

CIVIL REVISION.

Before Jack and Khundkar JJ.

LEAH ELIES JOSEPH SOLOMON

v.

H. C. STORK.*

1934

May 24, 25, 28.

Jurisdiction—Revision by High Court—Land Acquisition Collector—Limitation—Receiver—Right of a party to ask for reference not taken away by appointment of receiver—Land Acquisition Act (I of 1894), ss. 11, 18.

The High Court is empowered to revise an order of the Land Acquisition Collector refusing to refer a case to the civil court under section 18 of the Land Acquisition Act.

Administrator-General of Bengal v. Land Acquisition Collector, 24-Pergs. (1) and Krishna Das Roy v. Land Acquisition Collector of Pabna (2) followed.

Where a receiver is appointed “without prejudice to the contentions of the parties concerned,” the right of a party to ask for a reference is retained and the Land Acquisition Collector is not entitled to reject his application on the ground that his right was taken away by the appointment of a receiver.

But, where that party is represented before the Land Acquisition Collector at his own request by the receiver under the directions of the High Court, his application for a reference should be made within six weeks of the date of the award.

An award cannot be said to be made until it is drawn up and signed by the Land Acquisition Collector in accordance with section 11 of the Act.

CIVIL RULE under section 115 of the Civil Procedure Code obtained by the applicant for a reference.

The facts of the case and the arguments in the Rule appear in the judgment.

J. C. Hazra, S. Roy, Surendramadhab Mallik and Prabodhkrishna Shome for the petitioners.

*Civil Revision, No. 1525 of 1933, against the order of H. C. Stork, First Land Acquisition Collector of Calcutta, dated Sep. 1, 1933.

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*The Government Pleader, Saratchandra Basak,
 and the Assistant Government Pleader, Roopendra-
 kumar Mitra, for the opposite party.*

Cur. adv. vult.

JACK AND KHUNDKAR JJ. This Rule has been issued on the learned First Land Acquisition Collector in connection with his order, dated 1st September, 1933, rejecting the petitioner's application requiring a reference to the Calcutta Improvement Trust Tribunal under section 18 of the Land Acquisition Act for decision of her objection to the amount of an award made by the Land Acquisition Collector under the provisions of section 11 of the Act. The application was rejected on the ground that it was not within the time allowed by law.

A preliminary point was raised that this Court has no jurisdiction in revision either under section 115 of the Code of Civil Procedure or under section 107 of the Government of India Act.

The High Court has no powers of revision unless the case is decided by a court subordinate to the High Court, *viz.*, subject to the appellate jurisdiction of the High Court. It is true that a decision of the Collector as to the amount of an award may indirectly come before the High Court in its appellate jurisdiction, where a reference has been made to the civil court under section 18 of the Land Acquisition Act, and it is argued that on this ground the orders of the Collector are subject to revision just as the orders of the Rent Controller under the Calcutta Rent Act have been held to be subject to revision by the High Court in the cases of *H. D. Chatterjee v. L. B. Tribedi* (1) and *Allen Bros. & Co. v. Bando & Co.* (2). The fact remains, however, that the Collector cannot be said to be a court within the meaning of section 115 of the Civil Procedure Code or of section 107 of the Government

(1) (1921) I. L. R. 49 Calc. 528. (2) (1922) I. L. R. 49 Calc. 931.

of India Act. There is abundant authority for this view. Reference may be made to the cases of *British India Steam Navigation Co. v. Secretary of State for India* (1), *Ezra v. Secretary of State for India* (2), *Ezra v. Secretary of State* (3), *Abdul Sattar Sahib v. The Special Deputy Collector, Vizagapatam Harbour Acquisition* (4), *Balkrishna Daji Gupte v. Collector, Bombay Suburban* (5), *M. H. Mayet v. Land Acquisition Collector, Myingyan* (6).

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The petitioner, on the other hand, relies on the cases of this Court, in which it has been held that this Court is entitled to revise an order of the Land Acquisition Collector refusing to refer a case to the civil court under section 18 of the Act, viz., *Administrator-General of Bengal v. Land Acquisition Collector, 24-Pergs.* (7), *Krishna Das Roy v. The Land Acquisition Collector of Pabna* (8). These decisions have not been overruled and the petitioner supports them by reference to the decisions in *Saraswati Pattack v. Land Acquisition Deputy Collector of Champaran* (9), *Secretary of State for India v. Jiwan Bakhsh* (10), *Hari Das Pal v. The Municipal Board, Lucknow* (11), and to the cases under the Rent Act *H. D. Chatterjee v. L. B. Tribedi* (12), and *Allen Bros. & Co. v. Bando & Co.* (13).

There can be no question that the act of the Collector in refusing to make a reference under section 18 of the Land Acquisition Act is a judicial act. The petition for a reference corresponds to the plaint in a suit. It initiates judicial proceedings in the Land Acquisition Court, which, by virtue of section 54 of the Land Acquisition Act, is a court

(1) (1910) I. L. R. 38 Calc. 230.

(2) (1905) I. L. R. 32 Calc. 605 ;
 L. R. 32 I. A. 93.

(3) (1902) I. L. R. 30 Calc. 36.

(4) (1923) I. L. R. 47 Mad. 357.

(5) (1923) I. L. R. 47 Bom. 699.

(6) (1934) I. L. R. 12 Ran. 275.

(7) (1905) 12 C. W. N. 241.

(8) (1911) 16 C. W. N. 327.

(9) (1917) 2 Pat. L. J. 204.

(10) (1916) 36 Ind. Cas. 213.

(11) (1913) 22 Ind. Cas. 652.

(12) (1921) I. L. R. 49 Calc. 528.

(13) (1922) I. L. R. 49 Calc. 931.

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subordinate to the High Court, and the petition for reference is practically a part of those proceedings. Though, therefore, technically section 115 of the Civil Procedure Code may not be applicable, it was hardly the intention of the legislature that there should be no remedy against the wrongful rejection of an application for reference. It may be noted in this connection that no relief under section 45 of the Specific Relief Act could be obtained outside the jurisdiction of the Chartered High Courts. In these circumstances and in view of the previous rulings of this Court [*Administrator-General of Bengal v. Land Acquisition Collector, 24-Pergs. (1)* and *Krishna Das Roy v. The Land Acquisition Collector of Pabna (2)*], we will not decide against the petitioner on the preliminary point.

As regards the merits :—

The question of limitation turns upon the point, whether the applicant was present or represented before the Collector when the award was made. If she was so present, her application was barred by time, for the award was made in March, 1933, and her application was not made until the 31st of August 1933, whereas under section 18, clause (2)(a), the application must be made within six weeks. If, on the other hand, she was not present or represented, the application may be made within six weeks of the receipt of notice from the Collector under section 12 (2), or within six months from the date of the Collector's award, whichever period shall first expire. As in this case, the applicant received no notice under section 12(2), she would have time up to six months and was within time on the 31st of August. In dismissing her application the learned Land Acquisition Collector says that she was present when the award was made, because she was there throughout the discussions, which culminated in the award; she knew fully the terms proposed, in fact "the delay in making

(1) (1905) 12 C. W. N. 241.

(2) (1911) 16 C. W. N. 327.

“out the award as finally proposed and accepted by “the other parties was entirely due to her unwillingness to join the otherwise general agreement.” This is not quite accurate, since another party was also objecting to the proposed terms.

In showing cause under the Rule, the learned Land Acquisition Collector says that the fact that the petitioner was not present on the 30th of March does not alter the position. She was present when it was finally determined that the award would be for Rs. 4,10,000. He considers that the award is “made” when it is settled what the award is to be; after that it takes several days to draw up the actual award so determined—“a long and complicated document “requiring great care and intricate calculation in “this case”—and adds “in practice it would be absurd “as well and a great inconvenience to the parties, if “they were again recalled when the Collector only “signs his name to an award already determined, “merely in order to clarify an imaginary intention of “section 18 (2) (a).”

The learned Collector appears to have overlooked the terms of section 11 of the Act directing that an award shall be made “under his hand” and contain particulars of apportionment amongst those interested as well as the total compensation. It follows that the award cannot be said to be made until it is so drawn up and signed. In the present case this took place on the 30th March and the affidavits show that the petitioner was not herself present on that date. The learned Land Acquisition Collector was, therefore, not entitled to reject her application as barred under section 18(2) (a) by six weeks’ limitation on the ground that she was so present. However, his order can be supported on the ground that, though she was not present she was represented and so comes within the terms of section 18(2) (a), for, under the orders of this Court, she was represented by a receiver of the estate, a portion of which is the property in question. Under the direction of this Court the receiver was to accept

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the award on behalf of the claimants and there is no doubt that, when he appeared before the Collector on the 30th March and accepted the award, he was representing them under the orders of this Court. This would not take away the petitioner's right to make a reference specially as the appointment of the receiver was "without prejudice to the contentions of the parties concerned."

Reading the petition for appointment of the receiver together with the terms of the appointment and the directions given to him, it is clear that he was entitled to represent the claimants before the Land Acquisition Collector with the reservation only that his appointment would not prejudice their contention that the amount of the offer was too low. The effect of this would be that they were entitled to make a reference against the award under section 18 of the Act, but, inasmuch as they were represented before the Collector, section 18, clause (2)(c) would apply, and the period of limitation would be six weeks from the date of the award, *viz.*, six weeks from the 30th of March. Under Order XL, rule 1, this Court was entitled to so appoint a receiver and give him such powers. There was no appeal against the order appointing him and it must be taken that the petitioner, who had notice of his appointment accepted his representation of her before the Collector, and, as she did not take advantage of her right to make a reference within 6 weeks, her claim to do so was barred and her application on 31st of August out of time.

The Rule is accordingly discharged.

Rule discharged.

G. S.