced amount of compensation and the compromise petitions to that effect were filed before the Tribunal who on the basis of the said compromise petition passed an order in the apportionment case ordering that Kalipada or his representative Shyamapada would be entitled to the enhanced compensation. The said determination was, however, questioned in appeal by Government on the ground that the said decision should be made in the valuation case in presence of the Government inasmuch as the Government was the only person who would be affected by this determination. It has been held that the only person who will be affected by the determination is the appellant (the Government) because it will have to pay the enhanced amounts. In the determination of this question in view of the facts of the present case the persons interested are the respondent who claims the money and the appellant against whom the money is claimed. It has also been held that the appellant is only the person interested in opposing the respondents' claim

and as such the respondent is bound to prove his right to claim the enhanced amounts in the presence of the appellant.

10. In State of West Bengal Vs. Kesson Chand Kocher and Others, the fact in short was that on diverse dates certain plots of land with structures and trees standing thereon were acquired. The Collector made joint awards in favour of the landlords and tenants. Against those awards of the Collector the landlords filed application for reference disputing the amount of compensation as well as claiming the entire amount of compensation payable in respect of this acquisition for themselves to the exclusion of the tenants. The tenants did not file any application challenging the compensation awarded by the Collector. In the valuation reference the Calcutta Improvement Tribunal enhanced the valuation of the lands acquired. The tenants having not filed any application challenging the Collector's valuation were not entitled to any part of the enhanced compensation allowed. In the apportionment case to which the State of West Bengal was not a party the Tribunal held that the landlords were entitled to 13 and 1/2 annas share of the compensation and the tenants to the remaining 2 and 1/2 annas share. Against the said order the tenants filed four appeals which were disposed of by one judgment holding that the landlords were entitled to get thirty times the annual rent as compensation and the Mitra tenants would get the entire balance. Against those decrees of this Court the landlords filed appeals to the Supreme Court which were decreed on compromise. The compromise was to the effect that the enhanced ward together with all costs and interest would be paid to the landlords appellants. It has been held "the principles that the State is not a necessary party in apportionment cases is not an absolute proposition of law, but it is a rule of convenience. There may be cases of apportionment where there is neither any question of enhancement of the valuation made by the Collector, nor any question as to the liability of the State to pay enhanced compensation to anybody. If there is no challenge to the compensation determined by the Collector, nor any challenge to the liability of the State to pay the enhanced compensation to anybody, the State is certainly not an interested party in the apportionment cases, the State is certainly not an interested party in the apportionment cases, but where without any dispute as to the total amount of the compensation payable by the Collector, the liability of the State to pay compensation to any person is enlarged or enhanced, the State seems to be a necessary party.

11. It has been urged on behalf of the petitioners that in a similar case being Civil Rule No.167 of 1973 decided on 10th of August, 1973 it was held by this Court that the question whether the referring claimants had title to the acquired property was no part of the case referred to the Arbitrator and did not arise for consideration directly or incidentally for deciding the controversy in the valuation case. As such the Arbitrator has no jurisdiction to enter into the question of title even collaterally. Referring to this decision it was tried to be contended that the Arbitrator has no jurisdiction to decide the question of title of the referring claimants in the valuation

case. But it must not be lost sight of that in the aforesaid case the Collector made the award in the names of the referring claimants whereas in the present case the award was not made by the Collector in the name of the referring claimants that is the petitioners but in the name of the recorded tenants and the Union of India, the opposite party has questioned the title of the petitioners to get compensation in respect of the land acquired.

12. On a conspectus of the decisions mentioned before the conclusion is irresistible that the Arbitrator has jurisdiction to decide the question of title of the petitioners to receive compensation in respect of the said plots of land acquired u/s 5(1) of the Requisitioned land (Continuance of Powers) Act, 1947 in the valuation case and the Government is a necessary and proper party in whose presence the decision has to be made inasmuch as it is the liability of the opposite party to pay compensation to the petitioners in whose name no award was made by the Collector and so the opposite party is vitally interested in the decision on the question of title of referring claimants to receive compensation.

13. In view of the above findings it is not necessary to decide the question whether the Arbitration being vested with the like powers of the civil court under Rule 6 of the Defence of India Rules, 1939 has jurisdiction to decide the question of title in valuation case like any other civil court.

14. For the reasons stated above we overrule all the contentions raised on behalf of the petitioners. The application, therefore, fails and the Rule discharged. The order of the learned Arbitrator is a perfectly valid order and is within jurisdiction. There will be no order as to costs. Let the records be sent down to the Arbitrator immediately.

N.C. Mukherji, J.

15. I agree.