

(1921) 12 CAL CK 0020
In the Calcutta High Court

Saibesh Chandra Sarkar

APPELLANT

Vs

Moharajadhiraj Sir Bejoy Chand Mohatap Bahadur and Others

RESPONDENT

Date of Decision : 16-12-1921

Acts Referred:

Land Acquisition Act, 1894 — Section 31(2)

Citation : 65 Ind. Cas. 711

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for refund of money which had been allowed as compensation for certain lands acquired under the Land Acquisition Act and withdrawn by the defendant.

2. It appears that the lands in question were acquired for a Railway. The plaintiff (the Zemindar) and the defendant, (the putnidar) were served with notices u/s 9 of the Land Acquisition Act. The Collector apportioned the compensation half and half between the Zemindar and the putnidar. Neither party applied for any reference u/s 18 of the Act and the putnidar withdrew the amount awarded to him by the Collector. The Zemindar thereupon brought the suit, out of which this appeal arises, for recovery of the amount which had been withdrawn by the defendant, on the ground that under the putni kabuliyat, the putnidar was not entitled to any portion of the compensation money. The defence inter alia was that the plaintiff ought to have applied for reference u/s 18 of the Act and that no separate suit lies. The Courts below have overruled that contention and the defendant has appealed to this Court.

3. Section 9 of the Land Acquisition. Act (I of 1894) provides for notice being given by the Collector to all persons known or believed to be interested in the land acquired. Section 11 provides for inquiry by the Collector into the objections (if any) which any person interested had stated pursuant to the notice given u/s 9 to the measurements made u/s 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and further

provides for an award being made by him under his hand of.

(i) the true area of the land;

(ii) the compensation which, in his opinion, should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

4. Section 12 lays down (1) that such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested, (2) that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

5. u/s 18 any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. This application for reference is to be made within the time fixed by Sub-section (2) of that section, Section 30 provides that if any dispute arises as to apportionment of the compensation or as to the persons among whom it is payable, the Collector may of his own motion refer such dispute to the decision of the Court. The "Court" means the principal Civil Court of Original Jurisdiction unless the Local Government has appointed a Special Judicial Officer to perform the functions of the Court under the Act, and the provisions of the CPC are to apply to proceedings before the Court under the Act.

6. The Act creates a special jurisdiction and provides a special remedy. And, ordinarily, when jurisdiction has been conferred upon a Special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive. [See Bhandi Singh v. Ramadhin Rai 2 C.L.J. 359 : 10 C.W.N. 991].

7. It is an established principle that where by an Act of Legislature powers are given to any person for a public purpose from which an individual may receive injury if the mode of redressing the injury is pointed out by the Statute, the ordinary jurisdiction of Civil Court is ousted and in the case of injury the party cannot proceed by action. [See Stevens v. Peacock (1848) 11 Q.B. 731 : 17 L.J.Q.B. 163 : 116 E.R. 647 : 75 R.R. 64, West v. Downman (1880) 14 Ch. D. 111 : 42 L.T. 340 : 99 W.R. 6 and Ramchandra v. Secretary of State for India in Council 12 M. 105 : 13 Ind. Jur. 50 : 4 Ind Dec. (N.S.) 422.]

8. A difficulty, however, arises from the proviso to Section 31, Clause (2), which lays down: "Provided also that nothing herein contained shall affect the liability

of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto." There was a similar proviso to Section 40 of Act X of 1870 and the proviso was considered by the Judicial Committee in the case of *Raja Nilmoni Singh v. Ram Bandhu Rai* 7 C. 388 : 4 Shome L.R. 263 : 10 C.L.R. 393 ,8 I.A. 90 : 4 Sar. P.C.J. 234 : 5 Ind. Jur. 388 : 3 Ind. Dec. (N.S.) 799 (P.C.). In that case the appellant Raja Nilmoni Singh was a party to the apportionment proceedings under Sections 38 and 39 of Act X of 1870 and it was held that he could not reopen the question by a regular suit. Their Lordships with reference to the proviso observed: "Such a proviso, which appears to have been but a repetition of a provision in a previous Act in part materia, is necessary in this as in almost all acts of a similar character. It is necessary for the Government, or the persons or Company entitled to take property compulsorily, to deal with those who are in possession or ostensibly the owners: but it may happen, and frequently does happen, that the real owners, possibly being infants or persons under disability, do not appear, and are not dealt with in the first instance and, therefore, a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation money. Their Lordships went on to observe that the proviso applied only to persons whose rights had not been adjudicated upon in pursuance of the Sections (38 and 39). This is the passage on which reliance has been placed in *Srimati Punjabi Dai v. Rajah Pudmanund Singh Bahadur* 7 C.W.N. 538 in which it was held that, as between the claimants inter se, an award by a Collector u/s 11 of the Land Acquisition Act does not amount to an adjudication of any question regarding the apportionment of compensation adjudged under the Land Acquisition Act, and that any such question can be determined only by the Civil Court.

9. In that case the learned Judges observed: Their Lordships decided the case of *Raja Nilmoni Singh v. Ram Bandhu Rai* 7 C. 388 : 4 Shome L.R. 263 : 10 C.L.R. 393, 8 I.A. 90 : 4 Sar. P.C.J. 234 : 5 Ind. Jur. 388 : 3 Ind. Dec. (N.S.) 799 (P.C.) under the old Act X of 1870, and the proviso that their Lordships had to construe is word for word the same as the last proviso to Sub-section (2) of Section 31 of the present Act, and their Lordships referring to an adjudication in pursuance of Sections 38 and 39 go clearly to show that it is an adjudication of the Civil Court upon a reference by the Collector that their Lordships had in view."

10. It is to be observed, however, that the Collector under Act X of 1870 had no power to decide the question of apportionment in any case. Whenever there was any question of apportionment, he was bound to refer the matter to the Court, i.e., the Civil Court, and the Civil Court had to decide the matter under Sections 38 and 39 of the Act. This appears to be the reason why their Lordships in *Raja Nilmoni Singh's* case 7 C. 388 : 4 Shome L.R. 263 : 10 C.L.R. 393 ,8 I.A. 90 : 4 Sar. P.C.J. 234 : 5 Ind. Jur. 388 : 3 Ind. Dec. (N.S.) 799 referred to the adjudication under Sections 38 and 39.

11. Under Act I of 1394, compulsory reference was abolished, and the Collector

his full power to deal with the question of apportionment u/s 11, and his award, subject to the other provisions of the Act, is final u/s 12, no doubt as between the Collector on the one hand and the person interested on the other. The person aggrieved by the award, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested, may apply to the Collector for a reference to the Court. The "Court" by which is meant the principal Civil Court of original jurisdiction or a judicial officer specially empowered to perform the functions of the Court under the Act has to decide the questions referred to the Court. That being so, it is not reasonable to hold that the Act, while creating a Special Court to decide such questions, intended an adjudication of any question relating to apportionment by the ordinary Civil Courts. The proviso as it stands under the present Act, or as it stood under the old Act, is very general in its terms. Admittedly, it cannot be given effect to in its entirety, it cannot be held that a suit lies notwithstanding a reference to the Court upon the application of a party u/s 18, or by the Collector of his own motion u/s 30. The proviso, therefore, must be given a limited application, and we think that it applies only to cases where the person is under a disability or is not served with notice of the proceedings before the Collector.

12. In the case of *Srimati Punnabati Dai v. Rajah Padmanund Singh Bahadur* 7 C.W.N. 538, cited above, the learned Judges, although they referred to the contention that there being a special remedy provided by the Act the general remedy was not available, did not discuss the question, and the observations of the Judicial Committee in *Raja Nilmoni Singh's* case as to the persons to whom the proviso was applicable do not appear to have been considered by them. Then, again, the contention raised in that case that a separate suit if allowed would enable a party to avoid the limitation prescribed by Section 18, namely, six weeks from the date of the Collector's award where the party was present before the Collector, or six weeks of the receipt of the notice from the Collector, or six months from the date of the Collector's award whichever period shall first expire, was disallowed on the ground that there is no limitation prescribed for a reference u/s 30. Section 30, however, applies only to a reference made by the Collector of his own motion presumably before the final award is made; whereas Section 18 deals with a reference upon an application made by a party. For the above reasons, therefore, and with all respects to the learned Judges we are unable to follow the decision in the case of *Srimati Pannabati Dai v. Rajah Padmanund Singh Bahadur* 7 C.W.N. 538.

13. In the case of *Hurmutjan Bibi v. Padma Lochan Das* 12 C. 33: 6 Ind Dec. (N.S.) 22 the plaintiff who brought the suit was no party to the apportionment proceeding, and Wilson, J., pointed out that "apportionment" of the compensation is intended to be a proceeding distinct from that of settling the amount of compensation under the previous provisions of the Act and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. A separate notice, therefore, of the apportionment

proceedings is requisite to bind any person by those proceedings and where such a notice has not been served, any person interested, although served with notice of the proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it." The decision was under the old Act (Act X of 1870), and apportionment proceedings under that Act were taken before the "Court" under Sections 38 and 39 of the ACT.

14. We quite agree in holding that where a person has no notice of the apportionment proceedings he cannot be bound by the award or by the decision.

15. In the case of Bhandi Singh v. Ramadhin Rai 2 C.L.J. 359 : 10 C.W.N. 991 certain persons who were parties to a land acquisition proceeding being dissatisfied with the apportionment of the compensation money made by the Collector obtained a reference to the Court u/s 18 of the Land Acquisition Act, but as they did not appear at the hearing before the Court it was struck off. It was held that the suit instituted by them in the Civil Court for the apportionment of the compensation money was barred u/s 103, Civil Procedure Code, as the procedure to be observed by the Court is the same as that laid down in the Code of Civil Procedure. In that case Mookerjee, J., discussed the question whether, when special jurisdiction had been conferred, such jurisdiction was exclusive or not, and came to the conclusion that the jurisdiction of the Civil Court was exclusive. He however, expressed an opinion, having regard to the provisions of Section 31, Clause (2) and the decision in the case of Raja Nilmoni Singh v. Ram Bandhu Rai 7 C. 388 : 4 Shome L.R. 263 : 10 C.L.R. 393 ,8 I.A. 90 : 4 Sar. P.C.J. 234 : 5 Ind. Jur. 388 : ` ,that a question as to the persons to whom compensation is payable or its apportionment among the persons interested may be determined either under a reference as contemplated by Section 1, Clause (1), or by a suit at the instance of persons lawfully entitled to it as against another who has drawn the compensation money; but that if a party has once availed himself of a reference to the Court u/s 18 he cannot again ask for an injunction to litigate the same matter in the ordinary Civil Court. In that case, as stated above, the plaintiff had obtained a reference u/s 18, which was dismissed for his non-appearance. Consequently, no suit was maintainable. It was unnecessary, therefore, to consider whether the Special Court under the Land Acquisition Act, and the ordinary Civil Courts have or have not concurrent jurisdiction and it is to be noticed that the observations of their Lordships in Raja Nilmoni Singh's case 7 C. 388 : 4 Shome L.R. 263 : 10 C.L.R. 393 ,8 I.A. 90 : 4 Sar. P.C.J. 234 : 5 Ind. Jur. 388 : 3 Ind. Dec. (N.S.) 799 as to the persons to whom the proviso is applicable do not appear to have been considered by the learned Judges.

16. Although the Legislature has created a Special Court (the principal Court of Original Jurisdiction or a Judicial Officer specially empowered to perform the functions of a Court under the Act) to adjudicate all questions of apportionment upon a reference made within the period fixed by the Act, the effect of holding that such Court and the ordinary Civil Courts have concurrent jurisdiction will be

that a party may institute a suit even in a Munsif's Court, (in cases where the amount in dispute does not exceed Rs. 1,000) and that long after the periods prescribed by Section 18. The Act expressly provides that any party dissatisfied with the award of the Collector as regards apportionment, may apply to the Collector for a reference u/s 18 and on such a reference he can get relief in the same way as he can do in the ordinary Civil Court, as the procedure in the Court under the Act is the same as in ordinary Civil Courts, with a right of appeal to the High Court. It would not be reasonable to hold that the Legislature, having provided a special remedy in the Land Acquisition Court, intended to make it optional with a party to apply for a reference u/s 18 or to institute a suit in the ordinary Civil Court. The scope of the proviso may be amply satisfied by holding that it applies only to particular persons. The Collector u/s 9 has to serve notices upon the persons known or believed to be interested in the land. There may be persons who are not known to the Collector and who might not be in possession and the interests of this class of persons are protected by the proviso to Section 31, Sub-section (2).

17. We are of opinion that the plaintiff, having been served with notice u/s 9 of the Act, was bound to apply for reference u/s 18 when he was dissatisfied with the award, and he cannot maintain a suit in the ordinary Civil Court.

18. In this view, it is unnecessary to consider the question whether the word "rasta" in the kabuliyat includes land taken for the purpose of a Railway.

19. We accordingly set aside the decrees of the Courts below and dismiss the suit, but we direct each party to bear his own costs in all Courts.