Privy Council Appeal No. 33 *of* 1930.
Bengal Appeal Nos. 16 *and* 19 *of* 1929.

The Secretary of State for India in Council - - - - *Appellant*

v.

The Hindustan Co-operative Insurance Society, Limited - - *Respondents*

The Hindustan Co-operative Insurance Society, Limited - - *Appellants*

v.

The Secretary of State for India in Council - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH MARCH, 1931.

Present at the Hearing:

LORD MACMILLAN.
LORD SALVESEN.
SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES.]

These are two consolidated appeals from a decision of the High Court of Bengal arising out of certain land acquisition proceedings taken for the purposes of the Calcutta Improvement Act (Bengal Act V of 1911).

The property in question belonged to the Hindustan Co-operative Insurance Society, Ltd. (hereinafter referred to as the Society), and the questions sought to be raised by the appeals are as to the compensation to be awarded. Neither party was satisfied with the High Court's decision. The Secretary of State applied for a certificate enabling an appeal to His Majesty in Council. The Society objected that no appeal lay, but asked in effect that if a certificate were granted to the Secretary of State, a certificate should also be granted to them. The High Court granted certificates to both parties. The appeals were duly admitted and are before the Board for determination.

The Society contend, as they did in the High Court, that no appeal is competent, and this question has been argued before their Lordships as a preliminary point. It is with it alone that this judgment is concerned.

By the Act above referred to, which their Lordships will call for convenience the local Act, a Board of Trustees was constituted and was invested with very wide powers for the purpose of carrying out improvement schemes within the municipal limits of Calcutta. It was obvious that for this purpose the necessity would arise for the compulsory acquisition of land on a large scale, and the Bengal Government no doubt thought that it would facilitate the proceedings of the Trustees if they had a special code of their own under which such acquisitions should be made, instead of leaving this matter to be dealt with by the Land Acquisition Act of 1894, which was of general application throughout British India.

Under the general Act the land is acquired by the Local Government. It is in the first place valued by the Collector, who makes an "award" which fixes the sum to be offered for the land by Government. Any person interested who does not accept the award may then require the Collector to refer the matter to "the Court" for the determination of his objection, "the Court" being defined as "a principal civil court of original jurisdiction," or in certain cases a special judicial officer appointed by the Local Government. The Court then proceeds to deal with the matter upon the lines laid down by the Act, and its proceedings terminate again in an award, from which under Section 54 an appeal lies to the High Court.

It was held by this Board in 1912 (see *Rangoon Botatoung Company* v. *Collector of Rangoon*, 39 I.A. 197) that under this Act no appeal lay from the High Court to His Majesty in Council, the ground of the decision being that the proceedings throughout were in the nature of arbitration proceedings, and that no appeal being given in terms to His Majesty in Council, no such appeal lay.

Part IV of the local Act deals with the acquisition of land for the purposes of that Act. It provides that the Trustees may make such acquisitions under the Land Acquisition Act, but proceeds to modify that Act for the purposes of the local Act. The modifications are contained partly in the body of the Act and partly in a schedule attached to the Act. They are numerous and substantial, and the effect is, in their Lordships' opinion, to enact for the purposes of the local Act a special law for the acquisition of land by the Trustees within the limited area over which their powers extend.

The most important departure from the provisions of the Land Acquisition Act, so far as the present appeal is concerned, is that the local Act constitutes a "Tribunal" to take the place of the "Court" under the general Act. This Tribunal is to

consist of a President with judicial experience and two lay assessors. By Section 71 the Tribunal is to be deemed to be the Court under the general Act " except for the purposes of Section 54 of that Act." This exception operates to omit from the local Act the general right of appeal to the High Court which is given by the Land Acquisition Act, and this is emphasised by a further provision of the same section that the award of the Tribunal " shall be final." But almost contemporaneously with the passing of the local Act the Governor-General in Council passed Act XVIII of 1911. It is intituled " an Act to modify certain provisions of the Calcutta Improvement Act, 1911," and provides that, notwithstanding anything contained in that Act, an appeal shall lie to the Bengal High Court in certain cases, one of which is where the President grants a certificate that the case is a fit one for appeal, but subject to certain definite limitations therein set out.

The reason for this somewhat unusual course of legislation is, their Lordships have no doubt, to be found in what had happened previously in Bombay. There in 1898 the Local Legislature enacted a City Improvement Act (Bombay Act IV of 1898), upon which it is probable that the Calcutta Act was to some extent modelled. The Bombay Act set up a similar Tribunal to perform the functions of the Court under the Land Acquisition Act, and enacted that the award of the Tribunal should be final, subject to an appeal to the High Court in any case in which the President should certify the case as a fit one for appeal. The validity of this Act was questioned in *Hari Pandurang* v. *Secretary of State*, I.L.R. 27 Bomb. 424, and Sir Lawrence Jenkins, then Chief Justice of Bombay, held that this particular provision, giving the limited right of appeal to the High Court, was *ultra vires* the Local Legislature. Accordingly, Act XIV of 1904 was passed by the Governor-General in Council to validate the Bombay Act.

It was evidently the intention of the Bengal Legislature to follow in the matter of appeals from the Tribunal under their Act the general lines of the Bombay enactment, and this could only be done safely with the aid in their case also of the higher legislative authority.

This result was, their Lordships think, achieved by the combined action of the two Legislatures in 1911, with the effect, reading the two Acts together, that under what their Lordships would call the local code of the Calcutta Improvement Trustees, an award of the Tribunal was to be final subject only to the limited right of appeal to the High Court given by Act XVIII of 1911.

It is clear that on any reading of this local code applicable to the present case, there could (having regard to the decision of this Board referred to above) be no right of appeal to His Majesty in Council, nor is this disputed by counsel for the Secretary of

State. The right of appeal claimed is based upon an amendment of the Land Acquisition Act, which, it is said, also operates upon the local Act, and this is the real question in the present appeal.

The amendment relied upon was effected by Act XIX of 1921 of the " Indian Legislature " (see Section 63 of the Government of India Act, 1919). By this Act a new subsection was added to the Land Acquisition Act, 1894, under which every award of the Court under that Act was to be deemed to be a decree, and the statement of the grounds of the award a judgment, within the definitions of " decree " and " judgment " respectively contained in the Code of Civil Procedure, 1908. The amending Act also substituted for Section 54 of the Land Acquisition Act a new section, which gave in terms a right of appeal to His Majesty in Council from any decree passed by the High Court on appeal from an award of the Court.

Having regard to the provisions of Section 71 of the local Act above referred to, under which the Tribunal is not deemed to be the " Court " for the purposes of Section 54 of the Land Acquisition Act, it is, their Lordships think, clear that the amendment of Section 54 cannot assist the contention presented to them on behalf of the Secretary of State. For even if the borrowing by the local Act in 1911 from the Land Acquisition Act could be held to include the new Section 54, an award of the Tribunal would not, by the express words of the local Act, come within its provisions.

It is upon the new subsection 26 (2) introduced by the Act of 1921 into the Land Acquisition Act that reliance is placed. The argument addressed to their Lordships is that this subsection must be read into the local Act, with the effect that every award of the Tribunal must now be deemed to be a decree within the meaning of the Civil Procedure Code, and therefore, as their Lordships understand, *ex vi termini* appealable to His Majesty in Council under the Letters Patent of the High Court. It is said that this amendment of itself is sufficient to displace the grounds upon which the Board held in the *Rangoon* case that no appeal lay. If effect were given to this argument it would seem to follow that the amendment of Section 54 was wholly superfluous, and the somewhat strange result would be arrived at that though the provision of the amending Act by which the right of appeal to His Majesty in Council is expressly given was excluded in the case of awards by the Tribunal, they were nevertheless to be so appealable by implication from another section.

But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the subsection in question, which was not enacted till 1921, can be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended

to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor, again, does Act XIX of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.

Their Lordships have not been referred to anything in the General Rules of Construction embodied in the General Clauses Act, 1897, which supports the contention of the Secretary of State, nor to any authority which favours it. In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in "Craies on Statute Law," 3rd edition, pp. 349–50. This doctrine finds expression in a common-form section which regularly appears in the Amending and Repealing Acts which are passed from time to time in India. The section runs, "The repeal by this Act of any enactment shall not affect any Act . . . in which such enactment has been applied, incorporated or referred to." The independent existence of the two Acts is therefore recognised; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition. So Lord Westbury says in *Ex parte St. Sepulchre*, 33 L.J., Ch. 372, "If the particular Act gives in itself a complete rule on the subject-matter, the expression of that rule would undoubtedly amount to an exception of the subject-matter of the rule out of the general Act": see also *London, Chatham and Dover Railway* v. *Wandsworth Board of Works*, L.R. 8 C.P. 185.

Turning next to the terms of the local Act read with the modifying Act of the Governor-General in Council (Act XVIII of 1911), their Lordships are of opinion that the local code contains in itself a sufficient answer to the contention with which they are dealing. The joint effect of the two enactments was, as their Lordships have already pointed out, to give a special and strictly limited right of appeal to the High Court from an award of the

Tribunal, and to provide that, subject to this right only, the award should be final. Their Lordships have no doubt that this provision for finality was intended to exclude any further appeal. It was in 1911 the accepted view in India that under Section 54 of the Land Acquisition Act an appeal lay as of right to His Majesty in Council. Many such appeals had been preferred and determined by this Board, and the right had then never been questioned. The deliberate exclusion of Section 54 from the local Act was an indication of the Local Legislature's intention that there should be under the special code applicable to the Improvement Trust not only no unrestricted right of appeal to the High Court, but no appeal at all beyond the High Court, and this, their Lordships think, found expression in the words of Section 71 (*d*).

If, therefore, as is contended on behalf of the Secretary of State, the introduction into the local Act of the new Subsection 26 (2) of the Land Acquisition Act, were to give the right of appeal to His Majesty in Council, which is claimed in the present case, it would, in their Lordships' opinion, be clearly repugnant to the provisions of the local code. Even if their Lordships had been forced to hold that the subsection was incorporated in the local Act, they would, on the well-recognised principle of *generalia specialibus non derogant*, have come to the conclusion that the provision of the local code must prevail and that this appeal was barred.

Their Lordships also think it right to point out that, even if the award of the Tribunal were deemed to be a decree, that would not of itself be sufficient to give a right of appeal to His Majesty in Council. To come within the purview of clauses 16 and 39 of the Letters Patent, it must be a decree of a Court subject to the superintendence of the High Court, and it is at least doubtful whether the Tribunal is such a Court. In *Hari Pandurang's* case, above referred to, Sir Lawrence Jenkins held, for what seem to their Lordships to be very cogent reasons, that the Bombay Tribunal was not a Court, but " a body free from the control and superintendence of " the High Court. It is not, however, necessary for their Lordships to come to any decision on this aspect of the case, as they are satisfied on other grounds that these appeals are incompetent.

In arriving at this determination of the question now before them, their Lordships are not unmindful of the fact that an opposite conclusion had been arrived at by the High Court in Calcutta.

The question of competency was discussed on the application of the Secretary of State in the present case for the necessary certificate, and in granting it the learned Judges thought it proper merely to follow a previous decision of the High Court in which, in a similar case, it had been held by Sir Lancelot Sanderson, then Chief Justice of Bengal, with the concurrence of Walmsley J., that an appeal lay to His Majesty in Council. When that case

came before the Board (*Secretary of State* v. *Tarak Chandra Sadhukan*, 54 I.A. 187), the question of competency was again raised, but it was not found necessary to decide it, the appeal being dismissed upon other grounds.

The judgment of the learned Chief Justice proceeded upon the ground that Section 26 (2) of the Land Acquisition Act as amended by Act XVIII of 1921, should be read as part of the Improvement Trust Act of 1911 ; that the award of the Tribunal was thereby constituted a decree from which an appeal lay to the High Court, and that from the decree of the High Court an appeal lay to His Majesty in Council.

Their Lordships have probably had the advantage of a fuller discussion of what is undoubtedly a question of great intricacy, and have, with all deference to the views of the learned Chief Justice, who is now a member of this Board, come to a different conclusion. They notice in particular that the Bombay Act of 1898, and the decision in *Hari Pandurang* v. *The Secretary of State*, to which reference has been made above, were not brought to the notice of the Court.

Their Lordships will, for the reasons stated in this judgment, humbly advise His Majesty that these appeals are incompetent and should be dismissed, and that the costs of the Society, so far as they are not separately attributable to its own appeal, ought to be paid by the Secretary of State. Their Lordships think that justice in this respect will be done by directing that the Secretary of State should pay $\frac{5}{6}$ths of the Society's taxed costs of the consolidated appeals.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA
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DELIVERED BY SIR GEORGE LOWNDES.

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