

its being inconsistent with or taking away or abridging any of the fundamental rights contained in Article 14 to 32 of the Constitution. No such attack has been made on the impugned provisions of the Act by Mr. Hardy.

In almost similar circumstances the Supreme Court struck down section 8 of the West Bengal Land Development and Planning Act, 1948, by their Lordships' judgment in *the State of Bengal v. Mrs. Bela Banerjee and others* (1). The said West Bengal Act is also included in the Ninth Schedule at item No. 20. In *N. B. Jeejeebhoy v. The Assistant Collector, Thapa Prant, Thana* (2), the Land Acquisition (Bombay Amendment) Act, 24 of 1948, was struck down by their Lordships of the Supreme Court on similar grounds.

I, therefore, accept this appeal and set aside the award of the arbitrator, dated 31st January, 1961, which is solely and exclusively based on the two provisos which have been held by me to be unconstitutional and illegal and direct that the appropriate Government authority will now issue a proper notification re-appointing Mr. K. S. Sidhu or appointing any other competent and qualified officer as arbitrator under section 7(1)(b) of the Act to take evidence of both parties afresh and to make an award for the compensation to which the appellants may be found to be entitled in accordance with law. The appellants will have their costs of this appeal from the respondent.

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B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

ATMA SINGH,—*Petitioner.*

*versus*

WARYAM SINGH AND OTHERS,—*Respondents.*

Civil Writ No. 12 of 1966.

May 2, 1966

*Land Acquisition Act (I of 1894)—as amended by Land Acquisition (Punjab Amendment) Act, 1953 (II of 1954)—Ss. 3 (d), 18(3) and 53—Collector—Whether can review the orders passed by his predecessor—Clerical*

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(2) A.I.R. 1965 S.C. 1096.

Atma Singh v. Waryam Singh, etc. (Mehtar Singh, J.)

*error—Re-computation of shares on consideration of several matters—Whether, can be termed as correction of clerical error—High Court—Whether, in revision, can direct Collector to refer matter of apportionment of compensation to the Court.*

*Held*, that there is no provision in the Land Acquisition Act, 1894, which gives power to the Land Acquisition Collector to review the orders passed by his predecessor. The Collector is not a Court as defined in section 3(d) of the Act and section 53 of the Act is, therefore, not attracted to the proceedings before him.

*Held*, that when the Collector reviewed the revenue records for a number of years, entered into prolonged arguments to show how inheritance law had affected the proportions of the shares of the parties at various stages, he entered into the merits of the dispute with regard to the quantum of the shares of the parties so as to settle the matter of apportionment and it cannot be termed as a correction of a mere clerical mistake.

*Held*, that the High Court, in exercise of its revisional powers under sub-section (3) of section 18 of the Land Acquisition Act, added by the Land Acquisition (Punjab Amendment) Act, 1953 (2 of 1954), can direct the Land Acquisition Collector to make a reference of the dispute between the parties about apportionment of compensation to the Court under the Act.

*Petition under Section 18(3) of the Land Acquisition Act, 1894 (Punjab Amendment) for revision of the order of Shri Amrik Singh, Land Acquisition Collector, Estate Office, Chandigarh, dated 24th November, 1965, rejecting the land acquisition application.*

A. S. BAINS, ADVOCATE, for the Petitioner.

DALJIT SINGH, ADVOCATE, for the Respondents.

#### JUDGMENT

MEHAR SINGH, J.—This is a revision application under sub-section (3) of section 18 of the Land Acquisition Act, 1894 (Act 1 of 1894) from the order, dated November 24, 1965, of the Land Acquisition Collector (Estate Officer) at Chandigarh. Sub-section (3) has been added to section 18 of the Act by the Land Acquisition, (Punjab Amendment) Act, 1953, (Punjab Act 2 of 1954), and it provides that "Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the

Collector were a Court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure, 1908 (V of 1908)." The land of the parties has been acquired by the State Government for development of the Capital Project at Chandigarh. The Land Acquisition Collector made his award on March 27, 1965, settling two matters—(a) the quantum of compensation to be paid to the parties, and (b) the apportionment of the compensation among them. In the matter of apportionment he found that the share in the compensation of the applicants is two-thirds and that of the respondents one-third. The respondents thereafter made a number of applications to the Land Acquisition Collector in which they sought to show that the shares of the parties determined for the matter of apportionment of the compensation were not correctly determined. The Land Acquisition Collector who made the award in the first instance has subsequently been succeeded by the present Land Acquisition Collector, who has disposed of those applications of the respondents by the order sought to be revised. In the heading of the order it is clearly stated that the respondents' applications were under sections 18 and 30 of the Act and in paragraph 16 of his order the Land Acquisition Collector says clearly that he has rejected the applications of the respondents under those sections for reference of the matter of dispute in regard to apportionment of the compensation to the Civil Court. The Land Acquisition Collector, who was initially seized of the matter of claim for compensation proceeded to arrive at his conclusions on the basis of the Jamabandi of 1960-61, the relevant Jamabandi, but his successor, the present Land Acquisition Collector, in view of the applications of the respondents, has considered the revenue records from the Jamabandi of 1944-45, has taken into consideration deaths in the family, and consequent changes in the shares of the members of the family resulting from inheritance. He has arrived at the conclusion that the shares of the parties are not in the ratio of two-thirds for the applicants and one-third for the respondents, but in the ratio of 50:50. On this conclusion he has proceeded to correct the order of his predecessor, and, having done that, he has felt it unnecessary to make a reference of the dispute between the parties to the Civil Court under sections 18 and 30 of the Act.

In substance the order of the Land Acquisition Collector made on November 24, 1965, is an order reviewing the award made by his predecessor on March 27, 1965. In the Act there is no provision which gives power to him to review the orders of his predecessor. No doubt section 53 of the Act makes applicable the provisions of the Code of

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Civil Procedure to all proceedings before 'the Court' under the Act, and section 3(d) of the Act defines the expression 'Court' to mean a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under the Act. It is obvious that a Collector under the Act is not within this definition and to his proceedings section 53 of the Act is not attracted. So the Collector under the Act cannot claim a power of review under the provisions of the Code of Civil Procedure. The order, dated November 24, 1965, of the present Land Acquisition Collector is obviously without jurisdiction. The matter is quite clear and this approach is supported by *Kashi Parshad v. Notified Area Mahoba* (1). Apparently the order of November 24, 1965, of the Land Acquisition Collector, in the circumstances cannot be sustained under any provision of the Act.

The learned counsel for the respondents urges that what the Land Acquisition Collector has done is not to review the award of his predecessor, but only to correct a clerical mistake. But it is an extraordinary approach to the conception of a clerical mistake that the present Land Acquisition Collector had to review the revenue records back to 1944-54, enter into prolonged argument to show how inheritance has affected the proportions of the shares of the parties at various stages, and how, if the revenue officers had acted properly, the shape of the shares of the parties would have been in the *Jama-bandi* of 1960-61. In other words, he entered into the merits of the dispute with regard to the quantum of the shares of the parties so as to settle the matter of apportionment. This is not a question of a mere clerical mistake.

The learned counsel for the respondents then says that the Land Acquisition Collector having rejected the applications of the respondents under sections 18 and 30 of the Act, it is open to this Court under sub-section (3) of section 18, in exercise of its powers of revision, to direct him to make a reference of the dispute about apportionment to the Court under the Act. Although this application has been moved by the applicants and obviously not by the respondents, but I do not see why this Court cannot exercise its powers under sub-section (3) of section 18 of the Act in a proper case even in such

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(1) A.I.R. 1932 All. 598.

circumstances. The detailed order of the Land Acquisition Collector that is under consideration itself provides more than ample material which should have impelled him to make reference of the dispute between the parties to the Court, and it is obvious that he failed to exercise jurisdiction when this is an eminent case in which reference should have been made. So this argument on the side of the respondents is accepted, the order, dated November 24, 1965, of the Land Acquisition Collector is quashed, and he is directed to make a reference of the dispute between the parties to the Court under the Act.

A curious result has followed on the application by the applicants for to an extent, it is the prayer of the respondents that is being allowed in this revision application. With the direction above the application of the applicants is accepted, but, in the circumstances of the case, there is no occasion for an order in regard to costs.

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B.R.T.

REVISIONAL CIVIL

*Before Shamsher Bahadur, J.*

BRIJ LAL AND OTHERS,—*Petitioners.*

*versus*

RAJ KUMAR AND OTHERS,—*Respondents.*

Civil Revision No. 1048 of 1965.

May 4, 1966

*Code of Civil Procedure (V of 1908)—S. 92—Suit under—Scheme for management of a religious institution settled—Scheme not providing machinery for appointment of trustees—Court—Whether can be called upon to make the Scheme work in execution of that decree.*

*Held*, that where in a suit under section 92 of the Code of Civil Procedure, a scheme for the management of a religious institution is settled by decree but no machinery is provided in the scheme for the appointment of the trustees, the Court cannot be called upon to make the scheme work in execution of the decree.