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rule 1, clause (*u*) before the amendment stood as follows: "An order under rule 23, order XLI, remanding a case where an appeal would lie from the decree of the appellate court." After the amendment the rule runs as follows: "Any order remanding a case where an appeal would lie from the decree of the appellate court." It is, therefore, contended that the amendment has made every order appealable by which proceedings, even for a short time, have been sent back to the trial court. That is not the real reason or meaning of the amendment. The amendment was made because it happens that sometimes an order of remand is made which does not come within the four corners of the language of rule 23 of order XLI of the Civil Procedure Code, and yet such an order of remand is justified inasmuch as it is passed in the exercise of the inherent jurisdiction of the court or under the provisions of section 151 of the Civil Procedure Code. But only those orders are appealable where the entire case has been transferred from the first appellate court to the trial court and not where only certain issues have been remitted. The same view was taken by the Oudh Chief Court, where also the amendment of clause (*u*) has been similar to ours, in the case of *Sarabjit Singh* v. *Farahatullah Khan* (1), and the case of *Moti Lal* v. *Nandan* (2) also lends support to our view. Upholding the preliminary objection, we dismiss this appeal with costs.

FULL BENCH

Before Justice Sir Lal Gopal Mukerji, Mr. Justice King and Mr. Justice Niamat-ullah

1933
November, 23

MAKHAN LAL AND OTHERS (PLAINTIFFS) *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT)*

Land Acquisition Act (I of 1894), sections 3(d), 18, 26—"Court" —District Judge hearing a reference under section 18—

*Civil Revision No. 165 of 1932.

(1) A.I.R., 1930 Oudh, 366. (2) [1930] A.L.J., 454.

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MAKHAN LAL v. SECRETARY OF STATE FOR INDIA IN COUNCIL

Question of title as between the claimant and the Government —Jurisdiction of District Judge to decide such question— Whether District Judge acts as a court or as a persona designata*—Court subordinate to High Court—Civil Procedure Code, section 115—Subordinate court following a ruling of High Court and thereby refusing a jurisdiction really vested in it—Whether revision lies.*

A District Judge acting under the Land Acquisition Act, 1894, acts judicially as a "court", and not as a *persona designata* or as an executive officer. The "court" under the Land Acquisition Act follows all the rules laid down in the Civil Procedure Code for the guidance of an ordinary court, and an appeal is allowed from its award to the High Court. The court. therefore, is a court subordinate to the High Court, within the meaning of section 115 of the Civil Procedure Code, and a revision is entertainable from its orders.

A survey of the provisions of the Land Acquisition Act shows that a complete scheme and machinery has been provided by it for the determination of all questions of title and of the amount of compensation that may arise in the course of acquisition; so that it is competent to the court acting under that Act to adjudicate on any question of title to the land acquired, even where it is a question between the claimant on the one hand and the Government on the other. So, where the owner of buildings on the land which was being acquired also claimed an interest in the land itself as being the owner or, at any rate, the permanent lessee, and the Government on the other hand asserted that the land was Government property and that the claimant was a mere tenant at will, it was *held* that the District Judge was competent to decide this question of title on a reference by the Collector under section 18 of the Land Acquisition Act, and his refusal to do so was a failure to exercise jurisdiction, and therefore a revision lay to the High Court.

Held, also, that the fact that the subordinate court, in arriving at its decision, had followed High Court rulings which were binding on it did not bar the High Court from interfering in revision if, upon a correct interpretation of the law, the decision of the subordinate court amounted to a failure to exercise a jurisdiction vested in it by law.

Imdad Ali Khan v. *Collector of Farrukhabad* (1) and *Crown Brewery, Mussoorie* v. *Collector of Dehra Dun* (2), dissented from. *Yad Ram* v. *Sundar Singh* (3), distinguished.

(1) (1885) I.L.R., 7 All., 817. (2) (1897) I.L.R., 19 All., 339.
(3) (1923) I.L.R., 45 All., 425.

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Dr. *K. N. Katju* and Mr. *M. N. Kaul*, for the applicants.

The Government Advocate (Mr. *Muhammad Ismail*) and Dr. *S. N. Sen*, for the opposite party.

MUKERJI, KING and NIAMAT-ULLAH, JJ.:—This civil revision, No. 165 of 1932, has been referred to a Full Bench by two learned Judges of this Court, because they found some difficulty in agreeing with two earlier decisions of this Court, namely, *Imdad Ali Khan* v. *Collector of Farrukhabad* (1) and *Crown Brewery, Mussoorie* v. *Collector of Dehra Dun* (2).

The facts, so far as they are material at this stage of the case, are these. The Local Government decided to acquire a piece of land, which was described in the Notification as situate in district Cawnpore, pargana Cawnpore, village Civil Lines, area 2 acres and odd, with buildings thereon, for purposes of extending the G. N. K. School, Cawnpore. In the Notification, in the remark column the following was stated: "The land required is Nazul land occupied by buildings owned by a private person."

The applicants before us, who owned the buildings situated on the land, claimed to be the proprietors of the land, and, in the alternative, to be its permanent lessees, if it was found that the site was still the property of the Government. The Collector decided that the land belonged to the Government; that the applicants' interests in the site were limited to those of a tenant at will and that they were entitled to compensation only for the buildings that stood on the land. The applicants, being dissatisfied with this decision of the Collector, asked for a reference under section 18 of the Land Acquisition Act, 1894. The case was heard at length in the court below. It was argued there, on behalf of the Secretary of State, that the District Judge had no jurisdiction to decide whether the site belonged to the Secretary of State or not. The learned District

(1) (1885) I.L.R., 7 All., 817. (2) (1897) I.L.R., 19 All., 339.

Judge accepted this argument and said in his judgment as follows: "The amount of compensation to be awarded to the plaintiffs in this case depends entirely on the nature of their interest in the land in dispute, but as I cannot decide the nature of their interest, I cannot entertain the reference about the amount of compensation also. For reasons given above, it is ordered that the record be sent back to the Collector. The plaintiffs should establish their rights in the civil court." Being dissatisfied with this order of the learned District Judge, dated the 18th of February, 1932, the applicants have filed this revision.

A preliminary objection is taken on behalf of the Secretary of State for India in Council that the revision is not maintainable. The argument is twofold. One is that the learned District Judge acting under the Land Acquisition Act was acting as a *persona designata* and not as a "court"; and the second argument is that assuming that the District Judge was a court, he did not act with material irregularity, or illegally, nor did he fail to exercise jurisdiction vested in him, inasmuch as he followed two rulings of this Court.

As regards the first point, there can be no doubt that the learned District Judge was acting judicially. He was acting as a "court" as defined in section 3 of the Land Acquisition Act. A court is defined as follows: "The expression 'court' means a principal civil court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the court under this Act."

In this particular case it was the District Judge who performed the functions of the "court" within the meaning of the Land Acquisition Act. But the argument is that instead of the District Judge it was open to the Local Government to appoint any other officer. The argument further is that, if any executive officer had been so appointed, he could not have been

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described as a court. This argument, however, overlooks the fact that the officer to be appointed a "court" must be a judicial officer and not an executive officer. The idea in defining the word "court" is clear. The court must be presided over by a judicial officer. It is not difficult to see why this idea should have prevailed in defining the word "court". Important questions of law, such as status of parties, questions of Hindu and Muhammadan law, limitation and similar difficult questions may arise in determining the rights of the parties, and it was necessary that the duty, which is very often an onerous one, should be entrusted to a judicial officer. An appeal is permitted from the "award" of the "court" to the High Court, and a further appeal is permitted to His Majesty in Council: Vide section 54 of the Act. In this view, the officer, who gave the decision impeached, must be treated to have been a "court", as indeed he is called by the Act itself, and not merely a *persona designata*.

Now the question is whether the court, as defined in the Land Acquisition Act of 1894, is a court subordinate to the High Court. We have to find this out, because section 115 of the Civil Procedure Code gives jurisdiction to the High Court to revise only an order of a court subordinate to it.

The fact that an appeal is allowed from an award of the court constituted under the Land Acquisition Act is, in our opinion, conclusive of the fact that the "court" is subordinate to the High Court. The court under the Land Acquisition Act follows all the rules laid down in the Civil Procedure Code for the guidance of an ordinary court, and further an appeal is allowed from its award to the High Court. These two facts indicate that the court is subordinate to the High Court.

No authority has been cited before us in support of the argument that the court under the Land Acquisition Act is not subordinate to the High Court and that no revision is entertainable against its orders. On the

other hand, the few cases that are available appear to have held to the contrary. As far back as in the year 1875, the High Court of Calcutta had to consider whether a court established under Act X of 1870 (Land Acquisition Act which has been superseded by Act I of 1894) was or not a court subject to the superintendence of the Calcutta High Court. The fact that an appeal lay to the High Court from the award of that court was held to be an indication that the court was subject to the superintendence of the High Court. In *Joseph* v. *The Salt Company* (1) the High Court exercised revisional jurisdiction under section 622 of the Code of Civil Procedure of 1882. The fact that no cases decided to the contrary have been brought to our notice indicates that the revisional powers of the High Court have never been questioned.

Before leaving this point, we may quote the case of *Balakrishna Udayar* v. *Vasudeva Ayyar* (2) decided by the Privy Council under the Religious Endowments Act. The Religious Endowments Act XX of 1863 uses the words "civil court" and "court" and describes them as meaning the principal court of original civil jurisdiction. A District Judge exercised jurisdiction under section 10 of the Religious Endowments Act. A revision was entertained by the High Court against his orders. The matter was taken before their Lordships of the Privy Council, and it was contended that no revision lay to the High Court. It was specifically held by their Lordships that the High Court had jurisdiction under section 115 of the Civil Procedure Code of 1908. Their Lordships further pointed out that in making the order the district court was acting in a judicial capacity as a court of law, and not merely in an administrative capacity. We have already pointed out that the court constituted under the Land Acquisition Act is either the district court or a judicial officer exercising the functions of a court under the Land Acquisition Act. In each case

(1) (1892) I.L.R., 17 Mad., 371. (2) (1917) I.L.R., 40 Mad., 793.

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the court is acting in a judicial capacity and not in an administrative capacity.

In *Abdul Wahid Khan* v. *Radha Kishen* (1) the question arose, namely, where a District Judge exercises jurisdiction under the Charitable and Religious Trusts Act (Act XIV of 1920, section 7), whether a revision by this High Court is competent. Following the Privy Council case just quoted, a Division Bench of this Court, of which one of us was a member, held that a revision was maintainable.

For the reasons given above, we are of opinion that an application in revision would lie.

The next question is whether the fact that the District Judge followed two decisions of this Court should bar us from entertaining the revision. Reliance has been placed on the Full Bench case of *Yad Ram* v. *Sundar Singh* (2). That was a case in which, following a previous ruling of this Court, a subordinate court held that the person who had applied for setting aside a sale held in execution of a decree was not entitled to make the application. It was held by the Full Bench that the court below, in following the rulings of the High Court, acted in a way in which it should have acted and, therefore, no revision was maintainable. PIGGOTT, J., is reported to have said as follows: "I cannot reconcile it with my judicial conscience to hold that, in thus fulfilling an obligation incumbent upon him as a judicial officer, the learned Subordinate Judge was acting illegally, or with material irregularity, or going outside the jurisdiction conferred upon him by section 104 read with order XLIII of the Code of Civil Procedure." There, no question arose as to whether the court had or not jurisdiction in the matter before it. The only question for decision was whether the court acted illegally or with material irregularity. In following a previous decision of this Court the court did not act either illegally or with material irregularity. There

(1) (1929) I.L.R., 51 All., 957. (2) (1923) I.L.R., 45 All., 425.

was no question of failure to exercise jurisdiction vested in the court. It was conceded that the court was rightly seised of the case. In the present case, however, the District Judge had distinctly declined to exercise jurisdiction, being of opinion that he is precluded from hearing the case. He says: " . . . but as I cannot decide the nature of their interest, I cannot entertain the reference about the amount of compensation also." We are, therefore, of opinion that the second argument, also, as regards want of revisional jurisdiction in the High Court is not sound.

On the merits we are of opinion that the learned Judge was wrong in the decision at which he arrived. From an examination of the several sections, to be just noticed, of the Land Acquisition Act it appears to us that the Act provides a complete machinery for decision of all questions of title and interest that may arise in the course of the acquisition. If that be the case, there is no reason why, where a title to land is claimed on behalf of the Secretary of State, that question should not be decided by the court exercising functions under that Act.

Section 4 of the Land Acquisition Act states that where the Local Government considers that any particular land is needed or is likely to be needed for any public purpose, it shall issue a notification to that effect. This notification is meant for a preliminary inquiry as to the fitness of the land for the purpose for which it may be needed.

Then, when the Local Government decides that it should acquire that land or any other land, it shall issue a notification. After the notification, the Collector is called upon by section 9 of the Act to cause public notice to be given of the intention of the Government and calling on persons interested to claim compensation.

By section 11 the Collector is called upon to fix a date for an inquiry and then to proceed to inquire into the objections, if any, of any person interested. Then by section 12 the Collector is to make an award. By section

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18 any person dissatisfied with the award may call upon the Collector to make a reference to the "court". The Collector thereupon makes a reference to the court, and after service of notice the court proceeds to determine the points at issue.

By section 21 the scope of the inquiry is to be restricted to a consideration of the interests of the persons affected by the objection.

By section 22 the proceeding is to take place in open court, and all persons interested are entitled to have the services of persons who are entitled to practise in the civil courts of the province.

Then under section 26 the court is to make an award which is to be deemed to be a "decree", and the statement of the grounds of every such award is to be regarded as a judgment, within the meaning of section 2 of the Civil Procedure Code, 1908. The court has jurisdiction to allow costs.

As we have already indicated, the award of the court, which is to be regarded as a decree, is open to appeal to the High Court, and the decision of the High Court is again subject to appeal to His Majesty in Council.

A survey of the provisions of the Land Acquisition Act shows that a complete machinery has been provided for determination of all questions of title and amount of compensation that may arise in the course of the acquisition.

Now the question is, is there anything in the Land Acquisition Act which gives any indication of the view of the legislature that where the Secretary of State claims an interest in any land the "court" is to stay its hand and refuse to decide the question of title, as it is otherwise empowered to do under section 26 of the Land Acquisition Act?

The learned counsel appearing for the Secretary of State has not been able to lay his finger on any section of the Act as giving an indication in support of the argument. He merely took his stand on the two

decisions of this Court quoted in an earlier part of this judgment. With all respect, the decisions do not proceed on a correct consideration of the provisions of the Land Acquisition Act. The earlier decision is based on the view that where the Secretary of State is a party, the machinery provided is not applicable because section 15 of the Act of 1870 contemplated a dispute between parties other than the Collector himself. The second case merely follows the earlier case, though the learned Judges professed their agreement to the view expressed in the earlier case. In a case decided by the late Court of the Judicial Commissioner of Oudh, *Mohammad Wajeeh* v. *Secretary of State for India in Council* (1), the Bench followed the Allahabad cases. The reasons given by the two learned Judges were not the same. It would be sufficient to say that the several sections of the Act were not considered there in the way in which we have done. Mr. Lyle followed the Allahabad cases. Mr. Daniels felt some difficulty on the question before him, but ultimately accepted the view taken in the Allahabad cases. But, as we have said, none of the learned Judges examined the whole structure of the Act as we have done, and with utmost respect we differ from the opinion expressed by them.

On the other hand, numerous cases decided by other High Courts have been cited to us in which it has been specifically held that the question of title of the Secretary of State may be inquired into by the court under the Land Acquisition Act.

Before we proceed to examine these cases, we may point out that one case went up to the Privy Council and, although in it the question of the title of the Secretary of State was raised and decided, nobody thought of questioning the right of the court constituted by the Land Acquisition Act to entertain the reference. This case is, *Secretary of State for India in Council* v. *Satish Chandra Sen* (2). In another case recently decided in

(1) (1921) 64 Indian Cases, 93. (2) (1930) I.L.R., 58 Cal., 858.

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this Court, *Khushal Singh* v. *Secretary of State for India in Council* (1), the question was decided whether title to minerals under the upper soil lay in the Secretary of State or in the zamindar. No question of jurisdiction of the court was ever raised.

In the case of *Government of Bombay* v. *Esufali Salebhai* (2) the question of want of jurisdiction was raised and was decided against the present contention. The head-note does not bring this out clearly. In a later case, namely, *Mangaldas Girdhardas* v. *Assistant Collector of Prant Ahmedabad* (3), it was again decided that it was competent to the court to adjudicate on any question of title to the land acquired, as between the claimant and the Government. In *Bijoy Kumar Addy* v. *Secretary of State for India in Council* (4) it was held that the question of title between the Government on the one hand and the claimant on the other must be decided. In *Jogesh Chandra Roy* v. *Secretary of State for India in Council* (5) it appears that the Collector held that the claimant had no title to the site and his interests were confined to the structure on the land and the trees growing thereon. Thereupon, the claimant filed a suit in an ordinary civil court to obtain a declaration of his title to the site. The High Court of Calcutta held that the suit was not maintainable and that the only remedy of a person whose property was being acquired under the Land Acquisition Act, and who was dissatisfied with the award of the Collector, was by asking the Collector to make a reference under section 18 of the Act. In *Dasarath Sahu* v. *Secretary of State for India in Council* (6) the Patna High Court held that though the term "land" in section 3(*a*) of the Land Acquisition Act included things attached to the earth, the Act did not contemplate the acquisition of only things attached to the land without the land itself. In the case before the Patna High Court an attempt had been made to acquire

(1) (1931) I.L.R., 53 All., 658.
(2) (1909) I.L.R., 34 Bom., 618.
(3) (1920) I.L.R., 45 Bom., 277.
(4) (1916) 39 Indian Cases, 889.
(5) (1918) 48 Indian Cases, 702.
(6) (1916) 35 Indian Cases, 97.

things standing on the land apart from the land itself, and the High Court held that the proceedings were without jurisdiction. On behalf of the Secretary of State it has been argued that in this particular case what was sought to be acquired was not the site, namely the land, but only the buildings thereon. In our opinion this argument is not correct. Firstly, it would not be open to the Local Government to acquire anything apart from the land, and secondly, as a matter of fact, the Notification indicates that what was sought to be acquired was land. We have quoted the Notification, and we may point out that the word "land" clearly appears on the face of it. The Notification begins with the words "The land designated below", and under this Notification appears a specification of the land.

If we look at sections 4 and 6 of the Land Acquisition Act, we find that what is to be acquired is land, and nothing apart from the land. If the argument of the learned counsel for the Secretary of State were correct, the opinion of the officers of the Secretary of State that a certain site belonged to the Secretary of State would be conclusive for the purposes of Land Acquisition Act. It is always open to the Secretary of State to declare in the Notification that the Secretary of State claimed the land as Nazul, and this is what has been done in this case. Persons who are interested in disputing the title of the Government to the land would be entitled to raise objections before the Collector, and then before the District Judge, and to have a determination of the question of title on the evidence.

The result is that we accept this application in revision, set aside the order of the learned District Judge by which he declined to entertain the reference and returned the papers to the Collector, and direct him to send for the papers from the Collector and to proceed to determine the case from the stage at which he declined to accept the reference. The applicants will have their costs in this Court. The costs incurred in the court below will abide the result.