

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice King.*

1934,
October 3.

THE SPECIAL DEPUTY COLLECTOR OF RAMNAD
(PETITIONER), APPELLANT,

v.

THE RAJAH OF RAMNAD (CLAIMANT), RESPONDENT.*

Land Acquisition Act (I of 1894), ss. 31 and 32—Lands included in an Impartible Estate acquired under the Act—Compensation money payable—Proprietor of Impartible Estate—If, a person incompetent to alienate within the meaning of ss. 31 and 32—Madras Impartible Estates Act (II of 1904)—Policy of.

The proprietor of an impartible estate is a person incompetent to alienate the lands comprised in the estate within the meaning of sections 31 and 32 of the Land Acquisition Act. The policy of the Madras Impartible Estates Act is that the compensation money payable in respect of the lands acquired under the Land Acquisition Act should not be paid over to him but should be converted into other land to form part of the estate which will not thus suffer from the acquisition. In such a case the acquiring officer should deposit the compensation amount in Court under section 31 of the Land Acquisition Act so as to enable the Court to deal with the same under section 32 of the Act.

APPEALS against the orders of the District Court of Ramnad, dated 25th September 1931, in Original Petitions Nos. 43 and 48 of 1931 (originally presented to the High Court as Civil Revision Petitions Nos. 553 and 554 of 1932 but subsequently directed to be converted into appeals on payment of deficient court-fee).

* Appeals Nos. 232 and 233 of 1934.

These appeals originally came on for hearing before PANDRANG ROW J. who made the following order referring the appeals to a Bench :—

SPECIAL
DEPUTY
COLLECTOR,
RAMNAD
v.
RAJAH OF
RAMNAD.

In these cases the compensation amounts due in respect of lands acquired for public purposes were deposited in the District Court, Ramnad, by the Land Acquisition Officer under section 31 (2) of the Land Acquisition Act, because, according to him, there was no person competent to alienate the lands which formed part of the impartible estate known as the Ramnad Zamindari. The question for decision by the District Court was whether, in view of the provisions of section 4 of the Madras Impartible Estates Act (II of 1904), the Rajah of Ramnad who is the proprietor of the impartible estate in question was competent to alienate the lands, and this question was decided by the District Judge in the affirmative.

The Government Pleader has presented these two petitions for revision of the orders of the District Judge, as the question decided by the District Judge is one of general importance, which has arisen and is likely to arise frequently, and there have been contrary decisions given by different District Judges, and it is considered necessary to have the law definitely laid down on the point by the High Court. There can be no doubt that the point is one of considerable general importance, and it seems to me desirable that it should be decided by a Bench, especially in view of the absence of any clear authority. Another question has also been argued before me at some length, viz., whether these revision petitions are not competent because there is a right of appeal from the orders sought to be revised. This question also is one of general importance and should in my opinion be decided by a Bench. The petitions are therefore referred to a Bench of two Judges.

BEFORE THE BENCH :—

The Government Pleader (P. Venkatramana Rao) for appellant.

A. C. Sampath Ayyangar for respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by KING J.—Certain land situated in two villages KING J.

SPECIAL
DEPUTY
COLLECTOR,
RAMNAD
v.
RAJAH OF
RAMNAD.
—
KING J.

and belonging to the impartible estate of the Rajah of Ramnad was acquired under the Land Acquisition Act for the purpose of making a road. The acquiring officer (the Special Deputy Collector, Ramnad) deposited the compensation-money in Court under section 31 of the Act. The District Judge, holding in effect that the money should not have been deposited, ordered it to be paid to the Rajah. These are revision petitions filed by the Government against his order.

A preliminary objection was raised on behalf of the Rajah that, as the Land Acquisition Act provided in section 54 for an appeal, no revision petition could be heard. Realising that this contention would involve a lengthy argument of only academical interest and realising also the importance of the point raised in the petitions, we converted the petitions into appeals and proceeded to hear them on their merits.

The learned District Judge in a brief order has given two reasons for his decision,

(i), that the very existence of acquisition proceedings which the Rajah could not resist is a necessity which would permit alienation under section 4 of the Impartible Estates Act, and

(ii), that the Rajah is *not* a person who can come within the phrase "incompetent to alienate" in section 31 or "having no power to alienate" under section 32 of the Act.

No attempt has been made at the hearing before us to support the first of these reasons, nor is any serious reliance placed upon the second. Even the learned District Judge himself refers to the Rajah's powers of alienation being "limited by legislation as a matter of public policy." The learned Judges who decided the case reported as

Mrinalini Dasi v. Abinash Chandra Dutt(1) say on page 1027 :

“ The Legislature obviously intended to apply the section to cases of persons who have no power to alienate the property acquired as absolute owners.”

And with this view we are in entire agreement. In our opinion the Rajah can in no way be held to be absolute owner of his impartible estate, and sections 31 and 32 of the Land Acquisition Act must *prima facie* apply to him. It is true that in *Assistant Collector of Kaira v. Vithaldas*(2) a very subtle distinction is drawn between “ disability attaching to a person holding land ” and “ disability attached to the land held ”, but with respect we see no reason to follow this distinction. It seems to us obvious that if a person is entitled to land which by reason of some enactment he cannot alienate he is incompetent to alienate it.

The main argument of the learned Advocate for the Rajah is a somewhat different one. The Rajah may perhaps be a person incompetent to alienate the land, but if the whole of sections 31 and 32 is read it will be seen that the sections are unworkable if applied to his case, and can be applied only to cases in which the land acquired would eventually have come into the possession of an absolute owner. The provisions of section 32 are these : If the Court finds that the land acquired belonged to a person who had no power to alienate it, it shall order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership ; if such an immediate purchase cannot be made then the money must be invested and interest

SPECIAL
DEPUTY
COLLECTOR,
RAMNAD
v.
RAJAH OF
RAMNAD.
—
KING J.

(1) (1910) 14 C.W.N. 1024, 1027.

(2) (1915) I.L.R. 40 Bom. 254.

SPECIAL
DEPUTY
COLLECTOR,
RAMNAD
v.
RAJAH OF
RAMNAD.
KING J.

must be paid to the person who would have been entitled for the time being to the possession of the land and this must continue until either (i) land is purchased as contemplated above or (ii) any person becomes absolutely entitled to receive the money.

Now there is no authority directly covering the question before us, but the authority which comes nearest to it is *Assistant Collector of Kaira v. Vithaldas*(1) to which incidental reference has already been made. In that case, what was acquired was land the alienation of which was prohibited by the Bhagdari and Narvadari Act (Bombay Act V of 1862). It was held that section 32 *prima facie* applied to the case, but could not apply on closer examination, because (i) no other lands could be purchased to be held under the like title and conditions of ownership, and (ii) there could never be any person more absolutely entitled to the land acquired or the compensation money than the owner of the land at the time of the acquisition. No perpetual investment of money is contemplated by section 32, and therefore section 32 cannot apply.

The learned Advocate for the Rajah relies very strongly on this ruling, but clearly the crux of the whole matter is whether in the present case the purchase of land under section 32 is or is not possible. If it is possible the last remaining reason for not applying the section disappears. Now it is clear from section 3 of the Bhagdari and Narvadari Act that the Act applies to shares in definite Bhagdari or Narvadari villages. If a few acres of land in one of these villages are acquired

(1) (1915) I.L.R. 40 Bom. 254.

it will of course be impossible to purchase a similar small quantity of land elsewhere to be held under the same conditions of ownership, as there must be a limited number of villages and each village must be limited in area. But the estate of the Rajah of Ramnad is not geographically restricted in this way, and there is no reason why it cannot be added to by the purchase of land to compensate for the loss sustained by the acquisition.

The result is then that *Assistant Collector of Kaira v. Vithaldas*(1) affords no real parallel to the present case, and that there is no reason why section 32 should not be applied to it. In the ordinary sense of the words the Rajah was clearly incompetent to alienate the lands acquired and it is in accordance with the policy of the Impartible Estates Act that the compensation money should not be paid over to him but should be converted into other land to form part of the impartible estate which will not thus suffer from the acquisition. We hold therefore that the Special Deputy Collector was right in depositing the money under section 31, and the District Judge should now proceed to deal with the deposit under section 32 and we allow these appeals with costs (One set).

G.R.

SPECIAL
DEPUTY
COLLECTOR,
RAMNAD
S.
RAJAH OF
RAMNAD.
KING J.

(1) (1915) I.L.R. 40 Bom. 254.