APPELLATE CIVIL.

Before Mr. Justice Das and Mr. Justice Brown.

1933

Mar. 22.

K.M.K.R.M.K. CHETTYAR FIRM

v.

THE SECRETARY OF STATE FOR INDIA AND ANOTHER.*

Land Acquisition Act (I of 1894), ss. 18, 20, 31—Reference to Court—Collector when necessary party to reference—Payment by Collector under s. 31—Court's jurisdiction regarding payment—Suit against Government—No power of inquiry by Court regarding Collector's negligence on reference.

Under the provisions of the Land Acquisition Act, when a reference is made to the Court by the Collector under s. 18, the Collector is to be a party to the proceedings, if the objection is in connection with the area of the land or the amount of the compensation awarded. But if the objection is with respect to the person or persons to whom the compensation is payable the Collector is not an interested party, and ought not to be served with a notice to appear under s. 20 (*b*).

Where the Collector has duly paid out the money to a claimant under s. 31 the Court has no power under the Act to order the Collector to pay the sum over again to some other person even if the Court is of opinion that the Collector ought to have awarded the sum to such person.

Where the circumstances are such that the Collector by his negligence or serious error has caused a loss to a rightful claimant, a suit may lie against Government; but the Court cannot hold an inquiry into the alleged negligence or error of the Collector on a reference under the Land Acquisition Act.

Gangadas v. *Haji Ali Mahomed*, I.L.R. 42 Bom. 54; *Gobindarance* v. *Brindarance*, I.L.R. 35 Cal. 1104; *Satish Chandra* v. *Ananda Gopal*, 20 C.W.N. 816; *T. B. Ramchandra Rao* v. *A. N. Ramachandra Rao*, 26 C.W.N. 713—*referred to.*

Deputy Collector, Coconada v. *Maharaja of Pittapur*, I.L.R. 49 Mad. 519—*dissented from.*

Aiyangar for the appellant.

Sein Tun Aung for the respondents.

BROWN, J.—Proceedings were taken under the Land Acquisition Act to acquire certain land. Formal notification to the effect that property was required

* Civil First Appeal No. 35 of 1932 from the order of the District Court of Pegu in Civil Misc. Case No. 46 of 1931.

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for public purposes was issued in January or February, 1929. Notices were issued by the Collector who proceeded to hear the parties who appeared before him and passed orders on the 3rd of May, 1929. In that order the Collector set forth the amount he proposed to award for the various pieces of land acquired, but instead of definitely making an award he submitted the proceedings to the Deputy Commissioner, because the total amount he proposed to award exceeded the amount estimated. A long delay then ensued and on the 30th of March, 1931, the Deputy Commissioner approved of the award so far as the land now in dispute is concerned. The proceedings were apparently received by the Collector on the 18th of April, and on that date he directed that the claimants should be sent for for payment of compensation. Payments were made to the claimants on the 1st of May, 1931, payment on behalf of the land now in dispute being made to the respondent, Ma Saw Kyaing, who accepted the amount under protest. Ma Saw Kyaing then obtained a reference to the Court by the Collector under the provisions of s. 18 of the Land Acquisition Act on the ground that the amount awarded her was insufficient. On the 11th of May, the present appellant, who had not been a party to the proceedings before the Collector, made an application to the Collector claiming that Ma Saw Kyaing had sold the land to him and asking that the amount awarded be ordered to be paid to him. By that time the amount had already been paid out to Ma Saw Kyaing, and orders were passed by the Subdivisional Officer to the effect that the applicant was advised to file a case against Ma Saw Kyaing if he so desired. On the 13th of July the appellant applied to the Collector stating that the money ought to have been paid to him, and that the amount of

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compensation awarded was too small, and asking that a reference should be made to the Court. The Collector sent this application on to the District Court in continuation of his previous reference. The District Court amalgamated the two references and heard them together. The Court increased the amount awarded and also found that the money should have been paid to the appellant and passed orders directing that Ma Saw Kyaing should refund the amount she had drawn and pay it to the appellant. The appellant has now come to this Court in appeal on the ground that the District Court ought to have directed the Collector to pay out the whole of the money found due on the award to him including the sum already paid to Ma Saw Kyaing. The Collector was represented in the proceedings, as, of course, he had to be, as the amount awarded was in dispute. The diary entry of the 20th of August, 1931, however, shows that the pleader for the Collector took no part in the proceeding so far as the claim of the appellant that the money should have been paid to him and not to Ma Saw Kyaing was concerned.

There is no indication in the orders passed by the trial Judge that it had ever been suggested to him that he should pass orders directing the Collector to pay out again to the appellant what he had already paid to Ma Saw Kyaing. The actual application to have the reference made does not really suggest that the Court should pass such an order, and I think it must be held that this suggestion has only been brought forward seriously in this Court. If we were of opinion that the order now asked for was an order which the District Judge was competent to pass, then, we should be bound to send the case back to the District Judge for further enquiry on the point. The question, however, arises whether the

order now asked for is one which the District Judge could, in the circumstances, have passed.

The appellant chiefly relies on the case of *The Deputy Collector, Coconada* v. *The Maharaja of Pittapur* (1). In that case there were rival claimants before the Collector, and the Collector apportioned the amount amongst these claimants. There was clearly a dispute between the parties who appeared before the Collector, but the Collector nevertheless paid out the money under the provisions of s. 31 of the Act in accordance with the terms of his award. The District Court held that the apportionment of the compensation should have been differently made, and it was held that the order of the Court directing that the amount awarded by it should be paid by Government was correct. The matter was not discussed at any length. The learned Judges commenced their judgment by saying:

"The award of the District Court directed that the amount awarded by it should be paid to each party. We think this is a clear direction that Government shall pay to each party the amount awarded to him. That is the essential motive and meaning of an award and Government is bound, *primâ facie*, to supply the money required to pay each party the amount of compensation due to him."

The judgment does not suggest that there were any previous judicial pronouncements in which this principle had been laid down, and is stated in such broad terms, at any rate, that I find it with all deference difficult to hold that that could have been the meaning of the Legislature in passing the Land Acquisition Act. S. 31 of the Act states quite clearly that the Collector must pay the amount awarded by him to the persons to whom he has awarded it in certain circumstances. If the principles laid down in

(1) (1925) I.L.R. 49 Mad. 519.

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The Deputy Collector, Coconada's case were universally applicable, the result would be that the Collector would undoubtedly in many cases have to pay the money twice over in spite of the fact that he had exercised due care and attention throughout and had followed the procedure laid down for him in the Act. Ss. 31 to 34 of the Act are the only sections which deal with payment. They provide in certain circumstances for the Collector's depositing the amount awarded in Court, but they make no provision whatsoever for payment out by the Collector under the orders of the District Court of sums not deposited by him in Court which sums he has already paid out under the provisions of s. 31.

It is further to be noted that in the case of *The Deputy Collector, Coconada*, referred to, the Collector had not paid the money into Court, as he should have done under the provisions of s. 31 (*2*) of the Act, but had wrongly paid it out to the claimants in accordance with his award. That is not the state of affairs here. The appellant never appeared before the Collector, and there was never any dispute before the Collector as to the title to receive compensation. The appellant did make a claim in his petition of the 11th May, 1931, that on the 24th of September, 1930, he had filed a petition asking that compensation should be paid to him. That was, however, after the Collector had decided on the apportionment, and the actual petition would appear to have been made not to the Collector but to the Deputy Commissioner. In fact, in his application asking for the reference to be made, the appellant states that no notice was given to the petitioner of the acquisition; that no compensation was given to him; and that he was neither present nor represented in "this Court", although transfers to the petitioner were disclosed by Ma Saw

Kyaing. It is clear, therefore, that before the Collector there was no dispute as to the title to receive compensation. The second proviso to s. 31 of the Land Acquisition Act had, therefore, no application, and under the provisions of the first clause of s. 31, the Collector was bound to pay the money to Ma Saw Kyaing. I do not suggest that in such circumstances the Collector should never be held liable to pay out the money again. There may be cases in which he has shown such negligence that he could rightly be held liable for the loss by a claimant of money which the Courts subsequently hold should have been paid to him. But to decide whether a Collector should be so liable would involve a Court in an inquiry into the procedure adopted by him and a finding that at least there had been some negligence or serious error on his part. I can find nothing whatsoever in the Land Acquisition Act to suggest that such an inquiry should be held on a reference under the provisions of s. 18 of the Act.

S. 18 of the Land Acquisition Act lays down:

"Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

S. 20 of the Act lays down that on such a reference being received the Court shall cause notices to be issued to:

"(*a*) the applicant;

(*b*) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and,

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(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector."

That is to say, the Collector is to be a party to the proceeding only if the objection is in regard to the area of the land or to the amount of the compensation.

It has been suggested that if the objection is to the persons to whom the compensation is payable, then, the Collector is a person interested in the objection and should, therefore, be served under s. 20, clause (*b*). I find myself unable to accept this suggestion. In s. 3, clause (*b*) of the Act it is laid down:

"the expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:"

There is no suggestion anywhere in the Act that a "person interested" could include the Collector. The wording of s. 20 suggests very strongly that notice on the Collector is necessary only in a case where the objection is in regard to the area of the land or to the amount of compensation, and I find it difficult to believe that having provided so specifically for the notice on the Collector in s. 20 (*c*), the Legislature also intended that notice should be issued on the Collector in certain other cases as a person interested in the objection. Except for the Madras case, already referred to, no authority has been cited before us for the proposition that the Court can direct when the Collector has paid out the money under s. 31 that he should again pay out the same sum to some one else.

The learned advocate for the appellant referred to the case of *Raja Nilmoni Singh Deo Bahadur* v.

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Ram Bandhu Rai and others (1). That decision does not, however, touch upon the point for consideration in this case. In that case a reference had been made to the Judge and he had apportioned amongst the various claimants the sum awarded as compensation. It was held that such a decision could not be contested subsequently in a suit between rival claimants.

In the case of *Satish Chandra Singha* v. *Ananda Gopal Das* (2) there was a dispute as to who was entitled to claim the compensation awarded. The Collector paid out the money due under the award in accordance with his award. It was contended in such circumstances that the Collector had no jurisdiction to make a reference to the Court as to who was entitled to the money. It was held that such a reference could be made. It is to be noted that in that case the Court had directed that the successful parties before the Court were entitled to claim their compensation from Government. The High Court in appeal set this order aside and directed that the persons who had wrongly withdrawn the money from the Collector should pay over the money to the successful party. They pointed out that the Government was not a party to the proceedings, and, although in the case before us, the Collector was a party, because there was a question as to the amount of the award, I do not think that he can really be held to have been a party so far as the apportionment of compensation was concerned.

In the case of *Gangadas Mulji* v. *Haji Ali Mahomed Jalal Saji and another* (3), acquisition

(1) (1881) I.L.R. 7 Cal. 388. (2) (1916) 20 C.W.N. 816.
(3) (1916) I.L.R. 42 Bom. 54.

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proceedings had been taken in Bombay. A reference was made as to the apportionment of the compensation to the Tribunal of Appeal, which is "the Court" for the purposes of the Act in Bombay. The Tribunal of Appeal altered the Collector's orders as to the apportionment of compensation but they held that they had no jurisdiction to make any order for a refund of the compensation moneys paid to the parties successful before the Collector. It was held that the reference to the Special Tribunal was competent, although the money had been paid out by the Collector, but it was held that for the purposes of obtaining the money in accordance with the Tribunal's award a separate civil suit did lie.

In the case of *Gobindaranee Dasee* v. *Brinda Ranee Dasee* (1), the Collector had awarded a certain sum as compensation and paid it out to the persons to whom it had been awarded. Subsequently reference was made to the Court on the application of a third person. The learned Judges expressed a doubt as to whether a reference under s. 18 as to the persons to whom the compensation should be given could be made in cases in which the money had actually been paid away.

In the case of *T. B. Ramachandra Rao and another* v. *A. N. S. Ramachandra Rao and others* (2), their Lordships of the Privy Council held that

> "from the moment when the sum has been deposited in Court under s. 31 (2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award, * * * ".

(1) (1908) I.L.R. 35 Cal. 1104. (2) (1922) 26 C.W.N. 713.

S. 26 of the Act lays down:

> "(*1*) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (*1*) of s. 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts."

Clause (*2*) then goes on to say that every such award shall be deemed to be a decree. It is to be noted that the award of the Court as here defined is not the same as an award by the Collector under s. 11. An award by the Collector under s. 11 must include the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. That forms no part of the award as defined in s. 26, and the argument that an award under s. 26 must be deemed to be a decree and to be executable against the Collector would, therefore, seem to fall to the ground.

Under the general scheme of the Land Acquisition Act, the Legislature appears to me to have contemplated that on a reference to a Court the matters for decision may include either a question as to the total amount of compensation—a question in which the Collector is clearly interested—or a dispute between the parties claiming amongst themselves as to the person or persons to whom compensation should be paid—a question in which the Act does not consider the Collector to be interested. There is no suggestion that on such a reference the Court should have to decide whether or not the Collector had been so negligent that he should be required

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to pay the compensation twice over to different persons, and a question of that sort appears to me to be one which can only be decided satisfactorily in a separate suit.

In the present case it does not seem to me that the appellant even contemplated the making of any order against the Collector by the District Judge, nor so far as this question of the apportionment of the compensation was concerned can the Collector be deemed to have been a party.

For these reasons I am of opinion that this appeal must fail, and I would dismiss it and direct that the first respondent should obtain his costs in this appeal.

DAS, J.—I agree.

APPELLATE CRIMINAL.

Before Mr. Justice Das and Mr. Justice Brown.

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NGA PO KYONE *v.* KING-EMPEROR.*

Common intention—Penal Code (XLV of 1860), ss. 34, 114—Distinction between s. 34 and s. 114—Abetment—Operation of s. 114—Criminal Procedure Code (Act V of 1898), ss. 236, 237.

The appellant was charged under s. 302 read with s. 34 of the Indian Penal Code with the murder of a woman. The evidence showed that the appellant with a number of other persons, armed with *dahs* and spears, attacked her house. The appellant incited the others to set fire to the building, which they did. The appellant then in the presence of the woman incited the others to cut her, and two of them stabbed her to death. The defence was that the facts proved did not constitute an offence under s. 302 read with s. 34 of the Code, and that the Court could not consider whether they constituted an offence under s. 302 read with s. 114 as the charge was not under the latter section.

Held (1) that the provisions of ss. 236 and 237 of the Criminal Procedure Code apply both in cases where the law applicable is doubtful, and in cases where the facts are doubtful ;

* Criminal Appeal No. 230 of 1933 from the order of the Sessions Judge of Tharrawaddy in Trial No. 4 of 1933.