

by the Court subsequently disposing of the suit upon the merits, and the decision of such Court would not only be open to appeal to the Judge, but to a second appeal to this Court.

Under these circumstances, I do not think that the case falls within s. 617 of the Code, and the record must be returned to the Judge, and he must dispose of the appeal as to him seems fit. Any costs that may have been incurred by the parties owing to this reference will abide the result of the cause.

BRODHURST, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

IMDAD ALI KHAN (OPPOSITE PARTY) *v.* THE COLLECTOR OF FARAKH-
ABAD (APPLICANT)*.

Act X of 1870 (Land Acquisition Act), s. 15—Reference by Collector to District Court—Land claimed by Collector on behalf of Government or Municipality.

The scope and object of the Land Acquisition Act (X of 1870) is to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable.

S. 15 of the Land Acquisition Act contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under s. 9, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine.

The Collector has no power to make a reference to the District Judge under 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.

THE facts of this case are sufficiently stated for the purposes of this report, in the judgment of Straight, J.

Mr. *Amir-ud-din*, for the appellant.

The *Senior Government Pleader* (*Shri. Juala Prasad*), for the respondent.

STRAIGHT, J.—This is an appeal from a decision of the Judge of Farakhabad, dated the 15th August, 1884, and by way of precau-

* First Appeal No. 168 of 1884, from an order of C. J. Daniell, Esq., District Judge of Farakhabad, dated the 23rd August, 1884.

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tion, a petition for revision was also filed by the appellant. The order impeached professes to have been passed under the provisions of the Land Acquisition Act of 1870.

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Now, I find that the Judge, at the commencement of the judgment, observes as follows:—

“This claim is contested by three persons, the Collector, representing the Municipality of Farakhabad, Brindaban, and Chotey Khan. It is a claim to a strip of land, seven biswas in area, lying immediately with the jesnai gate of the city, next to a plot of land No. 1793, which is said to be owned by Chotey Khan.”

I gather from this passage in the Judge's decision that he regarded the matter much in the light of a civil suit for land in which three different parties were asserting a title to such land, and this question of title to the property was what he had to determine.

The first plea which has been raised before us is, that the Judge had no jurisdiction to take cognizance of such a dispute on a reference from the Collector of Farakhabad under the Land Acquisition Act, as no such reference could properly be made, when the Collector himself claimed the land as belonging to Government. I think that this plea is a sound one, and must prevail. The action of the Collector in making this reference was apparently founded upon a misapprehension of the object and intention of the Land Acquisition Act of 1870, which contemplate the provisions of a summary method of determining the compensation to be paid for land required for certain defined purposes, and the Act points out the mode in which the same is to be acquired, and the formalities necessary.

By s. 15 it is enacted that, if upon inquiry before the Collector, any question respecting the title to the land, or any rights thereto, or interests thereon, *arise between or among* two or more persons making conflicting claims in respect thereof, the Collector is authorized to refer the matter to the determination of the Judge.

This section clearly contemplates a reference when the question of the title to the land arises between the claimants who appear in

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response to the notice issued under s. 9 of the Act, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine. The scope and object of the Act as I have already observed, was to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable.

The special jurisdiction of the Judge for this purpose is intelligible enough; but I do not think it was ever intended to be extended to a case in which the Collector claims the land on behalf of the Government or the Municipality, and denies the title of other claimants to the land. Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector as seeking acquisition of land, when he asserts that the land is his own, and that no other person has any interest in it.

The Judge has treated this case as one between three persons making conflicting claims to the land, and he has determined that it belongs to the Collector. In other words, he has, under colour of the Land Acquisition Act, tried a triangular civil suit for declaration of proprietary title to land; and in my opinion he had no authority whatever to do so. Looking to all the circumstances of the case, it is clear to my mind that the Collector had no power to make the reference, and consequently the Judge had no jurisdiction to entertain and determine it. The proceedings of the Judge being without jurisdiction, we have no other alternative but to decree the appeal with costs, and set them and his order aside.

BRODHURST, J.—For the reasons recorded by my brother Straight, I am of opinion that the proceedings of the Judge are without jurisdiction, and must be set aside, and the appeal decreed with costs.

Appeal allowed.