

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

RAMALAKSHMI (CLAIMANT), APPELLANT,

v.

THE COLLECTOR OF KISTNA, RESPONDENT.*

1892.
December 22.
1893.
February 8.

*Land Acquisition Act—Act X of 1870, s. 55—Reference by a Collector—
Jurisdiction of a District Court.*

A Collector is not competent to refer nor a District Judge to decide any question arising under Land Acquisition Act, s. 55.

CASE referred for the orders of the High Court under Civil Procedure Code, s. 617, by G. T. Mackenzie, District Judge of Kistna.

The case was stated as follows :

“Ummanedi Ramalakshmi owns a house and compound at “Bezwada. The railway took up a portion of her compound and “she accepted the Collector’s offer of compensation. The railway “now requires another strip of her compound, extent $40\frac{2}{3}$ square “yards. The Collector offers ten annas a yard. Claimant does “not object to this valuation, but she contends that under section “55 of Act X of 1870 the Collector must take the whole house “and compound.

“The Collector, thereupon, referred the matter to the District “Court. Claimant relied upon *Khairati Lal v. The Secretary of “State for India*(1). The Government Pleader, on the other side, “cited *Taylor v. The Collector of Purnea*(2).

“I held that my duty was merely to value the land actually “taken up, that I had no power to compel the railway to acquire “the whole house and compound, that the remedy under section “55 must be by a suit, and that, on the merits, section 55 “would not apply to this case. As there is no dispute about “the valuation of the land taken up, I approved the Collector’s “offer. At claimant’s request I now state the dispute regarding “section 55.

“There seems to be no appeal. Under section 28 my deci- “sion on this point of law is final. I do not understand how

* Referred Case No. 37 of 1892, (1) I.L.R., 11 All., 378. (2) I.L.R., 14 Cal., 423.

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“there was an appeal to the High Court in *Khairati Lal v. The Secretary of State for India*(1).

“In *Taylor v. The Collector of Purnea*(2) the High Court set aside the District Judge’s order under section 55 as *ultra vires*.

“It appears to me that the view taken by the Calcutta High Court is correct. When the Collector makes a reference to the District Court under this Act, the District Court derives its jurisdiction from the reference and its powers are limited to settling the amount of compensation for the land actually taken up or apportioning that compensation.

“*Kharshedji Nasarvanji Cama v. Secretary of State*(3) was a suit to compel a railway to take up the whole of a mill after they had taken the well whence water was obtained for the mill. It was under section 32 of Act VI of 1857, which was in the same words as is section 55 of the present Act. This shows that a suit is the correct remedy.

“If the point can be decided by this District Court on a reference, then, upon the merits, I think that the claimant’s contention must fail. The land acquired is a portion of the compound in front of the house. The house will be habitable as before and this appropriation of 40 square yards of compound in front of it will make little difference. Claimant relies upon the decision in *Khairati Lal v. The Secretary of State for India*(1) and upon the English decisions under section 92 of the Land Clauses Consolidation Act of 1845. I admit that these decisions are in claimant’s favour, but I doubt if they will be followed in the Madras Presidency where compounds are so large. A compound in front of a house is not a necessity: many houses have a frontage immediately on the street.

“Also, I do not understand how claimant’s contention regarding section 55 can be reconciled with the third clause of section 24 which contemplates damages for severance.

“I have therefore the honour to submit the following questions :

“(a) Can a District Court, on a reference from the Collector under Act X of 1870 regarding the amount of compensation for part of premises taken up, apply section 55 and compel the Collector to take up the whole ?

“(b) If so, in the present case, ought the Collector to acquire the whole house and compound?”

Pattabhirama Ayyar for the claimant.

RAMALAKSHMI
*,
COLLECTOR OF
KISTNA.

The Acting Government Pleader (*Subramanya Ayyar*) for the Collector.

JUDGMENT.—As observed by the Calcutta High Court in *Taylor v. The Collector of Purnea*(1), the Collector is not competent to refer and the Judge is not competent to decide any question arising under section 55 of the Act. The Act confers only a special and limited jurisdiction to the Judge to deal with two classes of questions, viz., the award of compensation and its apportionment among several claimants. When there is a difference of opinion as to whether the whole house should be taken up by Government or not, the proper course for the party is to institute a regular suit.

We are of opinion that the view of the Judge is correct.

The costs of this reference will be the costs of the cause.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

RAJAH OF VENKATAGIRI (DEFENDANT No. 1), APPELLANT,

v.

YERRA REDDI (PLAINTIFF), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, s. 49—Suit for restoration of specific movable property.

1893.
January 10.

A raiyat brought a suit in the Court of a Deputy Collector as under the Rent Recovery Act, praying for the release from attachment and the restoration to him of certain movable property, and for some other subsidiary relief:

Held, that the Deputy Collector had no jurisdiction to entertain the suit under Rent Recovery Act, s. 49.

SECOND APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in appeal suit No. 111 of 1891,