

(1897) 03 AHC CK 0002
In the Allahabad High Court

The Collector of Dehra Dun	Vs	APPELLANT
The Crown Brewery		RESPONDENT

Date of Decision : 17-03-1897

Acts Referred:

Citation : (1897) ILR (All) 339

Hon'ble Judges : Knox, J;Burkitt, J

Bench : Division Bench

Judgement

Knox and Burkitt, JJ.—This is an appeal from an order passed by the Judge of Saharanpur on a reference made to him on the 16th of February 1894, by the Superintendent of the Dun. The reference was made u/s 15 of Act No. X of 1870, as Act No. I of 1894 did not come into force till the 1st of March 1894. The Collector (Superintendent) described the land proposed to be taken up as being land situated in Kinlock's State Crown Brewery, Jhari-pani, consisting of 17 acres, 6 poles: He described the Crown Brewery as being the "persons interested" in the land, and stated that he had offered 476 Rupees as compensation for that land, standing trees, &c., to this he added 15 per cent, for forcible acquisition, the total amount offered being Rs. 616-7-8, a sum which he says the manager of the Brewery refused as being insufficient.

2. In the reference the Superintendent of Dehra Dun alludes to a claim made by the Brewery as to a spring of water and for compensation for the same, but he adds that the spring clearly belongs to Government. He did not propose to take it up under the Act. The case first came on for hearing before the District Judge on the 20th of April 1894, when three issues were fixed, namely:

1. The value of the land, trees, &c.?

This was a perfectly proper issue and the only one that arose in the case.

The next two issues were:

2.The right to the water, i.e., could the claimants claim a right to it against

Government?

3. If so, the value of the water right?

3. These two issues did not arise on the reference and were improperly fixed for trial by the Judge as issues in the case.

4. The evidence of one witness, Mr. Campbell, was taken and the case was adjourned to the 28th of January 1895. Before that date arrived Mr. Winter, who had succeeded Mr. Tweedie as Superintendent of the Dun, addressed to the Judge a letter, dated the 9th of November 1894, (No. 25 on the record) appended to which, with reference to his predecessor's reference of the 16th of February 1894, he submitted what he called "a further note on the subject" together with copies of certain documents. The "note" is referred to in the Judge's memorandum of the 28th January 1895 as a "long written statement" filed by the Collector. We have no hesitation in saying that the Collector was wrong in addressing such a communication to the Judge, and the Judge was equally wrong in receiving and filing it. When the appeal was being argued, Mr. Chamier, who appeared for the Government, very rightly admitted that such proceedings should never have taken place and did not attempt to support them.

5. In his decision the learned District Judge found, firstly, that the Brewery had no title to the land, and, secondly, that the Brewery had no title to the spring and the water. But, as the Collector had offered Rs. 616-7-8, he confirmed that award. Thus it will be seen that he did not decide the issue as to the value of the land which had been raised at the first bearing, which, as we have pointed out, was the only real issue in the case. The Crown Brewery has appealed.

6. It is contended that the Judge was wrong in entering into the question of the title of the Crown Brewery to the land as against the Government. In our opinion the contention is a sound one and must be supported. We fully concur in the rule of law laid down in the case of Imdad Ali Khan v. The Collector of Farakhabad ILR 7 All. 817, in which it was held: "The Collector has no power to make a reference to the District Judge u/s 15 in cases in which he claims the land in question on behalf of Government or the Municipality, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference." If Mr. Winter desired to deny the title of the Crown Brewery to the land, &c., proposed to be taken up, his proper course, we conceive, would have been to withdraw the reference, but his not having done so did not in our opinion give the District Judge jurisdiction to decide the question of title. It therefore follows that whatever the Judge has decided in his judgment as to the title of the Brewery to the land is irrelevant and not called for by the reference. As to the spring and water, we have pointed out that the Collector did not propose to take them up under the Act; no question respecting them was before the Judge, and his finding on this point also is equally irrelevant and without jurisdiction.

7. There was one point and one point only awaiting decision, namely, the value of the land. On this point no decision has been given: it must now be decided.

We set aside the order of the Court below and refer, u/s 566 of the Code of Civil Procedure, that point for the determination of the Judge, namely, what is the value of the 17 acres 6 poles of the land together with the trees standing thereon, which the Collector proposes to take up, and what amount of compensation should be given under the Act? As both parties have had full opportunity of giving evidence, no further evidence will be taken. The Judge will send a reply to this reference in two months. On its return ten days will be allowed for objections by either party and the appeal then put up for hearing.