

*Before Mr. Justice Tudball and Mr. Justice Sulaiman.*

CHANDAR LAL SAH AND ANOTHER (OPPOSITE PARTIES) v. THE  
COLLECTOR OF BAREILLY (APPLICANT).\*

1911  
July, 26.

*Act No. I of 1894 (Land Acquisition Act), sections 25, 26, 27 and 54—Reference to District Judge—Powers and duty of Judge in dealing with an award made by the Collector—Review of his award by Judge—Appeal.*

A District Judge on a reference made to him under the Land Acquisition Act, 1894, cannot award a less amount than that awarded by the Collector, even though the Collector has by mistake awarded to the claimant a larger sum than he is entitled to. *Ezru v. Secretary of State for India* (1) referred to.

Where the District Judge, having confirmed the Collector's award, subsequently, on an application made by the Government Pleader, reviewed his award and made a fresh award reducing the amount awarded by the Collector. Held that an appeal would lie against the revised award under section 54 of the Act.

THE facts of this case are fully set forth in the judgment of the Court.

Pandit *Uma Shankar Bajpai*, for the appellants.

Mr. R. Malcomson and Babu *Lalit Mohan Banerji*, for the respondent.

TUDBALL and SULAIMAN, JJ. :—F. A. No. 160 of 1910 and Revision No. 61 of 1910 have arisen out of certain proceedings under the Land Acquisition Act which were taken in the court of the District Judge of Bareilly. Both the revision and the appeal have been filed as a matter of precaution, as the appellants were in doubt as to which was the proper course to take in the circumstance of the case. The facts are as follows:—Certain land was notified under the Land Acquisition Act; notices were issued; some of the land had standing upon it certain trees; a valuation was made by the Land Acquisition Officer in which a sum of Rs. 184 was entered as the value of the timber of the trees. Before the Collector made any award, permission was given to the owner of the land to cut and remove these trees. He did cut and remove the trees. After this had been done the Collector made an award. The appellants before us, or rather their predecessor in title, was not satisfied with the award and asked for a reference to the

\* First Appeal No. 160 of 1910, from a decree of H. E. Holme, District Judge of Bareilly, dated the 25th of January, 1910.

(1) (1905) I. L. R., 32 Cal., 605.

court of the District Judge. Under section 19 the reference was made. An award was made by the Judge, an appeal was preferred to this Court to set aside that award and the case was remanded to the District Judge again. On the remand, on the 23rd of July, 1917, the District Judge made, what we presume he would call, an award under the Act. Now what he did actually do was to give certain reasons and then pass the following order :—

“For the above reasons I confirm the award of the Collector and order that a decree in accordance therewith be drawn up as laid down in sections 26 and 27 of the Land Acquisition Act.”

The Judge's office, instead of drawing up a formal award in accordance with sections 26 and 27, drew up the following order :—

“It is ordered that the award of the Collector of Bareilly be confirmed, that a decree be drawn up as laid down in sections 26 and 27 of the Land Acquisition Act, that the petitioner do pay all costs of these proceedings, except those costs regarding which orders have been passed by the Hon'ble High Court, and it is further ordered that the opposite party do pay to the Collector of Bareilly the sum of Rs. 55-15, the amount of costs incurred by him on account of this application.”

Section 26 of the Act says :—

“Every award under this part shall be in writing signed by the Judge and shall specify the amount awarded under clause first of sub-section (1) of section 23 and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts.”

It is quite obvious that the learned District Judge ought himself to have drawn up his award giving all these details, which could have been formally embodied in a formal decree if necessary. However, the sum which the Collector had awarded was Rs. 470-11-2. This decree or formal order was drawn up and signed by the Judge on the 1st of August, 1917. On the 4th of August, 1917, the Government Pleader on behalf of the Collector of Bareilly filed a petition as follows :—

1921

---

CHANDAR  
LAL SAH  
v.  
THE  
COLLECTOR  
OF BAREILLY.

1921

CHANDAR  
LAL SAH  
v.  
THE  
COLLECTOR  
OF BAREILLY.

"In the above case it is submitted that the objector has cut down the trees standing on plot no. 319. It is, therefore, prayed that out of the amount of compensation Rs. 184, the value of the trees, may not be awarded to the objector."

In view of the fact that, however informal his order, the Judge had actually allowed to the claimant a sum of Rs. 470-11-2 as compensation, this application was clearly one made on behalf of the Collector to the Court to reconsider his award and to deduct therefrom the sum of Rs. 184 on the ground that the trees had been cut and removed by the plaintiff. It is not clear by any means what steps were taken on this application, *i.e.*, whether notice was or was not issued and whether or not it was served. Be that as it may, the matter did come up again before the Judge on the 25th of January, 1919, when both parties were represented. On that date the Judge passed the following order :—

"I have amended the decree to show that Rs. 184 awarded by the Collector for trees on no. 319, now admittedly cut down and sold for his own profit by the applicant (see my judgment, dated the 23rd of July, 1917), are not to be paid to the applicant under my award. Obviously he cannot take and sell the trees and keep the sale proceeds and also be given compensation for them. The Government Pleader's application is accordingly allowed and the objection dismissed. No order as to costs, as the matter should have been brought to my notice before the original decree was put before me for signature." It is on the basis of this that a formal order was drawn up which sets forth as follows :—

"It is ordered that the award of the Collector of Bareilly be confirmed, that a decree be drawn up in accordance with sections 26 and 27 of the Land Acquisition Act, that the petitioner do pay all costs of these proceedings except those costs regarding which orders have been passed by the Hon'ble High Court."

Then follows a calculation :—

	Rs.	a.	p.
" Compensation of the Collector of Bareilly ..	..	266	11 2
Compensation for trees..	..	204	0 0
Trees on no. 319 ..	..	184	0 0

Deducting one from the other, there is a balance of Rs. 20, by adding which makes the total Rs. 287-11-2."

1921

CHASDAR  
LAL SAH  
v.  
THE  
COLLECTOR  
OF BAREILLY.

It, therefore, comes to this that on the 25th of January, 1919, the District Judge made a fresh award altering his former award. It is from this last award that an appeal has been preferred. A preliminary objection is taken that no appeal lies, and our attention has been called to the rulings of this Court in *Raghunath Das v. Raj Kumar* (1), *Hasan Shah v. Sheo Prasad* (2) and *Sahadeo Gir v. Deo Dutt Misir* (3). The present case is one under the Land Acquisition Act and not an ordinary suit and those rulings have no application to the present case.

Section 54 of the Act is the only section which gives a right of appeal. That lays down:—

"Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees an appeal shall lie to the appellate court from an award or any part of an award of the first court in any proceedings under this Act."

Section 53 applies the provisions of the Code of Civil Procedure so far as they are not inconsistent with anything contained in the Act to all proceedings before the District Court.

As we read the proceedings in the present case, it seems to us clear that if the first order of the Judge, dated the 23rd of July, 1917, be taken as his original award, he was clearly asked to review that award and he did review it in the light of certain facts which were brought to his notice and he subsequently passed a fresh award on the 25th of January, 1919. It is true that in his order of that date he used the words:—"I have amended the decree to show, etc." What he passes under the Land Acquisition Act is not a decree but an award, and it is from his award that an appeal lies under section 54, and, as we read that section, an appeal will lie from any and every award made by the District Judge in proceedings under the Act. We are, therefore, of opinion that an appeal does lie from this order of the Judge, dated the 25th of January, 1919, it being an award under the Act. It was unnecessary for the appellant to have filed any revision, assuming that any revision could be filed in proceedings under this Act, a point which we do not decide.

(1) (1835) I. L. R., 7 All., 876. (2) (1893) I. L. R., 15 All., 121.

(3) (1915) I. L. R., 37 All., 823.

1921

CHANDAR  
LAL SAH  
v.  
THE  
COLLECTOR  
OF BAREILLY.

We next have to see whether the award of the District Judge is one that can be maintained. The nature of the proceedings in a Land Acquisition Court has been very clearly set out by their Lordships of the Privy Council in *Ezra v. Secretary of State for India* (1). The Land Acquisition Officer makes any inquiry that he may deem fit, to ascertain and to fix the amount which he will offer to the owner of the property which has been acquired under the Act. The owner of the property may or may not accept the award. If he is dissatisfied with it he has a right of reference to the District Court. Sections 18 and onward in Part III of the Act govern the proceedings in the court of the District Judge. Section 25 lays down clearly that "when the applicant has made a claim to compensation, the amount awarded to him by the court shall not exceed the amount so claimed by him or be less than the amount awarded by the Collector under section 11." It is, therefore, obvious that the District Judge in the present case could not possibly award to the claimant less than the amount awarded by the Collector. It appears that the Collector in making his award had overlooked the fact that he had allowed certain trees to be cut and removed. He may or may not have made a mistake in this respect, but the fact remains that he did make an award of a certain sum which was not accepted by the present appellants. These latter were not concerned with the details of the Collector's award. They were concerned with the total sum offered to them and, in their opinion, it was too small. They accordingly asked for a reference. The reference was made and it is obvious under section 25 of the Act that, whatever the District Judge might care to award, he could not award less than the amount which the Collector had awarded. The District Court is not concerned with the errors made by the Collector in the course of his calculations. The order, therefore, passed by the District Judge on the 25th of January, 1919, and the award made by him thereunder are clearly illegal in view of the language of section 25 of the Act.

We, therefore, allow this appeal and set aside the award of the District Judge. The appellants will be entitled to

(1) (1905) I. L. R., 32 Calc. 605.

recover the full sum of Rs. 470-11-2 as compensation as originally allowed to them by the District Judge on the 27th of July, 1917. The appellants will be entitled to their costs of this appeal from the opposite party.

*Appeal allowed.*

1921

CHANDAR  
LAL SAH  
v.  
THE  
COLLECTOR  
OF BAREILLY.

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Walsh and Mr. Justice Wallach.*

RAM LAL (PLAINTIFF) v. DEO RAJ (DEFENDANT)\*

*Arbitration—Reference to arbitration made pending a reference of an appeal to the High Court under section 17 of the Ajmer Courts Regulation—Jurisdiction—Civil Procedure Code, 1908, schedule II, paragraph 1.*

1921  
July, 26.

*Held*, on a reference to the High Court under section 17 of the Ajmer Courts Regulation, that it is open to the parties to an appeal to refer the matters in dispute between them to arbitration even after they have obtained an order of reference to the High Court.

THIS was a reference to the High Court under section 17 of the Ajmer Court Regulation. The facts which gave rise to the reference and the points as to which the decision of the High Court was asked are set forth in the following order of the Additional District Judge of Ajmer-Merwara:—

“In suit No. 11 of 1912 filed by the applicant in this reference, Ram Lal, for cancellation of a sale-deed against the opposite party Sheo Das, the Assistant Commissioner and Subordinate Judge, Ajmer, gave Ram Lal a decree. Sheo Das then filed an appeal in this Court and it was in due course dismissed. Sheo Das then obtained a reference to the Hon'ble the High Court at Allahabad. When this reference was pending Sheo Das died; moreover, parties filed an application in this Court asking this Court to refer this case to arbitration. The High Court accordingly was pleased to send back the case here, to bring the representative of Sheo Das on the record as well as to dispose of the arbitration petition. This Court accordingly decided to refer the case to arbitration. Ram Lal was evidently dissatisfied with the award and filed an objection, which was overruled. He then filed a Civil Suit, No. 42 of 1919, before the Subordinate Judge, Ajmer, seeking a declaratory decree to the effect that the order of this Court (*i.e.*, the District Judge)

\* Civil Miscellaneous No. 246 of 1921.