

CIVIL RULE.

Before Chitty and Smither JJ.

NANDA LAL GANGULI

v.

KHETRA MOHAN GHOSE.*

1918

Jan. 28.

Sanction for Prosecution—"Court"—"Court of Justice"—*Calcutta Improvement Tribunal, whether a "Court"*—*Criminal Procedure Code (Act V of 1898), s. 195*—*Calcutta Improvement Act (Beng. V of 1911), ss. 70, 71 (a), (c) and 77, as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911)*—*Evidence Act (I of 1872), s. 3.*

The word "Court" in s. 195 of the Criminal Procedure Code has a wider meaning than "Court of Justice" under s. 20 of the Penal Code, and includes a tribunal entitled to deal with a particular matter and authorized to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question.

Raghoobans Sahoy v. Kokil Singh (1) and *Chundi Charan Giri v. Godadhar Pradhan* (2) referred to.

The Tribunal constituted by the Calcutta Improvement Act (Beng. V of 1911), as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911), is a "Court", within the meaning of s. 195 of the Criminal Procedure Code.

Hari Pandurang v. Secretary of State for India (3) distinguished.

THE facts of the case were as follows:—

By a notification in the *Calcutta Gazette* the Land Acquisition Collector acquired the premises Nos. 109 and 117, Russa Road. Thereupon Nitto Kali Debi, Mahendra Chunder Ganguli and the petitioner, Nanda Lal Ganguli, preferred claims to the properties, and the Collector referred the cases under s. 18 of the Land

* Civil Revision No. 2 of 1918, against the order of the President of the Calcutta Improvement Tribunal, dated Dec. 6, 1917.

(1) (1890) I. L. R. 17 Calc. 872. (2) (1917) 22 C. W. N. 165.

(3) (1903) I. L. R. 27 Bom. 424.

1918

NANDA LAL
GANGULIv.
KHETRA
MOHAN
GHOSE.

Acquisition Act (I of 1894) to the President of the Tribunal constituted under the Calcutta Improvement Act (Beng. V of 1911).

The cases, entitled *Apportionment Cases Nos. 147 and 148 of 1917*, were heard together by the President sitting alone, and the opposite party, Khetra Mohan Ghose, was examined in the proceedings as a witness on behalf of Nitto Kali; and in his examination and cross-examination, on the 14th and 15th September, 1917, stated that he had not mortgaged any property of his, which statement was alleged to be false.

An application was, thereupon, made to the President for sanction to prosecute Khetra Mohan for giving false evidence in a judicial proceeding under s. 193 of the Penal Code. The President refused the application, on the 6th December 1917, on the ground that the Tribunal was not a "Court" within the meaning of s. 195 of the Criminal Procedure Code. The petitioner then moved the High Court and obtained the present Rule on the President of the Tribunal.

Babu Atulya Churn Bose (with him *Babu Manmatha Nath Pal*), for the petitioner. The word "Court" has a very wide meaning: see *Raghoobuns Sahoy v. Kokil Singh* (1), and *Chandi Charan Giri v. Godadhar Pradhan* (2). The Validating Act (Beng. XVIII of 1911) has conferred all the powers of a Court upon the Tribunal and made it a "Court within s. 195 of the Criminal Procedure Code".

Babu Manmatha Nath Mukherjee, for the opposite party. The Tribunal is not a "Court", though endowed with all the functions of a Court for specific purposes: see the language of s. 71 of the Calcutta Improvement Act—"shall be deemed to be the Court."

(1) (1890) I. L. R. 17 Calc. 872.

(2) (1917) 22 C. W. N. 165.

[Refers to ss. 70—77 of the Act]. The reasoning of Jenkins C. J. in *Hari Pandurang v. Secretary of State* (1) still stands, notwithstanding the amendment. The Validating Act (Beng. XVIII of 1911), s. 2, makes a distinction between “Court” and “Tribunal”. The mention of s. 54 of the Land Acquisition Act in s. 71 of the Calcutta Improvement Act merely relates to the powers of the Tribunal and does not constitute it a “Court” for all purposes: see *Nares Chandra Bose v. Hira Lal Bose* (2). The definition in s. 3 of the Evidence Act does not help, as an authority may be empowered to take evidence without being a “Court”: see in this connection s. 4 of the Oaths Act (X of 1873).

1918
 NANDA LAL
 GANGULI
 v.
 KHETRA
 MOHAN
 GHOSE.

Cur. adv. vult.

CHITTY J. An application was made to the President of the Tribunal constituted under the Calcutta Improvement Act, 1911, for sanction to prosecute one Khetra Mohan Ghose for giving false evidence before the President of the Tribunal in two apportionment cases. The President held that he had no jurisdiction to entertain the application on the ground that the Tribunal was not a “Court” within the meaning of section 195 of the Criminal Procedure Code. Against that decision the applicant obtained this Rule, and Khetra Mohan Ghose has appeared by pleader and shown cause against it. The opinion of the President appears to be based upon the decision in *Hari Pandurang v. Secretary of State* (1), where it was held that the Bombay Tribunal was not a Court but merely a body of arbitrators not subject to the supervision of the High Court. It was, no doubt, on account of this decision that Act XIV of 1904 was passed by the Imperial Legislative Council. In the case of Calcutta, the Tribunal is constituted by the

(1) (1903) I. L. R. 27 Bom. 424.

(2) (1915) I. L. R. 43 Calc. 239.

1918
 NANDA LAL
 GANGULI
 ?
 KHETRA
 MOHAN
 GHOSE.
 CHITTY J.

Calcutta Improvement Act, 1911, but the finality of its decisions is regulated by that Act as modified by the Calcutta Improvement (Appeals) Act, 1911, passed by the Imperial Legislative Council. It is unnecessary for us to discuss the question whether in view of the subsequent legislation the Bombay decision is still good law, as we have no doubt whatever that the Calcutta Tribunal is a "Court" within the meaning of section 195 of the Criminal Procedure Code. By section 70 of the Calcutta Improvement Act, the Tribunal is constituted for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894. By section 71 (a) the Tribunal shall (except as to appeals which are specially provided for) be deemed to be the Court and the President the Judge under the said Act. Section 71 (c) gives the President the powers of a Civil Court with regard to the summoning and attendance of witnesses and production of documents. By section 77 (b) apportionment cases may be tried by the President sitting alone, and his decision is then to be deemed to be the decision of the Tribunal.

It has been held by this Court that the word "Court" in section 195 has a wider meaning than a "Court of Justice" as defined in the Indian Penal Code. It may include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination. See *Raghoobuns Sahoj v. Kokil Singh* (1), where the question arose whether a Collector acting under sections 69 and 70 of the Bengal Tenancy Act was a Court. That case was followed in *Chandi Charan Giri v. Godadhar Pradhan* (2), where the question was to what Court the Collector was

(1) (1890) I. L. R. 17 Calc. 872.

(2) (1917) 22 C. W. N. 165.

subordinate. We may also refer to the definition of "Court" in section 3 of the Evidence Act. It includes all Judges and Magistrates, and all persons except arbitrators legally authorised to take evidence.

We do not think that the Tribunal as "the Court" under the Land Acquisition Act, 1894, for the purposes of the Improvement Trust, can be regarded simply as a body of arbitrators. It is *the* Court under that Act, and the President is the Judge. It follows that it must also be regarded as a Court for the purposes of section 195 of the Criminal Procedure Code. We may point out that if the contrary view were to prevail, the deplorable result would follow that any private person who alleged that false evidence had been given before the Tribunal might institute a prosecution without any control on his action by the Tribunal before whom the evidence was given.

The Rule is accordingly made absolute, the order of the President is set aside, and the application remanded to him for adjudication upon the merits.

SMITHER J. concurred.

E. H. M.

Rule absolute.

1918

NANDA LAL
GANGULI

v.

KHETRA
MOHAN
GHOSE.

CRUTTY J.