

(1961) 11 AHC CK 0029
In the Allahabad High Court
Case No : Special Appeal No. 123 of 1960

Raja Srinivas Prasad Singh	Vs	APPELLANT
S.D.O. and Another		RESPONDENT

Date of Decision : 21-11-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, Order 9 Rule 13, 151
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 164
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 341, 343, 343(1), 43, 46

Citation : AIR 1962 All 590 : (1962) 32 AWR 475

Hon'ble Judges : B. Dayal, J; A.P. Srivastava, J

Bench : Division Bench

Advocate : R.S. Pathak, G.S. Pathak and S.B. Johari, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.P. Srivastava, J.—This is a petitioner's special appeal against an order of a learned single Judge of this Court dismissing his petition under Article 226 of the Constitution.

2. Prior to the abolition of Zamindari in this State the appellant owned extensive zamindari interests in two tahsils of the Mirzapur district, viz., Tahsil Mirzapur and Tahsil Chunar. On the coming into force of the Zamindari Abolition and Land Reforms Act, 1950 with effect from the 1st July 1952 the State acquired all the proprietary interests of the appellant in his zamindari properties and under the provisions of the Act the appellant became entitled to compensation. The Sub-Divisional Officers of the Mirzapur and the Chunar tahsils who were functioning as compensation officers under the Act prepared draft compensation assessment rolls which were duly notified as required by the Act. The appellant filed objections to the draft rolls and contended that the amount of compensation payable to him should have been fixed at higher figures. According to the

appellant, when these objections were heard by the compensation officers the State was represented by the Naib Tahsildars of the two tahsils but the allegation is not accepted on behalf of the State and the authority of the Naib Tahsildars to represent the State during the hearing of the objections is also disputed. It is, however, conceded that the compensation officers heard the various objections filed. The objections in respect of some villages were accepted while those in respect of other villages were rejected.

As no appeals were preferred against the orders allowing the objections those orders became final. The compensation assessment rolls in respect of the villages lying in Tahsil Mirzapur were signed and sealed on various dates, the last date being 31st January 1955, and the total amount by which the appellant's compensation in respect of the villages lying in that tahsil was enhanced was about Rupees 3,01,348/5/-. The compensation rolls in respect of the villages lying in Tahsil Chunar were also signed and sealed on various dates and the amount of compensation payable to the appellant was increased by several thousands. The compensation bonds in respect of the villages in the Chunar Tahsil were even handed over to the appellant by the 22nd July 1955. Some of the bonds to which the appellant became entitled in respect of his villages in Tahsil Mirzapur were also received by him before the 22nd July 1955 but bonds worth about 3 1/2 lacs were still to be delivered.

On the 22nd August 1955 two applications were filed on behalf of the State before the two compensation officers praying that the orders accepting the appellant's objections in respect of the draft compensation assessment rolls be set aside and the objections be restored to their original numbers for the purpose of rehearing. The ground on which the restoration was claimed was that no notice of the objections had been issued to the State and the State having no knowledge of the objections having been filed could not appear to contest them. It was alleged that the State came to know of the orders passed in respect of the objections for the first time on the 22nd July 1955. The appellant opposed these applications for restoration on grounds of fact as well as law.

The question of fact he raised was that the State knew of the objections and that the Naib Tahsildars on behalf of the State had actually taken part in the hearing of the objections. As it was the case of the appellant that there were documents in the possession of the state and its officers which could conclusively show that the State and its officers had full knowledge of the objections filed by the appellant, on the 11th November 1955 the appellant made an application to the compensation officer, Tahsil Mirzapur, for the discovery and production of certain documents: mentioned in the application. The application was made under Rules 12 and 14 of Order XI of the C. P. C. Earlier, on the 23rd September 1955 and the 4th October 1955 the appellant had also applied for the inspection of the records of the compensation officers. The applications for discovery and production were orally opposed and without filing an affidavit the State claimed privilege under Sections 123 and 124 of the Indian Evidence Act in respect of the

documents which the appellant wanted to be produced. The applications for inspection, discovery and production were rejected by two orders dated the 11th November 1955.

A similar application for discovery and production was made before the compensation officer of Tahsil Chunar on the 15th December 1955. This application was also opposed on the ground that the documents were privileged and could not be produced. This application for discovery and production was also rejected by the compensation officer, Chunar, on the 5th January 1955. Subsequently, the cases pending before the compensation officers of Tahsil Mirzapur and Tahsil Chunar were consolidated by an order of the District Judge dated the 6th October 1956 and all the cases were directed to be heard by the Sub-Divisional Officer, Mirzapur, who was the compensation officer of Tahsil Mirzapur.

On the 22nd August 1957 the appellant filed two fresh applications for discovery, production and inspection under Order XI of the C. P. C. Some of the documents mentioned in these applications were new documents which had not been mentioned in the earlier applications. On the 31st August 1957 the State filed objections to these fresh applications and one of the grounds urged was that similar applications having already been rejected the fresh applications were not maintainable. Privilege was also claimed in respect of the documents mentioned in the applications.

Sri R.K. Misra, the compensation officer, Tahsil Mirzapur, was requested to decide as a preliminary issue the question whether in view of the earlier rejection of the applications for inspection, discovery and production the fresh applications with those prayers were maintainable. By his order dated the 12th October 1957 Sri R.K. Misra held that he could reconsider the question and directed the State to file its objections to the fresh applications. Before Sri Misra could decide the matter he was transferred and replaced by Sri C.D. Upadhyaya as compensation officer, Tahsil Mirzapur, Sri Upadhyaya by his orders dated the 31st March 1958 took a different view in respect of the matter. He set aside the order of his predecessor Sri Misra by which the latter had decided to reopen the question and being of opinion that the controversy could not be reopened, Sri Upadhyaya rejected the two applications made by the appellant for discovery, inspection and production on the 22nd August 1957.

The appellant then filed the petition out of which this appeal has arisen. A perusal of the grounds mentioned in the petition and the reliefs claimed therein will show that the scope of the petition, as it was framed, was limited. Eight of the nine grounds" mentioned in the petition related to the question of inspection, discovery and production and contained the reasons for which the order of Sri Upadhyaya dated the 31st March 1958 was being challenged. Besides the prayer for interim relief and costs, the main prayers in the petition were:

(1) To issue a Writ in the nature of certiorari to respondent No. 1 to bring up his

order dated 31st March, 1958 for being quashed;

(ii) to issue a Writ in the nature of mandamus or any other direction to respondent No. 1 to hear and decide the petitioner's application under Order XI, Rules 12 and 14, C. P. C. in accordance with law; and

(iii) to issue any other writ, order or direction that may be deemed fit and proper.

The ninth ground mentioned in the petition was in a sense wider. It said:

"(9) Because the respondent No. 2 is in the position of a plaintiff and no question of subsequent knowledge of the date of hearing can apply in his case even if it be held that the objections filed by the petitioner were decided ex-parte."

3. Though in the petition as it stood at that time there was no prayer for quashing the entire proceedings started by the applications of the State for restoration of the objections filed by the appellant for the purposes of their being reheard, this ninth ground could be said to relate to that matter. Two additional grounds Nos. 10 and 11 were permitted to be added to the petition by an order dated the 5th May 1958. The tenth ground also related to the matter of production of documents but the eleventh ground was:

"(11) Because the assessment rolls have become final and they cannot be reopened at this stage."

The addition of this eleventh ground had the effect of increasing considerably the scope of the Writ petition. The scope was no longer confined to the question of inspection, discovery and production or to the validity, of the orders of the 31st March 1958. By the addition of this ground the entire question as to whether the State could get the objections of the appellant restored to their original numbers for the purpose of rehearing got included within the scope of the petition. A subsequent application was made for adding a relief to the prayer also. The new relief was that the entire proceedings for the restoration of the objections be quashed by a writ of certiorari. This application for amending the prayer was directed to be put up along with the petition at the time of hearing. Apparently when the petition was heard this application for amending the prayer was not pressed and no orders were, therefore, passed in respect of it. The prayer for amending the relief was not pressed at the time of the hearing of the appeal also as it was contended on behalf of the appellant that the third general relief claimed in the petition as it was originally framed was enough to entitle the court to issue a proper writ or direction if it was satisfied that a case for the issue of that writ or direction had been made out.

4. It appears from the judgment of the learned single Judge that when the petition was argued before him the question of reopening the matter relating to discovery, inspection and production and of the validity of the orders of Sri Upadhyaya dated the 31st March 1958 somehow got relegated to the background. The question which was put in the forefront was the larger question whether the compensation officer had jurisdiction to consider the applications of the State to

restore the objections of the appellant to their original numbers for the purpose of being reheard.

5. It appears to have been urged before the learned single Judge in support of the petition that the decisions in respect of the appellant's objections to the draft compensation assessment rolls had become final after the rolls had been signed and sealed. The decisions had never been challenged in appeal. After the decisions had become final the compensation officer had become *functus officio* and could not touch the decisions or make any alterations thereon except for correcting clerical or arithmetical mistakes. He had, therefore, no jurisdiction to entertain the applications on behalf of the State that the objections be restored to their original numbers and be reheard. The entire proceedings, it was urged, started on the filing of such applications for restoration, were really without jurisdiction and the appellant was, therefore, entitled to a writ of prohibition restraining the compensation officer from proceeding to decide those applications for restoration. It was urged that if a case for the issue of a writ of prohibition had been made out the Court could issue the writ even though it had not been specifically prayed for.

6. The petition was opposed on behalf of the State which contended that when the objections to the draft compensation assessment rolls were filed by the appellant praying for the increase of the amount of compensation the State was the person most concerned because it had to pay the compensation. It was necessary under the provisions of the Zamindari Abolition and Land Reforms Act as well as under the rules of natural justice that notice in respect of the objections should be issued to the State. No notice, it was urged, had ever been issued and the objections had been allowed *ex-parte*. It was denied that the Naib Tahsildars had appeared to contest the objections and it was pleaded that in any case they had never been authorised by the State to oppose the objections on its behalf. The notice required by law not having been issued the decisions on the objections never became final. It was, therefore, open to the State, it was urged, to approach the compensation officer and to request him to reopen the matter, to rehear the State and then to decide the objections on merits.

It was pleaded that the C. P. C. applied and under the provisions of that Code and in any case in the exercise of his inherent powers the compensation officer could entertain the application for restoration made by the State. It could not be said, it was urged, that he had no jurisdiction to grant the prayer of restoration. It was also pointed out that the petition had been filed after considerable delay, that the impugned orders dated the 31st March 1958 were really interlocutory orders which could not be quashed by a writ of *certiorari* and that the petition was really premature because the compensation officer had not decided the applications for restoration on merits.

7. The learned Judge, who heard the petition, held that the objections filed by the appellant had, in fact, been decided without notice to the State and without any authorised person representing the State at the time they were heard. He

did not accept the contention that the Naib Tahsildars (Zamindari Abolition) had opposed the objections at the time of hearing and found that they had never been authorised by the State to do that. He also held that notice in respect of the objections was required to be given to the State u/s 343 of the Z. A. and L. R. Act, and that notice not having been given a mandatory provision of law had been contravened. That being so, the decisions had not in law become final and under the provisions of the C. P. C. which were applicable and also in the exercise of his inherent powers it was open to the compensation officer, if a proper case was made out, to vacate his earlier orders and to reopen the matter.

The learned Judge observed that in omitting to issue notice to the State the compensation officers had committed a mistake and no one could be made to suffer because of that mistake. The learned Judge went on to observe that as it was not shown that the compensation officer had no jurisdiction no writ of prohibition could be issued and as he had not yet decided the matter there was no question of issuing any writ of certiorari. The learned Judge thought that in that sense the petition was premature. In respect of the order dated the 31st March 1958 it was held that it could not be quashed by a writ of certiorari because in the first place it was an interlocutory order and secondly because it had not been passed without jurisdiction. As a result the petition of the appellant was rejected.

8. The correctness of the view taken by the learned single Judge is being questioned by the present appeal.

9. The rival contentions urged before us by the learned counsel for the parties will be better appreciated if we have before us the scheme provided in the Z. A. and L. R. Act for the assessment of compensation for zamindari acquired by the State.

Chapters III and IV of the Act relate to the determination of the amount of compensation and its payment. Section 27 of Ch. III declares the rights of every zamindars who is referred to as an intermediary to receive compensation and Section 28 fixes the date from which compensation shall become due. Section 29 provides for the payment of interim compensation till it is finally determined and Section 30 provides for the adjustment of the interim compensation paid towards the compensation that is finally declared. Section 31 declares the compensation officer to be the person before whom all proceedings relating to the assessment of compensation are to be carried on. He has first to prepare a statement of the gross assets of a mahal u/s 38 in accordance with the principles laid down in Sections 39 and 42. The basis on which the gross assets are to be determined are the entries in the record of rights which are presumed to be correct (Section 32) and the arithmetical and clerical mistakes in which can be corrected by the compensation officer himself (sec. 33) who can take into account all pending suits or proceedings regarding such entries (Sections 35 and 36) and who is to treat every intermediary as a separate unit for the calculation of the gross and the net assets (Section 37). The net assets are then to be determined, keeping

in view the provisions of Sections 44 and 45. A draft compensation assessment roll is then to be prepared u/s 40 in which are to be mentioned the gross assets, the net assets, the arrears of land revenue and other dues, the land revenue payable and the loans due to the State from the intermediaty. The statement of gross assets prepared u/s 38 and the draft compensation assessment roll prepared u/s 40 have to be signed u/s 41.

Having prepared the draft roll the compensation officer is required by Section 46 to

(a) publish a notice in the Gazette and in such other manner as may be prescribed to the effect that the statement referred to in Section 38 and the draft Compensation Assessment Roll mentioned in Section 40 have been prepared and are open to inspection by the persons concerned; and

(b) serve a (or?) cause to be served on the intermediary concerned a copy of the notice aforesaid along with a copy of the draft Compensation Assessment Roll.

The second clause of Section 46 then provides:

"The notice under Sub-section (1) shall call upon all persons interested, including a person who claims that the name of the intermediary is, in respect of any share or interest to which such person is entitled, entered in a representative capacity or in the capacity of the karta of a joint Hindu family, to appear and file objections upon such statement or roll within a period of two months."

The proviso to Section 46 limits the grounds on which the objection can be filed in certain circumstances.

The notices required by Section 46 having been published and served objections to the draft compensation assessment rolls can be filed within the period provided. Section 47 requires each objection to be registered by the compensation officer and further directs him to

"fix a date for hearing the same and shall give intimation thereof to the intermediary concerned and to any person interested who may have appeared in reply to the notice u/s 46".

The Compensation Officer has, according to Section 48, all the powers of a civil court and has to follow the procedure laid down in the C. P. C. for the hearing and disposal of suits relating to immovable property. The order passed by the compensation officer is to be deemed to be a decree of a civil Court u/s 49 which also prescribes the contents of that order. The order is appealable u/s 50 to the District Judge and in certain circumstances to the High Court and a second appeal can be filed u/s 51.

If no objection is filed or if an objection is filed and has been decided Section 52 provides that the draft compensation assessment roll shall be signed and sealed and shall then become final. A copy of it is to be supplied to the intermediary u/s 53. Section 54 lays down that the amount of compensation shall be eight times

the net assets mentioned in the compensation assessment roll. If there is a thekedar and a question of apportionment of the compensation between the thekedar and the intermediary arises it has to be determined under the provisions of Sections 55 to 57. That decision is also appealable u/s 57-A and a second appeal against the decision is provided u/s 58. After the compensation payable to the intermediary has thus been determined it has to be entered in the compensation assessment roll by the compensation officer in his own writing u/s 60.

Section 61 then provides

"(1) Except as provided by or under this Act. no correction shall be made in the Compensation Assessment Roll after it has become final.

(2) The Compensation Officer having jurisdiction may, at any time before the payment of compensation, either of his own motion or on an application filed by a person interested, correct any clerical or arithmetical mistakes in the Compensation Assessment Roll or any error arising thereto from any accidental slip or omission".

The jurisdiction of civil Courts in respect of matters pending before the compensation officer is barred u/s 62.

The expression "persons interested" used in Section 46 is explained in Section 63 as including

"all persons whether or not recorded in the record of rights claiming to be entitled as intermediaries to the compensation or any part or share therein to be assessed and paid on account of the acquisition of estates under this Act".

Section 64 then authorises the State Government to make rules for the purpose of carrying into effect the provisions of Ch. III. Chapter IV deals with the assessment and payment of compensation. In the Chapter relating to miscellaneous provisions of the Act, viz. Ch. XII, we find two Sections (i) Section 341 which makes the C. P, C. and the Limitation Act applicable to the proceedings under the Act and (ii) Section 343 which reads as under:-

"(1) The State Government shall be and be deemed to be a party in every proceeding before the Compensation Officer or the Rehabilitation Grants Officer under Chs. III to V and every notice to be served or intended to be served on the State Government may be served on the Collector or an authority nominated by the Collector.

(2) Notwithstanding anything contained in the said chapters or Clause (d) of Sub-section (1) of Section 344, the period of limitation for filing of an appeal by or on behalf of the State Government shall be ninety days from the date of the order appealed against."

10. Rules have been framed under the Act under which various forms have been prescribed in which statements have to be prepared by the compensation officers

and notices have to be issued by them. Rule 34 framed with reference to Section 39 authorises the compensation officer to call upon an intermediary to furnish a written statement about his sayer income for enabling the former to calculate the average of four years' annual income and Rule 43 framed with reference to Section 46 requires a notice in Z. A. Form 28 to be published in the gazette and to be pasted on the office of the Collector of the district, at tahsil and at a place of public resort of the village in which the estate is situate. A copy of the notice along with a certified extract of the draft compensation assessment roll is to be served under the same rule on the intermediary in the manner specified in the C. P. C.

11. The contention urged on behalf of the appellant is that there is no provision in the Act or in the rules framed thereunder requiring notice to be served on the State in respect of an objection filed by an intermediary in response to a notice u/s 46. u/s 343, it is pointed out, the State must be deemed to be a party to the proceedings before the compensation officer from the very start. Being a party it is the duty of the State to be on the look out for any objection filed and to be prepared to oppose it if it considers necessary. It is also open, it is urged, to the State to put in appearance in response to the notice u/s 46. In that case, it as pointed out, if an objection is filed and registered, notice about its date of hearing shall be served on the State u/s 47. If the State either negligently or intentionally does not put in appearance u/s 46 it cannot make a grievance of the fact that no notice, not required by law, was given to it in respect of the objections filed by the appellant. If, therefore, the objections were decided in the absence of the State it is not open to the State to apply for their restoration to their original numbers in order to enable the State to oppose them.

It is also pointed out that the compensation assessment rolls having been signed and sealed became final under Clause (2) of Section 52 and except as provided by Section 61 the compensation officer had no power left to make any correction or alteration in them. He had, therefore, no jurisdiction to entertain the applications of the State for setting aside the orders made in respect of the appellant's objections and to proceed to rehear the objections in the presence of the State. The entire proceedings started by the applications for restoration were, therefore, it was contended, without jurisdiction and the appellant could by a writ of prohibition prevent the compensation officer from acting in excess of his jurisdiction. It was urged that the applications for restoration could not be entertained by the compensation officer either under any provision of the C. P. C. or under any rule of natural justice. He had, it was urged, no inherent powers under which he could entertain the applications because he was not a Court.

12. For the purposes of the present appeal learned counsel assumed that the objections of the appellant had not, in fact, been opposed by the Naib Tahsildars and that they had not been authorised by the State to contest them.

13. The case of the State is that Section 343 of the Act definitely required a notice of the objections to be given to the State. As the State had no objection to

file against the compensation assessment rolls it could not appear in response to the notice u/s 46. Under that Section one could appear only to file an objection and not for any other purpose. Nor could the State be required to be on the look out for objections against compensation assessment rolls and then appear on its own accord to oppose the same. The State, it is urged, was vitally interested in the matter for the compensation which was finally determined as a result of the objection was to be paid by the State.

Before, therefore, any order in respect of the objection could be passed to the prejudice of the State it was necessary for the compensation officer under the rules of natural justice to give notice of the objections to the State and to hear it. It is also pointed out that the provisions of the C. P. C. applied and the objection filed was like a plaint in which the defendant was the State. Notice in respect of the objection should, therefore, have been issued to the State before it could be taken up for hearing. As mandatory provisions in respect of notice were not followed the decision on the appellant's objections did not really become final and no finality can on that account be claimed in respect of the compensation assessment rolls signed and sealed by the compensation officer. It is urged that the compensation officer has jurisdiction to entertain the State's applications for restoration under the provisions of the C. P. C. as well as in the exercise of its inherent powers. It cannot, therefore, be said, it is contended, that he is acting without jurisdiction while entertaining the State's applications for restoration.

14. The first question that, therefore, arises is whether the Act or the rules framed thereunder required a notice to be served on the State in respect of the appellant's objections filed u/s 46. Two provisions of the Act are relied upon in this connection as requiring the service of such a notice. One is Section 343 of the Act and the other is Section 48 read with Section 341.

15. Only the first clause of Section 343 is relevant for this purpose. It reads:

"(1) The State Government shall be and be deemed to be a party in every proceeding before the Compensation Officer or the Rehabilitation Grants Officer under Chs. III to V and every notice to be served or intended to be served on the State Government may be served on the Collector or an authority nominated by the Collector."

At the time of arguments comment was made on the expression "shall be and be deemed to be" used in the clause and it was pointed out that it was not easy to see what the Legislature meant by using the two terms "shall be" and "be deemed to be". If the State Government was to be a party to every proceeding the expression "be deemed to be" became redundant. The use of the two expressions, however, appears to be only an instance of inartistic drafting and much does not turn upon it. The intention appears to be clear that the State was to be treated as a party to every proceeding before the compensation officer under Chs. III to V. The word "proceeding" is wide enough to cover proceedings for the preparation of the statements of gross and net assets as well as

proceedings started by an objection filed in response to the notice u/s 46. The State Government must be considered to be a party to all these proceedings.

It is the latter part of this clause of Section 343 which is relied upon as requiring the issue of a notice to the State Government. It is contended on behalf of the State and the contention has been accepted by the learned single Judge that this second part of the clause requires a notice to be served on the State Government in respect of every proceeding, including a proceeding started by an objection, because the State Government is to be treated as a party to the proceeding. It is, however, urged on behalf of the appellant that this part of the clause only lays down the manner or method of service of notice if one is to be served or intended to be served on the State Government. It does not itself require or direct that such a notice should be served on the State Government in every such proceeding. The words in this part of the clause, in my opinion, clearly support the submission of the learned counsel for the appellant, and I am unable to read in this part as has been done by the learned Single Judge any direction or requirement about service of notice on the State Government in respect of objections like those filed by the appellant. As I read this part of the clause it only provides that if and when a notice is to be served on the State Government it need not be sent to the headquarters of the Government or be served on any Secretary or Minister. Service will be complete if it is effected on the Collector or an authority nominated by him. This part, therefore, lays down only the mode or method of service and does not prescribe any notice by itself.

16. Three reasons have been given by the learned single Judge in support of his view that this part of the first clause of Section 343 required a notice to be served on the State in respect of each proceeding. They are:

- (i) That a harmonious construction should be adopted;
- (ii) that if the appellant's interpretation is accepted Section 343 would become a very unjust and meaningless provision; and
- (iii) that it will render the second part of the clause redundant.

17. What appears to have weighed greatly with the learned Judge was that the State was very much interested in the matter, that according to the first part of Clause (1) of Section 343 it was to be treated as a party to the proceedings, that it could not have been intended by the Legislature that a proceeding should be decided without notice to the party who was materially to be affected by it, and that there was no provision in Chapter III itself requiring notice to be given to the State in respect of the proceeding. The learned Judge felt that having made the State a party the Legislature was bound to provide for notice to the State in respect of each proceeding and no provision about notice having been made anywhere else the requirement could be read in the second part of the first clause of Section 343.

18. The principle of harmonious construction is a well established principle of

interpretation and as far as possible the various provisions of an enactment must be so construed that they fit in with each other and no conflict arises. That the State is interested in getting the compensation payable for the property it has acquired properly determined as it is the party who has to pay it is also undisputed. The Legislature could, therefore, be expected to provide for notice to the State in respect of any objection filed which related to the amount of compensation that was to be paid. The assumption that such a provision was not made in Ch. III and, therefore, it was necessary to read it in Section 343, however, appears to be unjustified. According to the first part of the first clause of Section 343 the State is a party to the proceedings before the compensation officer from the very start. The materials on the basis of which the statements of gross assets have to be prepared and the net assets have to be determined have to be furnished by persons appointed by the State. Before the draft compensation assessment roll is prepared the intermediary is not in the picture except when he is required to appear and file a written statement under Rule 34 for enabling the compensation officer to fix the average of annual income from certain sources. After the draft compensation assessment roll is prepared and signed u/s 40 it has to be published u/s 46.

The purpose of this publication is two-fold. In the first place, it is a notice to "all persons interested" to appear and file objections, if any (vide the form of notice provided in the rules). The expression "persons interested" has not been exhaustively defined anywhere in the Act or the rules. Clause (2) of Section 46 includes in it a person who claims that the name of the intermediary is in respect of any share or interest to which such person is entitled to enter in the representative capacity or in the capacity of a karta of a joint Hindu family. Section 63 also includes within the meaning of the term "all persons whether or not recorded in the record-of-rights claiming to be entitled as intermediaries to the compensation or any part or share therein to be assessed and paid on account of the acquisition of estates under this Act." These two categories, however, do not exhaust the list of persons who can be persons interested for the purposes of Section 46. If the expression "persons interested" is given its natural meaning as a person having an interest in the matter the State Government can very easily be included under the expression. It is very much interested in having the amount of compensation determined property. It is the person who will ultimately be liable to pay it. There is, therefore, no valid reason why the term "person interested" should not include the State Government and why it could not be entitled to appear and if necessary file objections in response to the notice under Section, 46. The State Government, it is conceded, can be "an aggrieved person" for filing an appeal against the decision of the compensation officer in respect of an objection filed u/s 46. If it can be an aggrieved person for that purpose there is no reason why it should not be an interested person for the purpose of Section 46.

19. It is, however, urged that the State Government should not be included within the expression "interested person" as

(a) it is really a party, to the proceedings u/s 343

(b) ordinarily it would not have any objection to file against the compensation assessment roll, and

(c) the position of the State Government in this respect is analogous to that of the Land Acquisition Officer under the Land Acquisition Act. He is not entitled to object to the amount of compensation awarded and the award is really an offer on behalf of the State Government. The decision of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, is referred to in this connection.

20. The State may be a party but there is no reason why a party cannot be a person interested, in the majority of cases it may not be necessary for the State to file objections to the draft -compensation assessment rolls. There may, however, be cases in which the State may like to file objections for instance, if the gross assets have been incorrectly calculated or the amount of land revenue or loan which is due from the intermediary is incorrectly determined. There may also be cases in which the average of net income from certain sources has been incorrectly determined. In all these cases and similar cases it may be necessary for the State Government to point out the errors in the draft compensation assessment rolls and to have them corrected. The analogy of the Land acquisition Act does not appear to be applicable. The draft compensation assessment roll prepared by the compensation officer is not analogous to an award of a Land Acquisition Officer made under the Land Acquisition Act. It is only a draft against which objections can be filed by any person who is affected by the incorrect entries in its various columns, and the State Government can in many cases be such a person.

20a. Moreover, the terms of the second clause of Section 46 show that an interested person may put in appearance before the compensation officer even if he does not file any objection. He will by putting in such appearance entitle himself to notice of any objection if it is filed and is registered u/s 47. A person may not have any objection to the draft compensation assessment roll himself but may be interested in opposing an objection filed by another person. The second clause of Section 45 authorises an interested person to appear and file an objection.

The contention of the appellant is that the word "and" is used here in the disjunctive sense and the interested person may both appear and file objection or he may only appear without filing any objection. It is not at all difficult to conceive of persons who may have no objections against the draft compensation assessment rolls themselves but may be interested in opposing the objections raised by others. Take for instance, a father having a legitimate and an illegitimate son who wants the illegitimate son also to get a share in the compensation. In the records of rights the name of the father alone is entered. The legitimate son has no objection to the entries made in the compensation

assessment roll in respect of the estate. He, however, apprehends that the illegitimate son may file an objection and claim a share in the compensation. He is interested in opposing the objection, if filed. He can, therefore, put in appearance without filing any objection of his own. If the illegitimate son subsequently files an objection and it is registered u/s 47 notice in respect of it will be given u/s 47 to the objector himself, to the intermediary, i.e. the father, and also to the legitimate son because he has appeared in response to the notice u/s 46. The State Government can also, if it is interested in opposing the objection filed by any person u/s 46, put in appearance before the compensation officer in response to the notice u/s 46 and will in that case be entitled as of right to have a notice of the date of the hearing of the objection u/s 47.

21. Learned counsel for the respondents, however, urged that in the expression "appear and file objections" used in the second clause of Section 46 the word "and" has not been used in the disjunctive sense. Learned counsel submitted that it only means "for the purpose of" and referred to the Hindi version of the Act in which the words used are "upasthit hokar aapatti patra dakhil karen". According to Teamed counsel appearance is required only for filing objections and no appearance is contemplated of persons who have no objections to file. He urged that the Hindi version can be referred to for correctly interpreting the words in the English version.

22. Ordinarily, the word "and" is used either in the conjunctive sense or in the disjunctive sense. It is true that it is sometimes used to mean "for the purpose of" or "in order to" also but that use of the word is not common. In order to justify assigning this uncommon meaning to the word instead of its ordinary meaning there must be some special indications in the context in which the word has been used. I find no such indications in Clause (2) of Section 46. On the contrary, it appears to me that if the intention was to give that meaning to the word "and" as is suggested on behalf of the State the words used would not have been "to appear and" but would have been "by appearing".

The suggested interpretation narrows down the scope of the section unnecessarily and prevents persons interested in opposing others' objections but having no objections of their own from taking advantage of the section. If the principal act was the filing of objections and appearance was only the method provided for it one would have expected the use of the words "have filed objections" in Section 47 instead of the words "have appeared in reply". In my opinion there is really no ambiguity in Section 46 for clearing which reference to the Hindi version is necessary. On the contrary, the Hindi version at least so far as this point is concerned, appears to me to be inconsistent, with the English version, that being so, the English version will have to be preferred, vide Civil Misc. Writ No. 2032 of 1959, Jaswant Sugar Mills Ltd. Vs. The Presiding Officer, Industrial Tribunal (III) and Others, .

23. I am therefore, unable to agree with the submission of the learned counsel for the State that it was not open to the State to appear in response to the notice

u/s 46. Had the State appeared at that stage notice u/s 47 would have been given to it in respect of the objections filed by the appellant and the State could in that case contest the objections on merits. By not appearing in response to the notice u/s 46 the State by its own omission precluded itself from getting the notice contemplated by Section 47.

24. It cannot in the circumstances be said that there is no provision in Chapter III requiring notice to the State in respect of the objections filed. The provision is there in Section 47. But it appears that the Legislature provided for that notice only if the State had put in appearance u/s 46. For persons who had not put in appearance under that provision no special notice was provided as obviously the Legislature thought that those persons were not interested in the objections that could be filed u/s 46. It is, therefore, not correct to say that there is no provision in Ch. III requiring notice to the State in respect of the objections filed. If notice is to be given to the State u/s 47 the State being one of the persons who had appeared in response to the notice u/s 46 provision was necessary for the manner in which the notice was to be served. That provision was made in the second part of the first clause of Section 343.

25. It is also possible that in some cases the compensation officer may either before or after the preparation of the draft compensation assessment rolls feel that the State must be heard and like to give notice to the State. In such cases too the notice will have to be served on the Collector in view of Section 343. The second part of the first clause of Section 343 is, therefore, not redundant or unnecessary; nor can it be said to be unjust in any way. If Sections 46 and 47 are correctly interpreted it fits in with the entire scheme and all the provisions of the Act become harmonious with each other.

26. Even if the State was a party to the proceedings as required by Section 343 it was not necessary for the Legislature to provide for a notice to it in respect of an objection filed if it had not indicated its interest in the matter by appearing at the proper stage. Section 343 itself did not require any notice to be served on the State. The notice for which it provided the method of service was the one which could be issued u/s 47 in case the State had appeared in response to the notice u/s 46 or a notice which the compensation officer may find it necessary to issue to the State Government at any stage of the proceedings in Chs. III and IV.

27. The other contention put forward in this connection is that under Sections 341 and 48, the C. P. C. is applicable to the proceedings before the compensation officer and he has to follow in connection with an objection filed u/s 46 the procedure laid down for the trial of suits relating to immovable properties. An objection filed u/s 46 should, therefore, be treated as a plaint in which the State is a defendant. As summonses are necessary to be issued to the defendant in connection with a plaint, notices to the State were necessary in respect of the objections filed by the appellant.

Before the learned Single Judge it appears to have been urged on behalf of the

appellant that the State, being a party to the compensation proceedings from the very start, was really in the position of a plaintiff and the position of the objector was that of a defendant. No notice could, therefore, be required to be served on the plaintiff in respect of an objection filed by the defendant. The learned Single Judge has not accepted either of the two analogies to be correct. He says :

"In fact no clear analogies from the C. P. C. can be given to the parties in proceedings under Chs. III to V of the Act. But if any analogy can be nearest, the State Government would be deemed to be a judgment-debtor or a defendant against whom a preliminary decree has been passed I have already said above that the analogy of a plaintiff or defendant to persons who are parties in proceedings under Chapters III, IV and V of the Act are misplaced but if an analogy has necessarily to be found out the State Government would best answer to the description to the judgment-debtor, or a defendant against whom a preliminary decree has been passed and whose liability has been fixed and only the amount has got to be determined."

28. In a later portion of his judgment, however, the learned Judge while dealing with the question of "the applicability of Order V of the C. P. C. to proceedings u/s 48 of the Z. A. and L. R. Acts said:

"I am, therefore, of the opinion that the position of the State Government in the proceedings arising out of the objections filed by the intermediary objector was analogous to that of a defendant

In my opinion the words "in hearing and deciding objections" occurring in Section 48 of the Act, only mean that in the trial of or in the trial relating to the objections. This in my opinion would include not only the stage of evidence and arguments but also the stage of service on the defendant and considering the language of Section 48 of the Act, I am of the opinion that Order 5 would apply to the proceedings arising out of an objection filed u/s 47 of the Act and, therefore, even on this ground a notice should have gone to the State Government."

29. It is not easy to reconcile the former observation with the latter. If I may say so and with respect the learned Judge was perfectly justified in his view that the position of an intermediary who had filed an objection u/s 46 could not be compared either with that of a plaintiff or a defendant in a civil suit. The essence of a plaint is the cause of action and the relief which is claimed against the defendant. From this point of view neither the State nor the intermediary could be considered a plaintiff. The State had no claim to press against the intermediary; nor was the intermediary putting forward any cause of action against the State. The principal feature of a written statement filed by the defendant is that it seeks to meet the points raised by the plaintiff in his plaint and puts forward the other defences which are available for the purpose of defeating the claim made by the plaintiff. So far as the State is concerned, there can be no question of its trying to defeat any claim of the intermediary; nor is

the intermediary by filing an objection trying to meet arty claim put forward by the State.

The single Judge has placed Government in the position of a judgment-debtor. The analogy between an objecting intermediary and a judgment-debtor or a person against whom a preliminary decree has been passed is still more inapplicable. No decree can be held to have been passed against the intermediary to make him a judgment-debtor; nor can it be said that the principles for determining his liability have been laid down and the amount of the liability is going to be ascertained. In fact, the proceedings before the compensation officer are peculiar in nature not analogous in any way with the proceedings under the C.P.C. In his administrative capacity the compensation officer tentatively arrives at certain figures which are going to be the basis of the ascertainment of the compensation payable to the intermediary for his land which has been acquired. The figures are entered in the draft compensation assessment rolls along with certain other particulars. Every person is invited to inspect the draft compensation assessment rolls so prepared. If any person is interested in filing objections and suggesting alterations he can file objections. The objections may relate to the figures of gross and net income on the basis of which the compensation is to be calculated. They may also relate to the other particulars entered in the draft rolls about the title of the intermediary, his share in the land or the amounts payable by him to the State. The purpose is that the amount of compensation may be determined correctly and be paid to the persons to whom it is really due. In such proceedings neither the State nor the objector can be held to fill the roll of a plaintiff or a defendant, a decree-holder or a judgment-debtor.

30. Section 341 of the Act is a general provision declaring that unless otherwise expressly provided by or under the Act the provisions of the C.P.C. shall apply to the proceedings under the Act. So far as the proceedings relating to the objections filed against the compensation assessment rolls are concerned, the express provision "otherwise" is to be found in Section 48. According to that section, subject to such modifications as may be prescribed the compensation officer while hearing and deciding the objections filed under Sec, 46 must follow the procedure laid down in the C.P.C. 1908 for the hearing and disposal of suits relating to immovable properties.

It is to be noticed that the entire C.P.C. has not been made applicable. Only that part of it which lays down the procedure for hearing and disposal of suits relating to immovable properties is to be followed, and this procedure too is to be followed only for hearing and deciding the objections. The procedure for making the objection ripe for hearing is laid down in Section 47. The objection filed has to be registered and a date for its hearing has to be fixed. Intimation about the date of hearing is to be given not to every one but only to the intermediary concerned and the persons who have put in appearance in response to the notice issued u/s 46. The term "intermediary concerned" will include the intermediary

or the person claiming to be an intermediary who has filed the objection. This provision in a way obviates the necessity of issuing notices like summons in a regular suit and by implication excludes the application of Order V of the C.P.C.

31. Hearing and disposal for which the procedure or a suit has to be followed is the stage at which evidence has to be produced and considered and arguments are to be heard for arriving at a decision. This is the meaning which was attributed to the word "hearing" by the Privy Council in AIR 1924 198 (Privy Council) The dictionary meaning of the word "hearing" is not different. In my opinion the words "in hearing and deciding objections" were not intended to cover the stage of the objection in which it was being made ready for hearing. The words refer to only that stage of the objection at which evidence is led or arguments are heard. Merely because the objection is to be registered by the compensation officer it does not follow that a notice or summons is to be issued in respect of it to any one. I am, therefore, unable to accept the submission that notice to the State was necessary in respect of the appellant's objections under Order V or any other provision of the C.P.C.

32. Learned counsel for the respondents, urged that the compensation officer while hearing and disposing of the objection filed u/s 46 acts in a judicial or quasi-judicial capacity. He pointed out that even if notice to the State was not required u/s 343 or Section 48 of under the provisions of the C.P.C. the compensation officer was bound to follow the rules of natural justice and those rules required that before any order adverse to the State increasing its liability was passed the State should be heard. The State could be heard only if notice was issued to it. Rules of natural justice, therefore, required that a notice in respect of the appellant's objections should be given to the State before they were finally heard and decided.

It was urged that this rule of natural justice was to be followed not only by tribunals acting judicially or quasi-judicially but also by administrative tribunals. Reliance in support of this principle was placed on the observations made in a number of cases, viz. *Cooper v. Wandsworth Board of Works* (1863) 143 ER 414 , *R. v. Archbishop of Canterbury* (1944) 1 All ER 179, *Robinson v. Minister of Town and Country Planning* (1947) 1 All ER 851, *B. Johnson and Co. (Builders), Ltd. v. Minister of Health* (1947) 2 All ER 395, *Abdul Hamid Vs. Smt. Fatima Begum* , *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, and an unreported decision in Civil Misc. Writ No. 2624 of 1957, *Bishambhar Dayal Agarwal v. Income Tax Officer* decided on "the 3rd October 1961 (All) En which a decision of the Supreme Court in *Nand Lal Raj Kishan Vs. Commissioner of Sales Tax, Delhi and Another*, had been followed.

Sri Pathak for the appellant urged in reply that there were no rules of natural justice of universal application. The principles of natural justice which are to be followed by a Court or tribunal have to be ascertained with reference to the terms of the statute under which the Court, or tribunal acts. It is open, he contended, to the Legislature in a particular statute to make provisions which

make some of the rules of natural justice which would have applied in the absence of such provisions inapplicable.

He did not dispute the principle on which the learned counsel for the State relied but pointed out that it could apply only when the statute was silent on the point and did not lay down any rule to the contrary. He pointed out that in the present case the Legislature had mentioned in Section 47 the persons to whom intimation in respect of the date of the hearing of an objection was to be given. That provision being there no rule of natural justice could be invoked under which notice was to be given to any person not mentioned in the section. He also referred to the principle of "the special" excluding the "general" and urged that the special rule about notice being there in Section 47 the general rule of notice under the principles of natural justice could not apply. He analysed the various cases relied upon by the respondents' counsel and tried to show that in each of those cases the statute was silent.

33. It is certainly a well established principle of natural justice that no one should be condemned without being heard and that before an order is passed against any person which may affect his rights adversely an opportunity should be given to him to have his say. There is, however, no rule that such an opportunity should be given at every stage of the proceeding. Even under the C.P.C. if the defendant is once served but does not put in appearance no further notice is issued to him in respect of anything that is done in the case. The Legislature realised that an objection filed u/s 46 must be heard in the presence of all the persons interested. Among the category of persons interested, however, it included only the intermediary concerned and the persons who had put in appearance in response to the notice u/s 46. It, therefore, provided for notice to those persons. The State, could also entitle itself to the notice if it puts in appearance in response to the general notice u/s 46. This is, therefore, not a case in which the State had been deprived of all opportunity of having its say in respect of the objections filed. If the State did not put in appearance u/s 46 it had itself to blame. Having omitted, to appear at one stage it could not invoke any rule of natural justice to compel the compensation officer to give any notice to it after the objection had been filed though no such notice was required to be issued under the provisions of the Act. The rule of natural justice on which the respondents relied cannot, therefore, be of any avail to it and it cannot claim any notice on the basis of that rule.

34. Our attention was drawn to three notifications issued by the Government in this connection. The first is Revenue Department Miscellaneous No. 1756/1-A-1073-53 dated the 11th June 1953 published in the U. P. Gazette, Part I, page 698, on the 20th June 1953. By this notification all Sub-divisional Officers except in three districts were empowered to discharge all functions of a Collector under the U. P. Z. A. and L. R. Act. The second notification is No. 869/R/1/A-450-51 published in the U. P. Gazette Part 1, page 441, dated the 31st May 1952. By this notification all Assistant Collectors incharge of sub-divisions were made ex-officio

compensation officers within their respective jurisdictions. The third notification is No. 135/I-D-253-D-53 dated the 18th December 1953 published in the U. P. Gazette, Part I, page 61 on the 2nd January 1954. By this notification the Kacker, Officers became ex-officio compensation officers even in those areas to which the Act had been extended by the time the notification was issued. The practical effect of these notifications appear to be that the Sub-divisional Officers, became the compensation officers and were also empowered to perform all the functions of a Collector under the Z. A. and L.R. Act.

If these notifications are read with the second part of the first clause of Section 343 it will be found that the notice which was to be served was to be served on himself because he was performing the functions of a Collector also. Learned counsel for the appellant urged that really, there was no sense in requiring a person to serve a notice on himself. He, therefore, argued that even if it was conceded for the sake of argument that the compensation officer was required to serve a notice on the State Government in respect of the objections filed by the appellant the notice was to be served by the compensation officer on himself-- a wholly unnecessary act. This too, learned counsel urged, showed that no notice was required to be issued and even if one was required to be issued it must be deemed to have been served as no formal service of the notice by the compensation officer on himself as Collector could be considered necessary.

35. When the attention of Sri. Kacker, learned; counsel for the State, was drawn to these notifications the only thing he could say was that the compensation officer as Sub-divisional officer could only perform the functions of the Collector under the Z.A. and L. R. Act. The receiving of notice as required by Section 343 could not be said to be the function of a Collector. There were other provisions of the Act under which such functions had been described. The argument is, however, not convincing because if the notice to the State Government is to be served on the Collector the receiving of the notice must be held to be a function assigned to the Collector. The Collector may have other functions under the Act also but it cannot be said that the receiving of notice is not a function.

36. There thus appears to be no rule of law or natural justice under which any notice in respect of the objections filed by the appellant was required to be served on the State after it had been filed. In the circumstances of the present case intimation about the date of hearing of the objections could have been issued to the State only if it had appeared in response to the notice u/s 46 and it was frankly conceded on behalf of the respondents that the State had never appeared before the compensation officer in response to that notice. No error, illegality or irregularity can, therefore, be said to have been committed by the compensation officer when he heard and decided the objections of the appellant without serving any notice on the State. The orders passed by him in connection with the objections cannot, therefore, be held vitiated on account of any such error, illegality or irregularity.

37. The orders passed by the compensation officer on the objections filed by the

appellant were to be deemed to be decrees u/s 49 and were appealable u/s 50. They were, however, not questioned in appeal and the remedy open to the State was not, followed by it. The argument that no appeal could be filed because the State did not know of the orders cannot be of any avail because u/s 341 the Limitation Act was applicable and the appeal could have been filed with the help of Section 5 of that Act after the respondent learnt about the orders. It cannot, therefore, be said that the respondent was wholly without a remedy. It had a remedy but did not avail of it.

38. It is also not possible to accept the contention of the State that the compensation assessment rolls did not become final under Clause (2) of Section 52 after they had been signed and sealed simply because, the correct procedure had not been followed earlier and notice had not been issued to the State in respect of the appellant's objections. No decree or order becomes void or invalid simply because of some error or procedure leading up to it. It is only want of jurisdiction or some analogous ground that can vitiate a decree or order. The Legislature attached solemn finality to the compensation assessment roll after it had been signed and sealed. It clearly provided that except in the limited circumstances mentioned in Section 61 the final rolls could not be touched or altered. I find it difficult to accept the contention of the respondent that it could question the finality of the rolls simply because according to it a notice which should have been issued earlier had not been issued. The objections filed by the appellant were decided, the decision amounted to a decree and the decree was not questioned in the manner provided, by the Act. The draft compensation assessment rolls were corrected on the basis of the decrees and became final after they were signed and sealed.

A part of the bonds to which the appellant became entitled were actually handed over to him. Long after all that had been done the State made two applications praying that the decrees be set aside, the objections be restored to their original numbers and that they be heard afresh. It is contended on behalf of the appellant that by these applications the State invoked a jurisdiction of the compensation officer which was not vested in him. It is urged that the applications were not maintainable in law and the compensation officer had no jurisdiction to entertain them or to proceed to decide them. The whole proceedings started by these applications were, therefore, without jurisdiction and the appellant is entitled to prohibit the compensation officer from entertaining the same.

39. On behalf of the respondents, however, it is said that the compensation officer had jurisdiction to entertain these applications and the grounds put forward in support of the contention are:--

(1) That the notice required by law not having been issued in respect of the objections they had not been properly disposed of and were, therefore, pending. The respondents could, therefore, request the compensation officer to hear the State and to dispose of the objections on merits;

(2) The application for restoration could be made under the provisions of Order IX, Rule 13 of the C.P.C.

(3) The compensation officer had inherent jurisdiction to entertain the applications;

(4) One of the allegations made in the applications was that the appellant had been guilty of fraud. Fraud vitiated the most solemn of proceedings. The compensation officer could, therefore, be asked to go into the question of fraud and if fraud was established he could re-open the whole matter and hear the objections afresh.

(5) The compensation officer had committed an error in not issuing a notice to the State. No one could be allowed to suffer on account of an error of the tribunal. It was open to the tribunal to rectify its own errors, to hear the State and then decide the objections.

40. It has already been shown that the compensation officer was not required to issue any notice to the State in respect of the objections filed and even if a notice was required to be issued the final orders passed in respect of the objections could not be ignored and treated as void simply because the notices had not been issued. It was, therefore, not open to the State to treat the objections as pending and to request the compensation officer to hear them on merits. A perusal of the applications filed by the State will also show that it did not treat the objections as pending, it expressly prayed for the orders on the objections to be set aside and the cases to be restored to their original numbers,

41. The provisions of Order IX, Rule 13 of the C.P.C. could not apply for several reasons. The appellant and the State did not have the rolls of the plaintiff and the defendant in the case. The underlying basis of Order IX, Rule 13 of the C.P.C. is the requirement of a summons to be duly served. There appears to be no provision in the Act or the rules framed thereunder under which anything like summons is to be issued and served in any particular manner. The intimation of the date of hearing which is to be given u/s 47 cannot be treated as a summons issued to a defendant in respect of a suit filed by a plaintiff.

The provisions of Order IX Rule 13 of the C.P.C. read with Article 164 of the limitation Act show clearly that an application under the former provision can be maintained only on two grounds: (i) That the summons were not duly served or (ii) the defendant had sufficient cause for not appearing on the date fixed. The limitation for an application is thirty days and is to be counted if summons were not duly served from the date, of knowledge and in the other case from the date of the decree itself. As in the present case no summons were required to be issued or served the applications for restoration cannot be said to have been based on that ground. They should, therefore, have been filed within thirty days from the date of the decrees sought to be set aside. The applications of the State were filed long after the expiry of that period. If the applications were barred by time the compensation officer could have no jurisdiction to entertain them.

42. Sri Pathak tried to argue that as the compensation officer was not a Court and was only a tribunal he had no inherent jurisdiction to exercise. I find it difficult to accept this contention. u/s 48 the compensation officer was to have all the powers of a Court. The powers of a Court include inherent powers to do anything in the interest of justice. These powers are specifically preserved u/s 151 of the C.P.C. If the compensation officer was to have all the powers of a civil Court he had the inherent powers of the Civil Court also under which he could pass any orders in the interests of justice.

But it is well established that inherent powers can be invoked only when the statute does not provide any other remedy. If another remedy is open but has not been pursued or has been allowed to become time-barred it is not open to the party concerned to invoke the inherent jurisdiction of the Court. In the present case as has already been shown the State was not without a remedy but it had not pursued those remedies and had allowed them to become time barred. The compensation officer may have had inherent powers but those powers could not be invoked by the State.

43. The word "fraud" had certainly been used in the applications filed by the State for the restoration of the objections. No particulars were, however, mentioned and in the affidavits filed in support of the applications even the word "fraud" was not used. The mere mention of the word "fraud" in the application could not amount to an averment of fraud. As was laid down by the Supreme Court in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, :--

"Now if there is one rule which is better established than any other it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion".

No value could, therefore, be attached to the use of the word "fraud" in the applications and the compensation officer could not on that basis be required to go into the question and to consider whether fraud had vitiated his orders.

44. Nor could there be any question of the compensation officer correcting any error of his own to prevent prejudice to any party. He had, in fact, not committed any error. He had also not overlooked or contravened any mandatory provision of law regarding notice. If the State felt that it had been prejudiced the responsibility lay at its own doors. There was, therefore, no occasion for requesting the compensation officer to correct his own mistakes.

45. The appellant in the circumstances appears to be justified in his contention that the compensation officer completely lacked jurisdiction to entertain the applications for restoration which were filed by the State. He could, therefore, be prevented from proceeding with the applications for the restoration of the

appellant's objections.

46. Some technical objections have, however, been raised in this connection. They are:--

(1) That no writ of prohibition had been prayed for, A writ of certiorari was claimed for quashing the order dated the 31st March 1958. Subsequently an application was made for permission being granted to amend the prayer and to enable the appellant to claim a writ, of certiorari for quashing the proceedings started by the respondent's applications for restoration but that application was never pressed.

(2) The petition was filed after very great delay. The applications for restoration were filed on the 22nd August 1955. The writ petition was filed on the 11th April, 1958.

(3) The conduct of the appellant also disentitled him to any relief under Article 226 of the Constitution. He had submitted to the jurisdiction of the compensation officer so far as the applications for restoration were concerned and had been trying to contest the applications on several grounds for about two years.

(4) No objection relating to want of Jurisdiction had been raised by the appellant before the compensation officer himself.

(5) The applications for restoration were still pending. They had not been decided. After they have been heard on merits they may or may not be allowed. The present is not, therefore, the stage in which the Court should interfere in the exercise of its discretionary powers.

(6) The orders dated the 31st March 1958 which is sought to be quashed by a writ of certiorari are really interlocutory orders and it is the settled practice of this Court not to interfere with such interlocutory orders.

47. It is true that a writ of prohibition had not been specifically prayed for. It is also true that a writ of certiorari had not been claimed for quashing the entire proceedings. It is, however, pointed out that a general relief for issuing any other writ, order or direction that may be deemed fit and proper is there in the petition. It is urged that the omission to claim a specific relief cannot tie down the hands of a Court. It will consider what the exigencies of the case require and will formulate the writ, order or direction which ought to be issued and issue it even if it had not been prayed for. Reliance is placed in support of this contention on an observation made by the Supreme Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, where with reference to Article 32 of the Constitution (and it is pointed out that the discretion is no less wider under Article 226) the Supreme Court laid down:--

"Any way, Article 32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application of the petitioner cannot be thrown out simply on the ground that the

proper writ or direction has not been prayed for." No importance can, therefore, be attached to the omission of the appellant to claim a writ of prohibition or a wider writ of certiorari in his petition.

48. There is no doubt that the petition has not been filed soon after the applications for restoration were made. The appellant has been contesting the applications before the compensation officer on various grounds though he never questioned the jurisdiction of that tribunal to entertain the applications. It was only when Sri Upadhyaya refused to reopen the question of discovery, inspection and production that the appellant thought of filing the writ petition.

It is, however, urged on behalf of the appellant that all these considerations are beside the point. If the appellant is able to satisfy this Court that the compensation officer had no jurisdiction to entertain the applications the Court will by a writ of prohibition prevent him from dealing with the applications any further. Reference was made in this connection to an observation of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, while pointing out the distinction between a writ of certiorari and prohibition it was laid down at page 726:--

"The existence of another remedy is a very material "Circumstance to be taken into account when the Court is called upon to issue a writ of "certiorari", but wholly different considerations arise when the writ asked for is prohibition. Writ of prohibition is issued whenever a subordinate Court or Tribunal usurps jurisdiction which does not belong to it, and when that has been shown, the issue of the writ, though not of course, is of right and not discretionary."

49. Reliance is also placed on a passage in Halsbury's laws of England, third Ed. Vol. II, at page 115, paragraph 214 where it is laid down:

"Where the defect of jurisdiction is apparent on the face of the proceedings and the application is made by a party, the order goes as of right and is not a matter of discretion. Smallness of the matter in dispute and delay on the part of the applicant are not in themselves grounds for a refusal."

At page 117, paragraph 219, it is further said:

"Prohibition may be applied for as soon as the absolute absence of jurisdiction is apparent on the record of the proceedings of the inferior court, without the question of jurisdiction being raised by plea or otherwise in that court."

50. It is, therefore, urged that if the appellant has been able to satisfy the Court that the compensation officer has no jurisdiction, to deal with the applications for restoration filed by the State a writ of prohibition cannot be refused on the ground of delay or omission to raise the plea before the tribunal or the fact that for some time the appellant had been contesting the applications before the tribunal.

51. The reply of the learned counsel for the respondents is two-fold. He urges in

the first place that the very words of Article 226 of the Constitution make the issue of a writ of prohibition discretionary and before deciding whether the writ should be issued or not the Court can take into account the conduct of the petitioner and similar, factors. It is urged secondly that a writ of prohibition can be claimed as of right only in cases of patent lack of jurisdiction. When the lack of jurisdiction is not apparent on the face of the record the writ becomes discretionary. It is also urged that the present case cannot be considered to be a case of patent lack of jurisdiction. It is stressed in this connection that the learned counsel for the appellant took several days to make out his case that there was lack of jurisdiction in the compensation officer. This, it was urged, was enough to show that the want of jurisdiction was not patent or apparent on the face of the record.

52. The jurisdiction which Article 226 of the Constitution confers on the Court is certainly discretionary but the discretion has to be exercised in a judicial manner and as was observed by the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, , with reference to writs of certiorari though the Courts in India are not bound by the technicalities of English law the principles which have to be borne in mind while exercising the writ jurisdiction are the broad and fundamental principles which have been evolved in that connection by the English Courts. The principle that in cases of patent lack of jurisdiction the writ of prohibition can be claimed as of right and the writ cannot be refused on the ground of delay or omission to raise the point before the inferior tribunal appears to be well established. If, therefore, lack of jurisdiction in the compensation officer is established the appellant is entitled to urge this Court to issue a writ of prohibition even at the present stage. The various grounds on which it was urged that the compensation officer has jurisdiction in the matter have already been found to be untenable. His lack of jurisdiction is therefore, clearly established. The appearance of that lack of jurisdiction cannot, in my opinion, be clouded by the mere fact that some time has been taken in refuting the long and untenable arguments put forward for showing that jurisdiction was there. The lack of jurisdiction is patent in the present case because it was not necessary to go into any question of fact or consider any evidence for finding out whether there was jurisdiction or not Even if all that was said in the application for restoration and the affidavits filed in support of them was accepted there was no jurisdiction vested in the compensation officer which could be invoked on that basis.

53. If there was complete want of jurisdiction the fact that the applications for restoration had been pending for some time before the compensation officer and were being contested on other grounds was immaterial. The appellant was not bound to wait till the hearing of the applications was over and they had been decided against him. As the proceedings were wholly without jurisdiction he could approach this Court at any stage and prevent the compensation officer from proceeding further In the matter. The submission that the petition was premature is, therefore, not acceptable.

54. The validity of the orders dated the 31st March 1958 has been questioned on merits. It is urged that the earlier orders refusing inspection, discovery and production on the ground that privilege under Sections 123 and 124 of the Indian Evidence Act could be claimed in respect of the documents mentioned in the applications were erroneous as the required affidavits not having been filed the necessary foundation for the application of Sections 123 and 124 of the Indian Evidence Act had not been made out. Reference is made, in this connection to the observations in *The State of Punjab Vs. Sodhi Sukhdev Singh*, .

It is urged further that Sri Misra was in the first instance justified in reopening the matter and that Sri Misra's (his) successor had no jurisdiction to sit in appeal over the orders of his predecessor and to set aside those orders and to direct that the questions could not be reopened. In this connection it is pointed out that the subsequent applications made by the appellant covered documents in respect of which inspection, production or discovery had never been refused and the orders of the 31st March 1958 so far as they related to those additional documents were in any case invalid.

It is, however, unnecessary to consider these points on merits. The orders dated the 31st March 1958 are certainly interlocutory orders. In certain circumstances, if a proper case is made out, interlocutory orders can also be set aside. The decisions in *Dr. Brijendra Swarup Vs. Election Tribunal at Lucknow and Others*, , *Babu Ram and Others Vs. State*, , are instances of such orders. In the present case, however, the impugned orders will have to be set aside for the simple reason that the quashing of them will only be consequential to the writ of prohibition which the appellant can claim in respect of the entire proceedings started by the applications of the State for restoration. If the entire proceedings are without jurisdiction and cannot be carried on the orders of the 31st March 1958 must fail along with them.

55. The appeal must in the result succeed. It is allowed. The impugned orders dated the 31st March 1958 are quashed and a writ of prohibition shall issue restraining the respondent No. 1 from proceeding with the applications for restoration filed by the respondent No. 2 on the 22nd August 1955. The appellant is entitled to his costs from the respondent No. 2 both of the writ petition and this appeal.

B. Dayal, J.

56. I have had the advantage of seeing the judgment prepared by Hon. Srivastava, J. and I entirely agree with his conclusions. I only wish to add a few words in support of it.

57. From the record, it is clear that the State did not intentionally put in appearance in the case and its complaint about want of notice has no substance. In this connection it is not out of place to note that the State was fully aware of its duty to appear in all cases relating to the settlement of compensation rolls. The State issued instructions to all District Officers by Notification No. 145

ZAC-5/158 (1953) dated Lucknow, 29th July, 1953 to the effect that the Government is a party to all proceedings before the Compensation Officers, but it was expected that it will not be necessary to arrange for the State to be represented in all such cases in which objections had been filed before the Compensation Officer. But in particular cases if the District Officer or the Compensation Officer considers it necessary that some one should represent the Government before the Compensation Officer then the Z.A. Naib Tahsildar may be authorised to plead on behalf of the State.

This circular had been filed as Annexure B to the rejoinder affidavit by the appellant before the learned single Judge and it clearly indicates that the Government deliberately did not put in its appearance in all the cases and left the matter to the discretion of the District Officers and the Compensation Officers themselves to arrange for the representation of the State Government if in any particular case they thought it necessary that the State should be represented specially. Thus the Government had set up a machinery to catch each case and decide about the necessity of appearance or non-appearance. In such circumstances, the Government cannot be heard to complain that it had no knowledge of the proceedings and that no notice was specially served on it for making appearance in the case.

58. In considering the applicability of Order 9, C. P. C. if analogies must be drawn the State Government is really in the position of a plaintiff who has filed the suit for the declaration of the compensation due to a particular intermediary and the intermediary as a defendant objects to that amount being declared and claims that a larger amount should be held to be due. In such a situation if a decree is passed in the absence of the plaintiff, the plaintiff has to act under Order 9, Rule 9 and the limitation for such an application is only 30 days from the date of the order. He is not entitled to any extension of time on any ground.

BY THE COURT

59. The appeal is allowed. The impugned orders dated the 31st March 1958 are quashed and a writ of prohibition shall issue restraining the respondent No. 1 from proceeding with the applications for restoration filed by the respondent No. 2 on the 22nd August 1955. The appellant is entitled to his costs from the respondent No. 2 both of the writ petition and this appeal.