

(1960) 02 AHC CK 0028

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1191 of 1958

Sriniwas Prasad Singh

APPELLANT

Vs

Sub Divisional Officer Compensation Officer and Another

RESPONDENT

Date of Decision : 23-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 123, 124
Limitation Act, 1963 — Section 5

Citation : (1960) 30 AWR 418

Hon'ble Judges : Jagdish Sahai, J

Bench : Single Bench

Advocate : R.S. Pathak, for the Appellant; K.B. Asthana, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The Petitioner who was a big zamindar owned a large number of villages in the Chunar and Mirzapur tahsils in the district of Mirzapur before the abolition of zamindari. After the zamindari was abolished in 1952 proceedings were started u/Ch. III of the ZA and LR Act (hereinafter called the Act for determination of compensation payable to him. Sometime in 1953 the Petitioner received notices from the Compensation Officers of Mirzapur as also Chunar tahsils informing him that draft compensation assessment rolls in his respect had been prepared and he could file objections against it if he so liked. The Petitioner filed objections within the time provided by the notices on the ground that the draft compensation assessment rolls of both the tahsiis showed lesser amount of compensation than what the Petitioner was entitled to. The Compensation Officers of both the tahsils u/s 48 of the Act decided the objection filed by the Petitioner. No appeal was filed against any of these orders. By 31-1-1955 all the compensation assessment rolls in respect of the villages lying in tahsil Mirzapur were signed and sealed by the Compensation Officer and thus became final. Similarly the Compensation assessment rolls in respect of villages lying in tahsil

Chunar were sealed and signed by 13-12-54 and became final. As a consequence of the Petitioner's objection being allowed the compensation payable to him in respect of the villages in Mirzapur tahsil was raised by Rs. 3,01,348/5/- and that of Chunar Tahsil by several thousand rupees (the exact figures are not given). The Petitioner was given delivery of compensation bonds with regard to villages situated in Chunar tahsil a few days before 22-7-55. The compensation bonds in respect of villages situate in Mirzapur tahsil were also delivered to the Petitioner except to the extent of about 3? lacs of rupees which are lying with the Compensation Officer, Mirzapur. On 22-8-55 Respondent No. 2 (the State of UP) filed applications before the Compensation Officer Chunar as also Mirzapur tahsils praying for the setting aside of the orders accepting the objections filed by the Petitioner in respect of draft compensation assessment rolls and for restoring the various cases arising out of those objections to their original numbers for the purpose of re-hearing them. It was alleged in these applications that no notice of the proceedings arising out of these objections had been issued to Respondent No. 2 and the latter had no know ledge of these proceedings and it came to know for the first time of those orders on 22-7-55. These applications were supported by affidavits sworn by Shyam Narain Lal, Land Reforms Clerk, Mirzapur. On 17-10-55 the Petitioner filed objections against all the applications mentioned above inter alia on the ground that Respondent No. 2, its agents, representatives and officers had full knowledge of the objections filed by the Petitioner u/s 46 of the Act and the proceedings arising thereon and that the applications were barred by time. These objections were supported by an affidavit sworn by the mukhtar-i-am of the Petitioner. On 11-11-1955 the Petitioner applied to the Compensation Officer, Mirzapur Under Order 11, Rules 12 and 14 Code of Civil Procedure, for discovery and production of certain documents specified in that application on the ground that the documents mentioned in the application which were in the possession of Respondent No. 2 and its officers would conclusively prove that Respondent No. 2 and its officers had full knowledge of the Petitioner's objections against the draft compensation assessment rolls long before 22-7-55 and that the Naib Tahsildars Zamindari Abolition were authorised by Respondent No. 2 to represent it in all such cases. The counsel for Respondent No. 2 raised oral objections to the grant of the application mentioned above though no affidavit claiming privilege Under Sections 123 and 124 of the Evidence Act was filed on behalf of Respondent No. 2. Two other applications, one dated 23-12-55 and the other dated 4-10-55 had also been made by the Petitioner Under Order 11, Rule 12 and 14 Code of Criminal Procedure. All the three applications were rejected by the then Compensation Officer by two separate orders dated 11-11-55. True copies of the two orders have been filed and marked as annexure VI and VII. Applications Under Order 11, Rules 12 and 14 Code of Criminal Procedure were made on 15-12-56 by the Petitioner to the Compensation Officer, Chunar also. These applications were also objected to on behalf of Respondent No. 2 but no affidavit claiming privilege Under Sections 123 and 124 of the Evidence Act was filed in this case also. These applications were rejected by the then Compensation Officer, Chunar by his order dated 5-1-56. A

true copy of that order is filed and marked as annexure IX. On 6-10-56 the District Judge, Allahabad, passed an order directing all the cases relating to the villages of the Petitioner in tahsil Chunar and Mirzapur to be consolidated and sent for hearing to the Compensation Officer (Sub-Divisional Officer) Mirzapur, Respondent No. 1. On 2-8-57 the Petitioner presented two applications Under Order 11, Rules 12 and 14 Code of Criminal Procedure for discovery, production and inspection of documents in possession of Respondent No. 2 and its officers "fully setting out the grounds for the same." On 31-8-57 an objection was filed on behalf of Respondent No. 2 against the above mentioned two applications inter alia on the ground that similar applications of the Petitioner having already been rejected the matter could not be reopened as also that the documents were privileged and their production should not be ordered. No affidavit claiming privilege was filed this time also. On 12-10-57 an application was made by counsel for Respondent No. 2 asking Respondent No. 1 first to decide whether he could reopen the question in the face of the order of his predecessors dismissing similar applications and on 12-10-1957 Sri R.K. Misra, the then Compensation Officer, Mirzapur, passed an order saying that he could reopen the question and fixed 26-11-57 for the filing of objections with regard to the discovery and inspection of documents specified in the Petitioner's application dated 22-8-57. After the case had been adjourned several times on 15-1-1958 an objection was filed by the Special counsel for Respondent No. 2 inter alia on the ground that the documents were privileged. No affidavit claiming privilege was however filed. Thereafter Sri R.K. Misra, Compensation Officer was transferred to Lucknow and was succeeded by Sri C.D. Upadhyaya and the latter rejected the two applications of the Petitioner dated 22-8-57 mentioned above by his order dated 31-3-58 on the ground that inasmuch as the earlier applications for the same purpose had been dismissed the matter cannot be reopened. He did not record any finding as to whether or not the documents in respect of which privilege was claimed were really privileged documents. On these facts (he Petitioner has prayed for the issue of a writ of certiorari to the Respondent No. 1 to bring up his order dated 31-3-1958 for being quashed. There is also a prayer for the issue of a writ of mandamus or any other direction to Respondent No. 1 to hear and decide the Petitioner's application Under Order 11, Rules 12 and 14 CPC in accordance with law. In addition there is the usual prayer for the issue of any other direction which may be considered to be fit and proper in the circumstances of the present case.

2. A counter affidavit has been filed on behalf of the Respondents which has been sworn to by Sri Triloki Nath Pandey, Naib Tahsildar Zamindari Abolition, Mirzapur. The relevant allegations made in this counter affidavit are in substance, the following:

No notice of objections filed by the Petitioner was issued to the State and all the objections contained only the amount of gross assets claimed by the Petitioner and not the grounds or the reasons upon which the enhanced amount of gross assets was claimed, nor did they contain any details of the errors on the record

on the basis of which the compensation assessment rolls were objected to. The Naib Tahsildar never appeared on behalf of the State in any of the proceedings arising out of the objections filed by the Petitioner and even those Naib Tahsildars who were working with the Compensation Officer in connection with the preparation of the compensation statements had never been authorised by the district officer to represent the State in any of the proceedings. Under the instructions issued by the Deputy Land Reforms Commissioner in July 1953 to all the district officers in UP it was only when it was considered necessary to oppose a particular objection that the District Officer concerned could authorise the Zamindari Abolition Naib Tahsildar to represent the State in the proceedings arising out of that objection. In the present case as no notice of the Petitioner's objection was given to the State, no occasion arose for the district officer of Mirzapur to authorise the Naib Tahsildar Compensation or any other person to represent the State. The function of all the officers including the Zamindari Abolition Naib Tahsildar in the machinery set up for assessment of compensation under the Act was purely administrative and these persons could not act as recognised agents of the State for purposes of contesting objections until duly authorised by the Collector. The main ground on which the application made by the Petitioner for discovery and inspection was opposed was that the documents required by the Petitioner were not part of the judicial record and had no bearing on the merits of the case. Some of the applications of the Petitioner were also opposed on the ground that the Compensation Officer having already rejected the applications of the Petitioner for discovery and inspection of records, no fresh application for the same purpose could lie. The documents sought to be inspected related to official correspondence and the order passed by Respondent No. 1 on 31-3-58 was also to the same effect.

3. A rejoinder affidavit has been filed by Brahmdeo Singh, Mukhtar-i-Am of the Petitioner who had also filed the original affidavit in support of the writ petition. Mostly the allegations made in the original affidavit are in substance reiterated. The relevant additional allegations made in the rejoinder affidavit are in substance the following:

Sri Triloki Nath Pandey was the Naib Tahsildar Zamindari Abolition for tahsil Mirzapur only and not for Tahsil Chunar and he was posted to Mirzapur tahsil only after the entire compensation assessment proceedings had become final and closed in that tahsil. The Naib Tahsildar Zamindari Abolition at Tahsil Chunar represented the State. The order dated 18-12-54 (Annexure A) would show it.

4. Mr. G.S. Pathak, who has appeared for the Petitioner has submitted that though in the present case there is no prayer for a writ of prohibition but a prayer for the issue of a writ of certiorari only, a writ of prohibition be issued as the Respondent No. 1 has no jurisdiction to consider or allow the applications made by Respondent No. 2 for setting aside the orders allowing the objections filed by the Petitioner. The ground urged by the learned Counsel in support of this submission is that once the compensation assessment rolls are signed and

sealed u/s 52 of the Act they become final and cannot be varied except by way of correcting a clerical or an arithmetical error as provided by Section 61 of the Act and inasmuch as Respondent No. 2 did not file an appeal u/s 50 of the Act against the order of the Compensation Officers, Mirzapur and Chunar tahsils, it could not after the Compensation assessment rolls had been sealed and signed get the matter reopened.

5. Section 52 of the Act runs as follows:

52. Final Compensation Assessment Roll (1) Where no objection has been filed in regard to the draft Compensation Assessment Roll in pursuance of the notice u/s 46 or where such objections are filed and have been finally disposed of and the draft Compensation Assessment Roll amended, altered or modified accordingly, the Compensation Officer shall sign the same and also affix his seal thereto.

(2) The Compensation Assessment Roll when so signed and sealed shall become final.

6. Section 61 of the Act reads as follows:

61. Correction of bona fide mistakes-(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 mistake in the Compensation Assessment Roll or any error arising therein from any accidental slip or omission. In the present case it is not disputed that the compensation assessment rolls in respect of all the villages of which the Petitioner was the intermediary had been signed and sealed at the time when the applications for rehearing of the objections were made by the State Government. The contention on behalf of the State however is that inasmuch as no notice was given to Respondent No. 2, the State of UP and it had no knowledge of the objections filed by the Petitioner and the same were decided without giving the Respondent No. 2 an opportunity of contesting them, those orders are liable to be set aside Under Order IX, Rule 13 Code of Criminal Procedure, or under inherent powers and in the circumstances the compensation assessment rolls cannot be considered to be final.

7. The first question that arises for consideration in the present case is as to whether or not Respondent No. 2 was entitled to a notice with regard to the objections filed by the Petitioner u/s 46 of the Act.

8. Ch. III of the Act deals with the assessment of compensation, Ch. IV of the Act with the payment of compensation and Ch. V with the rehabilitation grant. Section 343 of the Act which falls in Ch. XII reads as follows:

State Government to be a party in the proceedings u/Ch. III to V.-The State

Government shall be and be deemed to be a party in every proceeding before the Compensation Officer or the Rehabilitation Grants Officer u/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 Chapter 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 be ninety days from the date of the orders appealed against.

9. Two interpretations which are diametrically opposed to each other have been placed upon this section by the learned Counsel for the parties. Whereas on behalf of the Respondents it is contended that this section provides that the State Government shall be a party to all the proceedings before the Compensation Officer or Rehabilitation Officer and notice of such proceedings should be served on the Collector or an authority nominated by him, the contention on behalf of the Petitioners is that it does not make any such provision. It is true that Section 343 has not been very happily worded but reading it carefully I have come to the conclusion that it provides that the State Government shall be a necessary party in all proceedings and even in cases where it is not actually made a party its right to its being treated as such would not be a matter of doubt and by the force of law its inclusion in the array of parties shall be presumed even though actually it has not been made a party. In other words the right of the State Government to be treated as a party either by the person who initiates the proceedings or by the Compensation Officer or the Rehabilitation Officer shall be conclusive. I am conscious that the words "The State Government shall be and be deemed to be a party in every proceedings" do, to some extent, create some confusion in the proper interpretation of the section because the expressions "shall be" and "deemed to be" are mutually exclusive. It has been contended on behalf of the Petitioner that the word "deemed" means that which in reality it is not. For (his submission reliance is placed upon the case of Commissioner of Income Tax Bombay v. Bombay Corporation where the Privy Council observed as follows:

Now when a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were.

10. The argument continues that if a person is deemed to be a party he cannot in fact be a party and that what was intended by Section 343 of the Act was that the State Government should not be made a party and no notice should be issued to it but in law it must be deemed to have been a party. In my opinion this interpretation is not possible for two reasons. In the first place the words "The State Government shall be...a party" conclusively prove that its right to be a party is fully guaranteed by that section. If the interpretation put forward by Mr. Pathak be accepted these words would become useless. It is well established principle of law that while interpreting a section or an Act the doctrine of

harmonious construction should be adopted. Therefore the words "The State Government shall be and deemed to be a party" must be read in a harmonious manner and one part of it should not be read so as to destroy the other part. Reading these words that way the only possible interpretation would be, which I have already given above. Beside, if the interpretation suggested by the learned Counsel for the Petitioner is accepted the result would be absurd and Section 343 would become a very unjust and meaningless provision. In my opinion it is not possible to hold that the Legislature ever intended to provide by enacting Section 343 that though the State Government be not treated as a party and no notice be issued to it should be deemed to be a party and visited with the consequences of being a party without having a right which every party has of contesting the objections. Apart from it words "every notice to be served or intended to be served" leave no manner of doubt that the State Government has got to be served in respect of every proceeding. If it is not to be treated as a party I do not see how it can be served with a notice. In my opinion the interpretation put forward by the learned Counsel for the Petitioner is not borne out by the language of Section 343 of the Act. In this connection the other point to consider is as to what does the expression "every notice to be served or intended to be served on the State Government" occurring in Clause (1) of Section 343 mean. In my opinion the expressions "to be served" and "intended to be served" in the context of this section mean the same thing. It may be that the words "intended to be served" may be redundant but there can be no manner of doubt that the total effect of the two expressions is that notices of all the proceedings contemplated by Section 343 of the Act must be served on the Collector or his nominee, On behalf of the Petitioner it has been contended that all that this part of Section 343(1) provides for is not that notice of every proceeding under Chaps. III to V shall be served on the Collector or his nominee but that if under the provisions of the Act any such notice is required to be served it shall be so served. It is therefore, contended that inasmuch as there is no provision in the Act for the service of a notice on the State Government or the Collector or his nominee with regard to an objection filed u/s 46 of the Act and a proceeding u/s 48 of the Act no notice was necessary to the State Government in the present case nor was such a notice necessary on the Collector or his nominee. In my opinion this argument is not correct. None of the sections falling in Chaps. III to V expressly provides for any notice to be served on the State Government. If the limited meaning assigned to the words every notice to be served or intended to be served by the learned Counsel for the State is to be given, the conclusion would have to be that in no case a notice on the State Government or the Collector need be served. The result of that interpretation would be that the second part of Section 343 Clause (1), that is, the one dealing with the notices to be served on the State Government shall become redundant. This interpretation to my mind is not supported either by the language of Section 343 Clause (1) which must be the main basis of interpretation or by any of the other recognised principles of interpretation of statutes. As I read the section all that I find it to mean is that the State Govt. is a necessary party in all proceedings under

Chapters III, IV and V of the Act and the notice of those proceedings should be given to the Collector or his nominee on behalf of the State Government invariably. It is an admitted fact that in the present case the State Govt. was not treated to be a party and no notice of the objections filed by the Petitioner was served on it or on the Collector, Mirzapur or his nominee nor were they intimated the date of hearing of the objections and the same were decided ex-parte. In my opinion this has been an illegality and a disregard of the mandatory provisions of law. What has been its effect I shall consider at a later stage. In this connection it may however be pointed out that Section 46 of the Act provides that after the draft Compensation Assessment Roll in respect of any intermediary has been prepared, the Compensation Officer shall 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 person concerned. Section 46 also requires that the notice should call upon person interested to appear and file objections upon statement or roll within a period of two months. It is also one of the requirements of this section that a copy of the notice as also the draft Compensation Assessment Roll shall be served on the intermediary concerned. It is significant to note that this section does not require any similar notice to be served on the State Government or any other person. Section 47 of the Act provides that if any objection is filed within the time allowed therefor, it shall be registered by the Compensation Officer who shall 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. A careful perusal of this section would show that the intimation of the date of the hearing has got to be given to the intermediary concerned and only to such of the persons interested who may have appeared in reply to the notice. This section does not in so many words require that intimation of the date of the hearing be given to the State Government. Section 63 defines the expression "person interested" which runs as follows:

In this chapter "person interested" includes 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.

11. Though the definition given in Section 63 of the Act is not exhaustive it appears to me that the State Government having been separately provided for being a party it would not be included in the definition of "person interested." Consequently if there had been no Section 343 in the Act and the Code of Criminal Procedure had not been made applicable the effect of Sections 46 and 47 of the Act would have been that the notice would not have called upon the State Government to file an objection and if any objections were filed by the intermediary or a person interested the State Government would not have been intimated the date fixed for the hearing of those objections, though it is obvious that the State Government has to pay the compensation and is a necessary

party. Section 48 of the Act provides that in hearing and deciding the objections filed u/s 46, the Compensation Officer shall, in so far as they may be applicable and not inconsistent with the provisions of Ch. III, have all the powers of a Civil Court and subject to such modifications as may be prescribed, follow the procedure laid down in the Code of Criminal Procedure for the hearing and disposal of suits relating to immovable property. Section 49 of the Act provides that the order that the Compensation Officer passes while deciding the objections mentioned above, shall be deemed to be a decree of the Civil Court and shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decisions.

12. It has been contended strenuously that the scheme of Ch. III and the specific provisions of Sections 46 and 47 read with Section 63 of the Act leave no manner of doubt that the State Government is not a party interested and has not got to be intimated of the date of the hearing of the objections. It is contended that if the legislature intended to treat the State Government as a necessary party for the purpose of the objections u/s 46, it would have made specific provision for the same and in any case Sections 46 and 47 would have been so worded as to require notices to be issued to the State Government and information of the date for the hearing of the objections being intimated to the State Government, In my opinion this argument is not correct. Section 343 of the Act, as I have mentioned above, clearly provides for the State Government being treated as a party in all proceedings in Chapters III, IV and V and instead of making a provision for its being treated as such a party in every section in these three chapters the Legislature thought it proper to provide for it by means of one section in the "Miscellaneous" chapter of the Act, That section is absolutely clear and applies to all the proceedings in the three chapters mentioned above and Sections 46 and 47 of the Act must be read along with that section. I am, therefore, unable to agree that the scheme of Ch. III of the Act is that neither the State Government is a necessary party nor should it be intimated the date of the hearing of the objections, it is relevant to examine the language of Section 50 of the Act which runs as follows:

Notwithstanding anything contained in any law, any person aggrieved by the order of the Compensation Officer deciding the objection u/s 48 may appeal to the District Judge:

Provided that where the difference between the net assets; entered in the toll and the net assets claimed by the intermediary exceeds rupees two thousand and five hundred, the appeal shall lie to the High Court. It would be noticed that the right of appeal is conferred not on the intermediary concerned or a party interested alone but on any person who is aggrieved by the order of the Compensation Officer. It cannot be doubted that if in his order the Compensation Officer enhances the amount of compensation payable to the intermediary illegally and improperly, the State Govt. would be a person aggrieved by the order and it has been admitted even by the learned Counsel for the Petitioner

that it would have a right to file an appeal u/s 50 of the Act. In my opinion there can be no manner of doubt that the State Government would be included in the expression "any person aggrieved" occurring in Section 50 of the Act and as such it would have a legal right of filing an appeal against the decision of the Compensation Officer if it in any way affects its interests. The question that therefore immediately faces us is that: can the legislature be attributed the intention of providing the State Govt. the right of filing an appeal and yet depriving it of the opportunity of contesting the objections and of making appearance on the date of the hearing of the objections? In my opinion no such intention can be attributed to the legislature and in fact it is not possible to do so in view of the express language of Section 343 of the Act. In my opinion reading the various sections of the Act together the only conclusion possible is that the State Govt. is a necessary party in all the objections filed either by the intermediary or by persons interested, for otherwise not only Section 343 will become a dead letter but the right of appeal conferred on State Government by Section 50 will become illusory. It is a cardinal rule of interpretation of statutes that while construing a provision harmonious interpretation to all the provisions in the same Act must be given in order to make the various provisions of the act consistent with each other. See *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, and *Pheku Chamar and Others Vs. Harish Chandra and Others*, .

13. The argument that Mr. Pathak advanced in this connection is that inasmuch as the notice u/s 46 of the Act is published in the Gazette of the State Government and also because Rule 43 of the rules framed under the Act requires that after the draft Compensation Assessment Roll has been drawn up the Compensation Officer shall cause a notice in ZA Form 28 to be published in the Gazette and copies of the notice shall be pasted at the notice board in the office of the Collector of the district, of the tehsil and at a place of public resort in the village in which the estate is situate, the Collector has in fact notice of the publication of the Gazette as also of the preparation of the draft Compensation Assessment Roll and he should thereafter keep himself informed of all the proceedings that are being taken and that is why Sections 46 and 47 did not require any notice being issued to him or intimation of the date fixed for the hearing of the objections being conveyed to him. In my opinion these modes of publicity are not a substitute for the notice contemplated by Section 343 of the Act. It is a matter of which a Court can take judicial notice that in every district there were at least 25,000 to 30,000 intermediaries and it is obvious that it could not have been the intention of the legislature to expect the State Government while discharging its other multifarious duties to look to every notice and Gazette issue and to treat the publication of the notice in the Gazette or the pasting of the notice on the notice board in the office of the Collector or the tehsil or in the village as a full compliance of the provisions of Section 343 of the Act. Apart from it, if that was the intention it was not necessary to enact Section 343 of the Act at all. It has also been contended that the position of the State Government

in these proceedings is that of the Plaintiff and once a proceeding is started no notice has got to go to the Plaintiff who has to keep himself informed of all the subsequent proceedings. In my opinion the analogy of the State Government with the Plaintiff is not at all correct. In fact no clear analogies from the CPC can be given to the parties in proceedings under Chapters 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. So far as the liability to pay compensation to all the intermediaries is concerned, it is not created by any orders of the Compensation Office but by virtue of the express provisions of the Act. Section 65 of the act provides that there shall be paid to every intermediary as compensation in respect of the acquisition of his rights, title and interest in every estate the amount declared in that behalf u/s 60. Section 28 Clause (2) makes the State Government liable to pay interest on the amount of compensation which is determined. Therefore, the liability to pay compensation and interest on it is fixed on the State Government by the Act itself and all that is required to be done under Ch. III of the Act is to determine the amount of compensation. 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 Govt. would best answer to the description of 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.

14. It is contended on behalf of the State that Section 48 of the Act makes the provisions of Code of Criminal Procedure applicable to the hearing of objections. It is contended that this would make the provisions of Order 5 Code of Criminal Procedure applicable to the proceedings contemplated by Section 48 Order 5 Code of Criminal Procedure deals with the issue and service of summons on the Defendant. The first question therefore that arises for consideration in this connection is whether the State Government will be deemed to be in the position of a Defendant in a proceeding u/s 48 of the Act arising out of an objection either filed by a person interested or by the intermediary concerned. In my opinion ordinarily the position of a person who initiates the proceedings by filing the objection should be analogous to that of a Plaintiff and of the one who has no hand in the initiation of those proceedings but is nonetheless a person concerned analogous to that of the Defendant. 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. The second question that arises for consideration is that in view of the fact that the Code of Criminal Procedure has been made applicable to the hearing and deciding of the objections, the same would be applicable for the purposes of effecting service on the parties or not. The word "hearing" has not been defined in the Act not in the Code of Criminal Procedure. Whenever the word "hearing" has come up for judicial interpretation, it has been considered in the setting in

which it has been used in that particular Act or section, for instance, the Privy Council held in the case of Lachmi Narain Marwary and Ors. v. Balmakund Marwary and Anr. that hearing in Rule 2 of Order 17 Code of Criminal Procedure only occurs when the Judge is taking the evidence or hearing arguments or otherwise coming to the final adjudication of the suit. The expression "hearing" is also used in the sense of trial (see Wharton's Law Lexicon). It is also used to mean as the investigation of a controversy (see Rama Natha Iyer's Law Lexicon 1940 Edition). In the same book the following meaning also has been given to "hearing":

The trial of a suit is called a "hearing" and technically considered this includes not only the introduction of the evidence and arguments of solicitors but the pursuance of the decree by the Chancellor.

15. In the same book again the following meaning is given to that expression:

A term properly applied to the argument and consideration of the case at the several stages of its orderly progress and when applied to that upon which the case is absolutely determined it is qualified by the word "final".

16. 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. It may also be mentioned that Section 341 of the Act provides that the Indian Court-Fees Act, the CPC and the Indian Limitation Act including Section 5 thereof apply to proceedings under the Act, except to the extent to which there is an express provision. So far as the procedure or effecting service is concerned, there is no express provision in the Act and Order 5 Code of Civil Procedure, as modified and supplemented by Section 343 of the Act in my opinion would apply. Section 343 of the Act requires that such a notice must be served upon the Collector or this nominee. I, therefore, hold that in the present case a notice should have been served on the Collector of the district.

17. It has also been contended on behalf of the State that principles of natural justice will require that a notice be served on the State Government in a case like the present one in connection with objections filed u/s 47 of the Act. In my opinion, though, it is true that it is a well known principle of natural justice that no order adverse to a party should be passed without giving him an opportunity of being heard, there is no application of that doctrine in the present case because both the Act and the Code of Criminal Procedure which applies to these proceedings require that a notice be served. The principles of natural justice can be invoked only if there are no statutory provisions for notice. I have already held above that there are statutory provisions which require that a notice should

be served. There is thus no application of the principles of natural justice in the present case.

18. It has been urged on behalf of the Petitioner that even though it be held that a notice of the Petitioner's objection was necessary to the State Government and the same was not issued, the Respondent No. 2 had nonetheless knowledge to the proceedings because a notice in the Gazette must have been published u/s 46 of the Act and publication would also have been made under Rule 43. In the first place there is no evidence on the record of the case that the provisions of Section 46 of the Act and Rule 43 of the Rules were in fact complied with in the present case and secondly even if it be presumed that the State Government and the Collector had knowledge of the Draft Compensation Roll or Rolls, they cannot be deemed to have any knowledge of the objection that the intermediary filed or any person interested may have filed because such objections could not be notified u/s 46 of the Act or Rule 43 of the Rules. It has not been shown to me by the learned Counsel for the Petitioners as to how could the State Government have knowledge of the objection filed by the Petitioner or the proceedings arising therefrom and admittedly in the present case the orders passed are affecting very adversely the State Govt. The only answer the learned Counsel could give was that the State Government was represented by the Naib Tahsildar of the Zamindari Abolition as also by the Compensation Officer and other Compensation Staff who were its agents and employees and therefore knowledge of all those proceedings must be attributed to the State Government and the State Government had the means of knowing what the objections of the Petitioners were. It is also alleged in the affidavit filed in support of petition that the Naib Tahsildar, Zamindari Abolition appeared on behalf of the Collector and the State Government and some questions were also put to some of the witnesses of the Petitioners. These allegations have been controverted in the counter affidavit. I see no reason to disbelieve the allegations made in, the counter affidavit. I am not prepared to hold that the Naib Tahsildar had been specially instructed by the Collector and he was taking part in the proceedings on behalf, of the State Government as a party. It is true that the Compensation Officer and the members of his staff are the employees of the State Government and in a sense their agents. But after the objections were filed the Compensation Officer became a judicial tribunal and ceased to be an agent of the State Govt. His functions thereafter were that of a Judge or a tribunal and he could not represent any party. The members of his staff were also public servant discharging their duties and were not the agents or the representatives of the State Government or the Collector as a party to the proceedings u/s 48 of the Act. I, therefore, overrule this submission of the learned Counsel. In view of the findings given above no finality can be attached to the orders passed by the Compensation Officer and the Compensation Rolls. It is well established law that even though the law may make a particular order or act final the Courts have the power to enquire into the validity of the steps leading to that order or act. See *Manick Chand Mahata v. Corp. of Calcutta and the Calcutta Improvement Trust* ILR 48

Cal. 916 : AIR 1921 Cal. 159. That being so, in my opinion, the Compensation Roll did not become final. If the Compensation Roll did not become final, it is open to the Respondent No. 1 to consider the applications made by the Respondent No. 2 for setting aside the orders passed and restoring the case to their original numbers. I have already held above that the Code of Criminal Procedure applies to these proceedings and that the position of the State Government is analogous to that of a Defendant. It is also admitted case of the parties that the proceedings against the State Government were ex-parte and not congested. In my opinion therefore Order 9 Rule 12 would be applicable to the present proceedings though not in express terms. It is true that there is no provision in the Act for setting aside ex parte orders. It is also true that there is no express provision like Order 9, Rule 13 or Order 47, Rule 1, Code of Criminal Procedure but the Code of Criminal Procedure has been made applicable to the proceedings under the Act generally and to the provisions of hearing expressly with the result that both the provisions of Order 9, Rule 13 Code of Criminal Procedure and Order 47 Rule 1 would be applicable. In the view that I am taking, I find support from the decision of their Lordships of the Supreme Court in the case of Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, where a right of appeal was considered to exist in a case tried under the Ordinance because the provisions of the Code of Criminal Procedure were made applicable to it though the Ordinance itself did not clearly confer a right of appeal on the State Government. I am, therefore, of the opinion that the ex parte orders passed by the Compensation Officer can be set aside if on merits a case is made out to the satisfaction of the Respondent No. 1 for doing so and in my opinion the provisions of Order 9 Rule 13 and even those of Order 47 would apply to proceedings such as the one giving rise to this writ petition.

19. There is another reason for which, in my opinion, it would be open to the Respondent No. 1 to set aside the earlier orders and to reopen the matter, the reason being that it is a well-known principle of law that no party will suffer for the mistake of the Court. In the present case I have already held above that a notice of the objections of the Petitioners was required to be sent to the Respondent No. 2. Inasmuch as the same was not sent, there is a mistake, though a bona fide one, of the Court (Compensation Officer). The Respondent No. 2 cannot be made to suffer because of this mistake of the Compensation Officer who was acting like a court and that being so the Compensation Officer like any other court had the inherent jurisdiction to vacate its earlier orders. The view that I am taking find support from, the following cases: Raja Debi Baksh v. Habib 40 Ind. App. 151, Syed Tafazzool Hoosain v. Raghoonath Pd. and Ladlee Pd. 14 Moores's Ind. App. 40 and Asa Devi v. Champa Devi 1947 A.W.R. 933. That being so, I am unable to agree with the learned Council for the Petitioners that the Compensation Officer has no jurisdiction to consider the application for setting aside the earlier orders and to reopen the matter. That being so there can be no question of the issue of a writ of prohibition. In my opinion there can be no question of issuing a writ of certiorari also in the circumstances of the present

case. We do not know what orders the Compensation Officer the Respondent No. 1 will pass on those applications. Until those orders are passed it cannot be said whether those orders are correct or not. In the petition there was no prayer for issue of a writ of prohibition and the only prayer was for the issue of a writ of certiorari quashing the order dated 31st of March 1958. In my opinion that order can also not be quashed because in the first place it is an interlocutory order and secondly the Respondent No. 1 had the jurisdiction to pass it. Even if it be assumed, though I am not holding to that effect, that that order is not legally correct, no certiorari will lie because no such writ lies against an order passed with jurisdiction though erroneous see Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, , Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, and Deoria Sugar Mills Ltd., Deoria Vs. Govt. of U.P. and Others, .

20. In my opinion the Petitioners have come prematurely to this Court. It may also be stated that if the Petitioners wanted to file a writ of prohibition, they should have come to this Court much earlier. The applications for setting aside the ex-parte orders were given on 22nd of August 1955 and this petition was filed on the 11th of April 1958. In between the Petitioners were taking full part in the proceedings arising out of those applications. Considering all the facts and circumstances of the case I am of the opinion that no case is made out for the issue of any writ or order under Article 226 of the Constitution of India.

21. The petition is accordingly dismissed but there is no order as to costs.