

(11) As a result, the appeal is accepted, the conviction and sentence of the appellant are set aside and he is acquitted. Fine, if paid, will be refunded to him. The appellant is on bail and he is discharged of his bail bonds.

K.T.S.

APPELLATE CIVIL

Before R. N. Mittal, J.

JOG RAJ AND ANOTHER,—Appellants

versus

BANARSI DASS ALIAS BANA GOPAL (DECEASED),—Respondent.

Execution First Appeal No. 64 of 1975

January 13, 1978.

Land Acquisition Act (I of 1894)—Section 31(1) and (2)—Compensation paid to landlord by the Collector ignoring lawful claim of the tenant to apportionment of his share—Such tenant—Whether entitled to recover his share in proceedings under the Act—Remedy of a civil suit—Whether also available.

Held that from a reading of sub-section (2) of Section 31 of the Land Acquisition Act 1894 it is evident that if there is any dispute as to the title to receive payment of the compensation or its apportionment, it is the duty of the Collector to deposit the amount of compensation in the Court to which reference has to be made under Section 18. If in spite of such dispute between the landlord and tenant, the Collector pays the amount to the landlord, then proviso (3) to sub-section (2) says that the person who receives compensation is liable to pay the same to the person lawfully entitled thereto. No machinery has been provided in the Act to enable the person who is lawfully entitled to compensation to recover the same from the person who has received it from the Collector. However, it is an established principle of law that an act of a Tribunal which causes injury to a party should not be allowed to stand and the Tribunal has an inherent right to remedy the same. The tenant can, therefore, recover his share in proceedings under the Act. A civil suit is also maintainable for recovery under the proviso to section 31(2). Thus both the remedies for recovery of such amounts are open and it is for the party concerned to choose either of them.

(Para 6)

Jog Raj and another *v.* Banarsi Dass alias Bana Gopal (deceased)
(R. N. Mittal, J.)

Execution First Appeal from the order of the Court of Shri B. S. Yadev, District Judge, Gurgaon, dated 18th December, 1974, holding that out of the compensation amount deposited by the Collector under the Award of this Court, the land owner is only entitled to that amount of compensation which remains due to him after deducting the amount of compensation received by him from the Collector and his execution to come up on 4th January, 1975 for filing fresh calculations.

Claim : Execution Application.

Claim in Appeal, for reversal of the order of the lower court.

G. C. Mittal, Advocate, for the appellant.

M. S. Jain, Advocate, for the Respondents.

JUDGMENT

R. N. Mittal, J.—(1) This judgment will dispose of E.F.A. Nos 64, 86 to 92 and 101 of 1975, and 145 of 1976. The facts in the judgment are being given from E.F.A. No. 64 of 1975.

(2) Briefly the facts of the case are that Ram Chander, since deceased (now represented by Jog Raj and Prithvi Raj, his sons) was the owner of the land in dispute which was on perpetual lease with Banarsi Dass, respondent No. 1. The land was acquired under the Land Acquisition Act (hereinafter referred to as the 'Act'). Banarsi Dass, tenant, claimed apportionment of the amount of compensation. The Collector, in spite of the claim of the tenant, paid the amount of compensation assessed by him to the landlord. The landlord, dissatisfied with the amount of compensation, filed an application under section 18 of the Act, for referring the matter to the Court. The tenant also filed a similar application for enhancement of the compensation and apportionment of the amount.

(3) The Collector referred both the applications to the District Judge, Gurgaon, for deciding the matter. The District Judge *vide* order dated January 21, 1974, enhanced the amount of compensation and simultaneously held that the landlord was entitled to capitalised value at 20 times of the rental value and the tenant was entitled to the remaining compensation. The Collector, in accordance with the

order of the District Judge, deposited the enhanced amount of compensation in his Court. The landlord filed an application for payment of the amount of compensation to him. The tenant also filed an application to the effect that out of the amount deposited, the total amount payable to him be deducted and paid to him.

(4) The question that arises for determination is as to how the amount deposited with the Collector under the award of the Court is to be distributed. The counsel for the appellants has vehemently urged that 20 times of the lease money is to be paid to the appellants out of the amount deposited and the balance to the tenant. He further submits that the amount already paid to the landlord by the Collector should not be adjusted while paying his share out of the enhanced amount. On the other hand, Mr. Jain, learned counsel for the tenant, has submitted that the landlord was not entitled to the whole amount paid by the Collector to him. According to him, the payment out of the enhanced amount should be made to the landlord in accordance with the award of the Court by making adjustment of the payment made to him by the Collector.

(5) I have given a deep thought to the arguments of the learned counsel. There is no specific provision in the Act in order to decide this matter. The counsel have placed reliance on section 31 of the Act which reads as follows—

“31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection.

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

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Jog Raj and another v. Banarsi Dass alias Bana Gopal (deceased)
(R. N. Mittal, J.)

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) * * * * *

(4) * * * * *

(6) From a reading of sub-section (2) it is evident that if there is any dispute as to the title to receive payment of the compensation or its apportionment, it is the duty of the Collector to deposit the amount of compensation in the Court to which reference has to be made under section 18. In the present case, in spite of the dispute regarding apportionment of the amount of compensation between the landlord and the tenant, the Collector paid the amount to the landlord. Proviso (3) to sub-section (2) says that the person who receives the compensation, is liable to pay the same to the person lawfully entitled thereto. The question arises as to how the person who is lawfully entitled to the compensation, has to recover it from that person who has received the same from the Collector. It is not given in the Act as to how such a person has to recover the amount from the person who unlawfully received it. No machinery has been provided therein to make such recoveries. It is an established principle of law that an act of a Tribunal which causes injury to a party, should not be allowed to stand. If any injury is done by its act, the Tribunal has an inherent right to remedy the same. In this view I am fortified by the observations of the Privy Council in *Rodger v. Comptoir D. Escompte De Paris*, (1) wherein Lord Cairns observed thus:—

“Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression ‘the act of the Court’ is used, it does not mean merely the act of the Primary Court, or of any intermediate

(1) (1871) 3 P. C. 465 p. 475.

Court of Appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court."

Section 31(2) came up for interpretation before a Division Bench of the Madhya Pradesh High Court, in *Hitkarini Sabha v. Jabalpur Corporation* (2), presided over by Mr. Hidayatullah, C.J. (as my Lord then was). The facts of that case were that land was acquired by the Collector and two claimants for the compensation money appeared before him. The Collector, assessed the compensation and apportioned between them. On the date the award was announced, both the parties, namely, the Corporation of the City of Jabalpur and Hitkarini Sabha, were present through their representatives and vouchers for payment to the Sabha and Corporation were drawn up to be handed over to them. The representatives of the Corporation did not accept the payment, but that of the Sabha accepted it and withdrew the money. Later, the Corporation accepted its share under protest. The matter was referred under section 18 to the Court. When the reference reached the Judge, he felt that his jurisdiction was ousted by payment of the compensation money to the Sabha. He accordingly directed the Sabha to deposit the amount in his Court before a particular date. The Sabha went up in revision before the High Court. The Bench after taking into consideration the provisions of section 31(2), observed as follows:—

"A Collector acts against the express provisions of section 31(2) in making the payment of compensation money when there is a dispute as to who should receive the same. Such payment, however, does not oust the jurisdiction of the Court to hear the reference. The Collector being in error in making the payment, the Courts must rectify the matter to bring the action of the Collector in line with the statutory requirements by ordering that the money be forthwith brought into court as an interim measure."

I am respectfully in agreement with the above observations.

(2) A.I.R. 1958 M.P. 339.

Jog Raj and another v. Banarsi Dass alias Bana Gopal (deceased)
(R. N. Mittal, J.)

(7) Mr G. C. Mittal, in support of his contention, referred to *Homanta Kumar Banerjee and others v. Satish Chandra Banerjee and others* (3), wherein it was observed that last proviso to Section 31(2) contemplates civil suit. It does not create right to get refund but merely recognises right existing independently of the section. He also referred to *Shri Deo Sansthan Chinchwad and others v. Chintaman Dharnidhar Deo and another* (4), wherein similar observations were made. There cannot be any dispute that a suit is maintainable for recovery under proviso to section 31(2), but it is not the only remedy. I am of the view that both the remedies for recovery of such amounts are open and it is for the party concerned to choose either of them.

(8) In the present case, it is not disputed that out of the compensation money deposited in the Court, the total share of the tenant can be paid to him. No useful purpose will be served directing him to institute a suit for recovery of the part of his share money which was paid to the landlord by the Collector. After taking into consideration all the facts and circumstances of the case, I am of the opinion that the view expressed by the learned District Judge is correct and does not require any interference. I consequently affirm the same. The facts of all the appeals, except those of E.F.A. No. 145 of 1976, are similar. Consequently E.F.A. Nos. 64, 86 to 92 and 101 of 1975, are liable to be dismissed.

(9) Onkar Dutt was the owner of the land and Tulsi, Bishan Dutt and Sat Parkash were his perpetual lessees. The land was acquired under the Land Acquisition Act. The Land Acquisition Collector gave his award on January 20, 1968, and paid the amount of compensation to the landlord. On a petition under section 18 of the Act, a reference was made to the Court of the Additional District Judge who modified the award by his judgment dated January 21, 1974. According to the judgment, the landlord was entitled to receive 20 times of the rental value of the land and the remaining compensation was to be paid to the tenants.

(3) A.I.R. 1941 Calcutta 635:

(4) A.I.R. 1962 Bombay 214.

(10) The tenants filed an application before the Additional District Judge praying that the total amount to which they had become entitled by the judgment of the Additional District Judge dated January 21, 1974, be paid to them by adjustment against the compensation payable to the landlord by the said judgment. The application was contested by the landlord but it was allowed by the District Judge,—*vide* order dated December 18, 1974. Subsequently, the landlord filed an application for review of the above said order, which was dismissed by him on March 17, 1975.

(11) The tenants filed an application for execution of the award of the Additional District Judge dated January 21, 1974. The landlord filed an objection petition *inter alia* stating that the executing Court cannot go behind the judgment dated January 21, 1974, and the tenants may file a separate suit for the recovery of excess amount alleged to have been illegally paid to them. In view of the aforesaid objections, it was prayed by him that the execution application be dismissed. The objection petition was contested by the tenants who stated that the objections had already been decided by the Additional District Judge and these cannot be reopened. They further stated that the Additional District Judge had the right to take into consideration the payments made by the Collector to the landlord while making the payment to him out of the enhanced amount. The learned Additional District Judge dismissed the objections. The landlord has come up in appeal against that order.

(12) It is evident from the narration of the facts above that the Additional District Judge had decided the same matter,—*vide* his order dated January 21, 1974. When the tenants filed an application for execution, the landlord again raised the same objections. It is established principle of law that principle of *res judicata* is applicable to the execution proceedings. In the present case, it cannot be disputed that the objections filed by the landlord were the same as had been adjudicated earlier. In the circumstances, the earlier judgment of the Additional District Judge operates as *res judicata* and he cannot be allowed to raise the same objections again. The appeal is liable to be dismissed on this account alone.

(13) On the merits, I have also examined the matter. I have already held above that two courses were open to the tenants—firstly they could file an application before the Additional District Judge

Bhagwan Singh v. Kalu (J. M. Tandon, J.)

for making payment to the landlord out of the enhanced amount, after taking into consideration the amount already paid by the Collector and to pay the balance to them and secondly to file a suit for recovery of their share out of the amount paid by the Collector to the landlord. They adopted the first course to which they were entitled to. For the aforesaid reasons, I do not find any fault with the judgment of the Additional District Judge and confirm the same.

(14) For the reasons recorded above, the appeals fail and the same are dismissed with costs. Counsel fee Rs 75 in each case.

N.K.S.

APPELLATE CIVIL.

Before J. M. Tandon, J.

BHAGWAN SINGH,—Plaintiff-Appellant.

versus

KALU,—Defendant-Respondent.

Regular Second Appeal No. 176 of 1968

January 18, 1978.

Code of Civil Procedure (V of 1908) as amended by Act (104 of 1976) and Punjab and Haryana High Court—Sections 122, 128(1) and 157, Order 22 rules 2-B and 4(3)—Death of a defendant-respondent—Legal representatives of the deceased not brought on record within limitation—Suit—Whether abates—Amendments made by the High Court—Whether inconsistent with the provisions of the amended Code.

Held, that the amendment made by the High Court of Punjab and Haryana substituting sub-rule (3) to rule 4 of Order 22 of the Code of Civil Procedure, 1908 is not inconsistent with the provisions contained in the body of the Code and under section 157, the rules made under the old Code continue to remain in force provided they are consistent with the present Code. There is no manner of doubt that the amendment made by the High Court can be given effect to even under the present Code. It means that the amendment made is not inconsistent with the provisions contained in the body of the Code. It is, therefore, clear that the enforcement of the present Code with effect from February 1, 1977, would not adversely affect