

1938

APPELLATE CIVIL.

Feb. 25.

Before Addison and Abdul Rashid JJ.

SUNDAR DAS (DEFENDANT) Appellant,

*versus*THE SECRETARY OF
STATE FOR INDIA

(PLAINTIFF)

MATHRA DAS AND OTHERS

(DEFENDANTS)

} Respondents.

Regular Second Appeal No. 1411 of 1937.

Land Acquisition Act (I of 1894), S. 31 — Award — Compensation money in hands of Collector — Whether belongs to the person whose land has been acquired — before its tender under S. 31 — and whether attachable in execution of decree against him.

Held, that under the Land Acquisition Act the compensation money in the hands of the Collector after the award belongs to the Government and not to the person whose land has been acquired, and, therefore it is not attachable in execution of a decree against such person till it has been actually tendered to him under the provisions of s. 31 of the Act.

Secretary of State v. Kuppasami Chetti (1), and Spence v. Coleman (2), relied upon.

Second appeal from the decree of K. S. Makhdum Mohammad Afzal, District Judge, Lyallpur, dated 13th August 1937, reversing that of Sodhi Durga Parshad, Subordinate Judge, 3rd Class, Sheikhpura, dated 15th April, 1937, and granting the plaintiff the declaration prayed for.

HAR BHAJAN DASS, for Appellant.

MOHAMMAD MONIR, Assistant to Advocate General, for Respondent.

(1) (1924) 78 I. C. 82.

(2) (1901) L. R. 2 K. B. D. 199.

The judgment of the Court was delivered by—

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ABDUL RASHID J.—Some land belonging to Fauja Singh, defendant No. 3, and Vir Singh, defendant No. 4, was acquired by the Secretary of State for India in Council under the Land Acquisition Act. Sundar Das, defendant No. 1, and Mathra Das, defendant No. 2, had two money decrees against Fauja Singh and Vir Singh. After the award had been made by the Collector and before the money was tendered to defendants Nos. 3 and 4 under Section 31 of the Land Acquisition Act, the decree-holders got the money attached. The Secretary of State, thereupon instituted the suit out of which the present appeal has arisen, for a declaration that the compensation money in his hands due to defendants Nos. 3 and 4 could not be attached in execution of the money decrees obtained by defendants Nos. 1 and 2 against defendants Nos. 3 and 4. The suit was dismissed by the trial Court. On appeal the learned District Judge decreed the claim. Against this decision Sundar Das, defendant, has preferred a second Appeal to this Court.

Section 31 of the Land Acquisition Act lays down that on making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested, entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2) of that Section. If there is no person to receive the money or if the persons entitled to the money do not consent to receive it, the Collector is bound to deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted. It is further

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provided that a person, who receives the money otherwise than under protest, is not entitled to have a reference made to the District Judge under Section 18 of the Act. If, however, he receives the money under protest, he does not lose his right of having a reference made under Section 18. The provisions of this section make it clear that until the tender is made, the money belongs to the Government, and that the Collector has got to carry out his duty of making the tender to the persons interested as the receipt of the money by the owner of the land without protest takes away certain rights, which would accrue to him if he receives the money under protest. The Land Acquisition Act is a complete code in itself, and until the tender is made, the person whose land has been acquired, does not become a creditor or the Collector a debtor. Reference may be made in this connection to a Division Bench ruling of the Madras High Court reported as *Secretary of State v. Kuppusami Chetti* (1), where it was laid down that the compensation money payable under the Land Acquisition Act is payable under that Act and that Act only. Any rights in respect of it are creatures of the statute and nothing else. It was held in *Spence v. Coleman* (2), in respect of surplus assets of the company in liquidation, that when it is the duty of some officer of the Court to distribute money, which is in his hands, in a particular way, the relation of debtor and creditor is not constituted between him and the person who is entitled to all or some part of the money, which is in his hands. He is an officer of the Court and his duty is to the Court, and no debt is created which can be the subject matter of attachment against him as garnishee.

(1) (1924) 78 I. C. 82.

(2) (1901) L. R. 2 K. B. D. 199.

It is clear from the authorities quoted above that the money in the hands of the Collector is money belonging to the Government until tender is made to defendants Nos. 3 and 4, and that no relationship of creditor and debtor can be said to have been established between the Collector on the one side and the owners of the land on the other. In these circumstances Section 60 of the Code of the Civil Procedure has no applicability.

For the reasons given above, we affirm the decision of the learned District Judge and dismiss this appeal. Having regard to all the circumstances we order that the parties will bear their own costs in this Court.

Appeal dismissed.

A. N. K.

MISCELLANEOUS CIVIL.

Before Addison and Din Mohammad JJ.

TULSI DAS-NAGIN CHAND (ASSEESSEES)	}	Petitioners,
<i>versus</i>		
THE COMMISSIONER OF INCOME-TAX	}	Respondent.

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March 1.

Civil Miscellaneous No. 654 of 1937.

Indian Income-tax Act (XI of 1922), SS. 22 (4), 23 (4) -- Notice under S. 22 (4) -- Partial compliance therewith -- Assessment under S. 23 (4) -- Legality of -- Arbiter of the relevancy of materials to be produced in support of return -- who is.

The assessee submitted the return for 1932-33, and was duly assessed thereon. In the course of assessment for the year 1933-34 it transpired that the assessee's income for 1932-33 had escaped assessment and therefore notice was issued to him under s. 34 and he submitted a fresh return which however was found to be incomplete. The assessee complied only partially with a notice issued to him under s. 22 (4) inasmuch as a large number of books dealing with the old accounts of certain concerns belonging to the assessee were

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