

(1968) 05 CAL CK 0033

In the Calcutta High Court

Case No : Civil Revision Cases No's. 1817-1821 and 2225 of 1966

Md. Golam Ali Mina and Another

APPELLANT

Vs

Land Acquisition Collector and Another

RESPONDENT

Date of Decision : 02-05-1968

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1969 Cal 221 : (1968) 2 ILR (Cal) 321

Hon'ble Judges : P.N. Mookerjee, J;A.K. Dutt, J

Bench : Division Bench

Advocate : P.N. Mitter, Amarendra Mohan Mitra, Arunendra Nath Basu, for the Appellant; Ranjit Kumar Banerjee, Sr. Govt. Advocate and Biswanath Mullick, for the Respondent

Judgement

1. These Rules are directed against the refusal of the learned Land Acquisition Collector to make references u/s 18 of the Land Acquisition Act in the instant cases.
2. The prayer for reference was rejected upon the view that the claimants applicants, having received payments under the awards, otherwise than under protest, were not entitled to maintain applications for references.
3. On behalf of the petitioners, it has been contended by Mr. Mitter that, in the instant cases, the applicants filed applications, clearly stating therein, that they were prepared to accept the award amounts under protest and prayed for payments accordingly. The payments appear to have been eventually made by the learned Collector and the receipts, which were given by the applicants for such payments, were endorsed on the back of the said applications. In the said receipts, the words "under protest" do not appear, although the above applications, on the back whereof, the said receipts were endorsed clearly contained statements that the applicants were prepared to receive payments under protest.

4. The learned Land Acquisition Collector construed the above receipts as receipts for payment, otherwise than under protest, and, upon that view, refused the applicants' prayer for reference. The propriety of this decision is one of the points, arising in these Rules.

5. The other question, which has been raised in these proceedings before us, arises on the objection of the opposite parties to the maintainability of the instant revision applications upon the ground that the Collector, acting u/s 18 of the Land Acquisition Act, is not amenable to the revisional jurisdiction of this Court, even under Article 227 of the Constitution.

6. This last point, which raises a question of jurisdiction of this Court and goes to the root of the entire thing, so far as the present revision cases are concerned, is, obviously, a point of considerable and far-reaching importance, and, accordingly, we will deal with it first. This point has been very strenuously argued by Mr. Banerjee, learned Senior Government Advocate, who has sought to oppose these Rules inter alia on this preliminary ground, namely, that this Court has no jurisdiction to interfere with the Order of the Collector, acting u/s 18 of the Land Acquisition Act. Mr. Banerjee's principal contention in this respect is to the effect that the Collector, even while he is acting u/s 18 and dealing with an application for reference, is not exercising any judicial function but is acting purely as an administrative officer and, accordingly, he, acting as aforesaid, is not amenable to the powers of this Court even under Article 227 of the Constitution.

7. This submission of Mr. Banerjee is directly opposed to the recent Bench decision of this Court, reported in *Kalidasi Dasi v. Land Acquisition Collector*, Surf (1962) 66 CWN 446. But Mr. Banerjee has made elaborate submissions on the point and has pressed us to hold that the said decision was not correctly made.

8. Mr. Mitter, appearing in support of these Rules, has contended inter alia that the Collector, whatever be his position under Chapter II, exercises judicial functions, while acting under Chapter III of the Land Acquisition Act, starting with Section 18, and, in dealing with an application for reference under the said section, he has to decide questions, which primarily appertain to the jurisdiction and functions of a judicial officer and primarily concern judicial matters. The whole dispute between the parties, so far as this point is concerned, is as to the question, whether the Collector, acting u/s 18 of the Land Acquisition Act, is acting judicially or exercising judicial functions, so as to be a tribunal within the meaning of Article 227 of the Constitution. If the said question be answered in the affirmative, the Collector, acting u/s 18 of the Land Acquisition Act, would, obviously, be amenable to the jurisdiction of this Court under Article 227 of the Constitution. If, on the other hand, the said question be answered in the negative, the Collector, not being a tribunal, far less a Court, would not be amenable to such jurisdiction.

9. On the above disputed question, the legal position may be briefly summed up

as follows:

Prior to the Constitution, the matter came up before this Court and also before several other High Courts u/s 115 of the Code of Civil Procedure. There was sharp difference of opinion amongst the learned Judges, considering the said question, and, while there was a strong body of opinion that the Collector, acting u/s 18 of the Land Acquisition Act, is not only a judicial officer but even a Court, so as to make Section 115 of the CPC applicable to him, the predominant view was to the contrary, namely, that the Collector, acting as such, was not a Court, -- at any rate, not a Court, subordinate to the High Court for purposes of Section 115 of the Code of Civil Procedure, so as to be amenable to the revisional jurisdiction under that Section. The leading decisions on the point are to be found in *Abdul Sattar v. Special Deputy Collector, Vizagapatam* ILR Mad 357: (AIR 1924 Mad 442), a Full Bench case of the Madras High Court, and *Khetsidas Gangaram v. First L.A. Collector, Calcutta* 50 CWN 758: (AIR 1946 Cal 508), a Full Bench decision of this Court, where all the earlier cases of the several High Courts on the point are reviewed. In these cases, it was held that the Collector, acting u/s 18 of the Land Acquisition Act, would not be amenable to the jurisdiction of the High Court u/s 115 of the Code of Civil Procedure, as he would not be a Court, nor, -- at any rate, -- a Court, subordinate to the High Court. It is interesting to note, however, that, even in these two Full Bench decisions, the view is, apparently, accepted that the Collector, acting under Chapter III of the Land Acquisition Act, starting with Section 18, acts as a judicial officer and exercises judicial functions. Indeed, in spite of some opinions to the contrary, the preponderance of judicial opinion has always been that, as Chapter III of the Land Acquisition Act deals with proceedings in Court and starts with Section 18, which initiates the said proceedings, the said section must be held to be part of the judicial machinery. Section 18 has thus been construed, in the majority of cases, to be the first or the initial stage of the judicial proceeding, which ultimately ends in the award of the learned Land Acquisition Judge.

10. The distinction between the two Chapters II and III, the first, as relating to administrative duties, and the second, as concerning judicial duties, has also been stressed in the above two Full Bench decisions. From the trend of discussion in those two cases, it is clear that the Collector's functions u/s 18 of the Land Acquisition Act are, primarily, judicial. This is also obvious from the contents of the said section, under which the Collector has to determine, inter alia, before deciding the question of reference, whether the applicant is a person Interested, so as to entitle him to apply under that section, and whether the application is within time. The first raises a question of status and involves a right of the subject; the second raises a point of limitation and involves determination of the question whether the enforcement of the said right has become time-barred. Both these are, primarily, questions, which appertain to the jurisdiction and] functions of judicial tribunals and, in deciding the said questions, the Collector, obviously, performs judicial functions. This duty of discharging this judicial function has also been entrusted to the Collector under a

statute. Clearly, then, the Collector, acting u/s 18 of the Land Acquisition Act, satisfies the test of a tribunal for purposes of Article 227 of the Constitution, as laid down in the recent Supreme Court pronouncement in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, . In the judgment, delivered in that case, the tests of a tribunal for purposes of Article 227 of the Constitution have been held to be that it must be a body, performing judicial functions, entrusted to it under the statute or under statutory authority. It has been pointed out, in the said decisions, that, for the constitution of a tribunal, the presence of a *lis* is not essential and it may be sufficient if the relevant functions have to be performed for purposes of adjudicating the rights of the subject at the instance of the Government vis-a-vis itself.

11. Applying the said test, in the view, which we have expressed above, the Collector, acting u/s 18 of the Land Acquisition Act, would be a tribunal for purposes of the above Article, as he would be performing judicial functions under the authority of a statute. Nothing more, according to the above Supreme Court decision, is necessary for the purpose of constituting a tribunal under the said Article. In this view, we would hold that the Collector, in the instant cases, would be a tribunal within the meaning of the said Article, and, accordingly, his present order, if otherwise revisable, would be well within the ambit of Article. 227 of the Constitution.

12. Turning now to the other question, namely, on the merits it may at once be stated that the receipts of payment in the instant cases cannot but be held to be receipts under protest. As we have already stated, the claimants applied for such payments, specifically stating that they would receive the same under protest. The receipts of payment, which were ultimately given, were endorsed on the back of those applications. In the circumstances, such receipts must be related to the applications themselves and must be held to be linked with the same and cannot but be held to be receipts under protest. The learned Collector, therefore, erred in the exercise of his jurisdiction in refusing to make references in the instant cases upon the erroneous view that the claimants in question had received payments without protest, so as to disentitle them to apply for references under the specific terms of Section 18 of the Land Acquisition Act.

13. In support, however, of the learned Collector's view, on this point, Mr. Banerjee referred us to two decisions of this Court, one reported in *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah*, , where, Banerjee, J., held, under essentially different circumstances, that the receipts before him were receipts without protest. It is true that there is an observation in the judgment of Banerjee, J., that the protest should be endorsed on the receipt itself, but that observation, in the facts of that case, would be clearly obiter and the said case would, obviously, be distinguishable on its facts. It is unnecessary to say more, so far as this case is concerned, but we would like to add that, if it was intended to hold, in that case, that, unless the protest actually appears in the body of the receipt, the receipt must be taken to be a receipt without protest, we are, with

respect, unable to agree with the said decision, as such statement of the law would be too wide for our acceptance.

14. Mr. Banerjee also relied on the earlier unreported decision of Sinha, J., (as he then was), in Civil Revn. Case No. 1925 of 1957 (Cal) Atul Kumar Bhadra v. State of West Bengal, where, also, some observations were made that, unless the protest was embodied in the receipt, the claimant would be disentitled to a reference on the ground that he had accepted payment without protest. It is to be pointed out, in this connection, that Sinha, J., (as he then was), in his above decision, relied inter alia -- and, in our opinion, mainly -- on affidavits before him and came to a finding upon the same that there was, in the case before him, receipt of payment without protest. Upon that finding, the decision of Sinha, J., (as he then was), in the above case, may be supported. But, if it was meant to lay down the law in the form that, unless the protest was embodied in or endorsed on the receipt itself, the claimant would be out of Court, so far as his prayer for reference is concerned we respectfully differ from the same. Law only requires that the claimant has not accepted payment without protest. If the claimant actually makes an application for receiving the amount or payment under protest and, in pursuance of or following that application, payment is made, and the claimant, as in the instant cases, endorses his receipt of payment on the back of the said application, it would hardly be reasonable to say that the claimant waived his protest and accepted the payment without protest.

15. In the above view, we would hold that we have jurisdiction to interfere with the order of the learned Collector, refusing to make references in the instant cases, and to correct his error of [jurisdiction, which he exercised, in the instant cases, illegally and with material irregularity, upon an erroneous view of the nature of the receipts, given by the claimants, as aforesaid, and we direct that the claimants' applications for references be allowed and the references in question be made by the Collector.

16. The Rules are made absolute as above, but, in the circumstances of these cases, there will be no order for costs in any of them.

Civil Revision Case No. 2225 of 1966.

17. This Rule was disposed of by our judgment, delivered yesterday in inter alia the connected cases, along with which this Rule was heard originally.

18. In the circumstances, the said judgment may be deemed to cover this Rule as well, as already stated by us, and it may be deemed to be disposed of accordingly, no further order being necessary in the matter.