

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

“casual” is an antonym for “regular” in the sense that something happens at uncertain times. In this sense payment under section 34 is not casual. Once payment of the compensation under section 23 is withheld after the taking of possession of the land acquired, the payment of interest at 4 per cent per annum becomes not casually but regularly and recurrently payable. I cannot, therefore, persuade myself to treat the receipt as exempt from tax on the ground that it is “of a casual and non-recurring nature”.

For reasons stated above I would answer the question of law referred to this Court in the negative. In other words, the answer is that on a true interpretation of section 34 of the Land Acquisition Act and the award given by the Collector of Pepsu on the 30th of September, 1955, the sum of Rs. 48,660 was not a capital, but a revenue receipt and as such was liable to tax under the Income-tax Act. The Commissioner of Income-tax shall be entitled to costs of this reference which are assessed at Rs. 250.

Dua, J.

INDER DEV DUA, J.—I agree

B.R.T.

REVISIONAL CIVIL

Before Shamsher Bahadur, J.

MAHARAJA HARINDER SINGH AND OTHERS,—
Appellants.

versus

PUNJAB STATE,—*Respondent.*

Civil Revision No. 627 of 1961.

1962
—
Feb., 12th

Land Acquisition Act (I of 1894)—Section 18—Collector—Whether bound to make reference to court for apportionment of compensation amongst the claimants and for enhancement of the award.

Held, that under section 18 of the Land Acquisition Act, 1894, the Collector is bound to make reference to the Court for apportionment of compensation amongst the claimants and for enhancement of the award, especially where the land has been taken as one parcel and at no stage has it been determined what separate interest in the land each claimant had. The civil Court is empowered to go into this matter of apportionment of compensation under section 18(1) of the Act and any person claiming an interest in compensation to be made on account of the acquisition under the Act has a right to ask for a reference from the Collector for determination of the dispute with regard to apportionment of the compensation awarded by the Collector.

Petition under section 18(3) of Land Acquisition Act, 1894, as amended by Act II of 1954, for revision of the order of the S.D.O., and Land Acquisition Collector, Palwal, dated 26th July, 1961, declining to entertain the petition, dated 23rd July, 1961, praying for referring the award, dated 14th June, 1961, under section 18 of the Land Acquisition Act to a Civil Court.

H. L. SARIN, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

SHAMSHER BAHADUR, J.—This is a rule directed against the order of the Collector declining to make a reference under sub-section (1) of section 18 of the Land Acquisition Act.

Shamsher
Bahadur, J.

Land of the aggregate area of 15 acres, 1 Kanal and 9 Marlas in village Balabgarh of Gurgaon District was acquired for the public purpose of setting up a steel fabricating industry. There were various claimants for compensation of this land and by the award of the Collector, dated the 14th June, 1961, overall compensation at the rate of Rs. 3,300 per acre was determined. The total compensation was computed at the figure of Rs. 50,098.13 nP. and after adding 15 per

Maharaja
Harinder Singh
and others
v.
Punjab State

Shamsher
Bahadur, J.

cent compulsory charges on the cost of land and interest, the aggregate award amounted to Rs. 59,292.28 nP. Thereafter an application was made on behalf of the 75 claimants that the amount awarded in compensation was inadequate and that apportionment should be made amongst them. Under sub-section (1) of section 18 of the Land Acquisition Act, "any person interested who has not accepted the award may, by written application to the Collector, 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 compensation, the persons to whom it is payable, or the apportionment of the compensation, among the persons interested". The Collector by his order, dated the 26th of July, 1961 directed that separate applications should be made on behalf of each petitioner stating the area acquired and other grounds as required under section 18(1) of the Land Acquisition Act.

It has been contended by the learned counsel for the petitioners, who have challenged the order of the Collector in this petition for revision, that the Collector was bound to make reference for apportionment of compensation amongst the claimants and for enhancement of the award. There is, in my opinion, force in this submission. The land was taken as one parcel and at no stage has it been determined what separate interest in the land each claimant had. In the circumstances, there must be a proper apportionment of the compensation and till that is done, it cannot be determined what portion of land each claimant is entitled to. The civil Court is empowered to go into this matter of apportionment of compensation under section 18(1) of the Land Acquisition Act and there seems to be no valid *prima facie* reason for the Collector to have declined to make a reference. A person interested has been stated in clause (b) of Section 3 of the Land Acquisition Act to include, "all persons claiming an interest in compensation to be made on account of the acquisition under this Act", and it would be noted that

any person interested has a right to ask for a reference from the Collector for determination of the dispute with regard to apportionment of the compensation awarded by the Collector. That the 75 petitioners are persons interested admits of no doubt and this position has not been controverted by the learned Additional Advocate-General, who opposes the rule. All that has been contended for on behalf of the State is that the petitioners should have made separate applications. As already indicated, the petitioners desire the civil Court to apportion their shares and till this is done it is not possible for them to submit the applications as required by the impugned order of the Collector.

Maharaja
Harinder Singh
and others
v.
Punjab State
—
Shamsher
Bahadur, J.

It would be well to advert to a Division Bench decision of the Bombay High Court (Chagla, C.J. and Tendolkar, J.) in *G. J. Desai v. Abdul Mazid Kadri* (1), where it was held that if the Collector refuses to make a reference it would always be open to the claimants to come to Court under section 45 Specific Relief Act and get the Court to compel the Collector to make a reference if they satisfy the Court that their application was within time. In my judgment, a wrong view has been taken by the Collector. It is open to this Court to afford redress to the petitioners in the exercise of its revisional jurisdiction. It is now provided by sub-section (3) of section 18 that "any order made by the Collector on an application under this section shall be subject to revision by the High Court under the power conferred on it under section 115 of the Code of Civil Procedure". This change has been brought about by the Punjab Amendment Act II of 1954.

The learned Additional Advocate-General submits that a joint petition would not be desirable as some of the claimants may not choose to object to the compensation which has been awarded. In a somewhat similar situation, it was held by a Division Bench of the Calcutta High Court (G. N.

(1) A.I.R. 1951 Bom. 156.

Maharaja
Harinder Singh
and others
v.
Punjab State
—
Shamsher
Bahadur, J.

Das and Guha, JJ.) in *Province of Bengal v. Radha Gobinda and others* (2), that where the claim of 4 brothers is not severable and the reference under section 18 is made by all of them acting jointly, the Land Acquisition Judge is justified in making an award for the entire sum representing their interest in spite of the fact that one of them later withdraws from the reference. Even if some of the claimants in the present case do not desire to contest the award, the reference would still be justified. Recently, it has been ruled by a Division Bench of the Kerala High Court (Sankaran and T.K. Joseph, JJ.) in *State v. Narayani Pillai Kuttiparu Amma* (3), that where the award is in favour of several persons having no separate and distinct interest in the property acquired, all of them may be said to be interested in the objection raised by one or more of them to the award made by the Land Acquisition Officer. In such a case the objection may be deemed to have been made on behalf of all.

I would accordingly make this rule absolute and allow this petition for revision. The papers including the order of the 26th July, 1961, would be sent back to the Collector who would then proceed with the application presented to him in accordance with law.

There would be no order as to costs of this petition.

B.R.T.

APPELLATE CIVIL

Before Tek Chand and Inder Dev Dua, JJ.

Mst. NARO,—Appellant

versus

HARBANS LAL AND ANOTHER,—Respondents.

Letters Patent Appeal No. 294 of 1959.

1962
Feb., 26th

Custom—Rattigan's Digest of Customary Law—Para 59—Consent to alienation by father given by a major son

(2) A.I.R. 1951 Cal. 43.
(3) A.I.R. 1959 Kerala 136.