

APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Fletcher.*

ABU BAKAR

v.

PEARY MOHAN MUKERJEE.*

1907

March 21.

*Compensation—Land Acquisition Act (I of 1894) ss. 18, 20, 21—Apportionment
—Reference to Court—Objection taken before Court by party who had raised
no objection before Collector.*

In a proceeding under the Land Acquisition Act, a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect.

Under sections 18, 20 and 21 of the Land Acquisition Act all that the Court can deal with is the objection which has been referred to it; it cannot go into a question raised for the first time by a party who had not referred any question or any objection to it under section 18 of the Act.

APPEAL by Sheikh Abu Bakar.

The appeal arose out of certain proceedings under the Land Acquisition Act. Some land with trees on it was acquired for the purposes of the East Indian Railway Company under the provisions of the Land Acquisition Act. The persons interested were Raja Peary Mohan Mukerjee, the zemindar; Surja Kumar Ghose and others, tenants under the zemindar, and Abu Bakar, an under-tenant under them. The Collector awarded Rs. 1,573-4-9 as compensation for the land, giving a six annas share of it to the zemindar and dividing the balance between the tenants and the under-tenant in the proportion of 6 annas and 10 annas; he awarded a further sum as the value of the trees and gave the whole of it to the under-tenant.

* Appeal from Original Decree, No. 522 of 1905, against the decree of Maulvi Abdul Bari, Subordinate Judge of Hooghly, dated Sept. 11, 1905.

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The tenants objected to the apportionment both of the share allowed to the zemindar as well as of that allowed to the under-tenant. The matter was accordingly referred to the Court under s. 18 of the Land Acquisition Act. Neither the zemindar nor the under-tenant made any objection before the Collector.

On the case coming before the Court, the zemindar claimed the entire amount awarded as the value of the trees. The tenants and the under-tenant entered into a compromise as to the apportionment between themselves of the value of the trees.

The Subordinate Judge, before whom the reference came up for trial, held that the zemindar was entitled to raise the objection as regards the value of the trees before the Court, and he gave the zemindar one-half of the compensation awarded by the Collector in respect of the trees, leaving the other half to be divided between the tenants and the under-tenant according to the terms of their compromise.

The under-tenant, Abu Bakar, appealed to the High Court.

*Babu Aghore Nath Sil (Babu Lalit Mohan Banerjee with him)*, for the appellant, contended that the zemindar not having claimed any reference under section 18 of the Act nor having raised any objection before the Collector, the Court was not entitled to go into the question raised by him for the first time before it. The Court could only adjudicate on the objections referred to it by the Collector. Reference was made to sections 18, 20 and 21 of the Land Acquisition Act.

*Babu Mahendra Nath Roy (Babu Surendra Nath Roy and Babu Haribhushan Mukerjee with him)* for the zemindar, respondent, referred to section 21 of the Land Acquisition Act, and contended that as the zemindar was "a person affected" by the objection made by the tenant before the Collector as to the apportionment of the value for the land, the scope of the inquiry before the Civil Court should embrace all points that affected his "interests." The Subordinate Judge having reduced the zemindar's share of the compensation for the land to the capitalised value of rent at 20 years' purchase, and awarded him one-half of the compensation for trees instead, the consideration of the latter compensation came within the scope of the inquiry.

MACLEAN C.J. The question on this appeal arises in connection with certain proceedings under the Land Acquisition Act. Certain land was taken by Government, and there were three parties interested in the apportionment of the compensation. No question arises as to the amount of such compensation. Those three parties are (i) the zemindar, (ii) the tenants, who, it is conceded, hold permanently and (iii) the under-tenant. The Collector made his award. He awarded a six annas share of the compensation money attributable to the land itself to the zemindar, and apportioned the rest between the tenants and the under-tenant. We are not concerned with any question between the tenants and the under-tenant, as between themselves they have arranged matters. The Collector has also awarded Rs. 997-4 in respect of the value of the trees. Then the tenants took the objection that the amount allotted to the zemindar was far in excess of what the law allowed him; and he applied to the Collector under section 18 of the Land Acquisition Act, asking him to refer that matter for the determination of the Court. The Collector, as he was bound, did so.

The matter came before the Subordinate Judge of Hooghly; and, when the matter came before the Subordinate Judge, the zemindar, who had not referred any question or any objection to the Court under section 18, raised the objection that the amount awarded in respect of the trees to the tenants ought not to have been dealt with in that way, and he claimed the entire amount awarded for the trees. The Subordinate Judge allowed that question to be gone into, and divided the compensation for the trees equally between the zemindar on the one hand and the tenants and the under-tenant on the other. From that decision, the present appeal is presented by the under-tenant; and his first point is that it was not open to the Subordinate Judge to go into the question as to who was entitled to the compensation money for the trees, because the zemindar had raised no objection as to that. That is the point we have first to consider, and if the appellant succeeds upon that point, there is practically an end of the case.

We must then consider certain provisions of the Land Acquisition Act. We need only refer to Part III, which deals

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with "Reference to Court and Procedure thereon." Section 18 enables "any person interested who has not accepted the award to 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. The application must state the grounds on which objection to the award is taken." Here, as I have pointed out, the only objection taken was that taken by the tenants as to the apportionment of the compensation money for the land. No objection was taken by the zemindar as to the whole of the compensation money for the trees being given to the tenants.

Now, passing to section 20, we find "The Court shall thereupon"—that is, after the reference has been made—"cause a notice, specifying the day on which the Court will proceed to determine *the* objection, and directing their appearance before the Court on that day, to be served on the following persons, namely," amongst others, "all persons interested in *the* objection." Pausing there for a moment, the reasonable inference from that language of the Legislature is that the Court can only deal with the objection which had been referred to it under section 18. That seems to be pretty clear from the language "will proceed to determine *the* objection," and "directing service only on the persons interested in the objection," and if there were any doubt about that, it seems to be set at rest by the language of section 21, which runs as follows: "The scope of the inquiry in every such proceeding shall be *restricted* to a consideration of the interests of the persons affected by *the* objection." If we read that section in connection with section 20 and section 18, I think it is impossible to avoid the conclusion that the Legislature intended that all that the Court could deal with was the objection which had been referred to it: and this seems to be a view consistent with common sense and with the ordinary method of procedure in civil cases. The zemindar here could, if he liked, have raised the objection as to the whole compensation for the trees being given to the tenants, but he did not do so. He must, therefore, be taken to have accepted the award in that respect; and it would be little less than dangerous

if we were to hold that [the Judge to whom] only one objection was referred could go into all sorts of questions and objections which had not been referred to him. It is clear upon the language of the statute that it was not open to the Subordinate Judge to go into the question raised for the first time by the zemindar as to who was entitled to the compensation for the trees. That is the only point raised upon this appeal, and the appeal must, therefore, succeed and that part of the order of the Subordinate Judge which relates to the compensation for the trees must be reversed and the award of the Collector as to them must stand.

The zemindar respondent must pay the costs of the appellant.

FLETCHER J. I agree.

Appeal allowed.

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