

APPELLATE CIVIL.

Before Mr. Justice Kanhaiya Lal and Mr. Justice Ashworth.

1926
July, 5.

SUKHIBIR SINGH AND OTHERS (APPLICANTS) *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY).*

Act No. I of 1894 (Land Acquisition Act), section 18—Reference based on applications not in compliance with law—Refusal of Judge to entertain reference.

Where a Collector in a matter under the Land Acquisition Act, 1894, acted upon an application which was not in accordance with the provisions of the Act and did not justify his making a reference, and made a reference to the District Judge, it was held that the Collector was not competent to waive the requirements of the Act and the District Judge was right in refusing to take action on a reference so made. *In the matter of Government v. Nanu Kothare (1) and Ezra v. Secretary of State for India (2)*, referred to.

THE facts of this case are fully stated in the judgement of the Court.

Mr. A. Sanyal and Munshi Girdhari Lal Agarwala, for the applicants.

Mr. G. W. Dillon, for the respondent.

KANHAIYA LAL and ASHWORTH, JJ. :—These two appeals arise out of references under section 18 of the Land Acquisition Act. Under section 9 of the Land Acquisition Act (I of 1894) notice was given by the Collector to the appellants that Government intended to take possession of their land for the purpose of a market at Muzaffarnagar. Both the appellants replied to this notice stating that they were not willing to give the land for the construction of the market and that no public market was required. They further stated that they had submitted a memorial to

* First Appeal No. 228 of 1923, from a decree of H. J. Collister, Additional Judge of Meerut, dated the 27th of January, 1923.

(1) (1905) I.L.R., 30 Bom., 275. (2) (1905) I.L.R., 32 Cal., 605.

the Provincial Government asking for proceedings to be stayed pending the decision of their memorial. Various other reasons were given in this application against the acquisition of the land for the purpose of the market. It was also stated that the market value of the land was not less than Rs. 1,000 per bigha kham. The Collector held proceedings and made an award under section 12 of the Act. Under subsection (2) of section 12 he gave notice of his award to the appellants. Under section 18 it was open to the appellants by written application to the Collector to require that the matter of the award should be referred for the determination of the District Judge. The applicant was bound to state also the grounds on which the objection to the award was taken. The appellants submitted, on the 4th and 12th respectively of July, applications, which the Collector treated as applications made under section 18 of the Act requiring the matter of the award to be referred to the District Judge. The District Judge has held that these applications, though acted upon by the Collector, did not comply with the law, and consequently that he had no jurisdiction to entertain the reference. Neither of the applications contained any request that the matter of the award should be referred for the determination of the District Judge. They asked that the matter relating to compensation should be postponed until the final decision as to the propriety or legality of Government in acquiring the land for the *mandi* has been settled by a competent court. They also mentioned that the amount of compensation awarded by the Collector was low and was not accepted. It is clear that there is no suggestion in these applications of a reference to the District Judge for the purpose of determining the sufficiency of the award. The reference to the competent court would,

1926

SURESH
SINGH
o.
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

1926

BUKHAR
SINGH
v.
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

when read with the former applications to the Collector objecting to the acquisition of the market, amount to an expression of intention by the appellants to bring a declaratory suit as regards the land, and such suit would be brought not in the court of the District Judge, but in the court of the Subordinate Judge. Again, it is required by section 18 (2) that the person asking the Collector to refer an award to the District Judge shall state the grounds on which objection is taken to the award. The ground stated here is that the estimate is very small. Possibly this might have been a compliance with the law as an expression of the ground of objection to the award, but it is immediately followed by a paragraph asking that the matter relating to compensation might be postponed until the decision of the declaratory suit threatened in the earlier application and in the former paragraph. We, therefore, agree with the District Judge that these applications did not comply with the provisions of section 18 of the Act.

It has been urged that any defect in the applications was cured by the Collector acting upon them and making a reference to the District Judge. On this point we may refer to the case of *In the matter of Government v. Nanu Kothare* (1). It is there stated that the Collector in making a reference is only an agent of Government and that he is not entitled to waive the requirements of the law on behalf of Government. Authority for this is found in the case of *Ezra v. Secretary of State for India* (2) decided by the Privy Council. We concur that the act of the Collector in acting on the applications will not preclude the District Judge from holding that they were not in compliance with law. The other pleas taken in the petition of the appeal have not been pressed.

(1) (1905) I.L.R., 30 Bom., 275. (2) (1905) I.L.R., 32 Cal., 605.

Counsel for the appellants has asked permission in this Court to amend the application for reference by the Collector to the District Judge at this late date. This request is one which for obvious reasons it is impossible for this Court to grant. Both these appeals are, therefore, dismissed with costs.

1926

SURESH
SINGHP.
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

Appeals dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Sulaiman.

EMPEROR v. BANWARI LAL.*

1926

July, 12.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 147—Citation—Act No. XLV of 1860 (Indian Penal Code), section 174.

Held, that a defaulter to whom a citation has been issued under section 147 of the United Provinces Land Revenue Act, 1901, does not render himself liable to prosecution under section 174 of the Indian Penal Code if he fails to appear in obedience thereto. *Emperor v. Bhirgu Singh* (1), followed. *Ram Bali Singh v. King-Emperor* (2), referred to.

THIS was a reference from the Sessions Judge of Mainpuri. The facts of the case were as follows:—The Government revenue due from one Banwari Lal was in arrears. A citation to the defaulter to appear on the 2nd of January, 1926, in case the arrears of Government revenue were not paid soon, was issued by the Tahsildar under section 147 of the United Provinces Land Revenue Act. Banwari Lal neither paid the revenue nor appeared on the date fixed. He was in consequence prosecuted and convicted by a first class Magistrate under section 174 of the Indian Penal Code and sentenced to pay a fine of Rs. 10 and in default to undergo ten days' simple imprisonment. Against this order Banwari Lal

* Criminal Reference No. 403 of 1926.

(1) (1925) I.L.R., 49 All., 205.

(2) (1910) 13 Oudh Cases, 55.