

redemption will be able to obtain contribution under section 82 from those persons who executed the hypothecation agreement or are transferees from them. —*Behari Lal Sen v. Indra Narayan Bandopadya and others* (1). That is a question that does not arise in the present case. Nor shall we express any opinion as to what would be the rights of the respondent by way of subrogation or otherwise if the respondent elected to redeem the mortgage of 1927 as a whole.

For these reasons the appeal is allowed, the decrees passed in all the Courts are set aside, and a decree will be passed granting the appellant the declaration for which he prayed in the alternative in the trial Court. The appellant is entitled to his costs in all the Courts.

BA U, J.—I agree.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

S.T.K.T. KATHERASAN CHETTYAR

v.

THE SPECIAL COLLECTOR OF TWANTE.*

Land acquisition—Estimate and award to be made by Collector only—Collector's use of information for forming an estimate—Supply of information by Government or any other person—Practice of Collectors—Preliminary estimate—Government's choice—Withdrawal from acquisition—Further information supplied by Government—"Instructions" to Collector—Ultra vires action—Land Acquisition Act (I of 1894), s. 11.

Under s. 11 of the Land Acquisition Act it is the Collector who makes the award. The award has to be of such a sum by way of compensation as, in the opinion of the Collector and of no other person, is a fair and proper estimate of the compensation that should be allowed for the land.

In making the award the Collector is not acting as a judicial officer, and therefore he is at liberty and bound to take into account all available

(1) 45 Cal. L.J. 571.

* Civil First Appeal No. 43 of 1935 from the order of the District Judge of Hanthawaddy in Civil Misc. No. 32 of 1934.

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information for the purpose of forming a true estimate of the compensation that ought to be awarded. It is open to Government or any other body or person to give information to the Collector to enable him to form his opinion. It is the practice of the Collector to prepare a preliminary estimate and to report to the prescribed authority his *prima facie* view of the correct amount to be awarded. If the Government is of opinion that the amount of the proposed award is too great it may under s. 48 withdraw from the acquisition, except where possession has been taken, and provided the estimate is preliminary the authorities can lay before the Collector any further information in their possession regarding the proper value of the property. But it is both improper and *ultra vires* for a superior executive officer to issue "instructions" to the Collector as to the matters which he should take into account in assessing the compensation, or to require the Collector to re-examine the case in the light of such "instructions" when received.

P. K. Basu for the appellant. Under s. 11 of the Land Acquisition Act it is the Collector who has to exercise his own judgment in determining the amount of compensation that he thinks fit to award. No superior executive officer has any say in the matter. The Government can put before the Collector any materials as regards the value of the property, but the Collector must come to his own finding on those materials. The Commissioner has no power under the Act to give directions to the Collector as to the amount that he should award. Direction 48 is *ultra vires*. The award in this case was not the award of the Collector, but of the Commissioner.

Chan Tun Aung for the respondent. Under Direction 35 the Collector is required to explore all sources of information available for making a proper award, and in so doing he is entitled to ask his superior officers for advice and information. The Collector, therefore, in accepting the instructions of the Commissioner under Direction 48 did not violate any law.

The District Judge has independently examined the award given by the Collector, and has found it to be fair, and there are no reasons for its rejection.

PAGE, C.J.—This is an appeal arising out of an order of the District Court of Hanthawaddy in Civil Miscellaneous No. 32 of 1934. The proceedings related to the amount of compensation to be awarded in respect of the acquisition of paddy land in the Hanthawaddy District. The land which is the subject-matter of this appeal was acquired in L.A. 3 (a), and, in my opinion, neither the order of the District Court nor the award of the Collector can be sustained.

Under section 11 of the Land Acquisition Act the Collector *inter alia* "shall make an award under his hand of * * * (ii) the compensation which in his opinion should be allowed for the land ; * *." Under the Act the Collector, who in the present case was the Subdivisional Officer of Twante, is the *persona designata* to make the award which must be based upon the Collector's own opinion of the amount of compensation that should be awarded. He is to make the award and nobody else. In making the award the Collector is not acting as a judicial officer, and therefore he is at liberty and bound, for the purpose of forming a true estimate of what in his opinion is the compensation that ought to be awarded, to take into account all the available information at his disposal, but after all the material information is before him it is his duty under the Act to award such compensation as in his own opinion ought to be paid.

Now, under Direction 48 set out in the Land Acquisition Manual it is stated that in cases in which the award is likely to exceed the grand total of the estimate referred to in the directions

"the Collector should defer announcing the award until he has received instructions from the Deputy Commissioner, the Commissioner, or the Local Government as the case may be.

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Each of these authorities may give the Collector any information which it may have regarding the proper valuation of the property and may issue instructions as to the matters which the Collector should take into account in assessing compensation under any head of section 23 (I). The Collector should thereupon re-examine the case in the light of the instructions received and proceed to make his award. If the Deputy Commissioner or Commissioner considers that a proposed award should not be accepted, he may take steps to obtain the notification by Government of its withdrawal from the acquisition under section 48, at the same time instructing the Collector to defer taking possession until the orders of Government have been received."

It appears that the practice of Collectors is to prepare a preliminary estimate of what the Collector *prima facie* regards as the amount of compensation that ought to be awarded, and then to report to the prescribed authority his *prima facie* view of the correct amount to be awarded. Of course if the Government is of opinion that the amount of the proposed award is too great it may under section 48 withdraw from the acquisition as therein provided except in cases such as the present where possession has been taken under section 36. If the estimate of the compensation is merely a preliminary and not a final estimate by the Collector I am disposed to think that there would be no objection if the authorities to whom the estimate has been reported lay before the Collector any further information in their possession regarding the proper value of the property; but, in my opinion, it would be both improper and *ultra vires* for the authorities to issue "instructions" to the Collector as to the matters which he should take into account in assessing the compensation or that the Collector should be required to re-examine the case in the light of such "instructions" when received. It is open to any body or

individual to give information to the Collector for the purpose of enabling the Collector to form his opinion as to the amount of compensation that ought to be awarded, but neither the Government nor any other body or person is entitled to issue or justified in issuing instructions to the Collector as to the manner in which or the figure at which the compensation ought to be awarded. Under section 11 the award has to be of such a sum by way of compensation as, in the opinion of the Collector and of no other person, is a fair and proper estimate of the compensation that should be allowed for the land.

What has happened in the present case illustrates the danger of not complying with the terms of section 11. By his preliminary award of the 10th March, 1934, the Collector stated the amount that he would pay as compensation for the land acquired as Rs. 3,063-15, and on the 26th March, 1934, he further stated that "the claimants are entitled to interest on the amount of compensation at the rate of 6 per cent per annum", which amounted to Rs. 61-4, making a total of Rs. 3,126. This preliminary award or *prima facie* estimate was reported to the Deputy Commissioner by the Collector, and on the 15th March the Deputy Commissioner stated that "in my opinion Rs. 65 per acre for Class II and Rs. 50 per acre for Class IV are fair rates. Ask Collector to supply omission at A (that is with respect to interest)." Nevertheless the Deputy Commissioner submitted the proceedings to the Commissioner of the Pegu Division. On the 22nd May, the Commissioner of the Pegu Division, in a departmental letter to the Deputy Commissioner stated that

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"I am not prepared to agree to the payment. It appears to me that the paddy land has been over-valued."

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And he added that

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"in the absence of data I have no objection to the Land Records figures of Rs. 50 and Rs. 30 being adopted: but, unless it can be shown that U Tin Gyi has raised the land to a higher soil-class (this seems unlikely as the Subdivisional Officer says it is somewhat low-lying) I do not agree to any higher figure."

On receiving these "instructions" from the Commissioner the Collector made an award purporting to be pursuant to section 11 as follows :

"In asking for sanction to the excess amount over the original estimate under the Land Acquisition Direction 48, the Commissioner has reduced the value of the land to Rs. 50 per acre of II class land and Rs. 30 per acre of IV class land. So I pay for the land at these rates, and it is necessary to revise the value of the land only."

An award in that form, in my opinion, clearly cannot stand. It is not, and does not purport to be, an award under the hand of the Collector of "the compensation which in his opinion should be allowed for the land." The compensation awarded was not the compensation which ought to have been awarded in the opinion of the Collector, but the compensation which the Commissioner thought ought to be awarded. But, as I have stated, it is not the opinion of the Commissioner that matters, for the award of compensation has to be that which the Collector in his opinion thinks the right sum to be allowed for acquiring the land. The result is that there has been no award by the Collector as prescribed and required under section 11 of the Act.

Now, the award of the Collector under section 11 is binding upon the Local Government, and the amount of compensation awarded by the District

Court in the events that happened was determined by the amount of the award. There being no award pursuant to the provisions of the Land Acquisition Act the order of the District Court which is based upon such an alleged award cannot stand.

The result is that the appeal is allowed, and the order of the District Court is set aside, and the proceedings will be returned to the Collector in order that he may make an award according to law. We assess the costs of the appeal at five gold mohurs and they will be the appellant's costs in the cause, which means that if in the event the appellant wins he will get his costs, and if he loses he will not have to pay them.

BA U, J.—I agree.

FULL BENCH (CIVIL).

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mya Bu, Mr. Justice Baguley, Mr. Justice Mosely, and Mr. Justice Ba U.

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Mar. 2.

Minor's contract to marry—"Capacity to act in the matter of marriage"—Burmese Buddhist marriage—Cohabitation with intent to become husband and wife in present—Promise to marry in futuro—Promise by Burmese Buddhist minor to marry—Contract Act (IX of 1872), s. 11—Majority Act (IX of 1875), s. 2 (a).

The expression "capacity to act in the matter of marriage" in s. 2 of the Majority Act means the capacity to be a party to a valid marriage, and relates to the acts of the parties by which their status is changed; the expression does not refer, and is not applicable to, a pre-nuptial agreement to contract a marriage in the future.

Mozharul Islam v. Abdul Gani, A.I.R. (1925) Cal. 322—referred to.

* Civil Reference No. 4 of 1936 arising out of Civil Second Appeal No. 246 of 1935 of this Court.