changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days."

It is difficult to see how in the light of the above observations the doctrine of public policy can be invoked with regard to the prohibition contained in section 11. I have no doubt that the protection conferred by the aforesaid section could be waived as indeed it was done in the present case.

BY THE COURT

On the first portion of the reference in question, whether the protection of section 11 of the Punjab Pre-emption Act is available to a deposit of a pre-emptor after the dismissal of the pre-emption suit the answer of Mehar Singh, J., is in the affirmative while that of Shamsher Bahadur, J., in the negative. In the opinion of Grover, J., the question does not arise on the facts of the case and is academic.

As regards the question whether the immunity could be waived by the pre-emptor, the answer of Mehar Singh, J. is that it cannot, while the opinion of Shamsher Bahadur, J., with which Grover, J., concurs, is that it can. The answer of the Full Bench, therefore, is that the immunity attaching to a deposit of a pre-emptor can be waived by agreement.

The case would go back to the Division Bench for disposal.

B.R.T.

CIVIL MISCELLANEOUS

Before Jindra Lal, J.

AMAR NATH AND OTHERS,—*Petitioners*

versus

THE LAND ACQUISITION COLLECTOR, KANGRA AND OTHERS,—*Respondents*

Civil Writ No. 1285 of 1962

1963

May. 24th

Land Acquisition Act (I of 1894)—Sections 11, 18 and 30—Award made with regard to the amount of compensation—Dispute arising as to its apportionment decided by

the Collector—Party aggrieved—Whether can ask for reference to Court, under section 18.

Held, that the language of section 18 of the Land Acquisition Act, 1894, is wide and if a party is aggrieved by the award or settlement made by a Collector with regard to the apportionment of compensation he can ask the Collector to make reference under section 18 and the Collector is bound to make such a reference subject, of course to the conditions contained in section 18 of the Act. A party may be aggrieved by an award on any of the matters enumerated in section 18 of the Act which includes apportionment of compensation awarded or part thereof. Once the Collector has apportioned the amount, the apportionment is necessarily, under section 11 and not under section 30 of the Act. Therefore, a party aggrieved by such an order of apportionment can claim a reference under section 18.

Petition under Articles 226 and 227 of the Constitution of India, and section 18(3) and section 30 of the Land Acquisition Act and section 115 of C.P.C., praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the orders, dated the 24th March, 1961 and 26th May, 1962, passed by respondent No. 1 and further praying that he be directed to make a reference, under section 18 of the Land Acquisition Act.

D. N. AWASTHY, V. C. MAHAJAN AND AMAR NATH SUD, ADVOCATES, for the Petitioner.

H. R. MAHAJAN, ADVOCATE, for the Respondents.

ORDER

Jindra Lal, J.

JINDRA LAL, J.—This is a petition under Articles 226 and 227 of the Constitution of India praying that orders dated the 24th of March, 1961 and 26th of May, 1962, passed by the Land Acquisition Collector, Kangra District be quashed and further praying that the Land Acquisition Collector, Kangra may be directed by the issue of a writ of *mandamus* to make a reference to the Court under section 18 of the Land

Acquisition Act. The Land Acquisition Collector, Kangra is respondent No. 1 but although served he has not entered appearance nor does he contest the petition which is only contested by respondents Nos. 2 to 5.

The point involved in the petition is not very complicated but in order to appreciate the different contentions of the parties it will be necessary to give some facts. On the 18th of October, 1926, some land was mortgaged by R. S. Kanhaya Lal, head of the family of respondents Nos. 2 to 6, in favour of Khazana Mal, Tulsi Ram, and in February, 1927 mutation was entered with regard to the above transaction in the revenue records. In the year 1936 half share of these mortgagee rights was sold in a Court auction in favour of Basanta Mal father of the petitioners, he being the highest bidder at Rs. 800. He was also a decree-holder against the mortgagor. On the 30th of October, 1939 a mutation was effected with regard to this half share of mortgagee rights in favour of Basanta Mal.

In 1960 proceedings were taken by the Collector for the acquisition of some land in the village of Paprola including the mortgaged land. Notification under sections 4 and 6 of the Land Acquisition Act, 1894, were issued.

On the 6th of March, 1961 an order was passed by the Collector, which is annexure 'A' to the petition, under the Land Acquisition Act in which it was ordered that notice under section 9(a) of the Land Acquisition Act should be delivered to the Patwari, Halqa Paprola, and he should be instructed to deliver a copy of the notice to each owner after obtaining a receipt and that the parties should appear before the Court of the Revenue Assistant exercising powers of Land Acquisition Collector on the 22nd of March, 1961. It was also ordered that a copy of the notice should be affixed

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at the spot and a report be made in the *roznamcha* of the events.

In pursuance of the said notice on the 24th of March, 1961 an award was made by the Land Acquisition Officer, but it is clear that the petitioners who had purchased the mortgagee rights got no notice as contemplated by section 9(3) of the Land Acquisition Act. In the award which is annexure 'B' to the petition regarding the mode of payment, it was said that the owners and tenants would be paid compensation according to their share as entered in the ownership and cultivation column of the *jamabandi*. The compensation for the land mortgaged was to go to the mortgagee. The petitioners mortgagees had no notice of this award.

A memorandum dated the 29th of July, 1961, was sent from the Deputy Commissioner, Kangra district, to the contesting respondents and the petitioners who are the sons of Basanta Mal. In this memorandum the subject bearing is "payment of compensation for land acquired for Seed Farm at Paprola." This land comprises *khata* Nos. 30, *khatauni* Nos. 85, 81, 87 and 88 measuring 72 *kanals*. This memorandum is enclosed with the petition as annexure 'C'. In response to this notice, which required the petitioners to produce documentary evidence in support of their claim for the payment of compensation, the petitioners sent a reply claiming half of the mortgagee rights in the land and claiming Rs. 5,250. By an order of the 16th January, 1962, the Land Acquisition Collector, Kangra, at Dharamsala held that the claim of the petitioners was untenable because they had purchased the mortgagee rights for Rs. 800 and they were only entitled to that amount. He held further that there was nothing on the record as to the mortgage in which the mortgagee rights had been acquired by the petitioners.

Being aggrieved by the order, the petitioners moved the Collector by an application dated 22nd February, 1962, asking him to refer the matter to the Court under sections 18, 30 and 31 of the Act. This application was rejected by the Collector in the following terms:—

> "I have heard the counsel for both the parties Apportionment in this case was made on 16th January, 1962, while the award was announced by me on 24th March, 1961, almost 10 months previous to the order of apportionment. The contention of the counsel for the applicants that the case regarding apportionment be referred to the Senior Sub-Judge, Dharamsala, since the award was announced on 2nd February, 1962, is incorrect. The application seems to be misconceived. Apportionment having been already done, I am divested of my powers under section 30 of Land Acquisition Act to refer the case to Senior Sub-Judge, Dharamsala, *Boregowda and another* v. *Subbaramiah and others* (1).

It is this order by which the petitioners are aggrieved.

Mr. D. N. Awasthy, learned counsel for the petitioners, has urged that there is an error apparent on the face of the impugned order inasmuch as the powers of the Collector under section 18 of the Land Acquisition Act to refer the matter of apportionment to the Civil Courts had not in fact been exhausted and the Collector was not *functus officio*. He submitted that there is a clear distinction between section 30 and section 18 of the said Act. He contends that so far as section 30 is concerned, it contemplates a situation where the compensation has been settled under section 11 of the

(1) A.I.R. 1959 Mysore 265.

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Act and if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. He says firstly that even after the Collector has settled the question of the apportionment of compensation himself he is still bound to refer the matter to the Civil Courts under Section 18 on the application of a party. The fact that the Collector has himself settled the matter of apportionment of compensation does not debar him from referring the matter to the Civil Courts for he says that this section 30 is only an enabling section and does not take away jurisdiction of the Collector from referring the matter under section 18. Section 30 of the Act reads as under:—

[His Lordship read section 30 and continued:].

Section 18 of the Act is, however, very comprehensvie and may be reproduced here:—

[His Lordship read section 18 and continued:]

Now it is clear that even after the Collector has given his award and the parties do not accept it a party aggrieved may apply to the Collector reuqiring him to refer the matter 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 compensation among the persons interested.

A party may not be aggrieved by any other matter in the award but only by the methods of apportionment of compensation. If he is so aggrieved, he can ask for a reference to the Court under section 18 of the Act. According to him, the Collector's award was only complete so far as the petitioners are concerned after he had made the order dated the 16th of January, 1962, because before that they were not aggrieved by any award of the Collector as they were only interested by the question of apportionment, according to him, an

order of apportionment must be considered to be a part of the main award and he is entitled to ask for a reference under section 18 and, therefore, the learned Collector was committing an error of law by holding that he was *functus officio*.

In support of his contention Mr. Awasthy pointed out that under the Act it is the duty of the acquiring authorities to comply with all statutory provisions like sections 9(3) and (4) and 12(2) of the Act, and he says that since his client was not served at all in accordance with law the acquiring authorities have failed to comply with the provisions of law to his detriment and he has a right to complain. His second contention was that there is no compliance of sections 9(3) and (4) and 12(2), and, therefore, the award is bad in law as till the time when the rights of the parties are determined, the award is not complete. He has cited *Prag Narain* v. *The Collector of Agra* (2), wherein their Lordships have held that where any one piece of land in which more than one person has an interest for which he can claim compensation, ought not to be made the subject of more than one award and, therefore, each award should contain within its four corners the fixing of the value of the land with which it deals and the apportionment of that value between the various persons interested in that land. Mr. Awasthy argues, therefore, that the award is one and indivisible and really is a complete award only after the matter of apportionment has been decided by the Collector which obviously was done on the 16th of January, 1962. Mr. Awasthy further argues that even if the Collector had made his award under section 11 of the Act, a decision as to apportionment of compensation among all the persons known or believed to be interested in the land, even then it was his duty under section 18 to make a reference to the Civil Courts, when called upon to do so within limitation.

(2) A.I.R. 1932 P.C. 102.

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He further argued that if the Collector did not make a reference as contemplated under section 18, this Court was entitled to issue a writ of *mandamus* and for this he relied upon *Huqdars of Peria Pallivasal* v. *R. D. Officer* (3). He has also cited *Nanak Chand* v. *Piran Ditta* (4), saying that the Collector has no option but to refer. As I have mentioned above, the real question is this: Once an award has been made with regard to the amount of compensation and a dispute arises as to the apportionment of the same or any part thereof, can that party thereafter ask for a reference under section 18 if he is aggrieved by the decision of the Collector under section 30 of the Act?

Now it appears to me that the language of section 18 is wide and if a party is aggrieved by the award or settlement made by a Collector with regard to the apportionment of compensation he can ask the Collector to make a reference under section 18 and the Collector is bound to make such a reference subject, of course, to the conditions contained in section 18 of the Act. A party may be aggrieved by an award on any of the matters enumerated in section 18 of the Act. As in this case, the grievance was only as regards the apportionment.

Mr. Awasthy further argued that even if the Collector had made an award under section 18 of the Act with regard to the amount of compensation, and had at that time not made an award as to apportionment, which was his duty to do if called upon, the moment he is called upon and he does make an order as to apportionment, that apportionment must necessarily form part of the award and the award made earlier as to the quantum of compensation cannot be taken as the final award making the Collector, *functus officio*.

(3) A.I.R. 1963 Mad. 109.
(4) A.I.R. 1941 Lah. 268.

The Collector seems to be under the impression that a reference against the apportionment made by him can be only under section 30 of the Act. He has clearly lost sight of the fact that section 30 merely provides an alternate procedure in cases where the Collector does not wish to apportion the amount himself due to the complicated nature of the matter involved. But once he has apportioned the amount, the apportionment is necessarily under section 11 and not under section 30. Therefore, a party aggrieved by such an order of apportionment can claim a reference under section 18. The matter can also be looked at from another angle. Under section 30 if the Collector refers the matter of apportionment to Court, then it is the decree of the Court which determines the amount of apportionment between the parties and there is no apportionment by the Collector under section 11 and, therefore, there can be no question of making an apportionment under section 11 against which a reference can be claimed under section 18. The effect of both the provisions read together is that the final decision regarding apportionment must rest with the Court. That decision can be obtained either by the Collector under section 30 or by an authority under section 18 by claiming a reference against the order of apportionment made under section 11.

In the present case there is no reference by the Collector under section 30 and, therefore, it necessarily follows that the apportionment made by him must be under section 11. That being so, the petitioner has every right to claim a reference under section 18 and that he could only do after the Collector had determined the matter under section 11 of the Act.

I am of the view, therefore, that the order of the learned Collector, which is impugned, is on the face of it erroneous on point of law and this writ petition, therefore, must be accepted.

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I, therefore, issue a writ of *mandamus* to the Collector, Kangra District, directing him to refer the matter of apportionment of the amount awarded to the Court under section 18 of the Land Acquisition Act. The Collector has not entered appearance, but respondents Nos. 2 to 5 have. The petitioner will have his costs against respondents 2 to 5, which I fix at a consolidated sum of Rs. 100.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.

DALJIT SINGH,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, DELHI,—*Respondent*

Income Tax Reference No. 34-D of 1961

1963

July, 31st

Income-tax Act (XI of 1922)—Section 9 and Finance Department's notification No. 878-F (Income-tax) dated the 21st March, 1922—Income from property—Computation of—Whether assessee entitled to deduction for the unabsorbed irrecoverable rent of the preceding year, not exceeding one year's rent.

Held, that the tax on properties, under section 9 of the Income-tax Act, 1922, is on the notional annual letting value. It is not a tax on income. The Finance Department's notification No. 878-F (Income-tax), dated the 21st March, 1922, provides that if tax has been paid on this notional income and that income does not subsequently accrue on account of the default of the tenant, the assessee should get relief. This relief is limited to one year's rent, that is the maximum, though the relief will be granted only with regard to the rent which has actually become irrecoverable and that may be in some cases less than one year's rent and in others the whole year's rent. The words