

Murat Singh
v.
The Controller
of Estate Duty
Delhi
Grover, J.

nor can it have any force, because at the time of the death of the deceased that could pass was only the verified claim, which has been held not to fall within the definition of the word "property". It is also common ground that no duty could be levied on the agricultural lands and immovable properties of the deceased in Pakistan by virtue of the provisions contained in sections 3 and 21 of the Estate Duty Act, as also the rules framed thereunder.

For the reasons given above, the answer to the question referred to us must be given in the negative. Ordered accordingly. We fix the costs of the assessee at Rs. 300.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before G. D. Khosla, C.J., and Bishan Narain, J.

BHAGWAT DAYAL AND OTHERS.—*Petitioners*

versus

UNION OF INDIA AND OTHERS.—*Respondents.*

Civil Revision No. 371-D of 1959

1960
March 23rd

Land Acquisition Act (I of 1894)—Sections 9, 10 and 11—Proceedings under—By whom to be taken—Appointment of an officer as collector—Whether can be made with retrospective effect—Award made by an officer not a collector on the date of the making of the award but later appointed as Collector with retrospective effect—Whether valid—Principle of ratification—Whether applies in such cases.

Held, that the proceedings under sections 9, 10 and 11 of the Land Acquisition Act, 1894, can be taken only by the

Collector. Neither the State Government nor the collector can delegate this power to any person other than the collector appointed under the Act. A person who has not been appointed a collector under the Act has no power to hold an enquiry or make an award fixing the amount of compensation that should be paid to the claimants. Any award given by him is, therefore, invalid and must be quashed. There is no provision in the Act under which the Government may adopt an award or direct it to be considered to be valid when it has been made by a person other than the Collector. Nor is it open to the State Government to make an award valid or invalid by the simple process of appointing a person to be a collector under the Act or by taking away the powers of the collector with retrospective effect. The State Government cannot by the application of the principle of ratification amend the provisions of a statute so as to enable an unauthorised person to take proceedings under the Land Acquisition Act. The principle of ratification has no application to such cases.

(Note.—This judgment has been passed on review of the judgment reported in I.L.R., 1959, Punjab 1665. Editor).

Petition under Section 151 and Order 47, Rule 1, Code of Civil Procedure Code, praying that the judgment passed by Hon'ble Mr. Justice G. D. Khosla and Hon'ble Mr. Justice Bishan Narain, in Letters Patent Appeal No. 41-D of 1957, on 8th April, 1959, be corrected and the appeal be allowed and the Award, dated 23rd February, 1957, be quashed.

BALMUKAND GUPTA AND HEM RAJ MAHAJAN, ADVOCATES,
for the Petitioners.

H. S. GUJRAL, ADVOCATE, FOR ADVOCATE-GENERAL, for
the Respondents.

JUDGMENT.

Bishan Narain, J.—This review petition arises Bishan Narain, J. in these circumstances. The petitioners were owners of Mubarak Bagh situated in village Malakpur Chhowni, Delhi. This garden has been acquired under the Land Acquisition Act, 1894. Shri

Bhagwat Dayal Murari Singh, purporting to act as a Collector
and others v. Union of India under the Land Acquisition Act, gave his award
and others under section 11 of the Act on 23rd February, 1957.

The owners filed a petition under article 226 of the
Bishan Narain, J. Constitution challenging the validity of the ac-
quisition itself and also of the award on various
grounds. Falshaw, J., dismissed the petition. They
then appealed under clause 10 of the Letters
Patent. The appeal came up for hearing in the Cir-
cuit Court, Delhi, before Khosla, J., (now the Chief
Justice and myself. We came to the conclusion that
the acquisition proceedings were valid and so was
the award and accordingly dismissed the appeal.

The objection to the validity of the award was
that Shri Murari Singh was not a Collector under
the Land Acquisition Act on 23rd February, 1957
and his appointment on 30th March, 1957 with
effect from 7th January, 1957 would not validate
the award. We rejected this contention on the basis
of the decision of Full Bench in *General S. Shiv
Dev Singh and another v. The State of Punjab and
others* (1). This Full Bench case had been argued
at Chandigarh, and Khosla, J., was a member of
the Bench. The judgment had not by then been
announced and the learned Judge had an impres-
sion that the Full Bench was of the opinion that the
appointment of an officer with retrospective effect
was valid. However later on when the decision
was given it was discovered that the Full Bench
had held such an appointment to be invalid. This
error on our part has led to the present review
petition.

It is obvious that the decision on the validity
of the award of Murari Singh was based on a wrong
impression of the decision of the Full Bench and

(1) I.L.R. 1959 Punjab 1445-1959 P.L.R. 544

the appellants at that time were not in a position to say anything to correct our erroneous impression. We have, therefore, unhesitatingly accepted this review petition because the error that has crept in was due to our mistake.

Bhagwat Dayal
and others
v.
Union of India
and others

Bishan Narain, J.

The parties were then called upon to argue the appeal on merits. These arguments were confined, as was the review petition, to the question of the validity of the award of Murari Singh.

Shri Murari Singh is a P. C. S. Officer. In March, 1957, he was not a Collector within section 3(c) of the Land Acquisition Act. He was specially appointed by the Delhi Government to perform the functions of a Collector under that Act by order dated 30th March, 1957. This order reads—

“Under the provisions of clause (c) of section 3 of the Land Acquisition Act, 1894, the Chief Commissioner, Delhi, is pleased to appoint Shri Murari Singh, P.C.S., Additional Revenue Assistant, Delhi, to perform the functions of a Collector under the said Act with effect from the forenoon of 7th January, 1957.”

Admittedly prior to 30th March, 1957, Murari Singh had no power to perform the functions of a Collector under the Land Acquisition Act and, therefore, could not hold an enquiry under section 11 of the Act nor could he give any award fixing the amount of compensation that should be paid to the claimants. Murari Singh, however, purporting to act as a Collector gave his award on 23rd February, 1957. At that time he did not have any authority to so function and had no jurisdiction to give the award that he did. The award, therefore, was invalid on the day that it was given.

The question arises whether this invalid award became valid subsequently by the fact that

Bhagwat Dayal and others
v.
Union of India and others

the State Government appointed the maker thereof of a Collector under the Land Acquisition Act and this appointment was made effective from a date prior to the date of the award.

Bishan Narain, J.

Now under the Land Acquisition Act proceedings under sections 9, 10 and 11 can be taken only by the Collector. Neither the State Government nor the Collector can delegate this power to any person other than the Collector appointed under the Act. The award filed under section 12 of the Act is binding on the Government. There is no provision in the Act under which the State Government can avoid an award validly given by the Collector. Similarly there is no provision under which the Government may adopt an award or direct it to be considered to be valid when it has been made by a person other than the Collector. What the State Government cannot do directly under the Act cannot be done by it indirectly. It is not open to the State Government to make an award valid or invalid by the simple process of appointing a person to be a Collector under the Act or by taking away the powers of the Collector with retrospective effect. The Government cannot validate an award made by an unauthorised person by clothing him subsequently with the required authority with retrospective effect. An appointment of a Collector with retrospective effect may or may not be valid so far as terms of his service, etc., are concerned but in my opinion it cannot cure the defect in his authority on the date of the award so as to convert an invalid award into a valid one. The principle laid down by the Supreme Court in *Strawboard Manufacturing Co., Ltd., v. Gutta Mill Workers' Union* (1), applies to the present case. In that case the Government concerned had referred an industrial dispute to the Labour

(1) 1953 S. C. R. 439.

Commissioner or his nominee for adjudication with the direction that the award is to be submitted not later than 5th April, 1950. The award was submitted by the adjudicator, nominated by the Labour Commissioner, on 13th April, 1950. The Government, however, on 26th April, 1950 allowed the award to be submitted by 30th April, 1950. It was argued before the Supreme Court that the order of extension made on 26th April, 1950 validated the award submitted on 13th April, 1950 because under the relevant provisions of law the Government could extend time for submission of the award. The Supreme Court did not accept this contention. It held that the power of an extension could be exercised only before the original date fixed for the submission of the award had expired. Their Lordships observed that the adjudicator was *functus officio* after 5th April, 1950 and had no jurisdiction to act at all after that date and that the order of 26th April, 1950 could not validate an award made without jurisdiction. Their Lordships then quashed the award. Applying this principle, I hold that the award given by Murari Singh on 23rd February, 1957 is null and void. This view is in consonance with my view in *Major S. Arjan Singh, etc. v. The State of Punjab, etc.* (Civil Writ N. 476 of 1957) and with the decision of the Full Bench in *General S. Shiv Dev Singh's case*.

Bhagwat Dayal
and others
v.
Union of India
and others
Bishan Narain, J.

The learned counsel for the respondents then urged that the Government has ratified and accepted the award given by Murari Singh and, therefore, the infirmity in the award has disappeared. I regret I am unable to accept this contention. Proceedings under sections 9, 10 and 11 of the Land Acquisition Act are to be taken by a Collector and nobody else. The Legislature has so provided.

Bhagwat Dayal and others v. Union of India and others
 Bishan Narain, J.

These provisions have been made for the protection of the Government as well as for the protection of persons whose land the Government has acquired. If an unauthorised person, wrongly assuming to be so authorised, takes these proceedings, then he is contravening the provisions of the statute. The Government cannot by application of principle of ratification amend the provisions of a statute so as to enable an unauthorised person to take proceedings under the Land Acquisition Act. The principle of ratification, in my opinion, has got no application to a case like the present one.

The learned counsel for the respondents then strenuously argued that the appellants had suffered no manifest injustice by this award of Murari Singh and, therefore, this Court should not, in the exercise of its discretion, quash it in a petition under article 226 of the Constitution. Reliance was placed on my decision in *Ramji Lal v. Punjab State* (Civil Writ No. 828 of 1958) for this purpose. That case related to a consolidation matter. I held that the scheme was prepared by an unauthorised person but I declined to interfere *inter alia* because it had been confirmed by an authorised person and the petition under article 226 of the Constitution had been made after inordinate delay. In that case the scheme as confirmed was not shown to be unjust to the petitioners. That case is clearly distinguishable. In the present case, the award dated 23rd February, 1957 is null and void. Such an award neither binds the Government nor entitles the interested persons to make an application under section 18 of the Land Acquisition Act. It is true that the Collector has in the present case referred the matter of compensation to the District Judge for adjudication under section 18 of the Land

Acquisition Act on the application of the appellants but if the award is null and void, then these proceedings are also without any jurisdiction. Moreover the appellants' case is that they had purchased the land in 1944 for Rs. 2,75,000 and its market price at the time of the acquisition was Rs. 13,00,000. Murari Singh has awarded only Rs. 2,58,300, that is, less than the price prevailing in 1944. The appellants' counsel urged that in such circumstances the award of an unauthorised person should not be allowed to prevail because a properly authorised person may take a more reasonable view of the matter. In my view, it will not be proper exercise of discretion to allow an award made by an unauthorised person to stand.

Bhagwat Dayal
and others
v.
Union of India
and others
Bishan Narain, J.

For these reasons, we accept this appeal and modify our judgment dated the April, 1959 by holding that the award made by Murari Singh on 23rd February, 1957 is null and void.

The result is that the appeal is accepted to the extent indicated above. In the circumstances of the case, however, we leave the parties to bear their own costs of the appeal as well as of the application for review.

G. D. Khosla, C.J.—I agree.

G. D. Khosla,
C.J.

B.R.T.

CIVIL MISCELLANEOUS.

Before A. N. Grover, J.

DIWAN CHAND,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 523-D of 1959

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 30 and 31—Construction, scope and object of—Agreement amongst the different occupants—Whether of any effect.

1960

March 23rd