

APPELLATE CIVIL.

Before Coxe and Ray JJ.

RAMPRASANNA NANDI CHOWDHURI

v.

SECRETARY OF STATE FOR INDIA.

1913

May 23.

Shebait—Alienation, power of—Dedicated property, acquisition of—Land Acquisition Act (I of 1894) s. 31 cl. (2)—Compensation-money, withdrawal of.

The position of a *shebait* is analogous to that of the manager of an infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his rights.

S. 31 cl. (2) of the Land Acquisition Act applies to a *shebait* since he is not competent to alienate the land.

Kamini Debi v. Promotho Nath Mookerjee (1) followed.*

APPEALS by Ramprasanna Nandi Chowdhuri and others, the claimants.

Certain land, belonging to the family idol of the claimants, was acquired by the Government under the Land Acquisition Act of 1894. The claimants, as *shebait*s, prayed for permission to withdraw the compensation-money awarded for the land. Their applications were rejected by the Special Land Acquisition Judge of the 24-Parganas. Against these orders the *shebait*s appealed to the High Court.

Babu Ram Chandra Mozumdar (with him *Babu Atul Chandra Dutt*), for the appellants, submitted that the whole question depended upon the inter-

*Appeals from Original Decrees No. 178-180 of 1911, against the decrees of Arthur Goodeve, Special Land Acquisition Judge of Alipur, dated Dec. 1, 1911.

1913
 RAM-
 PRASANNA
 NANDI
 CHOWDHURI
 v.
 SECRETARY
 OF STATE
 FOR INDIA.

pretation that was to be put on the words "no person competent to alienate the land" in s. 31, cl. (2) and the words "no power to alienate the same" in s. 32 of the Land Acquisition Act.

Are the *shebait*s competent to alienate the property or not? Here the property is dedicated to a family idol and it is well known that, so far as private property is concerned, the *shebait*s can change the character and give the estate another turn if they are so minded.

Section 32 of the Land Acquisition Act applies to a case where there is an absolute want of power to alienate the property.

There is a clear distinction made between *debuttur* property of a public and private character: *Konwar Doorga Nath Roy v. Ram Chunder Sen* (1); *Jagadindra Nath Roy v. Hemanta Kumari Debi* (2); *Abhiram Goswami v. Shyama Charan Nandi* (3).

In a *debuttur* of a private character no one outside the family circle is interested in the preservation of the *debuttur* property and therefore if the *shebait*s agree to give to it a different turn they are at liberty to do so: Mayne's Hindu Law s. 438. I must, however, point out that the case of *Kamini Debi v. Promotho Nath Mookerjee* (4), is against me. But there it is not clear that the endowment was not of a public character.

No one appeared for the respondent.

Cur. adv. vult.

RAY J. These are cases under the Land Acquisition Act, 1894. There has been an order under section 31 (2) of the Act for the deposit of the compensation money, and the claimants' applications

(1) (1876) I L. R. 2 Calc. 341, 347.

(3) (1909) I. L. R. 36 Calc. 1003.

(2) (1904) I. L. R. 32 Calc. 129.

(4) (1911) 13 C. L. J. 597

for payment were rejected. Against these orders there have been these three appeals. The lands acquired belonged to the family idol of the claimants, Sri Sri Raj Rajeswar. This is admitted, and it is also admitted that the claimants are only *shebait*s of the idol. It is settled law now that the position of the *'shebait* is analogous to that of a manager of an infant. He is entitled to possess and manage the dedicated property. He has no power to alienate it in the general character of his rights. It appears to us that the Land Acquisition Judge rightly held that section 31 (2) applied to the case. This was also the view of Mookerjee and Carnduff JJ. in the case of *Kamini Debi v. Promotho Nath Mookerjee* (1) and we follow that decision. It was contended for the appellants that as the *shebait*s could join in giving the dedicated property a different turn, it would follow that when they have all agreed, they are entitled to withdraw the money. The simple answer is that they have not as yet done so: and it is an admitted fact that the *debuttur* has remained unaltered in its character. The question whether they are capable of giving the dedicated property a different turn as regards this particular endowment has not arisen. The appeals are dismissed.

COXE J. concurred.

Appeals dismissed.

S. K. B.

(1) (1911) 13 C. L. J. 597.

1913
 RAM-
 PRASANNA
 NANDI
 CHOWDHURI
 v.
 SECRETARY
 OF STATE
 FOR INDIA
 RAY J.