

**(1946) 06 CAL CK 0005**  
**In the Calcutta High Court**

**Case No :** Full Bench Ref. No. 1 of 1942 in Civil Revn. No. 1802 of 1941

Khetsidas Gangaram

APPELLANT

Vs

First Land Acquisition Collector, Calcutta

RESPONDENT

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**Date of Decision :** 14-06-1946

**Acts Referred:**

**Citation :** (1946) 06 CAL CK 0005

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**Judgement**

Chakravartti, J.—The question involved in the present reference is one on which the Calcutta High Court seems to have been the first to pronounce in the year 1305. In that year, it was held in 12 C. W. N. 241 Administrator-General of Bengal v. Land Acquisition Collector ("08) 12 C.W.N. 241 that in dealing with an application under S. 18, Land Acquisition Act, asking for a reference to the "Court," the Collector himself acted as a Court and his order was liable to correction by the High Court in the exercise of its revisional jurisdiction: Since then, the question, after having been answered in various ways, has been finally answered in the negative by Full Benches or Special Benches of the High Courts of Bombay, Madras, Allahabad and shortly Before this reference was made, of Patna. The same has been the answer of the High Courts of Lahore, Nagpur and Rangoon. Only the Chief Court of Oudh has answered the question in the affirmative and in holding that opinion, it stands alone. In this Court, opinion in the later cases has inclined decidedly towards the negative and the question comes for final decision last in the Court by which it was first considered. The facts out of which the reference has arisen are the following. The petitioner occupied a portion of premises No. 6-A Armenian Street, Calcutta, as a tenant, for the purposes of his business. Those premises were acquired under the provisions of the Calcutta Improvement Act, read with the Land Acquisition Act, and the Collector on 23rd June 1941, awarded the petitioner a sum of Rs. 1268-12-0 as compensation. He was not satisfied with the amount and by an application under S. 18, Land Acquisition Act, filed on 7th August 1941, asked for a reference to the Calcutta Improvement Tribunal "for a proper determination of the question of valuation." By an order, dated 19th September 1941, the

Collector dismissed this application on the ground that notice of the award having been served on the petitioner on 25th June 1941, it was time barred. Thereupon, on 8th November 1941, the petitioner made another application in which he stated that no notice of the award had been served upon him at all and he repeated his prayer that a reference might be made. This application also was rejected by the Collector on 11th November 1941, with a remark that there were no grounds for re-consideration. On neither applications was the petitioner given a hearing.

2. On the dismissal of his second application, the petitioner moved this Court under S. 115, Civil P. C. and obtained the present rule. It came up for hearing before Mukherjee and Sen JJ. who observed that the petitioner had a just grievance and if the Collector's order were revisable under S. 115 of the Code, they would, without hesitation, send the case back in order that the petitioner might be given an opportunity to prove his case. They thought, however, that the order was not revisable, since, in their view, the Collector in refusing to make a reference under S. 18, Land Acquisition Act, did not act as a Court. The learned Judges noticed the conflict of opinion which existed on the matter and as it was desirable that the law should be settled, they referred to a Full Bench the following question:

Does the Land Acquisition Collector, Calcutta, in refusing to make a reference under S. 18, Land Acquisition Act, act as a Court, or a Court subordinate to the High Court, so as to make his order revisable under S. 115, Civil P. C.?

3. No special significance, we apprehend, attaches to the fact that the question referred mentions the Land Acquisition Collector, Calcutta, in particular; none again, we think, to the fact that only refusal to make a reference is mentioned. We shall treat the question as embracing all Land Acquisition Collectors and all orders made under S. 18, whether refusing to make a reference or making one. The reasons for which the learned referring Judges thought that the Collector was not a Court, were that the proceedings before him had been held by the Judicial Committee to be of an administrative character up to and including the making of his award and the functions he exercised in making or refusing to make a reference were not very dissimilar; and further that the power of the Local Government under S. 55 of the Act to make rules for the guidance of officers in all matters concerning its enforcement, which included the power to make rules for the Collector in matters coming under S. 18, was inconsistent with his being a Court. Although the application made before the Collector under S. 18, was the first stage in the judicial proceedings under part III of the Act and, in dealing with it, the Collector exercised certain judicial or quasi-judicial functions, that fact, the learned Judges thought, was not sufficient to make him a Court; and the argument that as and when dealing with such an application, the Collector was a component part of the Court which made the final award, was, they thought, far fetched. The learned Judges expressed no opinion on the second part of the question referred viz., whether the Collector, assuming he was

a Court, was yet a Court subordinate to the High Court within the meaning of S. 115, Civil P. C.

4. The scheme of the Land Acquisition Act as regards the disposal of matters on which a party may desire an adjudication by the Court is not very clear and the decisions of the Judicial Committee have not served to make it clearer. Broadly speaking, there are two such matters, viz., valuation of the land acquired and apportionment of the compensation. Starting from the award to be made by the Collector, S. 11 provides that he shall enquire "into the value of the land" and "into the respective interests of the persons claiming the compensation" and that his award must include the compensation which, in his opinion, should be allowed and "the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claims, he has information." Both the matters we have mentioned above are expressly included, and it is clear that the Collector may, and indeed, so far as this section is concerned, it would seem he must decide the question of apportionment, when one arises. Proceeding next to S. 18, that section enables a person interested, subject to certain conditions to which we need not here refer, to require the Collector to refer any objection he may have for determination by the Court, whether such objection be, taking only the questions which are material for our present purpose, to "the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested." It would thus appear that under S. 11, the Collector has to determine questions of both valuation and apportionment and under S. 18, a person interested has a right to require a reference to the Court on both. It is at this point that difficulties begin and since the nature and extent of the functions of the Collector are very material to the question we have to answer, the matter is one of importance. Although S. 18 covers, as we have seen, questions of both apportionment and valuation, the contents of the reference to be made by the Collector, as set forth in S. 19, do not seem to include any question of apportionment, unless it be that the schedule, giving the particulars of the statements of the parties, would include it. In any event, the form of the award to be made by the Judge, as set forth in S. 25, does not include any apportionment of the total compensation between the different persons interested. Sections 23 and 24 refer only to the principles to be followed by the Court in determining the amount of compensation on a reference under S. 16. How then is a question of apportionment decided when the Collector refers it under S. 18 and where is the decision recorded ?

5. The next matter to notice is that the Act contains a short chapter, dealing exclusively with the subject of apportionment and consisting of two sections, 29 and 30. The former of them provides that where there are several persons interested in the land acquired and they agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award. The latter provides that if any dispute arises as to the apportionment of the compensation or as to the persons to whom the same or any part thereof is

payable, the Collector may refer such dispute to the decision of the Court. The chapter which is in part IV of the Act, ends with this section and nothing further is provided as to how the Court is to decide the dispute and in what form its decision is to be given. This somewhat extensive review of the sections of the Act has appeared to us necessary, because, without an examination of the sections, the decisions of the Judicial Committee cannot be properly understood, nor the difficulty created by them appreciated. The Courts in India have held that as respects apportionment S. 30 provides for the Collector a procedure, alternative to that prescribed by Ss. 11 and 18. He may decide a dispute as to apportionment himself and then refer it under S. 18, if required by a party, to the decision of the Court. Or, he may act of his own motion under S. 30 and either obtain a decision from the Court before making his award or make a joint award and then make a reference. On this view, when the Collector follows the former procedure, a disputed question of apportionment would be decided by him in the first instance and finally decided by the Court, if so required, in the chain of the award.

6. In 49 I. A. 129 *Rama Chandra Rao v. Rama Chandra Rao* ("22) 9 A. I. R. 1922 P. C. 80 : 45 Mad. 320 : 49 I. A. 129 : 67 I. C. 408 (P. C.), however, the Judicial Committee observed that the Land Acquisition Act contemplated two perfectly separate and distinct forms of procedure and the first of them was necessary for fixing the amount of the compensation which was described as an award. Explaining further the nature of the award, their Lordships observed that the award, as constituted by the statute, was nothing but an award which stated the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose interests the Collector had information. They were quoting from S. 11 of the Act, and in explanation of the last phrase extracted from cl. (iii) of the section, they added, "meaning thereby people whose interests are not in dispute." They observed further that a dispute between interested people, as to the extent of their interest formed no part of the award. In the case with which they were dealing, the compensation money had been deposited in Court under S. 31 (2) of the Act, which requires the Collector to make such deposit "if there be any dispute as to the title to receive the compensation or as to the apportionment of it" and the High Court had given a decision as to the nature and extent of the interest of the parties, but it did not appear clearly whether the proceedings, which terminated in the decision of the High Court, had been commenced under S. 18 or S. 30. Their Lordships, however, held that how the proceedings had commenced was not material and they made a general statement as to the matters which could be properly dealt with by an award and matters which could not be so dealt with. It would appear that, in their Lordships' opinion, an award could comprise only a determination of the valuation and an apportionment of the compensation between persons whose interests were not in dispute and that an award was not appealable except so far as expressly provided for in the Act, even when it was the award of the Judge, the reason being that it was in the nature of a verdict in arbitration

proceedings which retained that character even when it came to be dealt with by the Court. Disputes as to apportionment, on the other hand, which involved questions of the title of the parties, were outside the scope of an award and when such a dispute was raised and the Collector deposited the compensation money in Court as he was bound under S. 31 (2) to do, "the functions of the award have ceased," The parties were then to litigate their title before the Court and any decision given would amount to a decree, appealable as such by the force of the Civil Procedure Code.

7. Previously in 32 I. A. 98 *Ezra v. Secretary of State* ("05) 32 Cal. 605 : 32 I. A. 93 : 8 Sar. 779 (P. C.), which was a case of valuation, the Judicial Committee had held that the proceedings before the Collector, resulting in his "award" were administrative and not judicial and in 39 I. A. 197 *Rangoon Botatoung Co., Ltd. v. The Collector, Rangoon* ("13) 40 Cal. 21 : 39 I. A. 197 : 16 I. C. 188 (P.C.) which, again, was a case of valuation, it had upheld the contention of Buckmaster K. C. as he then was, that an award, even when it was an award made by the Court on a reference, was not a decree, an argument which the learned counsel himself explained when, as Lord Buckmaster, he delivered the judgment of the Board in 49 I. A. 129 *Rama Chandra Rao v. Rama Chandra Rao* ("22) 9 A. I. R. 1922 P. C. 80 : 45 Mad. 320 : 49 I. A. 129 : 67 I. C. 408 (P. C.). In a later decision, 58 I. A. 259 AIR 1931 149 (Privy Council) , the Judicial Committee has re- affirmed this principle. We are concerned in the present case with these decisions only so far as they explain the scheme of the Act and define the functions of the Collector. The position as regards a dispute as to valuation is clear enough, but that as regards a dispute as to apportionments is not equally clear. If, as the Judicial Committee appears to hold, a dispute as to apportionment involving questions of title, is not for the Collector to consider and the apportionment by him, as provided for in S. 11 (3) of the Act, only means apportionment between persons whose interests are not in dispute, it is not easy to give any meaning to the provision contained in S. 18 (1) which enables any interested person, who objects to the award, to require a reference to the Court, whether his objection be inter alia to the persons to whom the compensation is payable or the apportionment of the compensation among the persons interested. The section pre-supposes that the Collector has decided these matters, for, the objection contemplated is an objection to the award, as made. Nor can it be said that the section contemplates a case where the interests of the various parties being admitted, the objection is only to the proportion of the distribution, for, an objection to the persons to whom the compensation is payable is also included in the section and the implication is that the Collector has decided this question as well. Section 11 again requires the Collector, to enquire "into the respective interests of the persons claiming the compensation." It is, therefore, not clear how the terms of Ss. 11 and 18 can be reconciled with the view taken by the Judicial Committee of the nature of the functions of the Collector and the scope of his award. At the same time, it is not clear how S. 18 can be reconciled with S. 26. While a reference made by the Collector may

include a question as to the title of a claimant or a question of apportionment, the award to be made by the Court on such reference, unlike the award made by the Collector, cannot, it would appear, include such matters.

8. If the functions of the Collector, in making an award, be limited merely to determining the amount of the compensation and, further, to apportioning it between interested parties in case there be no dispute as to their interest, he decides no matter of the kind as would, according to the Judicial Committee, make a decision a judicial decree. He can then be held to be always an administrative officer, on the reasoning in 32 I. A. 33 *Ezra v. Secretary of State* ("05) 32 Cal. 605 : 32 I. A. 93 : 8 Sar. 779 (P. C.), whether he is determining the compensation or making an apportionment. But if in dealing with the question of apportionment he can and does decide questions of title, he may still be acting as an administrative officer, but the reasoning in 32 I. A. 93 *Ezra v. Secretary of State* ("05) 32 Cal. 605 : 32 I. A. 93 : 8 Sar. 779 (P. C.) would not suffice to make him one and the principles laid down in 49 I. A. 129 *Rama Chandra Rao v. Rama Chandra Rao* ("22) 9 A. I. R. 1922 P. C. 80 : 45 Mad. 320 : 49 I. A. 129 : 67 I. C. 408 (P. C.) would seem to make his status at least problematic. When, therefore, it is said that the Judicial Committee decided in 32 I. A. 93 *Ezra v. Secretary of State* ("05) 32 Cal. 605 : 32 I. A. 93 : 8 Sar. 779 (P. C.) that up to and including the making of his award, the Collector was an administrative officer and not a Court, the statement, we think, requires qualification. The case was a valuation case and their Lordships were thinking of the award only as the conclusion of the Collector as to the amount which should be offered as compensation. In the later cases in 39 I. A. 197 *Rangoon Botatoung Co., Ltd. v. The Collector, Rangoon* ("13) 40 Cal. 21 : 39 I. A. 197 : 16 I. C. 188 (P.C.) and 49 I. A. 129 *Rama Chandra Rao v. Rama Chandra Rao* ("22) 9 A. I. R. 1922 P. C. 80 : 45 Mad. 320 : 49 I. A. 129 : 67 I. C. 408 (P. C.) they took the same limited view of an award on the footing that disputed questions of title or apportionment were outside the Collector's jurisdiction and even outside the purview of an award made by the Court. Their Lordships had no occasion to pronounce on the nature of the Collector's functions, if he was to decide and decided disputed questions of title or apportionment. They certainly did not decide, as some Courts in India have taken them to have done, that a Collector, in dealing with an application under S. 18, did not act as a Court. The only reference they made to S. 18 in 32 I. A. 33 *Ezra v. Secretary of State* ("05) 32 Cal. 605 : 32 I. A. 93 : 8 Sar. 779 (P. C.) was for the purpose of emphasising that the Collector's award was not final but subject to modification by the Court on a reference. In spite of the somewhat anomalous position created by S. 26 and the decisions of the Judicial Committee, an application for a reference under S. 18 may, under the very words of the section, include a question of apportionment or title as much as a question of valuation; and so far as the Judicial Committee is concerned, the question of the status of the Collector, when dealing with such an application, is free from authority, except so far as the decisions we have referred to bear upon it indirectly.

9. Under those decisions, one part of the question before us is capable of an easy answer. The question before the Collector, on an application under S. 18, is whether he will or will not make a reference. Both in 39 I. A. 197 Rangoon Botatoung Co., Ltd. v. The Collector, Rangoon ("13) 40 Cal. 21 : 39 I. A. 197 : 16 I. C. 188 (P.C.) and the case in 49 I. A. 129 Rama Chandra Rao v. Rama Chandra Rao ("22) 9 A. I. R. 1922 P. C. 80 : 45 Mad. 320 : 49 I. A. 129 : 67 I. C. 408 (P. C.) the Judicial Committee emphasised the fact that an award made by the Court on a reference, meaning thereby an award as to the amount of compensation payable, was "an award made in an arbitration" and therefore not appealable as a decree. Even the Judge, dealing with a reference and making his award, would therefore seem to act, not as a Court but as an arbitrator. Accordingly, in a case where the dispute is as to valuation, the Collector, when dealing with the dispute, is an administrative officer under the decision in 32 I. A. 93 Ezra v. Secretary of State ("05) 32 Cal. 605 : 32 I. A. 93 : 8 Sar. 779 (P. C.) and the position of an application under S. 18 is that an administrative officer has to decide whether he will make a reference to an arbitrator. There could be no question of the Collector acting as a Court in such a case. There is, however, the other part of the question, bearing upon the case where the application relates to a dispute as to the parties to whom the compensation is payable or the apportionment of the compensation between them. If the decisions of the Judicial Committee be taken literally, no such question can arise, for their Lordships say that "in case of dispute as to the relative rights of persons together entitled to the money," the Collector has only to place the money under the control of the Court "and the parties can then proceed to litigate in the ordinary way what their right and title to the property may be." It is not clear whether their Lordships' attention was not drawn to the terms of S. 18 or whether their meaning is that although a reference may include questions of both valuation and title or apportionment, the former will be dealt with by an award, but the latter will be dealt with as in a suit, if the parties so desire. There are great difficulties in the way of accepting this interpretation, for, the proper Court for a suit may not be the Court of the Land Acquisition Judge and it is likelier that their Lordships had their attention confined to S. 30, which they construed as simply authorising the Collector to refer the parties to the civil Court. The use of the expression "in the ordinary way" seems to point to the latter meaning. But if disputed questions of title or apportionment are neither for the Collector, nor for the referee Court, so far as the award is concerned, and the parties are to litigate those matters in the ordinary way, there can be no occasion for asking for a reference of such questions under S. 18, in spite of the clear terms of the section. As, however the position is by no means clear and the existing practice is to ask for and make such references, we shall proceed to deal with this part of the question on its merits.

10. The language of S. 18 is that a person interested may "require" the Collector to make a reference to the Court. The only qualifications are that the applicant must be a person interested, i. e., a person claiming an interest in the

compensation [S. 3 (b)] and his application must be made within certain limits of time. The section does not say that it is for the Collector to see if these conditions have been satisfied, nor that, if they are not satisfied, he may reject the application, but we think these powers are implied. We cannot agree with the Chief Court of Oudh that the Collector is bound to make a reference, whenever, and by whomsoever required, and that if he has any objections, he can only make a note of them and forward them to the Court. The question, therefore, is whether the Collector, who is otherwise an administrative officer, becomes a Court when he deals with an application for a reference and considers whether the applicant is a person interested and whether the application has been made within the period of limitation prescribed. He may consider these matters by himself, for the Act does not require him to hear the applicant or hold an enquiry. If he does hold an enquiry, he may, by virtue of the provisions of S. 14, exercise the powers of a civil Court, so far as may be as regards compelling the production of documents or the attendance of witnesses and parties. Decisions which have taken the view that when acting under S. 18, the Collector acts as a Court, proceed on one or all of the following grounds, (1) there is a clear distinction between part II of the Act and part III where S. 18 occurs, the former being concerned with acquisition of land through the administrative machinery and the latter with judicial proceedings arising out of the acquisition; (2) the reference by the Collector is the first step in the judicial proceeding which culminates in the award and the first step in a judicial proceeding must be held to be a judicial step; (3) in dealing with an application for a reference, the Collector has to decide several matters concerning the rights of the applicant and in deciding them, he acts judicially; (4) he deals with a part of the judicial proceeding initiated with a view to obtaining an award from the Court and is, therefore, a component part, as it were, of the Court to which the reference is to be made; (5) there being no other remedy, unless the Collector is held to be a Court and thereby jurisdiction over him assumed, even unjust awards and erroneous orders would remain uncorrected and great hardship and injustice would be caused.

11. Decisions which have taken the contrary view, rest on some or all of the following grounds: (1) Section 18 itself distinguishes the Collector from the Court; (2) the Privy Council has already decided that he is not a Court; (3) since he is an administrative officer up to making his award, the presumption must be that he continues to be so, unless there are circumstances showing the contrary of which there are none; (4) he decides disputed questions of a substantial character in the course of making his award and if he is not a Court then, he cannot be one, when acting under S. 18, simply because he has to decide certain preliminary matters of a formal nature; (5) he can be "required" by a party to make a reference which is inconsistent with his being a Court; (6) he can be controlled by the Local Government by rules made under S. 55 which also is similarly inconsistent; (7) he does not act "judicially" and even if he does, he cannot be held to be a Court on that ground alone; (8) he does not decide any

disputed question between two parties; (9) he has no power to hear and determine any question on the merits. Some of the reasons given in support of the view that the Collector is not a Court, may be disposed of at once. The first reason in our list is obviously a bad reason, for, S. 18 has no reference to the status of the Collector as such, or his status, as distinguished from that of a Court, but only provides for a reference to the Court, as specially defined in the Act. The Collector may well be a Court himself, according to the ordinary connotation of the term, although required by the section to refer an objection to "the Court", that is to say, the Court designate according to the definition contained in S. 3 (d). The second reason is also a bad reason, because, as we have already explained, the Privy Council has not decided that in dealing with an application under S. 18, the Collector is not a Court. The third reason, in our view, is no reason at all, for, we are unable to see how there can be a presumption of continuity as regards the status of a public officer, dealing with different matters at different, stages. Nor can we agree that the sixth reason is sound, for, in a way it begs the question. The fact that S. 55 authorises the Provincial Government to make rules for the guidance of officers in all matters connected with the enforcement of the Act, does not involve that the Government has power to control the Collector by rules even in the discharge of functions, if he has any, which are judicial in the true sense; and the existence of S. 55, we think, cannot be made a ground for denying him the status of a Court, if his status appears otherwise to be of that character. The true position is that if the Act has given the Collector certain judicial functions and rules are framed to control the exercise of those functions, the rules will be ultra vires. Lastly, the eighth reason appears to us to ignore that a reference may be asked for on a question of apportionment as well, or on a question of the right of someone to receive a part or the whole of the compensation and in such a case there will almost certainly be two parties. Persons who deny the applicant's claim will oppose the application.

12. Turning now to the reasons given in support of the view that the Collector, acting under S. 18, acts as a Court, the last reason in our list may at once be put on one side, for, it is not a legal but a sentimental reason. Yet it is the one reason, so far as we can see, which has influenced the Courts most strongly in holding the Collector to be a Court and thus providing some remedy, where otherwise there would be none, against unjust awards and erroneous refusals to refer. But a question of law or jurisdiction cannot, in our view, be decided on such considerations as these. The second and the fourth reasons put the same ground in different ways and are not in our view, correct. In our opinion, the proceedings before the Collector are not a part of the judicial proceedings before the Court and are concerned with the question as to whether the latter proceedings will be allowed to be initiated at all. The latter proceedings commence, not with the application made before the Collector, but with the statement submitted by the Collector to the Court under S. 19. The proceedings before the Collector constitute a chapter by themselves, antecedent to the

proceedings in Court, as in the case where the Collector considers under S. 70, Stamp Act whether he will sanction a prosecution or when the Advocate-General considers, under Cl. 26, Letters Patent, whether he will certify a case, decided by the High Court in its original criminal jurisdiction, as fit for review. We are not insensible that the analogies we have cited are not, in all respects, appropriate, but they serve to make it clear that where proceedings before a Court depend for their initiation on leave granted or a reference made by another authority, the proceedings before that authority as to such leave or reference form no part of the subsequent proceedings before the Court. The sanctioning or referring authority cannot, therefore, be held to be a Court on the ground that he deals with a part of the judicial proceedings nor to be a component part of some notional Court, composed of himself and the Judge.

13. Both the sets of reasons we have summarised above refer to judicial acting and adopt that to be a test as to whether an authority is or is not a Court. It is therefore important that the true meaning of the term "acting judicially" should be understood. It is often overlooked that judicial acting, such as will make the actor a Court, is not merely acting judicially in the popular sense, that is to say, acting with fairness and impartiality, on a proper consideration of all relevant materials and on giving a proper opportunity to all the contending parties to present their respective cases. A private arbitrator or an administrative officer may, or may have to, act judicially in this sense, but that, by itself, will not make either a Court. Acting judicially, in order to be a sign of acting as a Court, must be acting as a part of the judicial machinery of the State, charged with the duty of determining the rights of one subject against another or questions of right between the subject and the State, and discharging its functions according to the established form of judicial procedure. A Collector acting under S. 18, cannot be a Court unless he satisfies this test although he may be required to act justly and decide questions of law and although his determination may affect the interests of parties. He must, in other words, be a Court in law. The argument founded on "acting judicially" which is familiar in cases of this kind, will be found fully examined in (1892) 1 Q. B. 431 *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson* (1892) 1 Q.B. 431: 61 L. J. Q. B. 409: 66 L. T. 513 : 40 W. R. 450, particularly in the judgment of Fry L. J. But it an authority, in order to be a Court, must not only act judicially in the popular sense but must also be a Court in law, the relevant enquiry naturally is what a Court in law means. No one has attempted a complete definition. But Mr. Gupta, who appeared before us for the Land Acquisition Collector and to whom we are much indebted for the assistance he rendered, discussed the question on principles and referred us to three decisions. They were-(1931) A. C. 275 *Shell Co. of Australia v. Federal Commissioner of Taxation* (1931) 1931 A. C. 275 : 100 L. J. P. C. 55 : 144 L. T. 421, a decision of the Privy Council, (1921) 2 A. C. 570 *In re Clifford and O'sullivan* (1921) 2 A. C. 570 : 90 J. L. P. C. 244, a decision of the House of Lords, and (1918) 2 K. B. 405 *Co-partnership Farms v. Harvey-Smith* (1918) 2 K. B. 405 : 88 L. J. K. B. 472 : 118 L. T. 541, a decision of the High Court in

England in the King's Bench Division. We do not propose to discuss these decisions in detail, but shall only extract from them certain principles which appear to us to furnish an answer to the question before us. The considerations which have been relied on in support of the view that the Collector, acting under S. 18, is a Court, were all held insufficient by the Privy Council in a series of negative propositions which it laid down in the first of the cases above mentioned.

14. "1. A tribunal is not" observed their Lordships,

necessarily a Court in the strict sense because it gives a final decision. (2) Nor because it bears witnesses on oath. (3) Nor because two or more contending parties appear before it between whom it has to decide. (4) Nor because it gives decisions which affect the rights of subjects. (5) Nor because there is an appeal to a Court. (6) Nor because it is a body in which a matter is referred by another body.

15. It was further observed that one of the attributes which a Court truly so called, must possess was that it must be a tribunal through which the judicial power of the sovereign authority to decide controversies between its subjects or between its subjects and itself as to rights relating to life, liberty or property, was exercised by the giving of binding and authoritative decisions. But when an authority whose status falls to be considered, is one constituted by the sovereign power, either mediately or immediately, and performs function similar to those performed by a Court, it becomes a matter of difficulty to decide whether the above test is not satisfied. Cases of that kind are met by another principle which the Privy Council adopted from Isaacs J. of the High Court of Australia and repeated with its approval in the case cited.

There" are many functions which are either inconsistent with strict judicial action... or are consistent with either strict judicial or executive action... If consistent with either strictly judicial or executive action, the matter must be examined further.

16. The judgment of the Privy Council -was delivered by Sankey, L. J. who, AS Sankey J., had laid down in (1918) 2 K, B, 405 Co-partnership Farms v. Harvey-Smith (1918) 2 K. B. 405 : 88 L. J. K. B. 472 : 118 L. T. 541 what the further considerations were. His Lordship observed that when a tribunal acted in a manner similar to that of "Court of justice, one had to look to its (1) Constitution, (2) functions and (8) procedure in order to determine if it was a tribunal of a judicial character. It is therefore not enough that the Collector, acting under, S. 16, has to act judicially in the sense of acting impartially, or acts in a manner, similar to that of a Court, in deciding the two questions mentioned in the section, or passes orders which affect the interests of parties. Some further indicia are required to establish that he is a Court. It is clear that no number of negative propositions, such "as those enumerated by the Judicial Committee will answer the question in either way, for, although the existence of certain characteristics may not prove that the Collector is a Court, at the same time, that fact does not

prove that he is not a Court. On the other hand, a single circumstance, showing that he is not a Court will be decisive. Accordingly, it appears to us that in examining the further matters, viz., the constitution, the procedure and the functions, it will be more useful to search for a negative rather than a positive incident. Although it is extremely difficult to say what a Court is, it is comparatively easier to say what a Court is not

17. In our opinion, the fact that the applicant under S. 18 has no right of audience before the Collector and that the latter is not required to act in accordance with the established form of judicial procedure, or some procedure analogous thereto, is quite sufficient to exclude him from the category of a Court, if not also the fact that the matter for decision under S. 18 is not a matter concerning the merits. It is one of the fundamental characteristics of a court that its proceedings shall be public and the parties shall be heard. We are aware that in this Court the District Judge, acting under S. 40A, Bengal Agricultural Debtors Act, who is debarred from hearing the parties, has been held to be a Court, but that decision can perhaps be justified on the ground that the District Judge is otherwise a Court and so it was thought that the Debtors Act had only added a new matter to his jurisdiction subject to certain restrictions as to procedure and, therefore, he remained amenable to the revisional jurisdiction of this Court. Here, the Collector is otherwise a purely administrative officer. When such an officer is given power to consider whether he will refer to the Court a matter decided by him in his administrative capacity and he can make his decision in his private room, without hearing anyone and without following the procedure which Courts usually follow, we find it impossible to hold that in considering whether he will or will not make a reference, he acts as a Court. Constitution, subject-matter for decision and procedure are all against such a view being taken. The answer to the first part of the question must, therefore, be in! the negative.

18. The second part of the question is whether, assuming the Collector is a Court, he is a Court, subordinate to the High Court within the meaning of S. 115, Civil P. 8. The learned referring Judges have expressed no opinion on this part of the question. Before us, the petitioner was at pains to establish that the Collector was a civil Court within the meaning of S. 3, Civil P. C., and being of a grade inferior to that of a District-Court, was subordinate to that Court and the High Court. On behalf of the opposite party, Mr. Gupta conceded that in order to make out subordination of the Collector, it was not necessary to establish that he was a civil Court, as contemplated in S. 3 of the Code. In our opinion, this concession was rightly made. Section 115 of the Code only speaks of a Court subordinate to the High Court and not of a "civil Court" so subordinate. Again, the object of S. 3 is not to; define or enumerate Courts which are subordinate to the High Court, but simply to declare the order of subordination, for the purposes of the Code, as respects the ordinary hierarchy of Courts established under the Civil Courts Act, If a new Court was to be established to-day and made subordinate to the High Court, such of its orders as were not appealable, would be revisable under s. 115, unless the jurisdiction under that. section was otherwise excluded. On the

assumption that the Collector is a Court, the relevant enquiry, therefore, is not whether he is a civil Court, but whether he is subordinate to the High Court. In spite of the concession made by the opposite party, the petitioner insisted that the Collector was a civil Court, because he decides matters of a civil nature and is authorised to take evidence. Having established, as he thought, that proposition, he attempted to establish, subordination to the High Court through. S. 3 of the Code, on the footing that the District Court being the principal Court in the district, the Collector's Court must necessarily be of an inferior grade. In our opinion this argument is mistaken. In the first place, barring the High Court, S. 3 of the Code has no reference to any Court other than the civil Courts, established under the Civil Courts Act. In the second place, it is not easy to see how inferiority of the Collector's Court to the District Court can be established. In its relation to the Collector, the District Court is, by virtue of the definition of "Court" in S. 3 (d) of the Act, a Court of original jurisdiction. No appeal lies from the Court of the Collector to the District Judge and if the latter can interfere with the award on a reference, that power does not establish the subordination of the Collector, acting as a Court under S. 18, but -only of the Collector, acting as an administrative officer in making the award.

19. It was also contended that since the Collector had to make a reference to the Land Acquisition Judge and since the Land Acquisition Judge was unquestionably subordinate to the High Court the Collector was doubly subordinate. The principle of this argument might derive some support from the decisions in 49 Cal. 931 *Allen Bros. & Co. v. Bando & Co.*, ('23) 10 A. I. R. 1923 Cal. 169 : 49 Cal. 931 : 70 I. C. 371, and 36 C. W. N. 78 *H. D. Chatterjee v. L. B. Trivedi* ('22) 9 AIR 1922 Cal. 427 : 49 Cal. 528 : 26 C. W. N. 78 : 68 I. C. 274 but having regard to the -decisions of the Judicial Committee as to the nature of an award, even as made by the Judge, and of the proceedings relating thereto, it rests upon the facts of the present case, on an extremely precarious ground. At least so far as valuation cases are concerned, the Judicial Committee has held that the proceedings, even when they reach the Judge, are of the nature of an arbitration. In such cases, therefore, the Land Acquisition Judge is not a Court at all but only an arbitrator -and no subordination of the Collector to the High Court could be established through him. As regards apportionment cases, the position, as we have pointed out, is extremely obscure but so much seems to have been held that the proceedings before the Judge, so far as they relate to claims of title, are not in the chain of the proceedings under the Land Acquisition Act but partake of the nature of an ordinary litigation over civil rights in a matter with which the Collector has or had no concern. If that be so, then, in the words of Bankin J., as he then was, in 19 Cal. 931 *Allen Bros. & Co. v. Bando & Co* ('23) 10 A. I. R. 1923 Cal. 169 : 49 Cal. 931 : 70 I. C. 371, between the Collector and the High Court, there is no link but a gap. The one ground relied upon in the cases which have held that the Collector, even if a Court, is not subordinate to the High Court, is that the High Court has no appellate jurisdiction over his award. That reason is perhaps not very accurate, for the assumption only is that

the Collector, acting under S. 18, is a Court and not also that he is a Court in making his award as well. But even his order under s. 18, is not subject to the appellate jurisdiction of any other Court. If it had been appealable to the District Judge, but not further appealable to the High Court, subordination could have been found and revision under S. 115, would lie. But that is not the position. The position in short is that there is nothing to show that apart from his functions under S. 16, the Collector is in any way subordinate to the High Court and that being so, subordination must be found, if at all, qua S. 18, itself. As already shown it cannot be found there and the result is that subordination is not proved.

20. For the reasons given above, we are of opinion that in dealing with an application under S. 18, Land Acquisition Act, the Collector does not act as a Court and even if he does, he does not do so as a Court subordinate to the High Court: His position as Mr. Gupta rightly pointed out, is closely similar to that of the Chief Revenue Authority under s. 51 of the old income tax Act (7 [VII] of 1918) who had power to refer to the High Court a question of law, but could not be compelled to do so, except by an order in the nature of a mandamus under 8. 45, Specific Relief Act on the footing that he was a person holding a public office. It required an amendment of the Act, to make his successor, the Commissioner of income tax, subordinate to the High Court, in the ordinary sense, in the matter of the duty to make a reference. There remains the revision case itself which also has been referred to a Full Bench under the rules of the Court. Since, we are holding that the Collector's order is not liable to revision by the High Court, it necessarily fails. In the result, the question referred is answered in the negative as to both its parts. The rule is discharged but there will be no order as to costs. We cannot leave this case without placing on record our opinion as other High Courts have done before us, that it is essential in the ends of justice that the Collector should be placed under some measure of control. There was, before us, a very full citation of previous decisions which enabled us to acquaint ourselves with the kind of orders made, of which parties had occasion to complain before the High Court. Those orders would convince anyone that a strong case exists for making the Collector subject to effective superintendence. Whether such superintendence should be provided for by legislation or by rules, it is not for us to suggest, but since intricate problems often arise in connection with the question as to whether a person is a person interested the better course, in our opinion would be to make the Collector's order revisable by a Court.

Biswas, J.

21. I agree.

Blank, J.

22. I agree.