

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

**FA 5 of 2019
with
CAN 2 of 2022**

with

CPAN 15 of 2021

**Terai Tea Company Limited
Vs.
Union of India**

For the Appellant : Mr. Sagar Bandyopadhyay, Advocate
Mr. Sitesn Kr. Gupta, Advocate

For the : Mr. Sudipta Kumar Mazumdar, Id. Asst. S.G.
Opposite Parties : Mr. Ajoy Kr. Singhanian, Advocate
Mr. Sourav Kar, Advocate

Heard on : June 13, 2022

Judgment on : June 13, 2022

Debangsu Basak, J.:-

1. This is an appeal under Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952.

2. An award dated April 3, 2019 passed under the provisions of the Act of 1952 is the subject matter of the present appeal.

3. Learned Advocate appearing for the appellant submits that the learned Arbitrator failed to award interest at the rate at which the appellant is entitled to. Moreover, the learned Arbitrator failed to quantify the quantum of timber which the requisitioning authority utilized during the period of requisition and pass appropriate award with regard thereto. In support to such contentions, he draws the attention to the various portions of the impugned award.

4. Learned Assistant Solicitor General appearing for the respondent submits that the learned Arbitrator took into account the interest payable as also the quantum of timber which the requisitioning authority utilized and passed appropriate award with regard thereto. According to him, no ground exists for the purpose of interference with the impugned award.

5. As noted hereinabove, the appeal is under Section 11 of the Act of 1952. Section 11 of the Act of 1952 reads as follows:

“11. Appeal from awards in respect of compensation-

Any person aggrieved by an award of the arbitrator made under Section 8 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate;

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”.

6. Section 11 of the Act of 1952 allows an appeal to the High Court within whose jurisdiction the requisitioned property is situated within the time frame stipulated therein. Section 11 of the Act of 1952 does not limit the purview of the appeal in respect of an award which is otherwise limited under the provisions of the Arbitration and Conciliation Act, 1996. In our understanding as a Court exercising powers of appeal under Section 11 of the Act of 1952 we do therefore, not suffer from the same limitations as a Court deciding an application under Section 34 of the Act of 1996 would suffer from. The appeal under Section 11 of the Act of 1952 is, therefore, a regular appeal as is understood under the provisions of the Code of Civil Procedure, 1908. Therefore, as a Court exercising jurisdiction under Section 11 of the Act of 1952 we would be entitled to re-appreciate the evidence led in the arbitration and arrive at a finding which we as the appellate Court find appropriate.

7. The facts of the present case largely remains uncontested. The appellant is a lessee of Bagdogra Tea Estate comprising of tea garden land. Indian Army occupied two different plots of land belonging to Bagdora Tea Estate during war of 1962. The possession of Indian Army was on and from November 28, 1962. A formal order of requisition was made in the year 1966 under the Defence of India Act.

8. It is the claim of the appellant that there were trees standing on the plots of land requisitioned by the Army and at the time that Indian Army took possession of the two plots concerned. It is the claim of the appellant

that the Army should, therefore, pray for the timber on the land of that the Indian Army requisitioned.

9. A proceeding under Section 8 of the Act of 1952 was initiated in which both the parties participated. That was after much litigation amongst the parties. Such proceedings ultimately resulted in the impugned award of the learned Sole Arbitrator.

10. In the arbitration proceeding, the learned Sole Arbitrator framed 13 issues for trial. The learned Sole Arbitrator proceeded to pass the impugned Award covering all the issues framed.

11. The appellant is aggrieved primarily on two grounds. One of the grounds is the rate of interest awarded and the other is the failure of the learned Sole Arbitrator in quantifying the compensation receivable by the appellant under issues 6, 8 and 10.

12. The issues framed in the arbitration proceedings are as follows:

“1. Is the claim petition at all maintainable in its present form?”

2. Is the claim petition bad for defect of parties?”

3. Whether the claimants are entitled to get compensation as against requisition of the tea garden land by the respondent under the said Act, 1952 for the plot of land measuring about 20.22 acres in Mouja Bhujipari under J.L. No. 83 within Bagdogra P.S. area in the district of Darjeeling for the period from 28.11.1962 to till date and in respect of the plot of land measuring around 25.10 acres in Mouzas Harsingchat

and Kadpani under J. L. Nos. 10 and 11 within Bagdogra P.S. area in the District of Darjeeling from 28.11.62 till mid March, 1992?

4. *Whether the claimants are entitled for requisition compensation in respect of tea garden land measuring about 0.50 acres in Mouza Harsingchat under J. L. No. 10 within Bagdogra P.S. in the district of Darjeeling for the period from 01.01.1993 till date?*

5. *Whether for determination of rent compensation for requisitioned lands the market value of the land and trees is to be assessed in the light of the principle enunciated under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013? And if so then to what extent of the share of the market value of the land can be accepted as rent compensation payable to the claimants?*

6. *Are the claimants entitled to any compensation in respect of movable property?*

7. *Are only the claimants entitled to any rent as compensation for the requisitioned of jungle property?*

8. *What would be the proper method for determination of values of trees and tree bushes, destroyed by the respondent in utilizing the plots of land in question after requisition of the same by them?*

9. *Whether, as a perpetual lessee, the claimant no. 1 is entitled to get the entire share of rent compensation, which may be found appropriate upon adjudication by the Learned Arbitrator?*

10. Whether the claimants are entitled to any interest on the value of the tree bushes and tree destroyed on requisition of land and on the rent compensation for the past periods and if so at what rate ?

11. Why not the demand of the claimants will be assessed strictly under the provisions of Requisition & Acquisition of Immovable Property Act, 1972?

12. Are the claimants entitled to any interest for the arrear compensation?

13. What other or further reliefs to which the claimants are entitled to in law and equity.

13. The learned Sole Arbitrator awarded simple interest @ 6% per annum on the compensation amount payable from the date on which the same became due for payment to the appellant. According to the appellant, the rate of interest awarded should be much higher.

14. Obviously, given the nature of the disputes between the parties with regard to the arbitration, there was no agreement between the parties as to the rate of interest. The learned Sole Arbitrator proceeded to award interest on the basis as noted in the impugned award. The learned Sole Arbitrator exercised discretion in the award of interest in a particular manner. The exercise of such discretion cannot be said to be perverse. The view taken by the learned Arbitrator with regard to the rate of interest is a plausible view. The rate of interest is specified with a date of commencement and the termination thereof also being specified and/or clearly understood from the impugned award. We, therefore, do not deem

it appropriate to interfere with the impugned award with regard to the rate of interest awarded.

15. So far as the claim for compensation for damages suffered on account of total loss of high commercially valued and special trees is concerned, the same was considered by the learned Arbitrator in Issue Nos. 6, 8 and 10.

16. The learned Arbitrator observed that since both the parties did not lodge any oral evidence in the proceedings as recorded in the minutes dated March 28, 2017 and in absence of any evidence with regard thereto, the learned Sole Arbitrator was not in a position to determine the money valuation of the trees as on the date of de-requisition. Learned Sole Arbitrator therefore, allowed the appellant to take any legal measures and/or action as may be advised for the purpose of quantification of the valuation of the trees.

17. Per se the award of the learned Sole Arbitrator on issues 6, 8 and 10 relating to the quantification of the value of trees cannot be faulted. The parties agreed not to lead oral evidence. In absence of requisite evidence being placed on record by the parties, the learned Sole Arbitrator was constrained to return such finding in the impugned Award on such issues 6, 8 and 10.

18. The permissions granted by the impugned Award for institution of appropriate proceedings for quantification of the value of the trees under issues 6, 8 and 10 would allow the parties to enter into another phase of litigation after protracted litigation under the Act of 1962. We are of the

view that the same will not enure to the benefit of the parties. We are of the view that interest of justice would be sub-served by setting aside such portion of impugned order with regard to the Issue Nos. 6, 8 and 10 and remanding the matter to the learned Sole Arbitrator for decision on the Issue Nos. 6, 8 and 10. The points raised by the parties with regard to the Issue Nos. 6, 8 and 10 are kept open.

19. The order of remand is made in view of the fact that Section 11 of the Act of 1952 allows an appeal from the award passed under the Act of 1952. An appeal Court can remand a matter in the event it is of the view that the facts and circumstances of the case requires it. In the facts of the present the learned Sole Arbitrator took the trouble of deciding on all the issues raised and could not quantify the claim in Issue Nos. 6, 8 and 10 due lack of cogent evidence. One opportunity to the parties to place relevant oral and documentary evidence, if any, may break the impasse.

20. It is contended on behalf of the appellant that the West Bengal Forest Department are not cooperating in the arbitration proceedings and not providing the value of the trees for its quantification in the arbitration proceedings.

21. Needless to say in the arbitration proceedings the parties thereto are at liberty to produce relevant evidence both oral and documentary in support of their rival contentions with regard to issues 6, 8 and 10.

22. The parties are at liberty to agree as to the fees payable to the learned Arbitrator along with all incidental expenses. In absence of the

parties relating to an agreement with regard to his fees and incidental expenses, the learned Sole Arbitrator is requested to fix the same.

23. With the aforesaid observations, FA 5 of 2019 along with CAN 2 of 2022 is disposed of. CPAN 15 of 2021 is also disposed of.

[DEBANGSU BASAK, J.]

24. I agree.

[Bibhas Ranjan De, J.]