

the purposes of the Indian Penal Code. If, therefore, the prosecution case is that the petitioners committed offences under section 408, Indian Penal Code, only, they cannot call the petitioners public servants and no question of the application of Act II of 1947 arises. In my opinion, therefore, the petitioners are being rightly proceeded against in the Court of a Magistrate and there is no occasion for withdrawing these cases from that Court. These petitions fail and are dismissed.

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others
v.
The State
—
Dulat, J.

FALSHAW, J. I agree.

REVISIONAL CIVIL

Before Kapur, J.

KHUSHI RAM,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Revision No. 121-D, of 1953.

1954

Land Acquisition Act (L of 1894)—Sections 3(b) and 31(1)(2)—Mortgagee of the land acquired, whether a person interested within the meaning of section 31(1) of the Act. 23rd February

R. K.'s house mortgaged to K. R. by registered deed, dated 1st September 1950. On 11th October 1950, J. D. objected that she was the owner of the house. On 26th April 1950, award announced and R. K. held to be the right-holder. On 11th May 1950, J. D.'s, application contesting factum of ownership. Matter of disputed ownership referred by Collector under section 31(2) of the Act. Application by K. R. to the Tribunal on 20th January 1951 that being the mortgagee he was entitled to receive Rs 9,340.

Held, that persons who were not parties to the proceedings before the Collector are not persons who would fall within section 31(1) and (2) of the Act. The mortgage being before the acquisition, the mortgagee could have raised his claim before the Collector and having not done so, was not a person interested within the meaning of the Act.

Petition under Section 115 C.P. Code for revision of the order of Shree D. R. Pahwa, P.C.S., President, Tribunal, Improvement Trust, Delhi, dated the 25th March

1953, rejecting the petition under section 30/31(2) of the Land Acquisition Act, 1894 and directing the petitioner to seek his remedy in the Civil Court.

H. S. TYAGI, for Petitioner.

IQBAL KRISHAN, for Respondent.

JUDGMENT.

Kapur, J. KAPUR, J. This is a rule obtained by a mortgagee against an order passed by Mr. D. R. Pahwa, President, Tribunal Improvement Trust, Delhi, refusing to allow him to be made a party although the order is worded differently.

The facts of the case are that on the 11th October 1950, the house of one Raj Kishore was acquired under the Land Acquisition Act. Javitri Devi objected that she was the owner of the house. Previous to that on the 25th August 1950 the house was mortgaged to the present petitioner Khushi Ram. This was registered on the 1st September 1950. A reference was made by the Collector in the following words—

“Award in this case was announced on 26th April 1950, and it was held that Raj Kishore was the right holder. On 11th May 1950, Shrimati Javatari Devi widow of Chuhe Lal filed application to contest factum regarding ownership. The ownership thus becomes disputed. Hence this reference is made under section 31(2) of the Land Acquisition Act, 1894”.

Khushi Ram the present petitioner applied to the Tribunal on the 20th January 1951 that he was a mortgagee and was entitled to receive Rs. 9,340. It is not stated under what provision of law this application was made, but the prayer was for the money to be paid to him.

The question which arises for determination in this Court is whether a mortgagee in circumstances such as these is entitled to have his rights adjudicated upon by the Tribunal. Under section 11

of the Land Acquisition Act a Collector has to enquire into the objections which are raised by persons interested and who appear before him in pursuance of a notice and any person who has not accepted the award can under section 18 of the Act require a reference to be made by the Collector for determination by the Court and under section 31 payment of compensation is to be made to the persons mentioned in that section. The relevant portions of this section are contained in subsections (1) and (2) of section 31 and they provide as under—

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“31(1). 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 the next subsection.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment, of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18, would be submitted.”

A “person interested” is defined in section 3(b) to include all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and this includes a person who is interested in an easement affecting the land.

Counsel has relied on several cases beginning with *Nobodeep Chunder Chawdhry v. Brojendro Lall Roy and others*, (1). This is a case under the old Act and is not of much assistance. He has then drawn my attention to an Allahabad case

(1) I.L.R. 7 Cal 406

Khushi Ram Kishen Chand v. Jagannath Prasad and another,

v. (1). There, under section 53 of the Land Acquisition Act a person who was holding adversely made an application to the District Judge and it was held that this could be done. No reference is made there to sections 11, 18 or 30 and 31 of the Act. I am unable to derive much assistance from this judgment. Counsel has then relied on certain judgments of the Calcutta High Court. The first one is *Promotha Nath Mitra v. Rakhal Das Addy and another*, (2). There during the pendency of proceedings before a Land Acquisition Collector the property was sold for arrears of land revenue. A reference was made at the instance of a defaulting proprietor upon a question of apportionment of compensation. The purchaser whose sale was confirmed after the award made an application to be made a party but this was refused. It was held that the purchaser was entitled to be made a party, but could only urge such objections as might have been taken by the defaulting proprietor. His special rights, if any, had to be ascertained in a separate suit. In my opinion the facts of that case are quite different because the reference was made at a time when the defaulting owner was still the owner of the land and proceedings were pending in a revenue Court for reversal of the sale, it being uncertain as to whether the sale would be confirmed or not. The title vested in the auction purchaser thereafter the reference was made and it was in those circumstances that the learned Judges held that he could be made a party. I cannot see how that case applies to the facts of the present case.

The next case relied upon by counsel is *Golar Khan v. Bhol Nath Marick* (3). The question which was really decided there was whether an application made by a person applying for being made a party before a District Judge in land acquisition proceedings could go up in appeal. The person applying attached, the interest of the judgment-debtor before a reference was made and

(1) I.L.R., 25 All. 133.

(2) 11 C.L.J. 420

(3) 12 C.L.J. 545.

after the reference but during the pendency of the proceedings in the District Judge's Court there was a compromise by which the original petitioner had the property vested in him and it was held that the compromise by which the judgment-debtor abandoned his claim was void under section 64 of the Code of Civil Procedure. There may be observations here and there which may help the petitioner, but the facts of that case make it distinguishable.

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In Prabal Chandra Mukherjee v. Raja Peary Mohun Mukherjee (1), a reference was made under section 30 of the Land Acquisition Act by the Collector and the respondent in that appeal was made a party to the proceedings before the District Judge for the first time and it was held that the Court had no jurisdiction to deal with objections except those which were made by persons who were parties to the proceedings before the Collector and which brought about the reference. Reliance was there placed on other judgments of the Court, *Abu Bakar v. Peary Mohan Mukherjee*, (2) and *Gobinda Kumar Roy Chowdhury v. Debendra Kumar Roy Chowdhury*, (3).

As I read the sections of the Land Acquisition Act, I am of the opinion that persons who were not before the Collector in the present case and who were not parties to the proceedings before the Collector are not persons who would fall within section 31(1) and (2) of the Act. In the present case the mortgage had been effected before the acquisition was made and it was open to the present petitioner to make a claim before the Collector.

Reference is then made to section 73 of the Transfer of Property Act. That only gives to the mortgagee a right to receive compensation, but has no effect on the interpretation of sections 11, 18 and 31 of the Land Acquisition Act.

I would therefore dismiss this petition and discharge the rule with costs.

(1) 12 C.W.N. 997.
(2) I.L.R. 34 Cal 451.
(3) 12 C.W.N. 985.