

CIVIL RULE.

Before Holmwood and Mullick JJ.

NARESH CHANDRA BOSE

v.

HIRA LAL BOSE.*

1915

Nov. 25.

Records, power to call for—Special Tribunal—Calcutta Improvement Act (Beng. V of 1911) s. 71, cl. (c)—Land Acquisition Act (I of 1894) s 53—Practice.

The power to call for records is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court and consequently in the Special Tribunal constituted under the Calcutta Improvement Act.

Golap Coomary Dassee v. Raja Sunlar Naraiian Deo (1) followed.

RULE obtained by Naresh Chandra Bose, claimant No. 2, petitioner.

The opposite party, Hira Lal Bose, had mortgaged some properties including two cottas and odd of land being premises No. 177, Russa Road South, Bhowanipur, to Naresh Chandra Bose, claimant No. 2, petitioner. On 21st August 1912, he obtained a mortgage decree and in execution thereof purchased the mortgaged property on 15th July 1913 and duly obtained possession through Court. Meanwhile the judgment-debtor having become insolvent his estate passed into the hands of a Receiver. The Calcutta Improvement Trust acquired the said premises, and the Land Acquisition Collector awarded Rs. 11,250 for it. In this proceeding the Receiver filed a petition claiming a

* Civil Rule No. 627 of 1915, against the Order of A. H. Cuming, District Judge of 24-Parganas, dated June 23, 1915.

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portion of that amount on the allegation that the said two cottas did not pass to the petitioner not having been comprised in his mortgage. Thereupon the latter put in an objection, and this dispute was referred to the Calcutta Improvement Trust Special Tribunal under the provisions of section 30 of the Land Acquisition Act read with those of the Calcutta Improvement Act (Beng. V of 1911). Dr. S. C. Banerji, the President of the said Tribunal, on the application of claimant No. 2 made an order on the 5th May 1915 calling for the record of the aforesaid mortgaged suit from the record-room of the District Judge, 24-Parganas, who, after some correspondence, refused to send the record on the ground that the said Special Tribunal was not a "Court" within the meaning of Order XIII, rule 10 of the Code of Civil Procedure. Thereupon claimant No. 2, on the 21st June 1915, made an application to the District Judge of the 24-Parganas praying that the said record might be sent to the President of the said Special Tribunal. Although the opposite party never raised any objection, this application was rejected on the 23rd June 1915, and the learned District Judge recorded an order declining to send the record on the ground that the said Special Tribunal was not a "Court". Being aggrieved by this order of the District Judge, 24-Parganas, claimant No. 2 moved the High Court and obtained this Rule.

Babu Mahendra Nath Roy (with him *Babu Gunada Charan Sen, Babu Manmatha Nath Roy* and *Babu Surendra Nath Das Gupta*), for the petitioner. I submit that under s. 53 of the Land Acquisition Act and s. 71 (c) of the Calcutta Improvement Act, 1911, the President of that Special Tribunal has the same powers as those possessed by a Civil Court under rule 10 of Order XIII of the Code of Civil

Procedure, 1908, and can call for records from other Courts. I rely on the ruling in *Golap Coomary Dossee v. Raja Sundar Naraiian Deo* (1) where the Court dealt with its administrative orders. Besides s. 15 of the Charter gives this Court ample powers to interfere in a case of this nature.

Babu Ram Charan Mitra, (*amicus curiæ*), practically conceded that the President of the Special Tribunal could call for the records of other Courts.

HOLMWOOD AND MULLICK JJ. The question that is raised in this Rule is one of considerable importance to the public having dealings with the Special Tribunal constituted to hear cases from the orders of the Calcutta Improvement Trust. It is perfectly clear that some *modus operandi* must be devised by which the Tribunal may have access to Land Acquisition and other records that are necessary for the purposes of their business. But there appeared to be technical difficulties under the law. We, therefore, asked the learned Government pleader, Babu Ram Charan Mitra, to give us his assistance in the matter, and we have also heard the learned vakil, Babu Mahendra Nath Roy, for the petitioner, and it appears to us fairly clear that in the exercise of our powers of supervision under the Charter we ought to give directions to the lower Court in the same way in which a Bench of this Court appears to have done in the case of *Golap Coomary Dossee v. Raja Sundar Naraiian Deo* (1). There the Court also dealt with the administrative orders of this Court. Now, as the shortest way to get over the difficulty we may point out that the Special Tribunal has been constituted a Court under the Land Acquisition Act, 1894, and under section 53 of that Act the Land Acquisition Court is governed by the

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provisions of the Code of Civil Procedure and has the powers of a Judge under the Code. It is not necessary to follow the learned Judge in the Court below to the extent of holding that the Special Tribunal would be able to compel the production of records from another Court. It is this power of compulsion which seems to have been a stumbling block in the learned Judge's mind. Nobody ever heard of an attempt to compel a Court to send its record to another Court, and we are not apprehensive that any such question will ever arise. The power to call for records is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court and consequently in the Special Tribunal.

For these reasons, we think that the Rule should be made absolute and the District Judge should be directed to send the record asked for by the President of the Tribunal. We make no order as to costs.

G. S.

Rule absolute.