JAMMU AND KASHMIR HIGH COURT

Swami Sukhanand

Vs.

Samaj Sudhar Samiti

Civil Revn. No. 5 of 1961

(J.N. Wazir, C.J., and K.V. Gopalakrishnan Nair, J.)

18.12.1961

JUDGMENT

Gopalakrishnan Nair, J.

1. This revision arises out of certain land acquisition proceedings, which were taken for compulsory acquisition of an extent of six odd kanals of land in village Solina in Tahsil Srinagar for the purpose of widening the road leading to the Srinagar aerodrome. An award was made by the Collector under Section 11 of the Land Acquisition Act on 11-6-1952 and the amount of compensation was tendered in accordance with the award to Samaj Sudhar Samiti, a registered society, which accepted it. More than six months after the date of the Collector's award, the present petitioner applied to the Collector for making a reference to the Court on the ground that he was the person entitled to receive the compensation and not Samaj Sudhar Samiti. The Collector accordingly made a reference to the District Judge at Srinagar. The relerence purported to be made under Section 32 of the State Land Acquisition Act, which corresponds to Section 31 of the Central Act. But the District Judge treated it as a reference under Section 31 of the State Act which corresponds to Section 30 of the Central Act. He held that the reference was incompetent and rejected it. The petitioner has now moved this Court in revision. It first came before Ali, J. who referred it to a Division Bench as he was of opinion that the case involved difficult questions of law.

2. It is necessary to state at the outset certain facts to clear the ground. The petitioner's learned counsel proceeded on the basis that the reference was made under Section 31 of the State Act (S.30 of the Central Act). It is common ground that the reference was not one falling within the purview of Section 18 of the Act. In other words we have not to consider the validity or otherwise of the Collector's reference under the provisions of Section 18 of the Act. But the learned counsel for the petitioner strenuously urged that the reference which must be taken to have been made under Section 31 of the State Act was competent and that the District Judge was in error in rejecting it as incompetent. He argued even more vigorously for the position that it was not open to the Land Acquisition Court to go into the validity of a reference made to it by the Collector; but that its duty was only to proceed with the reference made to it. If the petitioner succeeds in either of these contentions, the reference will have to go back to the court below for

being heard on merits. The learned counsel for the respondent, Sudhar Samiti, has countered both these contentions raised on behalf of the petitioner. According to him it was the duty of the Land Acquisition Court to satisfy itself at the out-set that a reference made to it by the Collector under the Land Acquisition Act was competent and if it came to the conclusion that it was not, to reject it. He further urged that the reference made by the Collector was ultra vires of his powers under the Act and therefore invalid.

3. We shall first deal with the question whether it is open to a Land Acquisition Court to reject a reference made to it by a Collector on the ground that it is incompetent. In support of his contention the learned counsel for the petitioner placed considerable reliance on four decisions, namely, *Secy. of State v. Bhagwan Prasad*[1], *Secy. of State v. Bhagwan Prasad*[2], *Venkateshwaraswami v. Sub-Collector, Bezwada*[3], and *Hari Krishan v. State of Pepsu*[4], All these decisions dealt with references under Section 18 of the Land Acquisition Act, and all of them except AIR 1943 Madras 327 (supra), are by Division Benches. All the four decisions hold that a Land Acquisition Court cannot go behind a reference made to it by the Collector and that its duty is to proceed with the reference on merits. In AIR 1929 Allahabad 769 (supra), Mukerji, J. stated the view in the following words:

> "For the purpose of determination as to whether the application is within time, the Collector has to consider the facts and to come to a decision. If he decides that the application is within time and otherwise in order, he will make a reference. It is entirely for him and him alone to decide whether he will make a reference The "Court" does not sit in appeal over the Collector and the Land Acquisition Act does not give any authority to the "Court" either in express terms or by implication, to go behind the reference and to see whether the Collector acted rightly or wrongly."....
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> "The Collector may make a mistake in the use of his discretion, but he is entitled to decide rightly or wrongly. If he decides to make a reference, his act is within his jurisdiction, for he is entitled to act either way, i.e., either to make a reference or not to make a reference."

It was further pointed out by Mukerji, J. that the provisions of Section 20 of the Act are mandatory and the Court has no power to scrutinize the regularity of the proceedings taken by the Collector or the correctness of the view adopted by him on the question of limitation.

4. AIR 1932 Allahabad 597 cited above adopted the view propounded by Mukerji, J. It may be mentioned that Mukerji, J. was also a member of the Division Bench which decided AIR 1932 Allahabad 597 (supra).

5. In AIR 1943 Madras 327 (supra), Kuppuswami Ayyar, J. whole-heartedly accepted the view expressed by Mukerji, J. in AIR 1929 Allahabad 769 (supra). In AIR 1958

[1] AIR 1929 All 769
[2] AIR 1932 All 597
[3] AIR 1943 Mad 327
[4] AIR 1958 Pun 490

Punjab 490 (supra), this view was again accepted and sought to be further strengthened by

reference to Section 20 and 21 of the Act, and to the decision of Lord Esher, M. R., in R.v. Commr. for special purposes of the Income-tax, (1888) 21 QBD 313. Grover, J. who spoke for the Division Bench observed:

> "Once the opposite view is accepted it would lead to the result that if the Collector decides that a particular application is within time it is open to the court to re-examine the matter and hold that it is beyond time. This would be wholly contrary to the provisions of the statute and the scope of the functions of the Collector under Section 18. As observed by Lord Esher M. R. in (1888) 21 QBD 313, the legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more.

When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision for otherwise there will be none. It would be an erroneous application of the formula to say that the tribunal cannot give them jurisdiction by wrongfully deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

6. Now, before citing the authorities which have taken a contrary view, it will be worthwhile to consider the soundness of the grounds on which the view that the court cannot go behind a reference is based. One of the grounds is that there is no express provision in the Land Acquisition Act authorizing the court to examine the competence or validity of a reference made to it by the Collector. We think it was not necessary to enact any such express provision. The legislature has conferred on the Collector the power to make a reference subject to certain terms and conditions; if he does not observe those terms and conditions the reference he may make will be beyond his jurisdiction. It is not any absolute power or unfettered discretion that the legislature has granted him in the matter of making the reference. It is a circumscribed power and cannot therefore be exercised in transgression of the limitations imposed by the statute. This aspect, we consider, is necessarily implied in the provision which grants him the power to make a reference. And the court can be required only to deal with a reference which properly falls within the ambit of the powers of the Collector who makes it. If it is in excess of his powers, there will not be a valid reference and we cannot attribute to the legislature the strange intention of requiring the court to entertain an invalid reference. Sections 20 and 21 of the Act presuppose the existence of a competent reference to the Court by the Collector. These sections cannot be taken to contemplate bad and incompetent references. These sections can therefore be applied only if there is a proper and valid reference and not otherwise. Section 20 requires that if a valid reference is before a court it should cause notice to be served on the persons specified therein. Section 21 deals only with the scope of the inquiry in a proceeding initiated by a valid reference. In this view neither Section 20 nor Section 21 can be harnessed for use to pronounce against the right of a court to determine whether a reference made by the Collector was beyond his authority and jurisdiction.

7. Then it is said that a Land Acquisition Court is not sitting on appeal over the Collector and that it has not even the power of revision in respect of the Collector's order of reference. As a bare proposition this is correct; but this does not mean that the court has no power to reject a reference which is plainly incompetent. In doing so, the court is not sitting on appeal or seeking to revise the reference made by the Collector. Ail that the Court does is to satisfy itself whether it is required under the law to entertain the reference, and on coming to the conclusion in a given case that it is as so required (sic), it has necessarily to reject the reference. It is claimed that the Collector has the right to decide rightly as well as wrongly, and that a wrong decision on the existence or otherwise of the facts which give him jurisdiction to make a reference cannot vitiate the reference as one made without jurisdiction. This argument is sought to be supported by the dicta of Lord Esher M. R. in (1888) 21 QBD 313 (supra). We are unable with all respect to agree that the jurisdiction of a Collector to make a reference under the Land Acquisition Act falls within this category of cases enunciated in the formula propounded by Lord Esher. On the other hand we think that the case falls in the other category mentioned by him. The two different categories were enunciated by Lord Esher in the following passage in (1888) 21 QBD 313 at p.319:

> "When an inferior court or tribunal or body, which has to exercise the power of deciding facts is first established by Act of Parliament the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

8. Under Section 18 the Collector can make a reference only if certain facts exist and are shown to exist. If the facts did not really exist, he cannot by wrongly saying that they did exist give himself jurisdiction. If he does so, it will be open to the land acquisition court to ascertain whether the jurisdictional facts really existed or not. If they did not really exist, the court can well hold that the Collector had no jurisdiction to make the reference. In the words of Esher M.R., it is

not for the Collector conclusively to decide whether the state of facts exists or not. Therefore, if the Collector makes a reference in spite of the fact that the application under Section 18 was made much beyond the time specified therein, the court is not debarred from ascertaining whether the application on which the reference was made was preferred within the time specified, and to reject the reference if it is found that the application was time-barred.

9. The decision in *Chaube Jagdish Prasad v. Ganga Prasad*[5], appears to us to be in support of this view. There, their Lordships of the Supreme Court were dealing with Section 3-A of the U.P. (Temporary) Control of Rent and Eviction Act (III of 1947), which ran as under:
Section 3-A : "(1) In the case of any accommodation constructed after 30-6-1946, or falling under sub-clause (ii) of clause (3) of sub-section (f) of Section 2, the District Magistrate may, on the application of the landlord or the tenant, determine the reasonable annual rent thereof." The Supreme Court observed:

> "As we have held above, at the instance of the landlord the suit was only maintainable if it was based on the inadequacy of the reasonable annual rent and for that purpose the necessary jurisdictional fact to be found was the date of the construction of the accommodation and if the court wrongly decided that fact and thereby conferred jurisdiction upon itself which it did not possess, it exercised jurisdiction not vested in it and the matter fell within the Rule laid down by the Privy Council in *Joy Chand Lal v. Kamalaksha Chaudhury*[6], The High Court had the power to interfere and once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided. The High Court held that the Civil Judge had wrongly decided that the construction was of a date after June 20, 1946, and therefore fell within Section 3-A."

10. We think it is apposite in this context to refer to the decision of the Judicial Committee in *Nusseerwanjee Pestonjee v. Meer Mynoodeen Khan*[7], where their Lordships pointed out :

> "Wherever jurisdiction is given to a court by an Act of Parliament or by a regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only given upon certain specified terms contained in the regulation itself, it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise."

We are of opinion that this is the correct principle to be applied in determining whether a Collector in making a reference acted within his jurisdiction or not.

[5] AIR 1959 SC 492
[6] 76 Ind App 131: AIR 1949 PC 239
[7] 6 Moo Ind App 134 at p.155 (PC)

11. Having said so much about the grounds on which the decisions relied upon by the petitioner are based, we shall now turn to the authorities which have dissented from the view taken in those decisions. In *Mahadeo Krishna v. Mamlatdar of Alibag*[8], a Division Bench of the Bombay High Court consisting of Beaumont, C. J. and Rajadhyaksha, J. dissented from the view expressed in AIR 1929 Allahabad 769 (supra) and AIR 1943 Madras 327 (supra). They accepted the view expressed by Chandavarkar, J. in In re, Land Acquisition Act, ILR 53 Bom 275, which had been followed by an earlier Division Bench of the Allahabad High Court in *Sukhbir Singh v. Secy. of*

State[9]*,* Chandavarkar, J. had held in ILR 30 Bom 275 (supra), that the Court was not only entitled to but was bound to satisfy itself that the conditions laid down in Section 18 of the Act had been complied with. This view was again accepted by another Division Bench of the Bombay High Court, consisting of Chagla, C.J. and Tendolkar, J. in *G. J. Desai v. Abdul Majid*[10]*,* In *Subramania Chettiar v. Collector of Coimbatore*[11]*,* a Division Bench of the Madras High Court followed AIR 1944 Bombay 200 (supra). The decision in AIR 1943 Madras 327 (supra) was, however, distinguished. But in a later decision another Division Bench of the same High Court in *Narayanappa v. Revenue Divisional Officer, Sivakasi*[12]*,* dissented from AIR 1929 Allahabad 769 (supra) and AIR 1932 Allahabad 597 (supra), and held that the decision in AIR 1943 Madras 327 (supra) was not good law. This Division Bench accepted as correct the decisions in ILR 60 Bom 275 and AIR 1944 Bombay 200 (supra).

12. In *Ananta Ram v. Secy. of State*[13]*,* a Division Bench of the Calcutta High Court held as follows:

> "The Special Judge derives his jurisdiction from the reference made under Section 18 by the Collector. If the reference made by the Collector is ultra vires, the Special Judge would have no jurisdiction to proceed further and must stop the reference in limine. If the question of power of the Collector to make the particular reference be raised before the Special Judge, he must decide it. If the question raised by the Secretary of State before the Special Judge is that the reference had been made by the Collector by mistake at the instance of a person who had accepted the award, the question of fact as to whether the claimant had accepted the award must be gone into by the Special Judge and if he decides that question in the affirmative, he must throw out the reference on that ground."

For this view their Lordships derived support from ILR 30 Bom 275 (supra).

13. Two Judges of the Rajasthan High Court in *State of Rajasthan v. L.D. Silva*[14]*,* dissented from AIR 1929 Allahabad 769 (supra), and held that a Collector can only make a reference in accordance with the provisions of law and if he transgresses those provisions, it is open to the court to go into the question of the validity of the order of reference and to refrain from proceeding further in the matter in case the reference is found to be ultra virus.

[8] AIR 1944 Bom 200 [10] AIR 1951 Bom 156 [12] AIR 1955 Mad 23
[9] ILR 49 All 212 : AIR 1926 All 766 [11] AIR 1946 Mad 184 [13] AIR 1937 Cal 680
[14] AIR 1957 Raj 44

14. Two Judges of the Mysore High Court in *Boregowda v. Subraramiah*[15]*,* refused to follow the view taken in AIR 1929 Allahabad 769 and AIR 1932 Allahabad 597 (supra), and followed the decision in ILR 30 Bom 275 (supra).

15. *Ghulam Mohy-ud-Din v. Secy. of State*[16]*,* and *Collector of Akola v. Anand Rao*[17]*,* are also in support of the view taken in ILR 30 Bom 275 (supra). The same view has been adopted by a Full Bench of the Lahore High Court in *Abdul Sattar v. Hamida Bibi*[18]*,*

16. There is thus an abundance of authority for holding that a land acquisition court is entitled to go behind a reference made to it by a Collector and determine whether the reference fell within the scope and ambit of the jurisdiction conferred upon him by the statutory provision under

which the reference was purported to be made. If the court comes to the conclusion that the reference is ultra vires, the court will have no jurisdiction to proceed further with the reference and is bound to reject it in limine.

17. We have now to consider whether the present reference made by the Collector in the instant case under Section 31 of the State Land Acquisition Act (which corresponds to Section 30 of the Central Act) is competent or not. This takes us to a consideration of the scheme of the Land Acquisition Act. It will be misleading to isolate a particular section of the Act from its context and setting and try to construe it in isolation from the scheme of the Act. Section 31 of the State Act reads:

> "When the amount of compensation has been settled under Section 11, 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."

This section is the last of the two sections occurring in Part IV of the Act headed "Apportionment of Compensation." It is significant that this section does not speak of an award made by the Collector under Section 11. It merely refers to the amount of compensation being settled by the Collector under Section 11. Thus it sharply contrasts with Section 18 which makes a specific reference to the award made by the Collector under Section 11 and Section 32 (S.31 of the Central Act) which opens with the words "On making an award under Section 11." To understand the precise scope of Section 31 we may refer to Section 11 which relates to the inquiry and award by the Collector. Section 11 runs as follows:

> "On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (it any) which any person interested has stated pursuant to a notice given under Section 9, to the measurements made under Section 8, and into the value of the land and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of -
> (1) the true area of the land;
> (2) the compensation which, in his opinion, should be allowed for the land;

[15] AIR 1959 Mys 265 [17] 11 Ind Cas 690 : 7 Nag LR 88
[16] AIR 1914 Lah 394 [18] AIR 1950 Lah 229 (FB)

> and
>
> (3) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims, he has information whether or not they have respectively appeared before him."

This section requires the Collector to make an award under his hand to respect of (1) the true area of the land, (2) the compensation to be paid, and (3) the apportionment of the compensation among the persons known or believed to be interested to the land whether or not they have appeared before him.

18. It will be noted that Section 11 is couched in mandatory terms and employs the word 'shall'. The Collector has therefore not only to fix the amount of compensation but also to apportion it among all the persons interested in the land sought to be compulsorily acquired. It is also clear beyond doubt that the Collector has to specify the persons to whom the entire compensation or portions of it have to be paid. This requirement is necessarily implied in clause (3) of Section 11 itself and is further emphasized by sub-section (1) of Section 32 which enjoins on the Collector, on making a award under Section 11, to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award. In a given case, the Collector after settling the amount of the compensation may be confronted with a difficult dispute regarding the apportionment of it among the persons interested, or regarding the persons to whom the compensation or any part thereof is payable. Without ascertaining the persons to whom it is payable he cannot obviously apportion it much less tender it. It is open to the Collector himself to decide such disputes and then embody the result of his decision in his award under Section 11. But if he finds the dispute too difficult or inconvenient for him to decide, he is authorized by Section 31 of the State Act to refer the dispute to the decision of the court. What is important to note is that he is making a reference only in respect of a dispute which he is otherwise to decide himself under Section 11. But if the Collector himself has decided the dispute and made a complete award under Section 11, there will be nothing for him to refer to the court under Section 31. The assistance of the court which the legislature has authorized him to avail of in the event of his being faced with a dispute regarding the apportionment of compensation or persons to whom the same is payable for the purposes of making his award under Section 11 will not obviously be required, if he has himself given a decision on the dispute and made an award under Section 11 in accordance with that decision. Although the expression 'shall' is used in Section 11 that section has to be read along with Section 31 which empowers the Collector to leave it to the court to decide the disputes before him in regard to the apportionment of compensation and the determination of the persons to whom it is payable. But once the Collector himself decides these matters, the necessity for referring them to the court under Section 31 ceases to exist and with it his jurisdiction to make a reference to court under that section.

19. If, after an award is made under Section 11 any person interested does not accept the award and raises objections to it in respect of the measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of it, he is given a statutory right by Section 18 to require the Collector to make a reference to the court. This right given to an aggrieved person has to be exercised by him within the time specified in sub-section (2) of Section 18. No such time limit is prescribed for making a reference under Section 31. If these two sections are to be interpreted as of co-ordinate scope there does not appear to be any reason to prescribe any time-limit in Section 18. It does not appear to us to be reasonable that although a party cannot successfully ask for a reference under Section 18 on account of efflux of time, he can achieve the same object by moving the Collector to invoke Section 31. And the fact that Section 31 does not set any limit of time will make it possible for a Collector to make a reference to court after many many years, even after a valid reference under Section 18 has been adjudicated upon by a court and has been confirmed by the ultimate appellate court. All that need happen is perhaps that the person who moves the Collector under Section 31 must be one who was not a party to the proceedings initiated by a reference under Section 18. In other words, a person who had no notice of the acquisition proceedings and who had not asked for a reference under Section 18, who has in fact kept away from the scene for many long years, can come up to

the Collector claiming that the land acquired really belongs to him and that he is entitled to compensation and thereby induce the Collector to make a reference under Section 31. That indeed would be a strange situation. We are unable to agree that Section 31 of the Act can be so construed as to render such an eventuality possible. It could not have been the intention of the legislature to arm the Collector with such unlimited powers which he could, if he so chooses, exercise after the lapse of any length of time irrespective of whether the dispute had previously been referred to a court on a reference under Section 18 and has been finally decided between the parties after a protracted litigation. And we do not see any reason why the Collector after he has done with his award, should still continue to function of his own motion under Section 31. If it is for the protection of the persons interested, provision therefore is adequately made in Section 18; surely the legislature could not have intended to render assistance by means of Section 31 to a party who has slept over his rights and was not alert enough to pursue his remedy under Section 18. A person who had no notice at all of the land acquisition proceedings and who was in no sense a party to it is entitled to seek remedy by way of a suit in an ordinary court. It seems to us to be far-fetched to say that Section 31 is intended to help such a person. We may point out in this connexion that if Section 31 is to be given such an unlimited scope even such a person, after he has lost his remedy to file a regular suit on account of lapse of time can achieve his object by obtaining a reference under Section 31. If this were so, Section 31 would effectively over-ride the provisions of the Limitation Act with reference to a regular suit by a person who had no notice and who was not a party to the acquisition proceedings. We do not therefore consider it right to put upon Section 31 a construction which might lead to the anomalous and unusual results we have already indicated. We are unable to agree that Section 18 and 31 are in effect two different strings to the bow of a person interested, so that if one fails he can call the other to aid. On the contrary, we think that each of these two sections has a separate scope and ambit and can come into play only under entirely different circumstances. While the right under Section 18 arises only after an award under Section 11 is made by the Collector, Section 31, will come into play only before the Collector makes an award in respect of the apportionment of the compensation which would involve the ascertainment of the persons to whom the compensation is payable. In many of the cases cited to us at the Bar this distinction between the two sections does not appear to have been brought to the notice of their Lordships. In *Nanak Chand v. Piran Ditta*[20], an application under Section 18 was made and a reference to court was obtained from the Collector. But the court held that the application under Section 18 was time-barred and that the reference was therefore incompetent. A revision was preferred to the High Court and came before Bhide, J. The point urged before him was that the court had no jurisdiction to reject the reference even though the application on which the reference was made was time-barred under Section 18(2). The single Judge finding a conflict of decisions on the point referred the matter to a Division Bench. But the Division Bench did not deal with the question of law on which there was a cleavage of judicial opinion but held that the reference could well be treated as one made under Section 30 of the Central Act. It does not appear to have been argued before the Division Bench that the Collector, after having made a complete award in respect of all the matters mentioned in Section 11, could not in law make a reference under Section 30, especially when an application for reference was time-barred under Section 18. With all deference, we are unable to accept that AIR 1941 Lahore 268 (supra), lays down the correct law.

20. If we do not correctly delimit the respective scope and ambit of Section 18 and of Section 31 of the State Act (S.30 of the Central Act), there is likely to be confusion and great inconvenience in administering the Act. In *Venkata Reddi v. Adhinarayana*[21], Venkatasubba Rao, J. briefly

indicated the scope of Section 18 and 30 in the following passage:

> "If the Collector decides as regards the persons to whom the compensation is payable, but any of the claimants is dissatisfied with that decision, the person so dissatisfied may require the matter to be referred by the Collector for the determination of the Court. Section 18 (1) deals with such a matter. It runs thus:
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> * * * * * * * *
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> "I have now referred to what happens when the Collector's award contains a decision in regard to the persons to whom the compensation is payable. The Act seems also to provide for a case where the Collector's award does not contain such a decision. Section 30 provides for that case. It is in these terms:
> * * * * * * * *
> * * * * * * * *
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> "Here I must notice a slight inconsistency in the Act. Section 11 enacts that the Collector shall proceed to enquire inter alia into "the respective interests of the persons claiming the compensation" and that he shall make an award dealing also with the question of the apportionment of the amount awarded. But the legislature seems to have overlooked that the word used in Section 11 is 'shall' and assumes in Section 30 that the Collector has the option either to decide that question himself or to refer it to the decision of the Court"

21. The question has been rather elaborately discussed by a Division Bench of the Mysore High Court in AIR 1959 Mysore 265, although it does not refer to AIR 1929

[20] AIR 1941 Lah 268

[21] AIR 1929 Mad 351 at p.352

Madras 351 (supra). The court held as follows:

> "A reference under Section 30 is confined to the determination of the question as to the persons entitled to the compensation and its apportionment amongst them. In other words, the Dy. Commissioner can either himself decide the question of apportionment or in the alternative, refer it to the court. When once the Dy. Commissioner has in his award given a decision in regard to apportionment also, his power of reference under Section 30 does not remain."

22. In the instant case not only was an award made by the Collector in respect of the person to whom the compensation is payable but the amount of compensation was also paid to that person in accordance with the award. The present petitioner thereafter sought to move the Collector for a reference. As we already stated it is not the case of the petitioner that a reference could have been made by the Collector under Section 18 of the Act. His learned counsel proceeded all along on the basis that the Collector made the reference under Section 31 of the Act. We have already come to the conclusion that the Collector was not competent to make the reference under Section 31 after he had made the award in respect of all the matters mentioned in section 11 including the person to whom the compensation was to be paid, and what is more, had also paid the compensation to him. This is not the case of an illegal or erroneous payment of compensation by the Collector in the face of an existing dispute as to the person entitled to be paid, as happened in

Hitkarini Sabha Jabalpur v. Corporation of the City of Jabalpur[22], Therefore that decision has no application whatever to the instant case.

23. It is not necessary in this case to go into the question whether or not a court can direct a person to whom compensation has been paid by the Collector to deposit the money in court pending adjudication of a disputed title to compensation.

24. In view of the foregoing this revision fails and is dismissed, but without making any order as to costs in the somewhat peculiar circumstances of this case.

J.N. WAZIR, C J.

25. I agree and have nothing to add.

Revision dismissed.

[22] AIR 1958 Mad Pra 339