

## REVISIONAL CIVIL.

Before Syed Wazir Hasain, Chief Judge and  
Mr. Justice B. S. Kisch.

1931  
December, 9.

SAIYID AHMAD ALI KHAN ALAWI, RAJA, PLAINTIFF-  
APPLICANT V. THE SECRETARY OF STATE FOR  
INDIA IN COUNCIL (DEFENDANT-OPPOSITE PARTY).\*

*Land Acquisition Act (I of 1894), section 18—Land acquired under the Land Acquisition Act—Award by the Land Acquisition Officer as to the amount of compensation—Application under section 18 to refer the matter to District Judge for determination—Application barred by time—Land Acquisition Officer, if can determine the question of limitation and refuse to make the reference—Civil Procedure Code (Act V of 1908), section 115—Revision—Order of Land Acquisition Officer refusing to make the reference under section 18, if subject to revision to High Court.*

Held, that on a proper construction of section 18 of the Land Acquisition Act the final determination of the question as to whether an application under that section is barred by time or not must be made by the Court of the District Judge. The Land Acquisition Officer has no jurisdiction to refuse to make the reference even if in his opinion the application is not in time under clause (a) or clause (b) of sub-section 2 of section 18 of that Act.

Held further, that an order refusing to make a reference to the Court of the District Judge under section 18 of the Land Acquisition Act is a judicial order and is subject to the revisional jurisdiction of the High Court.

*Balkrishna Daji Gupte v. The Collector, Bombay Suburban*, (1), distinguished. *Ezra v. Secretary of State for India in Council* (2), *The Administrator General of Bengal v. The Land Acquisition Collector, 24-Parganas* (3), *Secretary of State for India v. Jiwan Bakhsh* (4), *Saraswati Pattack v. The Land Acquisition Deputy Collector of Champaran* (5), *Hari Das Pal v. The Municipal Board, Lucknow* (6), and *T. K. Parameshwara Aiyar v. Land Acquisition Collector, Palghat* (7), referred to.

\*Section 115 Application No. 39 of 1931, against the order of C. Ram Chand, Land Acquisition Officer, L. S. L. Railway, Lucknow, dated the 17th of September, 1930.

(1) (1923) I.L.R., 47 Bom., 699. (2) (1905) I.L.R., 32 I.A. 98.  
(3) (1905) 12 C.W.N., 241. (4) (1916) P.R., No. 67.  
(5) (1917) 2 P.L.J., 204. (6) (1913) 16 O.C., 374.  
(7) (1918) I.L.R., 42 Mad., 231.

Mr. *A. P. Sen*, for the applicant.

The Government Advocate (Mr. *H. K. Ghose*), for the opposite party.

HASAN, C.J. and KISCH, J. :—This is an application under section 115 of the Code of Civil Procedure from an order of the Land Acquisition Officer of Lucknow, dated the 17th of September, 1930.

It appears that the applicant is the owner of the village of Mohammadpur Garhi and an area of land within that village was acquired under the Land Acquisition Act, 1894, in connection with the construction of a railway line. Under the provisions of Part II of the said Act an award was made by the Land Acquisition Officer as to the amount of compensation to be awarded to the applicant in respect of his lands so acquired. The applicant did not accept the award and made an application under section 18 of the Land Acquisition Act, 1894, requiring that the matter be referred for the determination of the court, i.e. the court of the District Judge of Lucknow. The learned officer has refused to make the reference asked for on the ground that the applicant's application under section 18 was barred by limitation. The ground of the application before us is that the Land Acquisition Officer has acted illegally and with material irregularity in the exercise of his jurisdiction by refusing to make the reference to the court of the District Judge of Lucknow. Against the hearing of this application a preliminary objection is taken by the learned Government Advocate to the effect that the Land Acquisition Officer was not a court subordinate to this Court and therefore an application under section 115 of the Code of Civil Procedure from the order of that officer is not maintainable. It will be seen as this judgment proceeds that the decision of this objection will be a decision on the merits of the application.

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In support of the objection our attention was drawn to the definition of the expression "Court" in section 3, clause (d) of the Land Acquisition Act of 1894 and it was broadly argued that the order of the Land Acquisition Officer in refusing to make a reference under section 18 of the Act is not a judicial order. Reliance was placed on a decision of the High Court of Bombay in the case of *Balkrishna Daji Gupte v. The Collector, Bombay Suburban* (1).

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We are of opinion that the preliminary objection must be rejected. It appears to us that the definition of the expression "Court" in section 3 of the Act is wholly irrelevant for the purpose of determining the jurisdiction of this Court under section 115 of the Code of Civil Procedure. The Act deals with the functions of the "Collector" and of the "Court" and with a view to indicate what those two expressions mean as employed in the body of the Act they have respectively been defined in section 3. The construction of the word "Court" which we are called upon to determine in this case is the construction that should be put on it within the meaning of section 115 of the Code of Civil Procedure. It is agreed that there is no general definition of the word "Court" in the statutes. The case law has proceeded on the line that if the order of the Land Acquisition Officer is an order of a judicial character in that event the order must be construed as an order of a court and subject to the revisional jurisdiction of the High Court. We are of opinion that this is the right way of determining the question. We entertain little doubt that an order refusing to make a reference to the court of the District Judge under section 18 of the Land Acquisition Act is a judicial order, whatever may be the ground of the order. In this particular case the ground was that the application was barred by time. It appears to us that on a proper construction of section 18 the final determination of the question as to whether the application is barred

by time or not must be made by the court of the District Judge. The Land Acquisition Officer has no jurisdiction to refuse to make the reference even if in his opinion the application is not in time under clause (a) or clause (b) of sub-section (2) of section 18 of the Land Acquisition Act. He should express that opinion and refer the matter to the court for determination. The section nowhere provides that if the application contravenes the clause (a) or clause (b) the Land Acquisition Officer shall reject the application. These clauses are placed in the section by way of a proviso to the substantive enactment contained in sub-section (1) of section 18 of the Act and relate to the form of the application and do not have the effect of taking away the right given by the substantive enactment to an interested person who has not accepted the award of requiring that the matter be referred for the determination of the court. That this is the interpretation which has been placed by the Local Government, the second party interested in these cases, is clear from the note added to Rule 436 framed by the Local Government.

As to the decision of the High Court of Bombay in *Balkrishna Daji Gupte v. The Collector, Bombay Suburban* (1) all we need say is that with great respect we do not agree with the view expressed in that case generally, but so far as the matter before us is concerned even that decision professes not to decide it. (See the observation of CRUMP, J. at page 706.) We construe the observations of their Lordships of the Judicial Committee in the case of *Ezra v. Secretary of State for India in Council* (2) as an authority for the view which we are taking. Their Lordships say :—

“The objection is based and depends upon the theory that the inquiry by the Collector was a judicial proceeding, and that the rules of judicial proceedings apply. The argument of the appellant starts from the word ‘award’ (which is used to

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describe the conclusion of the Collector), and has nothing else to support it. When the sections relating to this matter are read together, it will be found that the proceedings resulting in this 'award' are administrative and not judicial; that the 'award' in which the inquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands; and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court."

According to this pronouncement the proceedings culminating in an award under Part II of the Act are administrative and not judicial, but if an ascertainment of value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the court and these proceedings would be judicial. This was the view taken by a Bench of the High Court at Calcutta in *The Administrator General of Bengal v. The Land Acquisition Collector, 24-Parganas* (1); by the old Chief Court of Punjab in *Secretary of State for India v. Jiwan Bakhsh* (2) and by the High Court at Patna in *Saraswati Pattack v. The Land Acquisition Deputy Collector of Champaran* (3). It appears that the old Judicial Commissioner's Court of Oudh was also inclined to the same view. *Hari Das Pal v. The Municipal Board, Lucknow* (4). Lastly we have the decision of the High Court at Madras in the same direction—*T. K. Parameswara Aiyar v. Land Acquisition Collector, Palghat* (5). We accordingly allow this application, set aside the order of the Land Acquisition Officer, dated the 17th of September, 1930, and direct him to refer the matter to the determination of the Court. There shall be no order as to costs.

*Application allowed.*

(1) (1905) 12 C.W.N., 241.

(3) (1917) 2 F.L.J., 204.

(2) (1916) P.R., No., 67.

(4) (1913) 16 O.C., 374.

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