

REVISIONAL CIVIL

Before Mr. Justice A. H. deB. Hamilton and Mr. Justice
R. L. Yorke

GANGA BAKSH SINGH AND OTHERS (APPLICANTS) v. MST.
POHOOP KUER (OPPOSITE-PARTY)*

1938
January
9

United Provinces Encumbered Estates Act (XXV of 1934), sections 4 and 6—Power to entertain application under section 4, Encumbered Estates Act—Objection to maintainability of application—Jurisdiction of special Judge to consider objection regarding maintainability of application under section 4.

Under section 4 of the Encumbered Estates Act the Collector is the authority who has the power to entertain an application. When he has entertained an application and forwarded it to the Special Judge under section 6 it is not for the Special Judge to question the entertainment of the application by the Collector under section 4. He has no power to sit as a court of appeal or of revision on decisions, decrees or orders of the Collector and, therefore he cannot determine whether an application under section 4 should have been entertained or not by the Collector.

Mr. H. H. Zaidi, for the Applicants.

Mr. Mohan Lal, Rai Bahadur, for the opposite-party.

HAMILTON and YORKE, JJ.:—This is a reference made by the District Judge of Hardoi and the point referred is as follows:

“Can a Special Judge to whom an application under section 4, Encumbered Estates Act, has been forwarded by the Collector under section 6 of the Act, determine the maintainability of the application on an objection being taken by creditors opposite party?”

The learned District Judge gives as his own view that the Special Judge has jurisdiction to determine such an objection, but he has not referred to any section of the Act as giving the Special Judge this power. He has,

*Civil Reference No. 1 of 1938, made by Raghubar Dayal, Esq., I.C.S., District Judge of Hardoi, on 17th January, 1938.

1939

GANGA
BAKSH
SINGH
AND
OTHERS
v.
MUSAMMAT
POROOP
KUER

*Hamilton
and
York, JJ.*

on the other hand, pointed out that in *Jodha Singh and others, In re* (1) and again in another case *Brahma Nand, In re* (2) it was held that the Special Judge could not question the Collector's jurisdiction to entertain the application and had to proceed according to the various provisions of the Encumbered Estates Act. He has also pointed out what is the view held by the Board of Revenue, namely, that if a creditor objects that the application before the Collector could not be maintained he must file his objection before the Collector who will then refer the case to the Board of Revenue for the exercise of revisional powers.

We have no difficulty in agreeing with the view expressed by the Allahabad High Court. Under section 4 of the Act the Collector is the authority who has the power to entertain an application and that section sets out in what cases the Collector can or cannot entertain it. Under section 6 when the application is entertained the Collector forwards it to the Special Judge and when the Special Judge has received it he has to proceed in accordance with section 8 and other subsequent sections. It is, therefore, for the Collector to decide whether the application should or should not be entertained. Any decision or decree or order of a Collector is subject to appeal only under section 46 and the appellate authority is the Board of Revenue. If no appeal lies nevertheless the court which has power under section 45 to hear an appeal may pass certain orders under section 46, that is to say, if the admission of an application by the Collector under section 4 cannot be questioned in appeal, the Board of Revenue can pass orders about it under section 46. The Special Judge has no power to sit as a court of appeal or of revision on decisions, decrees or orders of a Collector and, therefore he cannot determine whether an application under section 4 should have been entertained or not by the Collector.

(1) (1937) A.L.J.R., 867.

(2) (1937) A.L.J.R., 1207.

The learned District Judge thinks that if the Special Judge has no such powers difficulties will arise because the Board of Revenue cannot interfere with the proceedings in the court of the Special Judge taken under section 8 or any other section of the Act, and so the Special Judge will have to proceed. We do not think that this difficulty is a real one. When a creditor considers that an application has been wrongly entertained by the Collector he can represent the matter to the Collector and at the same time he can ask the Special Judge to postpone further proceedings in his court on the ground that he is going to object to the Collector in order that under section 46 the Board of Revenue may act in revision. It is within the powers of the Special Judge to fix dates for the cases in his court and he can pass suitable orders to avoid proceeding with the case when there is a probability that the whole matter may come to an abrupt ending because the order entertaining the application is set aside by the Board of Revenue.

Our answer to the question referred to us is, therefore, to the effect that it is not for the Special Judge to question the entertainment of an application by a Collector under section 4 of the Encumbered Estates Act.

Costs in accordance with the rules in this reference are granted to the applicants. Let the reference be returned to the District Judge.

Reference rejected

1939

 GANGA
 BAKSH
 SINGH
 AND
 OTHERS
 v.

 MUSAMMAT
 POHOOT
 KUER

*Hamilton
 and
 Yorke, fJJ.*