

1917

RAMJI LAL
v.
KARAN
SINGH.

appellate court with directions to re-admit the application under its original number in the file and proceed to hear and determine the same according to law. Costs will be costs in the cause.

Appeal allowed and cause remanded.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

KRISHNA SAH (OBJECTOR) v. THE COLLECTOR OF BAREILLY
(OPPOSITE PARTY.) *

Act No. I of 1894 (Land Acquisition Act), section 9—Procedure—Occupier of land sought to be compulsorily acquired—Notice.

Under section 9, clause (3), of the Land Acquisition act, 1894, the occupier of land, concerning which a public notice has been given under clause (1) of the section, is entitled to such notice as will give him, in the same manner as the persons mentioned in clause (2) fifteen days interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation, etc.

THIS was an appeal by the occupier of land the subject of proceedings under the Land Acquisition Act, 1894, from an order of the District Judge of Bareilly confirming the award of the Collector. The award was confirmed upon the sole ground that the appellant did not state "the nature of his interest in the land and the particulars of his claim to compensation for such interest" by way of objection under section 9, clause (2), of the Act. The main objection of the appellant involved a question of procedure under the Act, and was to the effect that the notice which had been served on him under section 9, clause (3), did not give him the statutory period, namely, 15 days, to which he was entitled for the purpose of representing his case to the Collector.

Pandit *Uma Shankar Bajpai*, for the appellant.

Mr. *A. E. Ryves*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of proceedings under the Land Acquisition Act. The learned District Judge has affirmed the award of the Collector on the sole ground that the appellant did not state "the nature of his interest in the land and the particulars of his claim to compensation for such interest" by way of objection under section 9, clause (2), of the Land Acquisition Act. He appears to have

* First Appeal No. 369 of 1915, from a decree of H. Nelson Wright, District Judge of Bareilly, dated the 3rd of September, 1915.

1917
April, 16.

considered that, such objection not having been put forward, he was justified (if not bound) under section 25, to affirm the award of the Collector. Section 9 of the Land Acquisition Act provides that the Collector must cause public notice to be given at convenient places, at or near the land to be taken, stating that the Government intends to take possession of the land and claims to compensation for all interest in such land may be made to him. Clause (2) prescribes what the notice shall state, and amongst other things that the notice shall require all persons interested in the land to appear before the Collector *at a time* mentioned in the notice. It has expressly provided that the *time shall not be earlier than 15 days after the publication of the notice*. In the present case the publication of the notice was on the 18th of July, and the date required for appearance before the Collector was the 24th of July, clearly a much shorter period than that prescribed by the section. Clause (3) provides for a second notice which is to be served on the occupier of the land, which is *to the same effect* as the notice prescribed by clause (2). In the present case this personal notice was served on the 16th of July. This also is less than 15 days. The learned Judge seems to have thought that because the personal notice was served, the first notice was unnecessary and as no *time* was prescribed in the second notice the appellant is not entitled to complain that the notice served on him gave him less than 15 days to make his objection. We think that the learned Judge was wrong in the view he took. In the first place the Act requires that two notices are to be served, and accordingly the service of the first notice containing what is prescribed by the section was absolutely necessary. We think also that the 15 days ought to be allowed by the second notice. There is no reason why the occupier should not have same time allowed him within which to make his objection as other persons. We think that the words "to the same effect" in clause (3), really mean that the second notice should have the same matters mentioned in it, including the time, as the first notice. The learned District Judge should therefore have tried the case and considered the evidence, and the appellant ought to be considered as having had sufficient reason for not filing his objections before the Collector. We allow the appeal, set aside the order of the

1917

KRISHNA SAH
v.
THE
COLLECTOR OF
BAREILLY.

1917

KRISHNA SAH
v.
THE
COLLECTOR
OF BAREILLY.

learned District Judge and remand the case to him with directions to re-admit the case on its original number on the file and proceed to hear and determine the same on the merits having regard to what we have said above. The respondent must pay the costs of this appeal.

Appeal allowed and cause remanded.

1917

April, 18.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

LAKHPAT RAI (PLAINTIFF) v. FAKHR-UD-DIN (DEFENDANT)*
*Act No. IV of 1882 (Transfer of Property Act), section 91—Mortgage—
Right to redeem—Attaching creditor.*

Certain property was mortgaged on the 4th of April, 1889. One *N. K.* obtained a simple money decree against the mortgagor on the 25th of May, 1889. Before judgement *N. K.* had attached the property, and it was subsequently sold by auction and purchased by *L. R.* on the 28th of September, 1902. In 1897, the mortgagees sued on their mortgage without impleading either *N. K.* or *L. R.* In execution of their decree the property was sold and purchased by defendant's father, who obtained possession on the 25th of April, 1900. *L. R.* brought a suit for recovery of possession or, in the alternative, for redemption.

Held that under section 91 (f) of the Transfer of Property Act, *N. K.* was entitled to redeem, and the plaintiff, as a person claiming under him, was also entitled to redeem.

THE facts of this case were as follows:—

One Nand Kishore obtained a simple money decree against Ram Mohan Lal on the 25th of May, 1889. Before judgement he had caused the property to be attached. The property was subsequently put up to sale and purchased by Lakhpat Rai on the 28th of September, 1902. The sale was confirmed on the 26th of November, 1902. The defendant, on the other hand, set up the following title:—The property in dispute had been mortgaged by Ram Mohan Lal on the 4th of April, 1889, in favour of Ram Ratan and Ram Gopal. On the 15th of June, 1897, a suit was instituted by the mortgagees for sale upon the mortgage. They obtained a decree on the 25th of September, 1897, and caused the property to be sold on the 20th of June, 1899, when the defendant's father purchased the same. He was put in possession on the 25th of April, 1900.

* First Appeal No. 167 of 1915, from a decree of Rama Das, Subordinate Judge of Pilibhit, dated the 31st of March, 1915.