

Vinod Kumar vs District Magistrate Mau on 7 July, 2023

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Bench: B.R. Gavai

2023INSC606

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5107 OF 2022

VINOD KUMAR & ORS. ...Appellant(s)
Versus
DISTRICT MAGISTRATE MAU & ORS. ...Respondent(s)

JUDGMENT

J.B. PARDIWALA, J. :

This appeal is at the instance of unsuccessful original writ petitioners and is directed against the order passed by a Division Bench of the High Court of Judicature at Allahabad dated 28th February, 2020 in Writ \square No. 7310 of 2020 by which the High Court rejected the writ application filed by the appellants taking the view that the District Magistrate is competent to look into the legality and validity of the order passed by the Special Land Acquisition Officer (for short, 'SLAO') under Section 3G(5) of the National Highways Authority Act, 1956 (for short 'the Act 1956').

FACTUAL MATRIX

2. The Central Government issued a notification dated 23.01.2015 in exercise of power under Section 3A(1) of the Act 1956 proposing to acquire few parcels of land situated in the District Mau for the purpose of four lane widening of the National Highway No. 29. The said notification included the land bearing Gat Nos. 158, 160 and 161 resp'y of the village Ahirani Bujurg, District Mau (UP).
3. In the aforesaid context, a further notification dated 21.01.2016 was issued under Section 3D of the Act 1956 declaring that the land as aforesaid would be acquired for the public purpose. Upon issuance of such notification, the land vested in the Central Government.
4. The competent authority i.e. the Special Land Acquisition Officer vide award dated 28.11.2016 passed under Section 3G of the Act 1956 determined the compensation to be paid to the landowners

(parties before us) for the acquired land. The relevant portion of the award passed by the competent authority reads thus: "By assuming the rate of Rs.4,50,00,000.00 as the stamp rate determined for the transferable land as basis, compensation of the land measuring 3.269 hec. situated in village Ahirani Buzurg which is being acquired comes out to Rs.14,71,05,000.00, double amount of which happens to be Rs.29,42,10,000.00 and compensation of the structure and tree comes at Rs.8,01,582.00, total double amount of which comes out at Rs.15,29,06,582.00. Amount of 100% Solatium amount on this amount comes out to Rs.30,00,11,582.00. Additional Compensation of Rs.3,16,66,953.00 is payable at the rate of 12% from the last publication of Section 3A dated 6th March, 2015. Thus, total compensation amount comes out to Rs.63,16,90,117.00 (Rupees sixty three crores sixteen lakhs ninety thousand one hundred and seventeen only), I regard to which I declare the Award. By recovering land acquisition expenses of Rs.6,31,69,012.00 at the rate of 10% of the total amount of compensation and 100 times of registered value of less land revenue which comes out at Rs.7476.00 from the Acquiring Authority, same be got deposited in the prescribed Account Head. Accordingly, Notice be sent to the concerned Tehsil for proceedings of making entry. While making one copy of the Award Order to Indian National Highway Authority, Gorakhpur, letter be sent for making available the entire amount covered by the Award in question."

5. On 11.12.2019, the respondents herein raised a dispute regarding apportionment of the compensation between themselves and the appellants herein. With respect to the three parcels of land, the respondents claimed half share of compensation in Gat No. 158 and 1/3rd share of compensation in Gat Nos. 160 and 161 respectively, while the appellants herein claimed 5/8 th share in the compensation in Gat No. 158 and 13/16 th share in Gat Nos. 160 and 161 respectively.

6. In accordance with the legislative scheme i.e. Section 3H(3) of the Act 1956, the competent authority is required to determine the shares of the landowners in the compensation. In such circumstances, the competent authority called for a report from the revenue authorities.

The revenue authorities vide its report dated 11.04.2019 reported the share of the appellants and respondents herein. This report was in favour of the appellants. The relevant portion of the report reads thus: "4. That on the basis of copy of Khasra No. 1353, Gata No. 213 is mentioned which is having present No. 232/ 51 min. and present No. of Gata No. 213 B min./ 519. Similarly present No. of Gata No. 233 is 214/ 644 acres and type of land is mentioned as "Bagh Digar". Apart from it, present No. of Gata No. 208 is 227 / 1.440 acres in which "Bagh Digar" is mentioned, which is correct.

5. That names of Mahadav Shahi, son of Sitaram Shahi and Bholanath, son of Ganga and Saryu, son of Brijmohan, Caste Kandu are recorded in Khata No. 46 of Copy of Khatauni for the crop year 1348, Ahirani Buzurg, in which Gata No. 232 acres is recorded and name of Mahadev, son of Sitaram Shahi and Bholanath, son of Ganga and Saryu, son of Brijmohan, Caste Kanu is recorded in respect of Gata No. 128 for the crop year 1348. Gata No. 232/ 0.284 acres is mentioned in it and names of Mahadev, son of Sitaram Shahi and Bholanath, son of Brij Mohan, Caste Kandu are recorded in Khata No. 92. Gata No. 232/0.539 and Gata No. 233/0.644 two Gatas admeasuring 1.163 acres are mentioned in it, which is correct. On the basis of the crop year 1348, which has been mentioned as Jamman 12. On its basis, 1/2 equal share in Gata No. 227 / 1.440, equal share of Salum in Gata No.

232 min./ 0.551, 232/ 0.183, 232/ 0.539 and 233/ 1.624 have been determined, which road is situated on both sides of Hashiya Doharighat to Gazipur, in which Applicant has got 1/3rd share in Gata Nos.

232 and 233 and Applicants have got 1/2 share in Gata No. 227 / 1.440 acres and present Gata No. 158, in regard to which according to the order passed by the Additional Civil Judge, Azamgarh on 31.05.1976, Applicants Suresh and others have got 1/8th share in Gatas No. 232, 233 i.e. in present Gata No. 158 measuring 0.583 and 1/16 th share in Gatas No. 160 and 161."

7. The respondents herein objected to the aforesaid report.

Both the parties were given opportunity to file their documents.

An opportunity of hearing was also given to the parties and thereafter the competent authority i.e. SLAO, Mau proceeded to determine the shares of the various parties in the land in question vide order dated 11.12.2019. This order was passed under Section 3H(3) of the Act 1956. The SLAO relied upon the earlier judgment of the Civil Court dated 31.05.1976. It is the case of the appellants that the SLAO has correctly determined the shares between the parties. The relevant portion of the order passed by the competent authority/SLAO reads thus: "Above parties have been heard and evidences available in the file have been duly perused. Khatauni for the crop year 1348 produced by the Objector in his support as evidence have been examined. Present Khatauni for the crop year 1423-1428, C. H. Form-41 and 45 and Form-1, previous Khatauni and order dated 31.05.1976 passed by the Hon'ble Court of Additional Civil Judge, Azamgarh have been perused. Hon'ble Court of Additional Civil Judge in its very passed order has mentioned the pedigree of the family, which has been mentioned by Tehsildar, Ghosi while perusing all the documents. This pedigree and share mentioned in it confirms the submission of the report. The Hon'ble Civil Court has categorically spoken on the issue of share in the suit while framing issue No.1 "Whether the Plaintiff is co-owner and in the possession over the trees of list Ka to the extent of the 1/4th and list Kha 1/8th and 1/12th of the list Ga as alleged in the plaint?" While deciding the above mentioned issue as well as others, Hon'ble Court of Additional Civil Judge, Azamgarh has clearly mentioned in its order "In view of the above pedigree and the documents, the share of Ganga, father of Bhola and Sukdeo was 1/4th in the grove of plot No. 208 (new number 158).

"Further, "In view of what has been discussed above, I arrived at the irresistible conclusion that Bhola had 1/8th share in Plot No. 208 (Old 227), 1/32nd share into trees of plot No. 213 and 214 (232 and 233 old) and 1/16 th share in tree of Doharighat - Ghazipur Road." In the above judicial order, partition of trees with land and shares finds mention, but balance of convenience is falling in favour of the Respondent Vinod. In my view, all the people who are present in the joint tenureship/co-tenureship their share is to be decided on the basis of pedigree. Therefore, when the pedigree has been decided by a competent Civil Court against which the Defendants have never appealed, hence judicial estoppel also in the same. Accordingly, the claim of Mr. suresh Gupta is not justified. Even earlier also, report was sought from Tehsil Ghosi in the present case in regard to objection on the

determination of the share, on which while granting sufficient opportunity of hearing to both the parties, same was furnished by Tehsildar Ghosi while determining the share. Even by appearing before the Court, both the parties have expressed the consent in regard to this fact that Suraj, Ganga, Baldev Salik and Radhakrishan were the children of Shri Brijmohan, in which Baldev died without children and thus, all of them shall have 1/4 th share in the property of Brijmohan. Ganga had two children namely Bholanath and Suktidev. Applicant Suresh is the heir of Shri Dwarika, son of Parag, who had bought the property from Bholanath in the auction. Accordingly, Bholanath can auction out that much only of which he is an owner lawfully. It shall also be pertinent to mention this fact also that consolidation proceedings have already been conducted in village Ahirani Buzurg, only after which, present records CH Form 11, 23, 41 and 45 have been prepared and Khatauni has been formed on their basis. Applicant Suresh Gupta or any member of his family has neither raised any objection in this regard before the Court nor has produced any evidence of initiating any proceedings in the Court, therefore, he is barred by Section 49 of the Consolidation of Holding Act.

ORDER Thus, in pursuance of the evidence available on the file, present Khatauni, report of the then Tehsildar, Ghosi and order of Hon'ble Court of Additional Civil Judge, share produced on the file are satisfactory and correct. Accordingly, by preparing file for payment of compensation, same be produced. After doing needful, file be consigned to Record Room.

Sd/□illegible (Atul Vats) Competent Authority/ SLAO Mau 11.12.2019”

8. The respondents, being dissatisfied with the order dated 11.12.2019 passed by the SLAO referred to above, challenged the same by filing a petition before the District Magistrate, Mau invoking Section 3G(5) of the Act 1956. It is the case of the appellants herein that the District Magistrate, Mau without any jurisdiction and further without giving any opportunity of hearing to the appellants proceeded to pass an order dated 16.01.2020 granting higher shares in favour of the respondents towards compensation. The operative portion of the order passed by the District Magistrate, Mau reads thus: □“ORDER On the basis of the above examination, order dated 11.12.2019 of the competent Officer/Special Land Acquisition Officer, Mau is set aside. File is remanded back to the competent Officer with this direction that while duly examining the records produced by the above parties, keeping in view the ownership of the land acquired by the ancestors of the objectors in the auction and according to the separate pedigrees of Khatedar, share of Khatedars be determined and also produce the proposal from Tehsil for taking action against the officials/employees who produced erroneous report.”

9. The appellants herein, being dissatisfied with the order passed by the District Magistrate, Mau referred to above, challenged the same before the High Court of Judicature at Allahabad by filing Writ □C No. 7310 of 2020. The said writ application came to be rejected by a Division Bench of the High Court vide its order dated 28.02.2020. The order passed by the High Court reads thus: □“1. Heard Sri Yadvendra Pratap Singh, learned counsel for petitioners and learned Standing Counsel for

respondents.

2. Writ petition is directed against order dated 16.01.2020 passed by District Magistrate, Mau in purported exercise of power under Section 3(G)(5) of National Highway Act, 1956 (hereinafter referred to as "Act, 1956") whereby he has set aside order passed by Special Land Acquisition Officer, Mau passed on 11.12.2019 and remanded the matter for redetermination.

3. Learned counsel for petitioners submitted that determination was already made but could not dispute that District Magistrate was competent to examine the order passed by Special Land Acquisition Officer and take appropriate decision in accordance with law and order impugned in present writ petition is not without jurisdiction. No otherwise error could be shown in the impugned order.

4. Writ petition lacks merit. Dismissed."

10. In such circumstances referred to above, the appellants came before this Court by filing the special leave petition. This Court vide order dated 31.08.2020 issued notice and stayed the operation of the order passed by the District Magistrate, Mau dated 16.01.2020. Later, leave was granted and the appeal came to be admitted.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

11. Mr. Gaurav Agrawal, the learned counsel appearing for the appellants, vehemently submitted that the High Court committed a serious error in passing the impugned order. He submitted that the order which came to be passed by the competent authority dated 11.12.2019 could be said to be under Section 3H(3) of the Act 1956. If the respondents had any grievance in regard to the order passed by the competent authority the remedy available in law to them was to approach the competent authority so that the competent authority could have referred the matter to the Civil Court. According to the learned counsel, such procedure is laid down under Section 3H(4) of the Act 1956.

12. The learned counsel further submitted that the District Magistrate, Mau who is an arbitrator appointed by the Central Government does not have any jurisdiction to decide the apportionment of the compensation. He is empowered only to decide the quantum of compensation under Section 3G(5) of the Act 1956 as an arbitrator.

13. The learned counsel submitted that challenge before the District Magistrate, Mau was to the order dated 11.12.2019 passed by the competent authority which he could not have entertained. The order passed by the District Magistrate dated 16.01.2020 could be said to be without jurisdiction.

14. In the last, the learned counsel submitted that even otherwise the impugned order passed by the District Magistrate, Mau, could be said to be without jurisdiction as no notice or any opportunity of hearing was given to the appellants.

15. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the order passed by the District Magistrate, Mau dated 16.01.2020 be quashed and set aside and the writ application filed by the appellants before the High Court be allowed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 – DISTRICT MAGISTRATE, MAU AND THE RESPONDENT NO. 2 □COMPETENT AUTHORITY/SPECIAL LAND ACQUISITION OFFICER, MAU

16. Shri V.K. Shukla, the learned senior counsel appearing for the District Magistrate, Mau (respondent No. 1) and Competent Authority/Special Land Acquisition Officer, Mau (respondent No. 2), very fairly submitted that the High Court committed an error in rejecting the writ application filed by the appellants herein. Shri Shukla submitted that the District Magistrate, Mau could not have entertained any petition filed at the instance of the respondents seeking to challenge the order passed by the competent authority dated 11.12.2019 under Section 3H(3) of the Act 1956. In such circumstances referred to above, Shri Shukla submitted that appropriate relief be granted in favour of the appellants.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 4, 6 AND

17. Shri Arvind Kumar Shukla, the learned counsel appearing for the respondent Nos. 4, 6 and 16, submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order. He submitted that the dispute, in substance, is not one of apportionment but is in respect of the share in the subject land. In such circumstances, the District Magistrate, Mau had the jurisdiction and competence to look into the order passed by the competent authority by relying upon the order dated 31.05.1976 passed by the Principal Civil Judge, Azamgarh in Civil Suit No. 63 of 1970. In such circumstances referred to above, the learned counsel prayed that there being no merit in the present appeal, the same may be dismissed.

ANALYSIS

18. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

19. Before advertng to the rival submissions canvassed on either side, we must look into few relevant provisions of the Act 1956.

20. Section 3A reads thus: □“3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub□section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.”

21. Section 3C provides for hearing of objections. Section 3D provides for declaration of acquisition. Section 3E provides for power to take possession. Section 3G is with respect to determination of amount payable as compensation. Section 3G reads thus:—“3G. Determination of amount payable as compensation.—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

(Emphasis supplied)

22. Section 3H is with respect to deposit and payment of amount. What is relevant for our purpose is sub-clause (4) of Section 3H. Sub-clause (4) reads thus: “3H. Deposit and payment of amount.— (4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

23. The scheme of the Act 1956 and the statutory provisions referred to above makes it very clear that once any land is acquired under the Act 1956, the competent authority is obliged to pay an amount by way of compensation. There is a procedure which has been prescribed under Section 3G of the Act 1956. Sub-clause (5) of Section 3G makes it abundantly clear that if the amount determined by the competent authority under sub-section (1) or sub-section (2) of Section 3G is not acceptable to either of the parties, the amount will have to be determined by the arbitrator who may be appointed by the Central Government on the strength of an application by either of the parties. Section 3H provides that the amount determined towards compensation under Section 3G will have to be deposited by the Central Government in accordance with the rules. It is only after such amount is deposited by the competent authority that the possession of the land can be taken. Sub-clause (4) of Section 3H talks about apportionment of the amount. The language of sub-clause (4) of Section 3H is plain and simple. It provides that if any disputes arises as to the apportionment of the amount or any part thereof, the competent authority is obliged to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

24. In the case on hand, the High Court seems to have completely misread the provisions of the Act 1956. It fell into error as it failed to apply the well settled principle of law that for construing a legal provision, the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision state. If the provision is unambiguous and from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statute. The other rules of construction are called into aid only when the legislative intent is not clear.

25. It may be mentioned in the aforesaid context that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation, for example, the mischief rule/ purposive construction, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. The language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistakes. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency.

26. There is a fine distinction between determining the amount to be paid towards compensation and the apportionment of the amount. The legislature has thought fit to confer powers upon the Principal Civil Court of original jurisdiction to determine the dispute arising as to the apportionment of the amount. There is a reason, why the legislature has thought fit to confer such power to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction is land is situated. We shall try to explain hereinafter.

27. The question of apportionment of compensation is not free from difficulties. In apportioning the compensation, the Court has to give to each claimant the value of the interest which he has lost by compulsory acquisition. So stated, the proposition may appear simple, but in its practical application numerous complicated problems arise in apportioning the compensation awarded. The difficulty experienced is due to the nature of a variety of interests, rights and claims to land which have to be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the interests which are extinguished and that compensation has to be distributed equitably amongst persons having interest therein and the Court must proceed to apportion the compensation so that the aggregate value of all interests is equal to the amount of compensation awarded. But in the valuation of competing interests, which from its very nature is dependent upon indefinite factors and uncertain data, considerable difficulty is encountered. Indisputably, in apportioning compensation the Court cannot proceed upon hypothetical considerations but must proceed as far as possible to make an accurate determination of the value of the respective interests which are lost. The Court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto. [See : Dossibai Nanabhoy Jeejeebhoy v. P.M. Bharucha, (1956) 60 Bom LR 1208]

28. Thus, the only general principle one could state is that apportionment under sub-clause (4) of Section 3H of the Act 1956 is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interests. In ascertainment of those interests, the determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.

29. In the circumstances referred to above, the legislature thought fit to assign such function to none other than the Principal Civil Court of original jurisdiction.

30. We are not impressed by the submission canvassed on behalf of the respondent Nos. 4, 6 and 16 that the dispute between the parties is not one of apportionment but the same is with regard to giving effect to the order passed by the Civil Court in Civil Suit No. 63 of 1970 decided on 31.05.1976. What is perhaps sought to be argued is that the shares in the land acquired should be determined on the basis of some order passed by the Civil Court referred to above. Thus, if the private respondents want to rely upon the order passed by the Civil Court, they can do so before the

Court of the Principal Judge of original jurisdiction. We hold that the District Magistrate, Mau has no power or jurisdiction in regard to the apportionment of the amount.

31. We fail to understand on what basis the High Court in its impugned order has observed that the District Magistrate is competent to examine the order passed by the Special Land Acquisition Officer and decide the dispute as to the apportionment of the amount.

32. In the decision in *Sharda Devi v. State of Bihar*, reported in 2003 MhLJ Online (S.C.) 23 = AIR 2003 SC 942, this Court had an occasion to consider the ambit and scope of Sections 30 and 31 resply of the Land Acquisition Act, 1894. In analyzing and interpreting these provisions, this Court held as under: “23. The two provisions contemplating power of the Collector to make reference as contained in Section 18 and Section 30 of the Act need a comparative study. Under Section 18 the subject-matter of reference can be a dispute as to any one or more of the following: (i) as to the measurement of the land, (ii) as to the amount or the quantum of the compensation,

(iii) as to the persons to whom the compensation is payable, (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the subject matter of dispute can be:

(i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable.

Though the expression employed in Section 18 is 'the amount of compensation' while the expression employed in Section 30 is 'the amount of compensation or any part thereof', this distinction in legislative drafting is immaterial and insignificant and a dispute as to entitlement or apportionment of part of the compensation would also be covered by Section 18 of the Act on the principle that the whole includes a part too. Thus, at the first blush, it seems that Section 30 overlaps Section 18 in part; but as will be seen shortly hereinafter, it is not so.

24. *Dr. G.H. Grant Vs. State of Bihar* (supra) is a three-Judge Bench decision of this Court wherein the scheme of the Act by reference to the power vesting in the Collector to make a reference came up for the consideration of the Court. The three-Judge Bench by a majority of 2:1 laid down the following principles :

(i) There are two provisions in the Act under which the Collector can make a reference to the Court, namely, Section 18 and Section 30. The powers under the two sections are distinct and may be invoked in contingencies which do not overlap. A person shown in that part of the award which relates to apportionment of compensation who is present either personally or through a representative or on whom notice is issued under Section 12(2), must, if he does not accept the award, apply to the Collector to refer the matter to the Court under Section 18 within the time prescribed thereunder. But a person who has not appeared in the acquisition proceedings before the Collector may, if he is not served with notice of filing, raise a dispute as to apportionment or as to the persons to whom it is payable and apply to the Court for a reference under Section 30, for determination of his right to

compensation which may have existed before the award, or which may have devolved upon him since the award. For a reference under Section 30, no period of limitation is prescribed.

(ii) It is not predicated of the exercise of the power to make a reference under Section 30 that the Collector has not apportioned the compensation money by his award.

(iii) The award made by the Collector under Section 11 is not the source of the right to compensation. An award is strictly speaking only an offer made by the Government to the person interested in the land notified for acquisition; the person interested is not bound to accept it and the Government can also withdraw the acquisition u/s 48. It is only when possession of the land has been taken by the Government u/s 16 that the right of the owner of the land is extinguished.

Therefore the appellant's contention that title to compensation is derived solely from and on the date of the award could not be accepted.

(iv) The liability of the Government u/s 31 to pay compensation to the person entitled thereto under the award does not imply that only the persons to whom compensation is directed to be paid under the award may raise a dispute u/s 30. The scheme of apportionment by the Collector under Section 11 is conclusive only between the Collector and the persons interested and not among the persons interested. Payment of compensation u/s 31 to the persons declared in the award to be entitled thereto discharges the State of its liability to pay compensation leaving it open to the claimant to compensation to agitate his right in a reference u/s 30 or by a separate suit.

(v) Under the Bihar Land Reforms Act the title of the appellant to the land noticed for acquisition became vested in the State and therefore the right to compensation for the land acquired devolved upon the State. A dispute then arose between the State Government and the appellant "as to the persons to whom" compensation was payable.

The State had no right to the compensation payable for the land under a title existing before the date of the award of the Collector and no application could be made by it as a person interested within the meaning of Section 18. But a dispute between the appellant and the State as to their conflicting claims to the compensation money was clearly a dispute which could be referred u/s 30 of the Act to the Court. There is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of the land has since the award, devolved.

30. The scheme of the Act reveals that the remedy of reference u/s 18 is intended to be available only to a 'person interested'. A person present either personally or through representative or on whom a notice is served u/s 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed u/s 18(2) to make a reference to the Court. The basis of title on which the reference would be sought for u/s 18 would obviously be a pre-existing title by reference to the date of the award. So is Section 29, which speaks of 'persons interested'. Finality to the award spoken of by Section 12(1) of the Act is between the Collector on one hand and the 'persons

interested' on the other hand and attaches to the issues relating to (i) the true area, i.e. measurement of the land, (ii) the value of the land, i.e. the quantum of compensation, and (iii) apportionment of the compensation among the 'persons interested'. The 'persons interested' would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the 'persons interested' inter se and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to 'persons interested'. It would, therefore, be available for being invoked by the 'persons interested' if they were neither present nor represented in proceedings before the Collector, nor were served with notice u/s 12(2) of the Act or when they claim on the basis of a title coming into existence post award. The definition of 'person interested' speaks of 'an interest in compensation to be made'. An interest coming into existence post award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. The State claiming on the basis of a pre-existing right would not be a 'person interested', as already pointed out hereinabove and on account of its right being pre-existing, the State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right. A right accrued or devolved post award may be determined in a reference u/s 30 depending on Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound and logical as a title post award could not have been canvassed upto the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Section 18 and 30 would not overlap and would have fields to operate independent of each other.

37. The Collector acts as a representative of the State whilst holding proceedings under the Land Acquisition Act. In fact, he conducts the proceedings on behalf of the State. The award of the Collector is not the source of the right to compensation; it is the pre-existing right which is recognized by the Collector and guided by the findings arrived at in determining the objections, if any, the Collector quantifies the amount of compensation to be placed as an offer of the appropriate Government to the owner recognized by the State. The offeree may accept or decline the offer. If he accepts the offer and the Government takes possession over the land, the title of the offeree is extinguished and vests absolutely in the Government free from all encumbrances. The power to make an award under Section 11 and to make a reference under Sections 18 or 30 of the Act is a statutory power. The sweep of jurisdiction of Court to determine the disputes is also statutory and is controlled by the bounds created by Section 17 or 30 whereunder the reference has been made to the Court. The power has to be exercised to the extent to which it has been conferred by the Statute and on availability of pre-existing conditions on the availability of which and which alone the power can be exercised.

38. Award made by the Collector is final and conclusive as between the Collector and the 'persons interested', whether they have appeared before the Collector or not, on two issues : (i) as to true area, i.e. measurement of land acquired, (ii) as to value of the land, i.e. the amount of compensation,

and (iii) as to the apportionment of the compensation among the 'persons interested' again, between the Collector and the 'persons interested' and not as amongst the 'persons interested' inter se. In the event of a reference having been sought for u/s 18, the Collector's award on these issues; if varied by Civil Court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum.”

33. We are of the view that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. Principal Civil Court means the Court of the District Judge.

34. Our final conclusion is as under:□If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub□section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.

35. In such circumstance referred to above, the order passed by the District Magistrate, Mau dated 16.01.2020 is hereby quashed and set aside. The writ application No. 7310 of 2020 stands allowed. In view of the dispute between the parties as regards apportionment of the amount of compensation, the Special Land Acquisition Officer shall now refer the dispute to the Principal Civil Court of original jurisdiction in accordance with sub□clause (4) of Section 3H of the Act 1956.

36. The appeal is allowed accordingly.

37. There shall be no order as to costs.

38. Pending application, if any, stands disposed of accordingly.

.....J. (B.R. GAVAI)J. (J.B. PARDIWALA) NEW
DELHI;

JULY 07, 2023