Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Lal Gopal Mukerji and Mr. Justice King.

BHAJANI LAL AND OTHERS (APPLICANTS) *v.* SECRETARY OF STATE FOR INDIA (OPPOSITE PARTY).* 1932 *June,* 28.

Land Acquisition Act (I of 1894), section 18—Collector refusing to make a reference to the District Judge—No revision lies—Civil Procedure Code, section 115—"Court"—"Court subordinate to High Court".

No revision lies to the High Court under section 115 of the Code of Civil Procedure against an order passed by a Collector under section 18 of the Land Acquisition Act refusing to make a reference to the court of the District Judge.

A Collector, in making or refusing to make a reference under section 18 of the Land Acquisition Act, acts in an administrative capacity and not judicially. Even if it were held that the Collector in this matter acts judicially, he is not a court, and certainly not a court subordinate to the High Court.

It is an essential characteristic of a "court" that it should have power to determine questions in dispute between litigants, on the merits, and the Collector has no power to determine upon the merits the questions raised by the application submitted to him under section 18; he is merely required to refer the questions for determination to the court of the District Judge.

The High Court has no appellate jurisdiction over the Collector acting under the Land Acquisition Act; and by section 55 of the Act power is given to the Local Government, and not to the High Court, to make rules for the guidance of officers in all matters connected with the enforcement of the Act, including, therefore, the guidance of the Collector when dealing with an application under section 18. So, even if the Collector be regarded as a court in any sense of the word, it can not be deemed that the court is subordinate to the High Court.

Mr. *Kedar Nath Sinha,* for the applicants.

Mr. *U. S. Bajpai* (Government Advocate), for the opposite party.

SULAIMAN, C. J., MUKERJI and KING, JJ.:—This reference arises from an application under section 115 of the Civil Procedure Code for the revision of an order

*Civil Revision No. 359 of 1931.

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passed by a Collector under section 18 of the Land Acquisition Act, 1894, refusing to make a reference to the court of the District Judge.

A preliminary objection was raised that the High Court has no jurisdiction to revise the order as it is not an order passed by a court subordinate to the High Court. The Division Bench before which the application was heard was of opinion that the case raised a substantial question of law requiring an authoritative pronouncement and accordingly directed the case to be laid before the Hon'ble Chief Justice for the continuation of a larger Bench.

Some land belonging to the applicant was acquired under the Land Acquisition Act. The Collector made an award. The applicant refused to accept the award on the ground that the compensation offered was quite inadequate and sent an application to the Collector requiring him to refer the matter under section 18 to the civil court for determination. The Collector passed the following order, dated the 17th of October, 1930: "This application was received by post in contravention of rule 2, Board Circulars II-6, and is unstamped. No action can therefore be taken upon it. Rejected and filed. Inform applicant."

The question is whether the High Court can interfere with this order in exercise of its revisional powers under section 115 of the Civil Procedure Code.

There is much conflict of judicial authority on this point. The rulings which have been cited before us show that the High Courts at Madras, Bombay and Lahore take the view that no revision lies, whereas the High Courts at Calcutta and Patna and the Chief Court of Oudh are of the contrary opinion.

The first question is whether the Collector, in refusing to make a reference under section 18, is acting "judicially". When we speak of the "Collector", we mean the Collector as defined for the purposes of the Land

Acquisition Act. It has been authoritatively ruled by their Lordships of the Privy Council in *Ezra* v. *Secretary of State for India* (1) that the proceedings of the Collector, resulting in the award, are administrative and not judicial. Their Lordships were only dealing with the award and the proceedings leading up to the award, and it has been held by certain learned Judges that a distinction should be drawn between the functions exercised by a Collector under part II of the Land Acquisition Act (relating to the proceedings resulting in the award) and the functions exercised by him in part III of the Act which relates to the judicial determination of claims made by persons interested who have not accepted the award. For instance, it has been held in *Administrator General of Bengal v. Land Acquisition Collector* (2) that part III of the Act relates to proceedings in court and that the Collector in rejecting the application under section 18 was a "court" and was acting judicially, and therefore it was held that his order was subject to revision by the High Court. In *Saraswati Pattack* v. *Land Acquisition Deputy Collector* (3) the learned Judges held that under the statute the first step in the judicial proceeding was a reference by the Collector, and the first step in a judicial proceeding must be held to be a "judicial step". With due respect to the learned Judges, we are unable to agree to this view. We are bound to hold, on the authority of *Ezra's* case, that the Collector throughout the proceedings resulting in the award was acting as an administrative officer and not as a judicial officer. It seems to us very difficult to hold that the Collector, in making or refusing to make a reference under section 18, has suddenly changed his official position and is acting judicially and not administratively. There must be a presumption of continuity. It is true that the Collector, when an application is made to him under section 18, has to see whether the application is within time

(1) (1905) I.L.R., 32 Cal., 605 (629). (2) (1905) 12 C.W.N., 241. (3) (1917) 2 Pat., L.J., 204.

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and is otherwise in order, but we are not prepared to hold that merely because he has to consider certain points before making the reference he therefore must be deemed to be acting judicially and not as an administrative officer. The functions which he performs under part II of the Act are very similar to judicial functions. He even has the power of compelling the attendance of witnesses, as if he were a civil court, and he certainly has to determine to the best of his judgment the proper compensation which should be given to the persons interested in the land. If the Collector in making such decisions is not acting judicially, we fail to see why he should be deemed to be acting judicially when making a reference under section 18. Although *Ezra's* case (1) does not directly decide whether the Collector is acting as an administrative officer or as a judicial officer when making a reference under section 18, their Lordships expressly refer to section 18 as one of the sections from which it could be inferred that the Collector is not acting as a judicial officer. Moreover, their Lordships approve the reasoning in the judgment of the Calcutta High Court which was under appeal, and in that judgment the High Court had clearly taken the view that the Collector is in no sense of the term a judicial officer, nor is the proceeding before him a judicial proceeding. They also refer (at page 619) to section 18 as showing that the Collector is not a court. In our opinion, the Collector is not suddenly converted from an administrative officer into a judicial officer for the purpose of making or refusing to make a reference under section 18, and he continues to act as an agent of Government, in an administrative capacity, throughout.

If it be conceded for the sake of argument that the Collector in refusing to make a reference under section 18 is acting "judicially", then the question arises whether he should be deemed to be a civil court. The word "court" is not defined for the purpose of section 115 of

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

the Civil Procedure Code, but we think it must be an essential characteristic of a "court" that it should have power to determine questions in dispute between litigants, upon the merits. The Collector has no power to determine upon the merits the questions raised by the application submitted to him under section 18. He is merely required to refer the questions for determination to the court of the District Judge. The only question that he himself is called upon to examine is whether the application is in conformity with the requirements of section 18. Even if it be held that he decides that question judicially, it does not necessarily follow that he is a "court". A registration officer in deciding that a document should not be admitted to registration might be held to decide the question "judicially", but in our opinion the registration officer does not, for that reason, become a "court".

The argument advanced before us that the Collector must be considered a "component part" of the District Judge's court, because he initiates or refuses to initiate judicial proceedings in that court, seems to us too far-fetched and unconvincing to merit discussion. We may add that the word "require" which is used in section 18 with reference to the Collector seems more appropriate to an administrative officer than to a court. For these reasons we hold that the Collector is not a "court".

Finally, if it be admitted for the sake of argument that the Collector is a "court", we think that he certainly is not a court subordinate to the High Court. The High Court has no appellate jurisdiction over the Collector and for that reason it is difficult to hold that the Collector is a court subordinate to the High Court, even if he is a "court" in any sense of the word. Section 55 of the Land Acquisition Act gives power to the Local Government to make rules for the guidance of officers in all matters connected with the enforcement of the Act. This would, in our opinion, include power to make a rule for the guidance of a Collector when receiving an application

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under section 18. No authority is given to the High Court to make rules for the guidance of the Collector and for this reason also we think that the Collector cannot be held to be subordinate to the High Court.

As the Collector is an officer of the revenue department, he would presumably be sitting as a revenue court, if he were sitting as a court of any description. In the present case it is perfectly clear that the Collector believed himself to be acting as a revenue court, because he refused to accept the application on the strength of a rule made by the Board of Revenue for the guidance of revenue courts. The Board of Revenue are also clearly of opinion that a Collector acts under section 18 either as a revenue officer or as a revenue court, because they have made rules (Board Circulars 1—VIII, rules 28 and 29) for his guidance. In our opinion, he is acting as an administrative officer of the revenue department, but not as a revenue court. In any case he is not subordinate to the High Court.

As we hold that the Collector was not acting judicially, and not acting as a "court", and that he could not in any case be acting as a court "subordinate to the High Court", we think it is clear that no revision lies under section 115 of the Code of Civil Procedure.

We agree generally to the views expressed by the Full Bench of the Madras High Court in *Abdul Sattar* v. *Special Deputy Collector* (1), but we would go further in holding that the Collector was not even acting "judicially".

The Bombay High Court in *Balkrishna Daji Gupte* v. *Collector, Bombay Suburban* (2) hold that no revision lies in such a case, but they were doubtful whether the Collector should be considered to be a "court" when acting under section 18.

Our view is also supported by the Lahore High Court in *Mushtaq Ali* v. *Secretary of State* (3). We may also

(1) (1923) I.L.R., 47 Mad., 357. (2) (1923) I.L.R., 47 Bom., 699.
(3) A.I.R., 1930 Lah., 242.

refer to a decision of our own High Court in *Secretary of State for India in Council* v. *Bhagwan Prasad* (1). In that case the question for decision was different, but the learned Judges clearly stated their opinion that the Collector when acting under section 18 of the Land Acquisition Act was acting in an administrative capacity and not in a judicial capacity.

The Oudh Chief Court took a contrary view in *Ahmad Ali Khan Alawi* v. *Secretary of State* (2). They were of the opinion that as the proceedings in part III of the Act are judicial, the reference by the Collector under section 18, which starts the proceedings, should be treated as a judicial order. They seem to have assumed that if the Collector was acting judicially, he must be a "court" and must further be a "court subordinate to the High Court". With due deference, we cannot agree to this view and we note that the learned Judges relied upon the cases, *Secretary of State for India* v. *Jiwan Bakhsh* (3) and *Parameshwara Aiyar* v. *Land Acquisition Collector* (4). Apparently it was not brought to their notice that both these cases had been overruled by subsequent decisions of the same High Courts.

It is objected that if the Collector's order refusing to make the reference is not open to revision by the High Court, then the applicant has no remedy. It would no doubt be open to the applicant to petition the Commissioner or the Local Government to direct the Collector to make a reference. If any further remedy is considered necessary, then we think it is for the legislature to provide some appropriate remedy.

As we hold that we have no power of interference, it is unnecessary to express any opinion upon the merits of the Collector's order. We can only suggest that the Local Government should make it clear, by statutory rules or departmental instructions, what procedure should be adopted by a Collector when receiving an application by

(1) (1929) I.L.R., 52 All., 96.
(2) A.I.R., 1932 Oudh., 180.
(3) [1916] P.R., No. 67.
(4) (1918) I.L.R., 42 Mad., 231.

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post. It may be pointed out that in *Shiva Sundari Dasi* v. *Collector of Cawnpore* (1) a Collector did receive such an application by post and raised no objection. The question of a court fee upon the application might also be made clear. Under section 19(22) of the Court Fees Act an "application for compensation" under the Land Acquisition Act is expressly exempted from being chargeable with a court fee. In the present case the application is not for payment of compensation but it is for determination of compensation and the Collector might be in doubt whether any court fee is chargeable on such an application.

As we have no power to interfere under section 115, we dismiss the application with costs.

MISCELLANEOUS CIVIL.

Before Mr. Justice King.

1932 June, 25.

PARMESHAR KURMI AND ANOTHER (PLAINTIFFS) *v.* BAKHTAWAR PANDE AND OTHERS (DEFENDANTS).*

Court Fees Act (VII of 1870), schedule I, article 5—Application for review of judgment of appellate court—Amending Act enhancing scale of court fees, passed after the appeal was filed—Court fee on application for review leviable according to the former scale.

Under schedule I, article 5, of the Court Fees Act the court fee payable on an application for review of judgment of the appellate court is one-half of the fee which was leviable on the memorandum of appeal according to the law in force at the time when it was filed, and is not affected by the fact that subsequent to the filing of the appeal and prior to the filing of the application for review an amending Act came into operation enhancing the scale of *ad valorem* fees so that the memorandum of appeal, if it were to be filed then, would require a higher fee than what had been paid on it.

Messrs. *Haribans Sahai* and *B. Malik*, for the applicants.

*Stamp Reference in Second Appeal No. 169 of 1930.

(1) (1905) 2 A.L.J., 784.