

CIVIL REVISION.

Before Mr. Justice Mackney.

MAUNG NYUN AND ANOTHER

7.

THE COLLECTOR OF MANDALAY.*

1938

Feb. 9.

Land Acquisition Act, s. 49 (1), proviso 2—Land intended to be acquired—Land whether part of owner's house—Owner requiring Collector to refer question to Court—Refusal of Collector—Act of Collector ministerial—Revision.

Where a person asks the Collector to refer to the Court under s. 49 (1), proviso 2, of the Land Acquisition Act the question whether the land propose to be acquired did or did not form part of his house and the Collector refuses to do so, the action of the Collector is ministerial and does not constitute him a Court subordinate to the High Court, and consequently no application in revision lies to the High Court against the order of refusal.

Ezra v. Secretary of State for India, I.L.R. 32 Cal. 605, referred to

Administrator-General of Bengal v. Land Acquisition Collector, 12 C.W.N. 241; *Krishna Das v. Land Acquisition Collector*, 16 C.W.N. 327; *Saraswati v. Land Acquisition Collector*, 2 Pat. L.J. 204; *T.K. Aiyar v. Land Acquisition Collector, Palghat*, I.L.R. 42 Mad. 231, dissented from.

K. C. Sanyal for the applicants.

No appearance for the respondent.

MACKNEY, J.—This application under section 115 of the Code of Civil Procedure to revise the order of the Collector of Mandalay must be dismissed as this Court in my opinion clearly has no jurisdiction in such a matter.

The applicants Maung Nyun and his wife are the owners of a piece of property, part of which it is intended to acquire under the Land Acquisition Act for the purpose of making a road. On the portion of the applicants' land which it is proposed to acquire is a shed. The applicants claim that the land on which this shed is built forms part of the building or

* Civil Revision No. 383 of 1937 from the order of the Deputy Commissioner of Mandalay in D.O.R. Proceedings No. 113 of 1936.

1938
 MAUNG
 NYUN
 v.
 THE
 COLLECTOR
 OF
 MANDALAY.
 MACRANEY, J.

manufactory in which they carry on their business of weaving, and when proceedings were taken under sections 4 and 5 (a) of the Act they filed an objection before the Collector asking that the whole property be acquired, and declaring that if the acquisition of the whole property was not acceptable, section 49, clause (1), of the Act applied and the provisions of the Act could not be put into force. Other objections were raised, but we are not concerned with them. The Collector dismissed the objection. The applicants had asked that the question whether the land proposed to be acquired did or did not form part of the petitioners' house might be referred for determination to the Court as provided in the second proviso to section 49 of the Act. This the Collector refused to do. It is argued that the making of this reference is a judicial act and in making it or refusing to make it the Collector is a Court and therefore his order refusing to make the reference is subject to revision by this Court. The argument appears to me to be singularly inconclusive.

It is not clear from the wording of section 49 of the Act at what stage of the proceedings the Collector is to make the reference : but there is at any rate nothing in the wording to suggest that an objector cannot require the reference to be made before notification under section 6 is published.

We have it then that no notification as yet had been published under section 6 and that the Collector of Mandalay in the course of enquiring into the objections raised to the proposal to publish such a notification was asked to make a reference to the Court under section 49 and he refused to do so. It is obvious that throughout these proceedings the Collector is acting administratively. I am unable to see how by his mere refusal to comply with the express provisions of section 49 he constitutes himself a Court subordinate

to this Court. In *Ezra v. Secretary of State for India* (1) it was pointed out that the proceedings resulting in an award under the Act are administrative and not judicial.

I have been referred to *The Administrator-General of Bengal v. The Land Acquisition Collector, 24-Pergunnahs* (2), in which it was held that the refusal of the Collector who had made an award under section 11 of the Act to make a reference to the Court under section 18 of the Act was a judicial act and the Collector in rejecting the application was a Court and his order was subject to revision by the High Court. It was said that the Collector's functions under Part III of the Act in which section 18 appears are clearly distinguishable from those under Part II (section 49 appears in Part VIII of the Act which is headed "Miscellaneous"), and Part III of the Act relate to the proceedings in Court. With great respect the argument seems to me to be entirely inconclusive; nor, with the greatest respect, does it appear to me relevant to point out that to hold otherwise would be to leave the party aggrieved without a remedy.

This decision was followed in *Krishna Das Roy v. The Land Acquisition Collector of Pabna* (3). This was a case in which the Land Acquisition Collector had refused to make a reference under section 49 of the Land Acquisition Act. The High Court in revision set aside his proceedings subsequent to the refusal and directed the Collector to proceed according to law. The learned Judges followed the case already cited giving their reasons that "it would, obviously, be unjust that the Deputy Collector should refuse to obey the provisions of the Act, and to provide no remedy for the correction of his mistaken action. Where the law

1938
 MAUNG
 NYUN
 v.
 THE
 COLLECTOR
 OF
 MANDALAY.
 MACKNEY, J.

(1) (1905) I.L.R. 32 Cal. 605.

(2) 12 C.W.N. 241.

(3) 16 C.W.N. 327.

1938
 MAUNG
 NYUN
 v.
 THE
 COLLECTOR
 OF
 MANDALAY.
 —
 MACKNEY, J.

gives a right to a party to a certain procedure, it must also be deemed to give a remedy for the rectification of any irregularities committed in that connection." With great deference I think this argument is not a pertinent one. It may be noted also that apparently the Collector who was asked to make the reference was the Collector who was making the award and evidently the proceedings had gone far beyond the preliminary stage of the proceedings with which we are now dealing.

In *Saraswali Pattack v The Land Acquisition Deputy Collector of Champaran* (1) the High Court of Patna held that it had jurisdiction to interfere with an order refusing to refer to the Civil Court a question under the second proviso to sub-section (1) of section 49 of the Land Acquisition Act. The learned Judges adopted the argument that section 49 requires the initiation of a judicial proceeding in the Civil Court for the determination of the question and the Statute provides that the first step in that judicial proceeding shall be a reference by the Deputy Collector. Mr. Justice Chapman says :

"I am of opinion that the first step in a judicial proceeding must be held to be a judicial step and that the act of making a reference or refusing to make a reference is an act with which we can interfere on the ground that the Deputy Collector is a Court when he takes such a step or refuses to take it."

And the cases already cited are referred to. The learned Judge does not give any reason for holding that when a person fails to take a judicial step he constitutes himself a Court subordinate to the High Court and for myself I regret I am unable to follow the observation.

The last case to which I have been referred is *T. K. Parameswara Aiyar and fourteen others v. Land Acquisition Collector, Palghat and eight others* (2).

(1) 2 Pat. L.J. 204.

(2) (1918) I.L.R. 42 Mad. 231.

This was a case in which the High Court dealt with an application to revise the order of a Revenue Divisional Officer dismissing an application under section 18 of the Land Acquisition Act for a reference to the Court regarding his award of compensation for certain lands. The cases that I have cited were followed. It was observed that proceedings under Part III of the Land Acquisition Act were undoubtedly judicial in character. The Collector had to determine whether the application satisfied the conditions of the proviso to section 18, and in making the reference he had to set out the grounds of his own award and his opinion as to what persons were really interested in the land required. The learned Judge, Mr. Justice Ayling considered that in so doing he was acting as a Court. It may be that he was acting in a manner similar to that in which a Court acts; but surely that does not constitute a Court subordinate to the High Court within the meaning of the Civil Procedure Code. One of the learned Judges who decided this case remarks :

"It cannot be denied that the proceedings under Part III which result in an award of the Court are judicial proceedings and by virtue of section 54 the Court is subordinate to the High Court. Sections 18 and 19 provide for the procedure to be adopted to initiate those proceedings. ** ** As soon as the application under section 18 is filed the matter of the amount of proper compensation assumes a litigious form and becomes a contentious proceeding between the owner and the Collector. ** ** I consider it to be the first step in the judicial proceedings and to be an integral part of it. It follows therefore that if the Collector decides to reject it or passes any orders regarding it, he does so judicially and not administratively; for a judicial proceeding once commenced cannot be effected by administrative action."

And the learned Judge concludes :

"If therefore the Collector takes upon himself to pass an order which has the effect of rejecting the petitioner's application and of preventing his claim being tried by the Court, I see no

1938
 MAUNG
 NYUN
 C.
 THE
 COLLECTOR
 OF
 MANDALAY.
 MACKNEY, J.

1938

MAUNG
NYUN
v.
THE
COLLECTOR
OF
MANDALAY.
MACKNEY, J.

difficulty in holding that it should be treated as a judicial order subject to our revisional jurisdiction."

And a reference is made to the Collector's position under Part III where he seems to act in a judicial capacity as "part of the Court" and receives the objection petition and deals with it.

Here again although the Collector may be acting "judicially" I cannot see that that constitutes him a Court or "part of a Court" subordinate to the High Court; nor do I see that the fact that he has to decide whether an application under section 18 complies with the provisions of section 18 or not in any way constitutes him a Court.

It appears to me that what has to be looked to is not what the Collector does or seems to do, but what he is: and he quite definitely is not a Court within the meaning of the Civil Procedure Code, whatever he does. It appears to me that it is part of his administrative duties to make the references which may be required of him under the Act. Before doing so it may be that he has to decide certain matters in the same way as a Judge has to decide matters in a suit before him or in an application before him: but this does not make the action of the Collector a judicial act (in the sense of the act of a particular Court), it still remains an administrative act.

In the written application for revision one of the grounds set out is that the proceedings of the Collector were illegal and without jurisdiction because the acquisition of the land was unnecessary for a public purpose. How this could be made a ground of revision in this Court passes my understanding. Under section 5 (a) these matters are to be decided by the Government whose decision is final.

This application is dismissed. It has been heard *ex parte*: there will be no order as to costs.