
(1957) 03 MP CK 0008
In the Madhya Pradesh High Court
Case No : C. Rev. No. 42 of 1957

Hitkarini Sabha, Jabalpur

APPELLANT

Vs

Corporation, Jabalpur

RESPONDENT

Date of Decision : 22-03-1957

Acts Referred:

Land Acquisition Act, 1894 — Section 31, 31(2)

Citation : (1957) JLJ 1142

Hon'ble Judges : M. Hidayatullah, C.J.; B.K. Chaturvedi, J

Bench : Division Bench

Advocate : B.S. Dabir with Shree S.C. Upadhyaya, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application for revision against an order made by Shri R.D. Doongaji, Second Additional District Judge, Jabalpur, in Miscellaneous Judicial Case No. 32 of 1956 on 13th December 1956.

2. The facts of the case are simple, Land was acquired by the Collector, and two claimants for the compensation money appeared before the Collector, One is the present applicant, the Hitkarini Sabha, a registered body running some educational institutions at Jabalpur, and the other is the non-applicant, the Corporation of the City of Jabalpur. The Collector assessed the compensation and apportioned it between the Sabha and the Corporation awarding to the former a sum of Rs, 2,34,739/-. On the day the award was announced, both the parties were present through their representatives and vouchers for payment to the Sabha and the Corporation were drawn up to be handed over to them. The Corporation did not accept the payment, their agent informing the Collector that instructions had to be obtained. The Sabha accepted the voucher and withdrew the money.

3. Later, the Corporation accepted its share of the compensation money, though

under protest. Under the terms of Sec. 31 of the Land Acquisition Act, a reference was necessary to be made, because there was a dispute as to the apportionment as well as to the party entitled to receive the compensation money. The learned Collector, it appears overlooked the provisions of sub-sec. (2) of Sec. 31 of the Land Acquisition Act and, instead of forwarding the money to the Court to which the reference was to be made, paid out the money to the respective parties. When the reference reached the learned Judge, whose order is impugned in this revision, he felt that his jurisdiction was ousted by the payment of the compensation money to the parties. He accordingly directed the Sabha to deposit the amount in his Court before a particular date. The present application for revision has been filed against that order.

4. The first question that arises is whether the jurisdiction of the learned Judge hearing the reference is ousted by the payment. The learned Judge has apparently relied upon a case reported in *Jogesh Chandra Rat vs. Yakub Ali*, 21-I.C. III, which, on a close inspection, does not bear out the proposition which he thinks is laid down in it. Indeed, the case shows that a fortuitous payment by the Collector, in spite of a dispute as to who should receive the compensation money, does not oust the jurisdiction of the Court to bear the reference. Other authorities on the subject exist and they are to be found in *Ramhit vs. Mahadeo*, AIR 1920 Pat. 222 *Satish Chandra Singh, vs. Anand Gopal Das* 20 C.W.N 816," and *K.M.K.R.M.K. Chettyar Firm vs. The Secretary of State for India* I.L. R. Rang. 344. Many other cases on the subject exist; and, indeed, no case has been brought to our notice which expressly lays down that the jurisdiction to hear the reference is ousted by reason of the payment of the compensation money by the Collector to a party.

5. The learned counsel for the applicant relied strongly on *Abdul Sattar vs. Hamida bibi* AIR 1950 Lah, 229 (F.B.) where it was laid down that it was not open to the reference Court to recall the money which had been paid by the Collector. It appears that on this part of the case there is a certain amount of difference of opinion in India. The Full Bench of the Lahore High Court in the last cited case referred to *Gobindaranee Dasee vs. Brinda Ranee Dasee* ILR 35 Cal. 1104 and *Mt. Gohar Sultan vs. Ali Muhammad* AIR 1921 Lah. 153. The cases to which we have referred and there are many others--clearly show that the Court can in a suitable case order the amount to be returned or paid to the rightful party. We do not think that it is necessary to decide finally this question, because on the terms of Section 31 of the Land Acquisition Act, it is quite clear that the Collector acted against the express provisions of Sec. 31 (2) *ibid* in making the payment when there was a dispute as to who should receive the compensation money.

6. Now the rule of law, which was stated by Lord Cairns in *Rodger vs. The Comptoir D'Escompte De. Paris* L.R. 3 P.C. 465, 475 and which has been applied universally, is that no act of a Court which is likely to do harm to one of the parties should be allowed to stand if it is known that the act is wrong. Lord

Cairns stated the rule in the following words:--

Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court.

7. Here it is quite clear that the Collector acted with considerable hurry and in defiance of the law laid down in sub-sec. (2) of Sec. 31 of the Land Acquisition Act in making the payment, One of the parties received it under protest, while the other received it without protest either by it or by the opposite side. The Collector was in error in making the payment when there was a dispute as to who should receive the compensation money, and this is a matter which the Courts must rectify to bring the action of the Collector in line with the statutory requirements. No doubt, it is open to this Court or to the Reference Court to order that the money be forthwith brought into Court as an interim measure. Parties, however, agreed before us that the money may be left where it is on condition that it is invested in fixed deposit for a period of one year. We understand that rupees two lacs are already in fixed deposit for a period of one year with the Punjab National Bank, Jabalpur, and the balance is in fixed deposit on a call-notice of four days, Parties agree that the amount should be placed in the name of the Sabha in the Punjab National Bank in fixed deposit for one year, so that it may earn suitable interest during the period this case is pending. The corporation also insists that we should issue an order on the Bank not to let this money be withdrawn, except under the orders of this Court.

8. We are of opinion in this case that the action of the Collector was erroneous in paying out the money when a dispute as to the right to receive the compensation existed. We are also of opinion that the learned Judge in the Court below was perfectly justified in asking that the money be returned, as an interim measure though he was in error in thinking that the payment of the money ousted his jurisdiction. We hold that he had the jurisdiction to hear the case in spite of a wrong payment to the Hitkarini Sabha, and we direct the learned Judge to hear this case as early as possible, giving it absolute priority over other cases. We think that in view of the agreement between the parties, it is not necessary to order the Sabha to deposit the money in Court, and that portion of the learned Judge's order we set aside. We, however, direct the Hitkarini Sabha to invest the entire amount in a fixed deposit for a period of one year with the Punjab National Bank. We also order the issue of a direction to the Punjab National Bank that this deposit shall not be repaid to the Hitkarini Sabha except under the orders of this Court. The Hitkarini Sabha is given 15 days" time in which to place the money in

fixed deposit, as it has undertaken to do. With these observations, the application for revision is dismissed. There shall be no order about costs.