

APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice
Madhavan Nayar.*

THE DEPUTY COLLECTOR, COCANADA (REFERRING
OFFICER), APPELLANT,

1925,
December 10.

v.

THE MAHARAJA OF PITTAPUR (FIRST CLAIMANT),
RESPONDENT.*

Land Acquisition Act (I of 1894), sec. 31 (2), proviso 3—Award of compensation by Deputy Collector—Apportionment—Payment by Deputy Collector to claimants according to his award—Apportionment, objected to by claimants, who were Zamindar and his tenants—Reference to District Court—Apportionment altered—Zamindar awarded increased share of the compensation in the District Court—Right of Zamindar to apply for execution against Government in the District Court.

Where a Deputy Collector, acquiring lands for the Government under the Land Acquisition Act, determined the amount of compensation payable, apportioned it among the claimants and paid their shares under his award, but, on a reference made to the District Court at the instance of a claimant objecting to the apportionment, the District Court increased the share of compensation in favour of the objecting claimant,

Held, that the award of the District Court was a direction that the Government should pay each claimant the amount awarded to him under its award, and that the claimant, who obtained an increased share under its award, is entitled to recover the amount from the Government by filing an application in the District Court for execution against the Government.

The Government is bound to deposit in the District Court the amount of compensation awarded by the Referring officer for distribution according to the award of the District Court,

* Appeal against Order No. 391 of 1923.

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and the increased amount, if any, awarded by the Court; the Government should not throw on the claimant the risk and burden of recovering the compensation from some other party to whom the Government has wrongfully paid it.

The third proviso to section 31 (2) of the Act does not apply to a case of wrongful payment by the Deputy Collector to a claimant, as the proviso only comes into operation when section 31 (2) has been obeyed.

Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai, (1881) I.L.R., 7 Calc., 388 (P.C.), relied on.

APPEAL against the order of T. V. NARAYANAN NAYAR, Acting District Judge of Gōdāvāri, in E.P. No. 64 of 1923 in Original Petition No. 164 of 1920.

The Government acquired an extent of seven and odd acres of land in Tenangi village, and the Deputy Collector estimated the market-value at Rs. 250 per acre. The Maharaja of Pittapur, who had melwaram rights in the land, was awarded by the Deputy Collector Rs. 104-4-4 as compensation for his melwaram interest and the balance was awarded to the tenants, who were the other claimants before him. The awarding officer paid the tenants the amount due to them according to his award. The Zamindar, who had objected to the share allowed to him, asked for a reference to be made to the District Court within the time allowed by the Land Acquisition Act. The reference was made, and the District Court upheld the Zamindar's contention and awarded to him Rs. 930 for the value of his melwaram right, in modification of the award of the Deputy Collector. As the Government did not pay the Zamindar the additional amount awarded to him by the District Court, he applied, by an execution petition in the District Court, to recover from the Government the additional amount awarded to him. The Government pleaded that the Zamindar should recover the amount from the tenants, to whom the Deputy Collector had

paid under his award, and that the award of the District Court should not be taken as an executable decree. The District Judge overruled both the contentions, and passed an order fixing one month's time for payment by the Government of the excess amount awarded to the Zamindar, under section 82 of the Civil Procedure Code. The Referring officer (Deputy Collector) preferred this appeal.

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The Government Pleader (C. V. Anantakrishna Ayyar) for appellants.

S. Srinivasa Ayyangar and *S. Venkatesa Ayyangar* for respondents.

JUDGMENT.

The award of the District Court directed that the amount awarded by it should be paid to each party. We think this is a clear direction that Government shall pay to each party the amount awarded to him. That is the essential motive and meaning of an award and Government is bound, *prima facie*, to supply the money required to pay each party the amount of compensation due to him.

In the present case, unfortunately, the Deputy Collector had not obeyed section 31 of the Land Acquisition Act, and instead of depositing in Court the amount to be apportioned, paid over to the tenants the amount awarded by him to them. Consequently when the District Court increased the Zamindar's share to the total compensation, the balance due to him was not available in Court for payment over to him. The Government's view is that the Zamindar must recover it from the tenants to whom it was paid in excess. The Government Pleader calls in aid the third proviso to section 31 (2). We do not think this proviso has any application. It only comes into operation when

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section 31 (2) itself has been obeyed, and does not apply to a case of excess payment wrongfully made [see *Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai*(1)].

We think that Government was bound, under the provisions of the Land Acquisition Act, to have ready in the District Court the amount awarded by the Referring officer, for distribution according to the decision of the District Court. If the District Court had in a proper reference increased the amount of compensation, Government is bound to pay into Court the amount of increased compensation. The principle is not altered when an apportionment of the compensation amount is increased, and if the Referring officer had obeyed section 31, the necessary money would have been there. It is not right that Government should throw on a party, whose property it has compulsorily acquired, the risk and burden of recovering the compensation from some one else to whom Government has wrongfully paid it. Whether Government can by appropriate proceedings recover the excess from those to whom it was paid is for Government to consider. We are not prepared at this stage to grant time to Government, as requested by the Government Pleader, to appeal against the award of the District Court. It seems to us a proper award and the appeal time has long ago expired.

We see no reason to interfere with the order of the lower Court and dismiss the appeal with costs.

K.R.