

MYSORE HIGH COURT

Boregowda

Vs

Subbaramiah

Appeal No. 1 of 1953

(N. Sreenivasa Rau and K.S. Hegde, JJ.)

14.11.1958

JUDGMENT

N. Sreenivasa Rau, J.

1. This is an appeal under Section 54 of the Mysore Land Acquisition Act by claimants 6 and 7 against the order of the learned Subordinate Judge, Mandya, holding that the reference made to him under Section 30 of the Act by the Special Land Acquisition Officer, Mandya, was incompetent.

2. The circumstances leading to the order of the learned Subordinate Judge may be briefly narrated. The acquisition of 38 guntas in Survey No. 74 of R. Kodihalli village, Mandya Taluk, was notified in the Mysore Gazette of 19-3-1942 under Section 4 of the Act. The names of four persons who figured later as claimants 1 to 4 before the learned Subordinate Judge were mentioned as those of the Khatedars and Anubhavadars of the land as would appear from the award of the Land Acquisition Officer. In the enquiry before the Land Acquisition Officer no one else seems to have appeared. He made an award on 30-4-1944 directing that the amount determined by him as compensation was to be paid to the said four persons. On 31-8-1948 he made a reference to the District Judge, Mysore, stating that a compensation of ₹ 357-3-0 was awarded in the joint names of persons who have been referred to above as claimants 1-4, that all the parties except claimant 4 who had not given any statement were claiming the entire amount and that the amount was not paid to any party and was in deposit in the Mandya District Treasury. He added that, besides, two persons Sri Javaregowda and Patel Boregowda had also presented petitions to his office on 26-5-1948 and 27-5-1948 respectively claiming a portion of the compensation amount. He concluded by saying that in the circumstances mentioned above he had referred the question of apportionment of the award amount among the disputants to the Court under Section 30 of the Land Acquisition Act. The case was taken on file and the four persons who figured in the award and the two others were notified and arrayed as claimants 1 to 6. Later on two other persons, Boregowda and Deviah, sought to be impleaded and were added as claimants 7 and 8. All the claimants did not appear before the Court and the stand taken by those who did will be briefly adverted to later. There were many hearings of the case extending

over a long period when the learned Judge entertaining doubts about the maintainability of the reference interrupted the recording of evidence and heard arguments on the question of maintainability. Relying upon the decision reported in *Venkata Rao v. Devaraya Gowda*¹, he took the view that claimants 5, 7 and 8 had purported to acquire an interest in the land subsequent to the award and were therefore not entitled to agitate their claim before the Court and that claimant 6 also could not agitate his claim for, even though he purported to have acquired an interest in the land prior to the date of the award, he had not asked for a reference within the prescribed period. In the result he held that none of those claimants, i.e. claimants 5 to 8, could agitate the question of apportionment before the Court and that the award was not liable to be interfered with.

3. The main contention urged by the Appellants, claimants 6 and 7, is that the learned Judge was in error in thinking that persons who acquired an interest subsequent to the award could not have their rights agitated in the proceedings before him. It is urged that once a reference is made and the matter is before Court it is open to any person interested in the land to seek to be added as a party under the provisions of the Civil Procedure Code governing the matter. As regards no reference having been asked for within the prescribed period it is urged that the reference is not under Section 18 of the Land Acquisition Act, but under Section 30 and that such a reference is not governed by any period of limitation.

4. These contentions have not been opposed obviously as such of the claimant's as are respondents are equally interested with the appellants in upholding the competence of the reference while the Deputy Commissioner (Special Land Acquisition Officer) is not interested in the question of apportionment. In support of his contentions Sri Gopalaswamy Iyengar, the learned Advocate for the Appellants, has relied upon several decisions. *Premasuk Das v. Udairam Gungabux*², lays down that when there has been a reference under Section 30 of the Land Acquisition Act, it is not ultra vires for the District Judge to add a party to the proceedings before him having regard to Section 53 of the Land Acquisition Act which attracts the provisions of the Code of Civil Procedure to all proceedings before the Court under the Act where no specific provision is made by the Act itself and Section 32 of the old Code of Civil Procedure, corresponding to Order 1 Rule 10, Sub-Rules 2, 3 and 5 of the present Code, would permit such addition. In *Promotha Nath v. Rukhal Das*³, it was held that it was permissible to allow the representative of a claimant to be added as a party though he could not be allowed to agitate any right or interest in the land other than what his predecessor could have done. In *Special Land Acquisition Officer v. Umed Laloo*⁴, it was held that in the case of a reference by the Collector under Section 30 a person interested within the meaning of Section 3(b) of the Act can apply to the Court to be joined as a party to the reference made by the Collector although his name does not appear in the reference made provided the question raised by him in essence is the dispute raised. In *Nanak Chand v. Piran Ditta*⁵ the Court took the view that as Section 30 of the Land Acquisition Act conferred an unqualified discretion on the Deputy Commissioner to refer the question of apportionment to the Court the fact that he did so at the instance of an interested party who himself could not demand a reference under Section 18 of the Act as it would be beyond time would

¹7 Mys LJ 355

³11 Cal LJ 420

⁵ AIR 1941 Lah 268

²22 Cal WN 204 : AIR 1918 Cal 204

⁴ AIR 1942 Sind 82

make no difference to the Deputy Commissioner's powers. It was also held that as Section 30 did not provide for any specific period within which a reference had to be made no question of limitation would arise in regard to such a reference. It will be remembered that in the decision

reported in 7 Mys LJ 355 on which the learned Judge relied the Court held that the reference in that case, though purporting to be under Section 30 of the Mysore Land Acquisition Act was really one under Section 18 as it was made at the instance of an interested person.

5. On the strength of these decisions it is urged that, even though the appellants did not figure before the Land Acquisition Officer during his inquiry, since according to them they had derived their interest in the land in question from those who had so figured, it was open to the Officer to make a reference in so far as appellant 2 (claimant 6) was concerned as he had acquired an interest prior to the award, if the officer was satisfied that the matter was one calling for the exercise of his powers under Section 30 of the Act and that so far as appellant 1 (claimant 1) was concerned he could agitate his claim in the proceedings before the Court resulting from the reference as he could be properly added as a party under the provisions of the Code of Civil Procedure even though he had acquired his interest in the land subsequent to the award. The decision of the Supreme Court reported in *Saila Bala Dassi v. Nirmala Sundari Dassi*⁶, is relied upon to show that the provisions of Section 146 and Order 22 Rule 10 Civil Procedure Code are sufficiently wide to enable a person who has subsequently acquired his interest in the subject-matter of the proceedings to be allowed to participate in it.

6. The learned Judge has no doubt taken the view that the persons who had acquired interest subsequent to the award could not come within the meaning of the expression "interested parties", that therefore claimants 5, 7 and 8 cannot figure as parties in the proceedings consequent on the reference, and that claimant 6, even though his sale deed came into existence prior to the date of the award had not made an application under Section 18 within the prescribed period and that he was therefore out of Court. As regards claimant 6 in effect the learned Judge took the view that the reference was really one under Section 18 of the Act though it purported to be one under Section 30 of the Act.

7. Adverting to the case reported in 7 Mys LJ 355 the circumstances of the case were as follows : The Land Acquisition Officer awarded a certain amount of compensation in respect of the lands acquired to the persons who figured in the proceedings before him as the owners in possession of the lands. They were dissatisfied with the amount awarded as compensation and applied for reference to the Court under Section 18 of the Mysore Land Acquisition Regulation. The District Judge enhanced the amount on inquiry and the amount was further enhanced by the High Court on appeal. During the pendency of the reference proceedings in the District Court the appellant filed a petition to be made a party to the proceedings on the ground that he had purchased the whole village in a revenue sale for arrears of Jodi and obtained possession and was therefore entitled to the compensation. His application was rejected. After the decision of the High Court referred to above he applied to the Land Acquisition Officer that the whole amount of compensation should be paid to him or that the

⁶ AIR 1958 SC 394

matter should be referred to the District Court under Section 30 of the Mysore Land Acquisition Regulation. The Land Acquisition Officer sent the appellant's application to the District Judge stating that he did so under Section 30 of the Regulation. The High Court took the view that though the reference purported to have been made under Section 30 it must be regarded as one made under Section 18 of the Regulation, as it was clearly one made on the application of the appellant and that, as the special Court functioning under the Regulation had no jurisdiction to deal with objections except those which were made by partita to proceedings before the Deputy

Commissioner or by persons who had within six months of the award applied to the Deputy Commissioner, the District Judge had no jurisdiction to accept the reference.

8. In the light of the views expressed in the decision none of the claimants 5 to 8 in the present case would be entitled to ask for a reference as they had made no application within the prescribed period of 6 months from the date of the award. That would be on the basis that the reference is one under Section 13 of the Mysore Land Acquisition Act (It may be mentioned that at the time of the decision in the case reported in 7 Mys LJ 355 Mysore enactments were called Regulations and later on were styled Acts.) As regards the Mysore Land Acquisition Act there is no material difference between the provisions of that Act and the corresponding sections of the Act of the Central Legislature and the learned Judge held that in the present case the reference, though it purported to be under Section 30, was really one under Section 18.

9. The learned Advocate for the appellants contends that there is no reason to hold that the reference is under Section 18 when it was clearly stated to be one under Section 30. In the 7 Mys LJ 355 case and the cases referred to in it, the Courts proceeded on the footing that they could go behind the form of the reference in determining whether it was really under Section 30 or Section 18 of the relevant Act. It appears to us, however, that it is not necessary in this case to decide whether the reference was really one under Section 30 of the Act as it purports to be, for it appears to us that no reference under either section would be competent in the case, though we are inclined to think as will be explained later that the reference was not one under Section 18.

10. The award in this case was made on 30-4-44 and directed that the amount awarded was to be paid to claimants 1 to 4 who were the only persons whose right or interest in the land came to the notice of the Land Acquisition Officer. Claimant 6 purported to have obtained some interest in the land by virtue of a sale deed dated 3-1-1944 but he did not participate in the inquiry before the Land Acquisition Officer, nor did he ask for a reference under Section 18 of the Act within 6 months of the award. Claimants 5, 7 and 8 purport to have acquired an interest in the land by virtue of sale deeds dated 9-5-1944. This was only a few days after the date of the award. They also did not apply to the Land Acquisition Officer for a reference under Section 18. It was only on 25-5-1948 that claimant 5 petitioned the Land Acquisition Officer stating that he had also a right in the land and requesting that his share of the award amount be paid to him. Claimant 6 made a similar application to the Land Acquisition Officer on 27-5-1948. Neither of them explicitly requested that a reference be made to the Court either under Section 18 or under Section 30 of the Act.

On 31-8-1948, i.e., more than 4 years after the award, the Land Acquisition Officer made the reference in question. In that reference he stated that a compensation of ₹ 357-3-0 was awarded in the joint names of claimants 1 to 4, that all the parties except claimant 4 who had not given any statement were claiming the entire amount, that the amount had not been paid to any party and was in deposit in the Mandya District Treasury and that besides, claimants 5 and 6 had also presented petitions to Him on 26-5-1948 and 27-5-1948 respectively claiming a portion of the compensation amount. He said that in the circumstances he had referred the question of apportionment among the disputants under Section 30 of the Act. Looking into the award itself all that is found in it, omitting the preamble is :

"The Anubhavedars want a compensation of ₹ per acre. It is reasonable to award a

compensation of ₹ 240/- per acre, as approximately the same amount has been awarded and accepted in similar cases and that as the information gathered from the Sub-Registry Office supports the proposed award. Hence I acquire the land and award land compensation of ₹ 240/- per acre plus statutory allowance of ₹ at 15 per cent and crop compensation at per acre for 5 years. The total amount for payment will be ₹ 357-3-0 and the same will be paid as follows :

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|---|--|
| 1 | Venkalapathiah. |
| 2 | T.V. Achulha Rao. |
| 3 | S.P. Srinivasa Rao. |
| 4 | Sivally Venkatappa son of Venkalliramiah". |

There is nothing to indicate in this award, as stated in the reference 4 years later, that each of these 4 persons claimed the whole amount, that there was a dispute amongst them and that the Land Acquisition Officer did not decide such dispute. On the other hand it reads as it the award was made in favor of the four persons jointly. It is urged by the learned Advocate for the appellants that the very fact that the award was made jointly in favor of four persons indicated that the Court had not settled the dispute amongst them. It may be that in certain circumstances such an inference is permissible or the award itself makes the position clear that a joint award is made because the officer has not given or has not been able to give a decision on the dispute amongst the joint awardees. That is not the position here and the direction for payment seems to indicate that in the eyes of the Land Acquisition Officer the payment had to be made to the four persons together presumably because that was the manner in which he decided the question of apportionment of the compensation, as he was entitled to do under Section 11(3). There is nothing in the language of Section 11 which makes it obligatory that the compensation should be split amongst the claimants; nor would it be proper to go behind the actual terms of the award itself and embark upon an investigation in the course of the enquiry before the Land Acquisition Officer to ascertain what was in his mind in making the award.

11. We see no ambiguity in the language of the award in respect of the apportionment of the compensation amount. It seems to us that it was a clear decision that the four persons together were entitled to the amount, it being open to them to make any adjustment amongst themselves. It may also be noticed that as the award stood there was no obstacle in the way of the payment of the amount awarded as compensation being made to the said four persons (claimants 1 to 4) if they together applied for payment. We cannot therefore attach any value to the additional circumstance mentioned in the reference indicating that there was a dispute amongst the four persons each of them claiming the whole amount. We may also remark that the Special Land Acquisition Officer who made the award and the officer who made the reference four years later were not the same.

12. We may now briefly advert to the course of the proceedings in Court after receipt of the reference by the District Court, Mysore. It may be mentioned that it was in the first instance transferred to the Additional Subordinate Judge's Court, Mysore, and thereafter to the Subordinate Judge's Court Mandya, when the latter was invested with jurisdiction to try Land Acquisition cases. Hence the proceedings referred to below relate to what took place successively in all the three Courts. The four original claimants and Javaregowda and Patel Boregowda who had submitted applications to the Land Acquisition Officer on 25-5-48 and 27-5-48 and who had been referred to in the reference were notified by the Court, the latter two being arrayed as claimants 5 and 6. Claimant 5 appears to have been the earliest to file a statement, i.e., on 1-3-1940. That statement is not available in the record. On 21-7-49 claimant 6 called for information from claimant 5 in respect of the latter's claim, but this was objected to by claimant 5 on the ground that claimant 6 had not filed his statement. On 30-7-49 Boregowda, one of the present appellants, filed an application (numbered I.A. 1.) under Order 1 Rule 10 Civil Procedure Code seeking to be impleaded as a party on the ground that he had acquired an interest in the land by virtue of a sale deed dated 9-5-1944 in his favor by one of the original owners i.e., claimant 3 and others. This was followed by a similar application (numbered I.A. II) by Deviah on 6-8-1949 though it purported to be under Section 151 C.P.C. These applications were granted on 22-8-1949 and Boregowda and Deviah were arrayed as claimants 7 and 8 respectively. The first claimant had died and a statement was filed by his legal representatives on 13-9-1949 in which they disclaimed all interest in the land, but stated that so far as they were able to make out 18 guntas of the land belonged to claimant 6 and that claimant 5 possessed no interest in the land. They appear to have ceased to take any further interest and none of the other original claimants, i.e., claimants 2 to 4, appeared in the Land Acquisition Court. The other claimants, i.e., claimants 6, 7 and 8, also filed their statements on 13-9-1949, claimant 6 relying upon his sale deed dated 3-1-44 and claimants 7 and 8 on the sale deed of 9-5-1944 in their favour. It may be mentioned that the sale deed in favour of claimant 5 was also of the same date. The case, which at this stage was pending before the learned Additional Subordinate Judge, Mysore, was posted to 26-9-1949 "to hear" and continued to be adjourned and posted for the same purpose from date to date until 5-12-1949, by which time the Subordinate Judge of Mandya was invested with jurisdiction to hear Land Acquisition Cases and the case was transferred to that Court. It is not clear on what point the Court wanted to hear the parties. It is one of the possibilities that it was in regard to the competency of the reference. Any way the learned Subordinate Judge, Mandya, seems to have taken a different view in regard to the need to hear and after the parties had been notified posted the case for evidence. After the case had come up for evidence claimant S filed an application under Order 6, Rules 5 and 17 for filing an amended statement which was permitted to be filed on the same day. As mentioned above claimant 5's written statement dated 1-3-1949 is not available in the records. According to the stand taken by claimants 5 to 8, out of 38 guntas acquired in the survey number, claimant 5 claimed 32 guntas, claimants 2 and 7 claimed 20 guntas each and claimant 8, 14 guntas. Claimants 6, 7 and 8 took exception to the altered stand taken by claimant 5. It will be noted that the claims were mutually irreconcilable considering the area acquired and the respective areas claimed by each of the claimants. After the case had been adjourned and posted for hearing on a number of days evidence was recorded on 13-6-1951. The recording of evidence continued on many subsequent hearing till on 4-9-1952 the learned Judge in the middle of the examination of the 10th witness felt that he should hear counsel regarding the scope for further inquiry. Accordingly the case was adjourned to 10-9-1952 on which date he heard arguments and on 17-9-1952 we find the following note :

"On going through the records I find that the reference has been made to the Court in this case by the Land Acquisition Officer on 31-8-1948 and had been received by the Court on 3-9-1948. I wish to hear all parties regarding the competency of the reference under Sections 18 and 30 of the Land Acquisition Act in view of the alleged subsequent dates at which the disputing claimants are stated to have acquired interest in the acquired property."

After hearing arguments he pronounced orders holding that the reference itself was not competent as already mentioned above.

13. If the reference is really one under Section 18, though purporting to be under Section 30, there is no doubt that it is barred since the award by the Land Acquisition Officer was made on 30-4-1944 and the longest period permissible under Section 18 had expired more than 3 years before claimants 5 and 8 approached the Land Acquisition Officer. It is urged, however, that there is no reason to go behind the terms of the reference itself and hold contrary to what is mentioned therein that the reference is not one under Section 30. It may also be mentioned that claimants 5 and 8 only asked for payment of compensation to be made to them in respect of their interest in the acquired land and did not ask for a reference to the Court. It was the Land Acquisition Officer himself who made the reference on the footing that there was a dispute in regard to apportionment and presumably that the award made by his predecessor did not contain a decision as to the persons to whom the compensation amount had to be paid. Nor can we see any reason why he should not exercise his powers of reference on the motion of some person even though such person himself may not have, or may have lost, the right of requiring a reference under Section 18.

It is a matter for the Officer's discretion and the context in which he comes to exercise his power is immaterial. It would appear, therefore, that there is some force in the contention that the reference was intended to be under Section 30 of the Act and not under Section 18. But we have come to the conclusion that there is nothing in the award itself to indicate that a dispute existed in regard to apportionment and that, as far as the terms of the award went, it entitled claimants 1 to 4 together to receive the amount of compensation. The question, then is whether an award having been made by the Deputy Commissioner, not only in regard to the amount payable as compensation but also in regard to the persons to whom it had to be paid, it is open to him to make a reference under Section 30 of the Act. It is true that as observed in AIR 1941 Lahore 268 when the section does not provide for any specific period within which a reference has to be made no question of limitation as such would arise in regard to the reference. It is urged however that the Court to which a reference is made cannot go behind the reference and consider its competency. In *Secy, of State v. Bhagwan Prasad*,⁷ there are no doubt observations in support of that contention, but there are other decisions which take a contrary view : (Vide *Sukhuir Singh v. Secy, of State*⁸, *Sitaram v. Kalandi Patra*⁹, *Ghulam Mihiyddin v. Secy, of State*¹⁰, *Collector of Akola v. Anand Rao*¹¹, *In re Land Acquisition Act*¹²) The case reported in 7 Mys LJ 355 and the cases referred to in it also support the same view though it may be mentioned that the question of competency arose in all these cases while considering whether the reference had been made within the time prescribed in Section 18. But they all proceed on the footing that it is open to the Court to go behind the reference and see whether it is competent. That appears to us to be the correct view. When the power given to the Deputy Commissioner to make a reference is governed by statutory provisions, such a reference has to be made in conformity with those

provisions and it stands to reason that the Court to which the reference is made, before embarking on the proceedings consequent on the reference, should be able to satisfy itself that the reference is in accordance with law, for the question is as much one of the Deputy Commissioner's jurisdiction to make the reference as of the Court to entertain the reference.

14. The Land Acquisition Act is intended to arm the State with the power of compulsory acquisition of land and the persons interested in the land are no doubt given an opportunity to show cause against the acquisition (except in emergent cases). But once the Government decides upon the acquisition and makes the requisite declaration the acquisition cannot be challenged by an interested person except on the ground that it is outside the purview of the Act or that the vital provisions of the Act have not been conformed to. In view of the compulsory character of the acquisition the Act provides that the Officer entrusted with the task of acquisition should adequately publicise the proceedings so that every person interested may have an opportunity of vindicating his right to compensation and it also provides that individual notices should be sent to all persons known or believed to be interested in the land. The Deputy Commissioner has to hold an enquiry thereafter and after considering the objections of all interested persons placed before him he has to make an award of (1) the true area of the land, (2) the compensation which in his opinion should be allowed for the land, and (3) the apportionment of the 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 appeared before him. It should be noticed that the decision in regard to apportionment is not to be confined to the interests only of those who appear before the Deputy Commissioner but should extend to those of persons about whose claims the Deputy Commissioner has

⁷ AIR 1932 All 597

⁹13 Ind Cas 127 (Cal)

⁸ ILR 49 All 212 : AIR 1926 All 766

¹⁰24 Ind Cas 379 : AIR 1914 Lah 394

¹¹11 Ind Cas 690 (Nag)

¹² ILR 30 Bom 275

information irrespective of their appearance before him. The award made by the Deputy Commissioner is to be final and conclusive evidence as between him and the persons interested irrespective of their appearance subject, however, to the decision on a reference to the Court. Under Section 18, any person interested, who has not accepted the award, including the persons who have not appeared before the Deputy Commissioner, has a right to require the Deputy Commissioner to refer for the determination of the Court his objection to the measurement of the land, the amount of compensation, the persons to whom it is payable and the apportionment of the compensation among the persons interested. This right of obtaining an adjudication by the Court on a reference is given to persons interested since the Government itself is an interested party and considering the compulsory nature of the acquisition it would not be just to drive persons interested to resort to a Court of law in the usual way, compelling them to pay court-fee etc., since the need for adjudication is not of their own seeking. But this right has to be exercised within the period prescribed under Section 18. Section 11 of the Act no doubt reads as if it is obligatory on the part of the Deputy Commissioner to make an award in respect of all the three matters, i.e., (1) the true area of the land, (2) the quantum of compensation, and (3) apportionment. But this section has to be read subject to Section 30 which 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 Deputy Commissioner may refer such

dispute to the decision of the Court."

The language of Section 30 would seem to indicate clearly that while the quantum of compensation has to be determined by the Deputy Commissioner (and necessarily the true area of the land, on which the compensation would normally depend, in addition to such delimitation being necessary to enable the authorities to take over possession) it is open to him to pass on to the Court the determination of the question of apportionment. It may also be noticed that 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 Deputy Commissioner can either himself decide the question of apportionment, or in the alternative refer it to the Court. It would be unreasonable and even anomalous if the two sections should be construed to mean that the Deputy Commissioner could give a decision in regard to apportionment also and, even in the absence of a requisition by a person interested to make a reference, refer the question of apportionment to the Court, doubting the correctness of his own decision in the matter. The position is obviously different when a requisition is made by a person interested, for that is a right given to such a person to challenge the Deputy Commissioner's decision. The words "if any dispute arises as to the apportionment" etc., occurring in Section 30 after the words "when the compensation has been settled under Section 11" may give room for the contention that the dispute can arise only after a decision is given on the question of apportionment, but obviously that is not its import since such a contingency is provided for under Section 18. Further Section 30 has to be read together with Section 29 which are the only two sections occurring in Part IV entitled "Apportionment of Compensation".

Section 29 provides that when the persons interested agree in regard to the apportionment the award shall incorporate such an agreement. The wording "if any dispute arises as to the apportionment" etc., in Section 30, following Section 29 as it does, clearly refers to a situation of dispute amongst the persons interested arising from a failure to agree as contemplated in Section 29. It seems to us therefore that when once the Deputy Commissioner has given a decision in regard to apportionment also, his power of reference under Section 30 does not remain.

15. It is urged by the learned Advocate for the appellants that all matters relating to title in the acquired land have to be agitated in the Land Acquisition Court as otherwise the rights of interested persons would be barred by *res judicata*. There is no force in this contention for, while as mentioned above, the Act provides for all steps being taken by the Deputy Commissioner to apprise persons interested of the acquisition proceedings, there is nothing in the Act to bind persons who have not participated in the proceedings either before the Land Acquisition Officer or before the Court. On the other hand the last proviso to Section 31(2) saves such rights though in the very nature of things they can only be asserted against the person or persons who have received the compensation amount.

16. It may also be mentioned that while the interpretation given above would lead to no untoward results or affect any one's legitimate rights, it might easily lead to anomalous results if it should be held that the Deputy Commissioner, even after giving a decision as to apportionment, can refer that question to the Court. It is no doubt true that the language of the relevant sections is not as clear as it might have been and some decisions, e.g., AIR 1941 Lahore 268, related to cases in which the Collector appears to have given a decision as to the persons to whom the compensation had to be paid and still it was held that he could make a reference under Section

30. But that was only with reference to the extent of the Collector's discretion and whether it could be exercised without limitation of time. The present question was not considered. Whatever the obscurities or inadequacies in the language of the provisions, when there is nothing in them to compel the construction that, even after himself giving a decision on apportionment, the Deputy Commissioner could make a reference suo motu to the Court it seems to us that such a construction should not be adopted. Reasonably interpreted, the combined effect of Sections 11, 12, 18, 29, 30 and 31 may be stated to be as follows :

(i) The Land Acquisition Officer, after taking the requisite steps to apprise all parties believed to be interested in the land of the inquiry, has to give a decision on the true area of the land and the quantum of compensation.

(ii) He can give a decision on the question of apportionment not only in regard to persons appearing before him, but also in regard to the claims of others of which he has information.

(iii) He may, however, not give a decision on the question of apportionment. This will presumably be the case when he thinks that the matter is a complicated one and can more properly be dealt with by the Court. If, however, the interested persons agree in regard to apportionment he has to incorporate such an agreement in the award.

(iv) When an award is made by the Deputy Commissioner including the question of apportionment also, whether by his own decision or in consequence of an agreement under Section 29, he must tender payment of the compensation amount to the persons entitled to it according to the award except :

(a) when they do not consent to receive it (It is however open to an interested party to receive the amount under protest, i.e., subject to such person's right to require a reference to be made to the Court), or

(b) when there is no one competent to alienate the land.

(v) When there is any dispute as to the title to receive the compensation or its apportionment the Deputy Commissioner has to deposit the amount in court.

(vi) Any person interested who is aggrieved by the Deputy Commissioner's decision in regard to the true area of the land, the quantum of the compensation or its apportionment, can require the Deputy Commissioner to make a reference to the Court within the period prescribed under Section 18. He can also require a reference to be made where the Deputy Commissioner does not give a decision in regard to apportionment.

(vii) The Deputy Commissioner when he himself has not given a decision on the question of apportionment can suo motu make a reference to the Court in regard to the question of apportionment.

17. It will be noticed that under Section 31 of the Act the Deputy Commissioner has to tender the compensation amount and make payment when his award provides for apportionment and cannot withhold payment if the payment is accepted except when there is a dispute in regard to apportionment. Such a dispute cannot be said to exist when either he himself has not refrained from giving a decision on the question of apportionment or where he has given a decision on the matter, a person interested, has not required him to make a reference, within the time prescribed.

The compensation amount so tendered, if it is accepted by a person interested, is rightfully received (subject to the right of any other person to vindicate his right in a suit as indicated in the last proviso to Section 31(2)) and there is no reason why he should be compelled to participate in proceedings under the provisions of a special enactment initiated suo motu by the Deputy Commissioner when the persons who may have an interest in the land have not taken timely steps. Different considerations may arise where the compensation amount has been inadvertently or illegally paid as for example was the case in *Hitkarini Sabha v. Corporation of City of Jabalpur*¹³,

18. In the case on hand it is in evidence that there have been civil and criminal proceedings in consequence of the rival claims put forward amongst claimants 5 to 8 as successors in interest of the original claimants 1 to 4. The learned Judge in the course of his order says :

"It was also submitted that except one of the claimants the other parties have filed a civil suit relating to the question of title concerning this very land. That suit is stated to be still pending, in the appeal stage."

¹³ AIR 1958 Madh-Pra 339

It will thus be seen that two of these parties have, while agitating their rights by resort to normal remedies, have at the same time persuaded the Land Acquisition Officer to make a reference purporting to be under Section 30 of the Act 4 years after the award.

19. The case reported in 7 Mys LJ 355 referred to above is a further illustration of the anomalies that may arise if Section 30 of the Act is interpreted so as to enable the Deputy Commissioner to make a reference at any time uninhibited by any other provisions of the Act, though this aspect of the matter was not considered by the learned Judges and the decision was given on a consideration of another point. In that case, the Land Acquisition Officer made his award on 24-6-1916 directing payment of certain compensation to the owners in possession of the lands. The latter applied for a reference under Section 18 of the Act. When the reference was pending in the Court a person, alleging that he had purchased in a revenue sale for arrears the village in which the land was situated, unsuccessfully applied to be made a party. The Court enhanced the compensation granted to the owners in possession and it was further enhanced on appeal by the Chief Court by its decision dated 18-7-1924. Thereafter the purchaser of the village applied to the Land Acquisition Officer on, 13-8-1924 that a reference be made to the Court and the Land Acquisition Officer made a reference purporting to be under Section 30 on 12-8-1925 ignoring altogether that a previous reference had already been made to the Court and that a decision had been given. Apparently in the Land Acquisition Officer's view his power of reference was inexhaustible and could be availed of time and again. It need hardly be said that there is no warrant for such an unrestricted power under the provisions of the Act. While if a reference is made under Section 30 of the Act after the Deputy Commissioner himself has given a decision on the question of apportionment such anomalies may arise, no similar situation would occur where he does not decide the question of apportionment, for the compensation amount would be in deposit. In actual practice also no difficulty need arise in either event. If the Deputy Commissioner gives a decision on the question of apportionment also in his award the aggrieved parties have the opportunity of getting their rights adjudicated upon by the Court by requiring the Deputy Commissioner to make a reference under Section 18. If the Deputy Commissioner himself thinks that the question of apportionment is a difficult or complicated one, he need not

give a decision, and can refer the matter to the Court under Section 30 of the Act. It is true that there is no limitation of time in that section or even an obligation to make a reference. But it appears to us to be the intention of the scheme of the Act that normally speaking he should make a reference when he himself does not decide the matter and that without unnecessary loss of time. The utmost period for him to wait, if at all, would be the period prescribed under Section 18 so that any person interested may ask for a reference either in regard to apportionment alone or in regard to other matters also, i.e., the true area of the land and the quantum of compensation so that the Deputy Commissioner will be in a position to refer all the questions to the Court in one reference. If no requisition for a reference under Section 18 of the Act is made within the prescribed period he can immediately thereafter make a reference under Section 30. It may be remembered that in the case of disputed title or apportionment the compensation amount has to be deposited in Court and there can be no difficulty in making a reference along with the deposit.

20. In the light of what is stated above we are of the view that when the Deputy Commissioner has in his award given a decision on the question of apportionment also it is not open to him to make a reference under Section 30 and that such a reference would be incompetent. That is the position in this case.

21. We accordingly confirm the order of the Court below though for different reasons and in the view we have taken it is not necessary for us to go into the other questions raised by the learned advocate for the appellants. This appeal is accordingly dismissed. As there is no opposition to the appeal there will be no order as to costs in this appeal.

Hegde, J.

22. I agree.

Appeal dismissed.