(1965) 01 AHC CK 0013

In the Allahabad High Court

Case No : Special Appeal No. 82 of 1963

Raja Shatranjai — APPELLANT

Vs

Azmat Azim Khan and Others — RESPONDENT

Date of Decision : 15-01-1965

Acts Referred:

Uttar Pradesh Encumbered Estates Act, 1934 — Section 23A, 35
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 70
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 77, 77(1)

Citation : AIR 1966 All 109

Hon'ble Judges : M.C. Desai, C.J;R.N. Sharma, J;Lakshmi Prasad, J

Bench : Full Bench

Advocate : Akhtar Husain and Ali Hasan, for the Appellant; S. Rahman, for the Respondent

Final Decision : Partly Allowed

Judgement

Desai, C.J.—This is an appeal from a judgment of our brother Beg by which he quashed part of an order passed by the Board of Revenue. The father of the respondent was a zamindar of several villages including villages Rahimnagar Grant and Moondasawaran and had mortgaged the two villages with the appellant. On the enforcement of the U. P. Encumbered Estates Act the respondent applied for the benefit of the Act. The Special Judge passed a decree in the appellant''s favour in respect of the mortgage sometime in 1941 and transmitted it to the Deputy Commissioner for execution. He also transmitted a list of the property belonging to the respondent which was liable to attachment or sale in execution of the decree. The liquidation proceedings became protracted on account of appeals from various orders and proceedings for reduction of the decretal amount under the Zamindars Debt Reduction Act. With effect from 1-7-1952 the proprietary rights in the two villages of the respondent vested in the State and he became entitled to compensation u/s 66 of the Zamindari Abolition and Land and Reforms Act.

Section 70 of the Zamindari Abolition and Land Reforms Act lays down that where before any Court or authority any proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the compensation it may require the Compensation Officer to place at its disposal the amount so payable and there upon the same shall be disposed of in accordance with its orders. The respondent''s right to compensation for the two villages was not directly or indirectly affected or likely to be affected by the proceeding pending before the Deputy Commissioner for execution of the decree passed by the Special Judge in the appellant''s favour and he did not (sic) the Compensation Officer to place (sic) disposal the amount of the compensation. On the passing of the Zamindari Abolition and Land Reforms Act Sections 19(2) and 23-A were added in the U. P. Encumbered Estates Act. Section 19 (2) re quires the Special Judge to inform the Collector of the amount of the secured debt which is not legally recoverable otherwise than out of the compensation and rehabilitation grant payable to the landlord in respect of the mortgaged estate and of the nature and extent of the property mentioned in the notice u/s 11 which he has found to be liable to attachment or sale in satisfaction of the debts of the appli cant.

Section 23-A imposes upon the Collector the duty of requiring the Compensation Officer and Rehabilitation Grants Officer to place at his disposal in pursuance of Section 70 of the U. P, Zamindari Abolition and Land Reforms Act the amount of compensation money and rehabilitation grant payable to the landlord in respect of his proprietary rights in land reported to be liable to attachment or sale u/s 19 (2). No action was taken by the Deputy Commissioner in compliance with this provision of Section 23-A. The appellant himself, who was interested in seeing that the Collector required the Compensation Officer to place at his disposal the compensation money, also failed to bring to his notice the provisions of Section 23-A of the Encumbered Estates Act and Section 70 of the Zamindari Abolition and Land Reforms Act. The respondent as an intermediary was entitled to the compensation money and in 1957 took possession of it through zamindari abolition bonds from the Compensation Officer. Then in 1959 the appellant made an application before the Deputy Commissioner in proceedings for execution of the decree in his favour passed by the Special Judge for a direction to the respondent to return the bonds taken by him from the Compensation Officer and to render account for them to the Court, for attachment of his Immovable and Immovable property to extent of the amount of the bonds in the event of his failure to return them and certain other directions with which we are not concerned in this special appeal. He contended that the decree passed in his favour was liable to be discharged out of the compensation money payable to the respondent, that the respondent fraudulently received the bonds from the Compensation Officer without informing him of this fact and that he was not entitled to the bonds because they were meant for execution of the decree passed under the U. P. Encumbered Estates Act.

2. The Deputy Commissioner dismissed the application saying that after the

delivery of the bonds by the Compensation Officer to the respondent it was impossible to take any action as required by Section 70 of the Zamindari Abolition and Land Reforms Act read with Section 23-A of the U. P. Encumbered Estates Act. His order was maintained on appeal by the Commissioner. The appellant then applied to the Board to revise the order of the Deputy Commissioner and the Commissioner. u/s 46 (2) the Board may on an application filed by any person concerned on any of the grounds mentioned in Section 100(1) of the CPC "call for the record of proceedings of any case under this Act which. . . .has been decided by" a Deputy Commissioner or a Commissioner and pass such order thereon "consistent with the provisions herein contained as it thinks fit". The Board of Revenue allowed the application and directed the Deputy Commissioner to take action under one or both of the following modes for liquidation of the debt due from the respondent:--

(1) Direct all Treasuries to stop payment of money on installments as they fell due on Zamindari Abolition bonds.

(2) Attach moveable and Immovable property belonging to the respondent for liquidation of the debt.

There was one more direction with which we are not concerned.

3. The respondent feeling aggrieved by this order of the Board of Revenue applied for certiorari which has been granted by our brother Beg. His order is challenged by the appellant in this appeal.

4. The charge levelled by the appellant against the respondent that he acted fraudulently in taking delivery of the bonds is groundless. The respondent was entitled to the bonds u/s 66 of the Zamindari Abolition and Land Reforms Act and in the absence of an order u/s 70 of the Act or Section 23-A of the Encumbered Estates Act the Compensation Officer was bound to deliver them to him. He was relieved from this obligation only if a direction had been given to him u/s 70 or Section 23-A by the Deputy Commissioner. It is to be noted that he was relieved from the obligation only if such a direction had been given to him and not by the mere fact that such a direction could be given to him. Admittedly no such direction had been given to him and, therefore, he was not relieved from the obligation and the respondent was entitled to take delivery of the bonds. When he got what he was entitled to, it could not possibly be said that he committed fraud. He was not required to inform the Compensation Officer that a direction could be given to him u/s 70 read with Section 23-A by the Deputy Commissioner because this fact was, as explained above, immaterial.

Actually the appellant himself was responsible for the bonds being delivered to the respondent instead of their being placed at the disposal of the Deputy Commissioner, because when the Deputy Commissioner failed within a reasonable time to give direction u/s 70 read with Section 23-A it became his duly to remind him of his obligation. When he himself was negligent he could not accuse the respondent of fraud. Both Sections 70 and 23-A presuppose that the bonds are still in the Compensation Officer''s possession and have not been already delivered to the intermediary entitled to them. The Compensation Officer can place them at the disposal of the Deputy Commissioner only if he has them in his custody; if he has already delivered them to the intermediary he cannot possibly place them at the Deputy Commissioner''s disposal. He has not been given any power to get them back from the intermediary and the reason is obvious. Once they have been already delivered to a person, the person found by the Court or authority to be entitled to them must seek his remedy in a Court of law for recovering their possession.

There is no reason why instead of his proceeding to recover them from the person to whom they were delivered the Compensation Officer should be asked to take proceedings for their recovery. The sole object behind the provisions of Sections 70 and 23-A is to prevent the delivery pending decision of the dispute before the Court or authority. Consequently the provision of neither section can be applied after the bonds have been delivered to the intermediary. The Deputy Commissioner and the Commissioner rightly rejected the appellant''s application on the ground that no direction could possibly be made by them under either of the two sections and the Board acted illegally in setting aside their orders.

5. A Collector executing a decree under Chapter V of the Encumbered Estates Act has power to proceed against the debtor''s property other than proprietary rights in land. He cannot proceed against his proprietary rights in land and, therefore, it cannot be said that the execution proceeding pending before him directly or indirectly affects or is likely to affect the right of the debtor to receive the whole or part or the compensation and he cannot issue a direction u/s 70 to the Compensation Officer. That is why the legislature enacted Section 23-A conferring upon him such a power and Section 23-B authorising him to expend or utilise the compensation amount in liquidation of the debtor''s debts. The Deputy Commissioner could give a direction u/s 23-A only so long as the bonds were in the Compensation Officer''s custody. After they had been delivered to the intermediary debtor all that the Deputy Commissioner could do was to attach them, if they could be attached under the Encumbered Estates Act. They could not be attached either as a substituted security for the proprietary rights previously owned by him or as movables under Chapter V. They could not be attached as substituted security because he could not proceed against the proprietary rights in execution of a decree.

He could not attach them as moveables because they were not mentioned by the Special Judge in the list of the respondent''s property liable to attachment and sale. The Special Judge had prepared the list in 1941 long before the Zamindari was abolished and the compensation bonds came into existence. The Deputy Commissioner in execution of the decree under Chapter V could proceed only against the property mentioned by the Special Judge as liable to attachment or sale; he had no jurisdiction to proceed against any other property even if it belonged to the debtor or was in his possession. So it was not possible for the

Deputy Commissioner to get the bonds attached from the respondent''s possession when proceeding under Chapter V of the E. E. Act.

6. The Deputy Commissioner had thus no jurisdiction over the bonds and the Board of Revenue could not direct him to order all treasuries to stop payment of installments due on the bonds. If he could not proceed against them he could not direct the treasuries not to pay the installments due on them. The first direction given by the Board was, therefore, without jurisdiction. As soon as an installment fell due on the bonds it became movable property and the Deputy Commissioner had no jurisdiction over it because it was not mentioned by the Special Judge in the list of property liable to attachment or sale.

7. The second direction given by the Board also was beyond its jurisdiction. In execution of the decree passed by the Special Judge the Deputy Commissioner could proceed only as laid down in Chapter V, E. E. Act and could not attach any Immovable property of the respondent except as permitted by the provisions contained in it. Under the provisions contained in it his right to attach was restricted to the property mentioned by the Special Judge as liable to attachment or sale in execution of the decree. Our brother Beg rightly cancelled both the directions.

8. It is undoubtedly true that the Deputy Commissioner defaulted in performance of the duty imposed upon him by Section 23-A, but it does not follow that this default enhanced the power of the Board of Revenue so that it could pass an order not contemplated by the law. The Deputy Commissioner could not by his own default enhance his powers so as to be able to proceed against the property not mentioned in the list prepared by the Special Judge. The appellant was undoubtedly prejudiced by the Deputy Commissioner''s default but the Deputy Commissioner could give him redress only if he could do so without infringing any provision of the law. The appellant was not entitled to any sympathy because he himself was to blame. Consequently the principle that it is a paramount duty of a Court to see that no party is injured by its wrongful act does not apply in the instant case.

9. In the result the appeal should be dismissed but in the circumstances of the case I could make no order as to costs.

10. L. PRASAD, J. : This is an appeal from the judgment of an Hon''ble Judge or this Court by which the order of the Board of Revenue elated the 30th August/6th September, 1960 has been quashed in part.

11. I have had the advantage of going through the judgment of my Lord the Chief Justice. It is my misfortune that I do not find myself able to agree that the appeal deserves to be dismissed in its entirety.

12. The facts of the case are detailed in the judgment of my Lord the Chief Justice. I need not repeat mem. Still I may mention them in brief to make my judgment intelligible.

13. The appellant holds a decree against the respondent No. 1 passed by a Special Judge in the proceedings under the U. P. Encumbered Estates Act on the basis of a mortgage executed by the father of respondent No. 1 in favour of the appellant. Before any direction could be issued by the Collector as envisaged by Section 23-A of the Encumbered Estates Act to the Compensation Officer regarding the zamindari compensation bonds in respect of the property mortgaged under the said mortgage, the respondent obtained delivery of these bonds from the Compensation Officer. This happened sometime in 1957. In April. 1959 an application was moved on behalf or the appellant before the Collector for a direction to the respondent to return the bonds. The application was dismissed on the ground that the Collector had no power to pass such an order. The appellant went up in appeal before the Commissioner who upheld the order of the Collector. The appellant then went in revision before the Board of Revenue which allowed the application in revision and passed an order indicating the following modes for liquidation of the debts due from the respondent:--

"(i) To stop payment of money of installments of the bonds by the treasuries.

(ii) To direct the Compensation Officer to hand over bonds of the face value of Rs. 32,000/-reported to be remaining with him for liquidation of debts.

(iii) To attach moveable and Immovable properties belonging to the petitioner and his brother for liquidation of debts."

14. Aggrieved by the aforesaid order of the Board of Revenue the respondent moved a petition for a writ of certiorari seeking that Instructions Nos. (i) and (iii) of those mentioned above be quashed. The Hon''ble Judge who heard the petition allowed it and hence the appellant who figured as a respondent before the Hon''ble Judge has come up in appeal.

15. If I may say so, respectfully, I agree to the conclusion arrived at by my Lord the Chief Justice so far as direction (iii) of those mentioned above is concerned. I agree that in giving the aforesaid direction the Board acted without Jurisdiction and as such the respondent is entitled to have the same quashed. However, I feel difficulty in accepting the contention of the respondent in regard to his prayer for the cancellation of direction No. (i) mentioned above. If it could be shown that in executing the decree held by the appellant the Collector had power to realise the amount due under the compensation bonds for the satisfaction of the decree then, obviously, the steps suggested by the Board in the above mentioned direction No. (i) would be within the competence of the Collector and hence the Board could legally make that suggestion in the exercise of its revisional jurisdiction on finding that the Collector who had jurisdiction to act in a particular manner to grant redress in the matter, failed to do so. I shall, accordingly, come to the question if or not a Collector executing a decree under Chapter 5 of the Encumbered Estates Act has power to demand the amount payable under the compensation bonds for the satisfaction of the decree passed by a Special Judge.

15a. It has been contended on behalf of the respondent that a Collector executing a decree under Chapter 5 of the Encumbered Estates Act has power to proceed against the debtor''s property other than proprietary rights in land. This contention is, obviously, based on the phraseology of Sub-section (1) of Section 24 of the Encumbered Estates Act. It, however, ignores the position that u/s 24 the Collector has been given power to realise the value of the debtor''s property and for doing so, under Sub-section (4) of the same section the Collector has been given all the powers of a civil Court for the execution of a decree. So the proprietary rights in land have been designedly excluded from Section 24(1) with a view not to allow the Collector to realise the value of such rights in land. That does not, however, mean that the Collector executing a decree under Chapter 5 of the Encumbered Estates Act has no power to proceed against the proprietary rights in land.

Sections 25 to 28 of the Act as it stood prior to the amendments incorporated in it by Act XIII of 1954, clearly indicate that the Collector had power to proceed against the proprietary rights in land in liquidation of the debts due from the debtor though, of course, only in the manner provided for in the aforesaid provisions. These provisions, obviously, became redundant since after the abolition of zamindari as a result of which compensation became payable to the proprietors with the result that many other amendments were introduced in the Act. By Act XIII of 1954, Section 25 to Section 28 came to be deleted and Sections 23-A and 23-B came to be incorporated. As I read Section 23-A, I find that it only lays down a rule of procedure and does not confer a right otherwise non-existent. The well known principle of substituted security as incorporated in Section 73 of the Transfer of Property Act does not appear to have been abrogated by any provision in the Encumbered Estates Act either as it stood before its amendment by Act XIII of 1954 or as it stands since after the said amendment.

Had there been no abolition of zamindari and consequently no occasion for making amendments in the Act as done by Act XIII of 1954, could it be maintained over for a moment that the compensation money received by the debtor under the Land Acquisition Act for the compulsory acquisition of his part or whole of proprietary rights in land could be taken away by him and the creditor could get no part of it in the proceedings under Chapter 5 of the Encumbered Estates Act. I think the answer is, obviously, in the negative. Once a mortgage is made, an interest in the mortgaged property is created in favour of the mortgagee and only the equity of redemption remains with the mortgagor, if that mortgaged property is substituted by another, say, in the form of money paid as compensation for its compulsory acquisition, while the mortgage is still subsisting, such compensation must necessarily be first applied towards the discharge of the debt due under the mortgage and the mortgagor can have only the balance, if any.

That position clearly obtained under the Encumbered Estates Act as it stood prior to its amendment in 1954. In that connection a reference may be made to the provisions of Section 79(2) and Sections 25 to 28 of the Act as it stood prior in the amendment made in it "in 1954. I am unable to find anything either in the amending Act of 1954 or in the provisions incorporated in the principal Act by the amendment Act to affect that position.

16. Section 70 of the U. P. Zamindari Abolition and Land Reforms Act clearly provides that where before any Court or authority any suit or proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the compensation determined under Chap. III, the Court or authority may require the Compensation Officer to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such Court or authority. Obviously, this provision has bean incorporated in Chapter IV of the U. P. Zamindari Abolition and Land Reforms Act with a view to disentitle a debtor to claim compensation otherwise payable to him u/s 66 of the said Act. In a proceeding pending before the Collector for the liquidation of debt under Chapter 15 of the Encumbered Estates Act, the debtor''s right to receive compensation is no doubt not in dispute. But it can by no means be said that it is not affected even indirectly. Having in view the legal position that a mortgagor has no right to receive compensation payable for the acquisition of the mortgaged property without discharging the subsisting mortgage, the wide phraseology of Section 70 of the U. P. Zamindari Abolition and Land Reforms Act has to be interpreted to include a case like that of the respondent.

Even Section 23-A of the Encumbered Estates Act says that the Collector shall require the Compensation Officer to place at his disposal in pursuance of Section 70 of the U. P. Zamindari Abolition and Land Reforms Act the amount of compensation money and so on. I am, therefore, of opinion that the right to require the Compensation Officer to place at the disposal of the Court or authority before which any suit or proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the compensation determined under Chapter III is conferred by Section 70 of the U. P. Zamindari Abolition and Land Reforms Act and Chapter 5 of the Encumbered Estates Act, which in effect prescribes the procedure for liquidating the debts of a person who has applied under the Encumbered Estates Act, does not create any substantive right which cannot be availed of otherwise than in accordance with the strict compliance with the provisions of the said Chapter.

Here we are concerned with Section 23-A which, as I have already said, appears to lay down only a rule of procedure. It is manifest from its language that it places an obligation on the Collector to take action as provided therein in pursuance of Section 70 of the U.P. Zamindari Abolition and Land Reforms Act in order to be able to apply the compensation payable to the intermediary towards his secured debts. It may be that the requirements of Section 23 A could be effectively and without any difficult complied with only till before the delivery of the compensation bonds had been taken by the debtor intermediary. That does not, however, in my view, mean that no action can be taken by the Collector to achieve that object once the delivery of the compensation bonds has been taken by the debtor intermediary. I concede that to take any punitive action there must be express and specific authority of law. To direct treasuries not to make payment of the installments due under the compensation bonds to the respondent is neither a punitive action nor in contravention of any of the rights possessed by the respondent.

I say so because the right of the respondent to get compensation u/s 66 of the U.P. Zamindari Abolition and Land Reforms Act is subject to what has been provided for in Section 70 of the said Act and that provision of Section 70 is, obviously, in consonance with the general legal position as already indicated above. If the Collector could realise the installments due under the compensation bonds and apply the same towards the discharge of the debts due to the appellant, I fail to see as to how the mere transfer of physical possession of the bonds to the respondent prevents the Collector from realising the installments due under the compensation bonds by issuing a direction to the treasuries to make the payment to him and not to the respondent. Such a procedure does not appear to be, in any manner, repugnant to any provision in Chapter 5 of the Encumbered Estates Act, if at all it is calculated to implement the object envisaged by Section 23-B of the Encumbered Estates Act. If what the respondent could not get having in view the legal position in preference to the appellant, I fail to see as to how he can get it by merely obtaining the delivery of bonds from the Compensation Officer.

In my view the instruction No. (i) given by the Board of Revenue by virtue of the order under consideration is not repugnant to any provision of the Encumbered Estates Act and is rather calculated to achieve the object envisaged by Chapter 5 of the Encumbered Estates Act. As such it cannot be said that the Board had no jurisdiction to pass such an order or that the order is one which requires to be quashed in exercise of the writ jurisdiction of this Court. I would, accordingly, allow the appeal in part and quash the order of the Board dated 30th August to 6th September, 1960 only in so far as it relates to direction No. (iii) mentioned above. In these circumstances, I would direct the parties to bear their own costs.

17. BY THE COURT: Since we disagree on the question whether the direction No. 1 given by the Board of Revenue was beyond its jurisdiction and deserves to be cancelled we direct this question to be laid before the Hon. the Chief justice for referring it to a third Judge for his opinion on the question. On receipt of his opinion on the question the appeal shall be listed before us for final orders.

18. R.N. SHARMA, J. : This is a special appeal from the judgment of my brother Beg, J. On difference of opinion between my Lord the Chief Justice and my brother Laxmi Prasad J. the following question has been referred to me as a third Judge for opinion.

"Whether the direction No. 1 given by the Board of Revenue was beyond its jurisdiction and deserves to be cancelled"?

I have heard the learned counsel for the parties and have perused the two judgments. Although the facts of the ease are fully set out in the two differing judgments, they may be stated here briefly. The father of respondent No. 1 had executed a simple mortgage of two villages with the appellant. On the enforcement of the U.P. Encumbered Estates Act the father of respondent No. 1 applied u/s 4 of this Act for the liquidation of his debts. The appellant as a creditor obtained a decree for Rs. 1,31,040/1/- plus costs in the proceedings under the aforesaid Act. It was transferred to the Collector for liquidation and during the pendency of the liquidation proceedings the father of respondent No. 3 died leaving respondent No. 1 and another son as his heirs. During the pendency of the proceedings the U.P. Zamindari Abolition and Land Reforms Act came into force whereby the proprietary rights of intermediaries vested in the State and the intermediaries became entitled to receive compensation in lieu thereof.

Section 70 of the U. P. Zamindari Abolition and Land Reforms Act lays down that where before any court or authority any suit or proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the compensation determined under Chapter III, the court or authority may require the Compensation Officer to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such court or authority. It is an admitted fact that the Collector before whom the proceedings were pending for liquidation of debts, did not require the Compensation Officer to place at his disposal the amount of compensation payable to the respondent. The appellant too docs not appear to have made any request to the Collector in this behalf. Rule 77 (1) of the U. P. Zamindari Abolition and Land Reforms Rules requires the Compensation Officer to issue a notice to the intermediary directing him to take delivery of bonds and/ or receive payment in cash on a specified date.

The respondent accordingly took delivery of the compensation bonds of the value of Rs. 42,750/- from the Compensation Officer while his brother received bonds of the value of Rs. 21,250/-. Thus the two brothers together received compensation bonds of the total value of Rs. 64,000/-. Later the present appellant made an application to the Collector praying that the petitioner and his brother be ordered to return the aforesaid bonds which they had received from the Compensation Officer failing which their moveable and Immovable properties to the extent of these bonds be attached for liquidation of their debts. On contest by the respondent the application was rejected by the Collector on the ground that after the bonds had been made over to the respondent the Collector had no jurisdiction to take any action in the matter. An appeal was preferred to the Commissioner which too was dismissed. Then the present appellant went in revision before the Board of Revenue. The latter allowed the revision and directed the Collector to take action under any of the three modes of liquidation of the debts as specified in the Board''s order. One of them was to direct all treasuries to stop payment to the respondent of money on installments as they fell due on the zamindari abolition bonds. The question referred to me is with regard to the validity of this direction.

19. The contention of the respondent is that this direction of the Board was illegal and in excess of its jurisdiction while the contention of the appellant is that the respondent was not entitled to these bonds and because he fraudulently obtained them from the Compensation Officer and he has failed to return them the Collector can exercise such powers for realising the amount of the bonds and making it available for liquidation of debts.

20. For appreciating the legal position reference to certain provisions of law is necessary. Sub-section (2) of Section 19 of the U. P. Encumbered Estates Act lays down that the Special Judge shall inform the Collector of the amount of the secured debt which is not legally recoverable otherwise than out of the compensation and rehabilitation grant payable to the landlord in respect of the mortgaged estate. The manner of execution of decrees and liquidation of debts is laid down in Chapter V of this Act. On the enforcement of the Zamindari Abolition and Land Reforms Act a provision similar to that contained in Section 70 of the U. P. Zamindari Abolition and Land Reforms Act was made in a newly added Section 23-A of the U. P. Encumbered Estates Act. Section 23-A lays down that the Collector shall require the Compensation Officer and Rehabilitation Grants Officer as may be necessary to place at his disposal in pursuance of Section 70 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, the amount of compensation money and rehabilitation grant payable to the landlord in respect of his proprietary rights in land reported to be liable to attachment or sale under the provisions of Sub-section (2) of Section 19.

It was therefore the duty of the Collector to require the Compensation Officer and Rehabilitation Grants Officer to place the amount of compensation at his disposal. According to Sub-section (1) of Section 23-B the amount or the bonds received by the Collector in pursuance of the requisition u/s 23-A shall be expended or utilised by the Collector in liquidation of the amount or the secured debt which having regard to the provisions of the U. P. Zamindar''s Debt Reduction Act, 1952, was secured on the proprietary rights in land in respect of which such money has been received. Even though the appellant does not appear to have reminded the Collector of his duty under the provisions of Section 70 and Section 23-A aforesaid it was for the Collector himself before whom the proceedings were pending, to do the needful. Section 23-A makes it mandatory for the Collector to require the Compensation Officer etc. to place the amount of compensation money and rehabilitation grant at his disposal. The words used are "shall require".

It is no doubt true that the unfortunate position as it exists now would not have happened if the appellant had reminded the Collector of his duty, but the provisions of the two Acts or the Rules nowhere impose a duty on the creditor to apply to the Collector for requiring the Compensation Officer to place the amount at his disposal. If, therefore, the appellant did not remind the Collector of his duty, he cannot be held to be at fault and made to suffer for not doing a thing which he was not required to do. On the enforcement of the Zamindari Abolition and Land Reforms Act and the amendment in the U. P Encumbered Estates Act the Collector was expected to know the provisions of these laws and to act according to them.

21. Section 3-5 of the U. P. Encumbered Estates Act which occurs in the same Chapter V requires a person entitled to possession of any property under the provisions of this Act to apply to the Collector to be put in possession of such property but no duty has been cast on a creditor to remind the Collector for performing his duty u/s 23-A.

22. The Collector had before him the list of the properties of the debtor and he should have known that the mortgage debt was secured on the debtor''s zamindari property and he should have taken judicial notice or the fact that compensation would be payable to the debtor in lieu of the vesting of the zamindari in the State. The learned counsel for the respondent has argued before me that the opening words of Section 23-A of the U. P. Encumbered Estates Act should be read as follows:

"The Collector shall on an application of the creditor require the Compensation Officer ...."

Similarly he wants me to read the words "the court or authority may require the Compensation Officer" occurring in Section 70 of the Zamindari Abolition and Land Reforms Act as "the court or authority may on an application of the creditor require the Compensation Officer". I do not at all agree with the learned counsel. It is the function of a court to interpret the language of the law as it is and not to ark to or subtract from the language used by the Legislature. In other words, courts cannot legislate and they can only interpret the laws. I will not therefore read these provisions as contemplating an application to be moved by the creditor in order to remind the Collector of his duties. The failure of the appellant to make an application does not, in my opinion, extinguish his rights that he had in the properly secured by the mortgage. By rights I mean the rights left after the abolition of zamindari.

23. Sub-section (1) of Section 24 of the U.P. Encumbered Estates Act lays down that the Collector shall then realise the value of such of the debtor''s property other than proprietary rights in land as shall have been reported by the Special Judge under the provisions of Sub-section (2) of Section 19 to be liable to attachment or sale. Obviously the bonds could not have been reported by the Special Judge under the provisions of Sub-section (2) of Section 19 to be liable to attachment or sale because the decree in this case had been sent to the Collector for execution before the coming into force of the Zamindari Abolition

and Laud Reforms Act when there was no question of payment of compensation. However, on a strict interpretation of Sub-section (1) of Section 24, the bonds in the hands of the respondent cannot be attached and sold because they were not included in the report of the Special Judge.

The fact however remains that under the provisions of Section 70 of the Zamindari Abolition and Land Reforms Act and Section 23-A of the U. P, Encumbered Estates Act the compensation bonds should have been sent for by the Collector from the Compensation Officer. Under Sub-rule (1) of Rule 77 of the U. P. Zamindari Abolition and Land Reforms Rules, the Compensation Officer could have delivered the bonds to the respondent but Rule 77 shall be read subject to the provisions of Section 70 of the Zamindari Abolition and Land Reforms Act and Section 23-A of the U. P. Encumbered Estates Act. In effect the position is that the respondent obtained possession of the bonds which he could not get under the law. The respondent should also be presumed to have been aware of the provisions of the law under which he was not entitled to obtain the delivery of the bonds. He acted wrongfully in obtaining those bonds. If the compensation bonds are stolen, the person entitled to them can obtain new bonds in lieu thereof. There is thus no reason why a person who wrongfully obtains delivery of the bonds from the Compensation Officer should not be made to return mem. If he does not return them, other steps can be taken by the Collector in exercise of his inherent powers to recover the amount of those bonds payable in installments.

24. As stated above Sub-section (1) of Section 23-B clearly lays down that without prejudice to the provisions of Section 8 of the U.P. Zamindars Debt Reduction Act, 1952, the amount or the bonds on account of compensation or rehabilitation grant received by the Collector in pursuance of the requisition u/s 23-A shall be expended or utilised by the Collector in liquidation of the amount of the secured debt etc. Thus whether it be the amount or it be the bonds, they can be expended or utilised in liquidation of the amount of secured debt. The words, however, used in this Sub-section are "received by the Collector in pursuance of the requisition u/s 23-A". It may be said that in this case the amount or the bonds were not actually ''received'' by the Collector. It may be so but because under the law he could receive them and even if the bonds had not been physically received by him, the amount of the bonds that is now payable in installments can still be received by the Collector and he can therefore direct the payment of the installments to himself. The installments that will now come to the Collector will be the amount ''received'' by the Collector. The installments are payable under the bonds and even though the bonds could not be received by the Collector he can still receive their amount.

25. It has been rightly contended before me by the learned counsel for the appellant that it is the duty of courts to see that no injury is caused to a litigant by reason of their omissions or laches and the courts should do all that may be necessary to give the just relief to the litigant. I have already discussed above

that it was none of the duties of the appellant to remind the Collector that he had to ask the Compensation Officer to send him the amount or bonds of compensation and it was for the Collector himself to take necessary action in the matter. Lord Cairns observed in the case of Rodger v. Comptoir D''Escompte De Paris (1871) 3 CP 465 as follows.

"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".

This case was referred to by the Supreme Court in V.G. Paterson Vs. O.V. Forbes and Others, . In V.G. Paterson Vs. O.V. Forbes and Others, the property of a contemner was attached to secure his presence in court, The property attached consisted of some Government Promissory Notes and a cash deposit. The contemner died while the attachment had not been withdrawn. The G. P. Notes and the cash amount were placed at the disposal of the State Government. The Government refused to return them to Forbes'' lawful heirs after his death. The Supreme Court observed as follows AIR All LJ 698.

"This is not a case where there are conflicting claims between two parties which have been decided by a judgment or order of the Court as between the parties. The question really is whether the rightful owner of the property would have it or the Government which has come into possession of the property without being a claimant to it because of an erroneous order of the court should retain it, if it is found that the order was wrong. In our opinion, this question must be answered in favour of the rightful owner of the property."

Further in paragraph AIR All LJ 434 their Lordships observed.

"We cannot see what legitimate grievance the State of U. P. can have against this. It had no title to the attached property and it would have had no control over it, except for the mistaken application of the provisions of Section 88(7) of the Code of Criminal Procedure. If now it is found that the Court had made a mistake, first, in attaching the property in question and secondly, even apart from that, in directing the property to be in made over to Government, the Government cannot legitimately object to the Court correcting this mistake. It would be deplorable if in circumstances like these the Court would find itself helpless to correct its mistake and to order restoration on an application being made to it in that behalf. In our opinion, the applicant is entitled to an order for restoration of the attached property."

26. In a recent Bench decision of this High Court in Parahu v. Deputy Director, of

consolidation U. P. 1964 All LJ 240 it was held that where in a revision the Deputy Director of Consolidation acted in excess of jurisdiction vested in him u/s 48 of the Consolidation of Holdings Act but his order was proper, equitable and a just order, the High Court should not issue a writ for setting aside such an equitable order. In my view, the direction of the Board of Revenue was in the circumstances proper, equitable and just. The Collector should have required the Compensation Officer and Rehabilitation Grants Officer to place at his disposal the amount of compensation money and rehabilitation grant payable to the respondent but he failed to perform his duty and the debtor managed to take delivery of the bonds from the Compensation Officer. In order to do full justice to the creditor the Board of Revenue issued the impugned direction there- by facilitating the diversion of payment of installments to the Collector so that they could be utilised for liquidation of debts. In my opinion the Board''s direction calculated to do substantial justice in the matter was just and proper and does not call for interference.

27. My opinion on the question referred, therefore, is that the direction No. 1 given by the Board of Revenue was not beyond its jurisdiction and does not deserve to be cancelled.

28. This opinion shall now be laid before the Bench concerned.

29. BY THE COURT : For the reasons given in our judgments dated October 26, 1964, we uphold the order of the learned single Judge cancelling direction No. 3 of the three directions given by the Board of Revenue. In view of the opinion of the third Judge we allow the appeal in part and set aside the order of the learned single Judge cancelling direction No. 1 given by the Board of Revenue. Costs shall be easy.

