

## ORIGINAL CIVIL.

Before Mr. Justice Kajji.

1916.  
August 31.

GANGADAS MULJI (PLAINTIFF) v. HAJI ALI MAHOMED JALAL SAJI AND ANOTHER (DEFENDANTS).<sup>o</sup>

*The City of Bombay Improvement Trust Act (Bom. Act IV of 1898), section 48 (1)—The Land Acquisition Act (I of 1894), sections 11, 12, 18, 31—Award of the Special Collector—Notice of the award and of payment to be made thereunder—Apportionment disputed by a claimant not appearing before the Special Collector and after payment made to other claimants—Reference to the Tribunal of Appeal—Jurisdiction of the Tribunal of Appeal to hear the reference but not to order the refund of money—Remedy of the claimant to recover the refund by a suit—Inherent jurisdiction of the High Court—Estoppel.*

The plaintiff was the owner of a large piece of land situated within the island of Bombay and let out on a lease for a term of ninety-nine years to A. M. and M. I. In November 1914, the Trustees for the Improvement of the City of Bombay acquired a portion of the land under the City of Bombay Improvement Trust Act. At the time of the acquisition, the lessee's interest in the land had become vested in the first defendant who had mortgaged his interests to the second defendant company who in their turn created a sub-mortgage of their interests in favour of R. P. M. The plaintiff did not take any part in the enquiry before the Special Collector. The amount of compensation was amicably settled between the Improvement Trust and the first defendant for Rs. 85,000 which was apportioned as follows : Rs. 43,116 to the second defendant in part payment of their mortgage claim against the first defendant, Rs. 7,967 to R. P. M. in full satisfaction of his claim as equitable sub-mortgagee of second defendant, Rs. 2,804 to the plaintiff, Rs. 30,000 to the mortgagee of the plaintiff, and Rs. 1,113 to the Municipal Commissioner, Bombay. The Special Collector gave notice of his award on 7th November 1914 to the parties concerned intimating that compensation moneys would be paid on 11th November 1914. The plaintiff received this notice on 11th November 1914. The next day after payment was made to the second defendant and R. P. M. in pursuance of the notice, the Special Collector received a letter from the plaintiff who was dissatisfied with the award asking for a reference to the Tribunal of Appeal. The plaintiff did not dispute the total amount of compensation awarded, but disputed the apportionment made by the Special Collector as between himself and the first defendant. On a reference being made under section 18 of the Land Acquisition Act, the Tribunal of Appeal

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varied the award of the Special Collector with the result that the plaintiff was declared to be entitled to a sum of Rs. 2,960-10-0 out of the moneys received by the second defendant. The Tribunal of Appeal, however, held that it had no jurisdiction to make an order for the refund of the moneys paid to the second defendant whereupon the plaintiff brought the present suit against the defendants Nos. 1 and 2. The defendants contended (1) that the plaintiff was estopped by his conduct from questioning the payment of compensation moneys, (2) that the Special Collector had no jurisdiction to make the reference under section 18 of the Land Acquisition Act after payment was made in accordance with the award before the raising of any objection and when there were no moneys which could be deposited with the Tribunal of Appeal as required by section 31 (2) of the Land Acquisition Act, (3) that the Tribunal of Appeal had no jurisdiction to entertain the reference, and (4) the suit was not maintainable as the plaintiff had not appealed from the order of the Tribunal of Appeal as provided by section 48 (11) of Act IV of 1898.

*Held* (1) that the plaintiff by not adducing any evidence before the Collector and by his mortgagee accepting the sum of Rs. 30,000 had not expressly or by implication accepted the award, as after getting notice of the award he duly intimated to the Collector that he did not accept the same ;

(2) that deposit of the amount in Court was not a condition precedent to the making of the reference by the Collector and that the Tribunal of Appeal had jurisdiction to entertain the reference ;

(3) that the suit was not premature because the plaintiff did not avail himself of the right of appeal given to him by section 48 (11) of Act IV of 1898 ;

(4) that the question being as to how the plaintiff was to receive the amount which he was declared to be entitled to by the Tribunal of Appeal, his remedy was by a suit in the civil Court and the Court had inherent jurisdiction to entertain such suit.

*Gobindarane Dasee v. Brinda Rane Dasee*<sup>(1)</sup>, *In re Land Acquisition Act*<sup>(2)</sup> and *Nusserwanjee Pestonjee v. Meer Mynodeen Khan*<sup>(3)</sup>, referred to.

#### SUIT to recover money.

The plaintiff Gangadas Mulji was the owner of a large piece of land admeasuring about 8,295 square yards situate at De Lisle Road, in the City of Bombay. By an indenture of lease made on the 12th January 1903, he had leased the said land to Ahmed Moosa and

<sup>(1)</sup> (1908) 35 Cal. 1104.

<sup>(2)</sup> (1905) 30 Bom. 275.

<sup>(3)</sup> (1855) 6 Moo. I. A 134.

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Mahomed Ibrahim, their heirs, executors, administrators and assigns for a term of 99 years renewable upon certain conditions at a yearly rent of Rs. 2,073-12-0.

In the year 1914, the Trustees for the Improvement of the City of Bombay acquired 7,825 square yards of the said piece of land together with all structures erected thereon under the powers conferred on them by the City of Bombay Improvement Trust Act. At the time of the said acquisition, the lessee's interest in the said piece of land had become vested in Haji Ali Mahomed, the first defendant, who had mortgaged his interests to Kuppa, Dolla and Co., the second defendants, who were a partnership firm carrying on business as money-lenders in Bombay. The second defendants had in their turn created a sub-mortgage of their interest in favour of Rustomji P. Mehta.

The Special Collector made an award on the 7th November 1914 by which he awarded Rs. 85,000 as the compensation to be paid for the land so acquired and apportioned such compensation as under:—Rs. 43,116 to the second defendants in part payment of their mortgage claims against the first defendant, Rs. 7,967 to Rustomji P. Mehta in full satisfaction of his claim as sub-mortgagee of the second defendants, Rs. 2,804 to the plaintiff, Rs. 30,000 to Narottam Anandji, the mortgagee of the plaintiff's interest, in full satisfaction of his equitable mortgage claim and Rs. 1,113 to the Municipal Commissioner, Bombay. The Special Collector thus valued the lessor's interests in the land so acquired at Rs. 32,804. The plaintiff, however, took no part in the proceedings before the Special Collector, but received a copy of the award on the 9th November. The plaintiff being dissatisfied with the said award applied by his solicitors' letter of the 11th November 1914 to the Special Collector for a reference to the Tribunal of Appeal. A reference was accordingly made and the

same was treated as an apportionment reference, the parties thereto being the plaintiff and the first and second defendants. Before the Special Collector had received the plaintiff's application for a reference, he paid on the 11th November 1914 to all the parties interested (other than the plaintiff) the amount awarded to them under the said award.

The reference was heard by the Tribunal of Appeal who varied the award of the Special Collector on 28th April 1915, and awarded to the plaintiff the sum of Rs. 35,764-10-0 instead of the sum of Rs. 32,804 awarded by the Special Collector, upon the ground that he was entitled to a higher number of years' purchase of the ground rent than that allowed by the Special Collector, the net result being that the plaintiff became entitled to a sum of Rs. 2,960-10-0 out of the moneys received by the second defendants.

The Tribunal of Appeal, however, giving support to the contentions of the second defendants held that it had no jurisdiction to make any order for a refund of the compensation moneys paid to the second defendants. On the second defendants' failing to pay the said sum of Rs. 2,960-10-0, the plaintiff filed the present suit, praying that the second defendants may be ordered to pay to the plaintiff the sum of Rs. 2,960-10-0 together with interest thereon at the rate of 6 per cent. per annum from the 11th November 1914 until judgment; the costs of the suit and further interest on judgment at the rate of 6 per cent. per annum until payment.

The first defendant was joined as a party to the suit as being interested to deny the plaintiff's right to any refund from the 2nd defendants.

The defendants contended *inter alia* that the plaintiff was informed by the Special Collector by a letter dated 7th November 1914 that payment would be made to the

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interested parties on the date of the taking possession of the land under acquisition, namely, on the 11th November 1914. The plaintiff failed to object within the time to the payment to the second defendants of the amounts awarded to them. The defendants submitted that the plaintiff having permitted the said payment and so stood by as to induce the belief that he assented to such payment, he must be deemed to have accepted the award and was estopped from questioning the payment of the sums awarded; and further that the reference was *ultra vires* of the Special Collector as the Special Collector had no power in law either under section 18 or section 30 of the City of Bombay Improvement Trust Act to make the said reference, as instead of a dispute having arisen the plaintiff had by his acquiescence and laches accepted the award in its entirety. In any event the defendants submitted that the present suit was not maintainable as the plaintiff had not appealed from the order of the Tribunal of Appeal, dated 28th April 1915, as provided in section 48 (11) of Act IV of 1898.

The following issues were raised on behalf of the defendants :—

- (1) Whether this suit is maintainable ?
- (2) Whether the plaintiff is now estopped from questioning the payment of the compensation moneys by the Special Collector to the parties interested ?
- (3) Whether the Special Collector had any power to make the reference, and whether the Tribunal of Appeal had any jurisdiction to entertain the same ?
- (4) Whether the plaintiff is at law entitled to Rs. 2,960-10-0 ?
- (5) Whether the plaintiff is entitled to the interest claimed on the said sum ?
- (6) The general issue.

The following issue was raised on behalf of the plaintiff:—

(7) Whether this Court has any jurisdiction *to entertain* issue no. 3?

*Weldon* (with *Strangman*), for the plaintiff:—The Tribunal of Appeal has exclusive jurisdiction in the matter. This Court is not competent to try the same questions under section 11 of the Code of Civil Procedure: see *Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai*<sup>(1)</sup>. In the events that had happened the plaintiff's only remedy was to sue for the refund of money: see section 72 of the Indian Contract Act.

The Collector's award is only an offer. The plaintiff was not bound to accept it; nor did he accept it: see *Ezra v. Secretary of State for India*<sup>(2)</sup>. The plaintiff cannot be estopped by the action of the Collector in paying money. The Collector should give reasonable notice of payment to parties—two days' notice in the present case was not reasonable. There was no laches or acquiescence on the part of the plaintiff.

It was not necessary for the plaintiff to appeal from the decision of the Tribunal of Appeal having regard to the decision of the Calcutta High Court in *Gobindarane Dasee v. Brinda Rane Dasee*<sup>(3)</sup>. A civil suit may be brought: see *Nilkanth v. Collector of Thana*<sup>(4)</sup>.

*Campbell* with *B. J. Wadia*, for defendant:—The Collector had no jurisdiction to refer the matter to the Tribunal of Appeal. The Collector had made payments to parties interested after due notice being served on them. Section 18 of the Land Acquisition Act cannot be invoked by the plaintiff. Section 12, cl. (2) makes it obligatory upon the Collector to give 'immediate notice'. The plaintiff was informed that moneys would be paid

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(1) (1881) 7 Cal. 388.

(3) (1908) 35 Cal. 1104.

(2) (1905) 32 Cal. 605.

(4) (1897) 22 Bom. 802.

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on 11th November 1914. Prompt action was necessary on the part of the plaintiff: see *In re Land Acquisition Act*<sup>(1)</sup>. The plaintiff had virtually accepted the award of the apportionment. He was estopped by his acquiescence and laches: see *Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai*<sup>(2)</sup>. The terms 'paid' or 'tendered' in section 19 of the Land Acquisition Act imply that the section cannot apply when the moneys apportioned have been paid away. Moreover, there was never a distinct requisition for reference by the plaintiff. The plaintiff's attorneys' letters were vague. The Collector having no jurisdiction, the Tribunal of Appeal had no jurisdiction. Section 32 contemplates a deposit which is a condition precedent for the jurisdiction of the Tribunal of Appeal. *Gobindarane Dasee v. Brinda Rane Dasee*<sup>(3)</sup> not followed by the Bombay High Court in an unreported case, *Anandrao Bhau Jare v. Ganpati Bhau Jare*<sup>(4)</sup>.

Under section 48 cl. (11) of the Bombay Improvement Trust Act an appeal ought to have been filed. The plaintiff ought to exhaust all remedies: see *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan*<sup>(5)</sup>.  
Weldon in reply.

C. A. V.

KAJJI, J.:—In this case there is no dispute as to facts as they are all practically admitted. The plaintiff was the owner of a large piece of land situate at De Lisle Road. By an indenture of lease, dated 12th January 1903, the plaintiff had leased the said piece of land to one Ahmed Moosa and Mahomed Ibrahim, their heirs, executors, administrators and assigns for ninety-nine years upon certain terms and conditions. In the year

<sup>(1)</sup> (1905) 30 Bom. 275.<sup>(2)</sup> (1908) 35 Cal. 1104.<sup>(3)</sup> (1881) 7 Cal. 388.<sup>(4)</sup> (1913) Unreported F. A. No 16 of 1913.<sup>(5)</sup> (1855) 6 Moo. I. A. 134.

1914, the Trustees for Improvement of the City of Bombay acquired a portion of the said piece of land under the powers conferred on them by the City of Bombay Improvement Trust Act (IV of 1898). At the time of the acquisition the lessee's interest in the land had become vested in the first defendant, Haji Ali Mahomed Jalal Saji, who had mortgaged his interests to the second defendant, Kuppa, Dolla & Co., who in turn had created a sub-mortgage of their interests in favour of one Rustomji P. Mehta. The question of compensation was amicably settled between the Improvement Trust and the first defendant, Haji Ali Mahomed Jalal Saji, for Rs. 85,000. The plaintiff, it appears, took no part in the enquiry before the Special Collector. The Special Collector made an award under section 11 of the Land Acquisition Act on the 7th November 1914, by which he awarded Rs. 85,000 as compensation to be paid for the land acquired and apportioned such compensation as under:—

To

1. Kuppa, Dolla & Co., the second defendants, in part payment of their mortgage claim against the first defendant, Haji Ali Mahomed Jalal Saji .....Rs. 43,116-0-0.
2. Rustomji P. Mehta in full satisfaction of his claim as equitable sub-mortgagee of Kuppa, Dolla & Co.....Rs. 7,967-0-0.
3. Gangadas Mulji, the plaintiff.....Rs. 2,804-0-0.
4. Narottam Anandji, the mortgagee of the plaintiff's interest, in full satisfaction of his equitable claim.....Rs. 30,000-0-0.
5. The Municipal Commissioner, Bombay.....Rs. 1,113-0-0.

The Special Collector, under section 12 (2) of the Land Acquisition Act, gave notice of his award on 7th November 1914 to the parties concerned, but this notice was received by the plaintiff on 9th November 1914. The Special Collector, by his notice above referred to, had also intimated to the parties in these terms that:

"Possession of the land in question will be taken by the office Surveyor on 11th instant at 8 a.m. On the same day at 1 p.m. you should call at the

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Office to receive payment of the compensation payable to you as above. If you do not attend to receive payment on the day fixed, the amount will carry no interest with it."

It must be remembered that the Collector is entitled, under section 18 of the Land Acquisition Act, to take possession of the land after he has made an award under section 11 of the Act. Subsequent to the date fixed for payment of the compensation and after payment was made to Kuppa, Dolla & Co. and R. P. Mehta, on 11th November 1914, the plaintiff being dissatisfied with the award applied by his solicitors' letter, dated 11th November 1914, to the Special Collector for a reference to the Tribunal of Appeal. This letter was received by the Special Collector on 12th November 1914. This letter as well as another, dated 21st November 1914, set forth the grounds of objections to the award. From this and subsequent correspondence it appears that the plaintiff did not dispute the total amount of compensation awarded but the apportionment as made by the Special Collector as between plaintiff, whose ground rent has been capitalized at 16½ years' purchase, and the lessee. A reference was accordingly made by the Special Collector under section 18 of the Land Acquisition Act and the same was treated as an apportionment reference. The reference was heard thereafter by the Tribunal of Appeal who varied the award of the Special Collector, the net result of such variation being that the plaintiff was declared to be entitled to a sum of Rs. 2,960-10-0 out of the moneys received by the second defendant, Kuppa, Dolla & Co. The Tribunal of Appeal, however, held, on 28th April 1915, relying on the authority of *Gobindaranee Dasee v. Brinda Ranee Dasee*<sup>(1)</sup>, that it had no jurisdiction to make an order for refund of the compensation moneys paid to the second defendant,

(1) (1908) 35 Cal. 1104.

Kuppa, Dolla & Co. Hence the present suit. The defendant contests the plaintiff's claim on the following grounds: First, that the plaintiff is estopped from questioning the payments of compensation moneys by the Special Collector to the parties interested by his conduct. Second, that the Special Collector had no jurisdiction to make the reference under section 18 of the Land Acquisition Act, (a) after payment had been made of all the compensation moneys in accordance with his award before any objection had been raised to the award, and (b) when there were no moneys which could be deposited with the Tribunal of Appeal as required by section 31 (2) of the Land Acquisition Act. Third, that the Tribunal of Appeal had no jurisdiction to entertain the reference, and lastly, that the present suit is not maintainable as the plaintiff has not appealed from the order of the Tribunal of Appeal, dated 28th April 1915, as provided in section 48 (11) of Act IV of 1898. Counsel for the plaintiff contends that as all these questions were raised before, heard and finally decided by the Tribunal of Appeal, a Court of exclusive jurisdiction, this Court is not competent to try the same questions under section 11 of the Code of Civil Procedure. I do not consider this course a satisfactory way of dealing with the questions raised in this suit by disposing of them in such a summary way. I, therefore, propose to deal with the points raised by the defendant's counsel. The first point to consider is, is the plaintiff estopped from questioning the payment out of the sums awarded by his omission to take objection to the award and the sums thereby apportioned and the payment thereof within time permitted and further has the plaintiff by his conduct induced the belief that he assented to such payment and had accepted the award? It is true that the plaintiff is a person interested in the award and that the Collector,

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in his letter, dated 25th January 1915, states that long before he made his award he had informed the plaintiff that he was going to award to him 16½ years' purchase of his annual rent, but he never adduced any evidence to induce the Collector to take any other view. It has been further argued by counsel for the defendant that the plaintiff has accepted the Collector's tender because his mortgagee has accepted a sum of Rs. 30,000 in full satisfaction of his claim out of the sum of Rs. 32,804 being the total amount of the plaintiff's interest in the land acquired and therefore should be taken to have accepted the Collector's award. Now it is settled law that the Collector's award is only a tender which is only binding on the acquiring party (*Ezra v. Secretary of State for India*<sup>(1)</sup>) and that the claimants are not bound to accept it. Further, it is clear that the claimants are not bound to appear at the enquiry before the Collector (see section 12 (1) of the Land Acquisition Act) and to my mind it is also equally clear that the plaintiff's mortgagee has a distinct and separate interest in the land and that he could have never, in any event, got anything more than he did, and it is further distinctly to the advantage of the plaintiff that his mortgagee should accept the amount, for by his doing so he saves payment of further interest; therefore, it follows that the plaintiff by not adducing any evidence before the Collector and by his mortgagee accepting the sum of Rs. 30,000 has not certainly by implication accepted the award and he cannot be taken to have expressly accepted the award as after getting notice of the award on the 9th November 1914 he by his solicitors' letter of the 11th November 1914 intimates to the Collector that he does not accept it. It has been further argued by the defendant's counsel that as the plaintiff had notice that the

(1) (1905) 32 Cal. 605.

Collector would pay the amount payable to the parties he ought to have taken steps to stop the payment within the time fixed by the Collector. In this connection it must be borne in mind that no time is fixed under the provisions of the Land Acquisition Act within which the moneys can be paid, but I am of opinion that it is incumbent on the Collector, unless the parties expressly consent to the payment out, to give a reasonable notice to the parties, bearing in mind the provision of section 18 (2a) of the Land Acquisition Act, and in the present case two days' notice cannot be considered a reasonable notice at all, for the Legislature has prescribed time within which a party aggrieved can refuse to accept the award and ask for a reference and in the present case he actually did so within two days after receipt of notice. The next point taken by the defendant's counsel was that there was no proper requisition to the Collector for a reference as contemplated by section 18 of the Land Acquisition Act and in support of this great reliance is placed on the observations in the judgment of Chandavarkar J. in *In re Land Acquisition Act*<sup>(1)</sup>. Therefore, it is necessary to consider what section 18 of the Land Acquisition Act provides. It provides that any person interested who has not accepted the award should, within the period of limitation prescribed in the proviso to the section, make a written application to the Collector requiring him to refer the matter for the determination of the Court whether his objection be *inter alia* as in this case to the apportionment of the compensation among the persons interested and that such application shall state the grounds on which objection to the award is taken. It seems to me that it is common ground and in fact law requires it (see *Nusserwanjee Pestonjee v. Meer Mynooddeen Khan*<sup>(2)</sup>) that these terms must be

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(1) (1905) 30 Bom. 275.

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complied with in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise. Great stress was laid in argument by the counsel for the defendant that in the letters of the plaintiff's solicitors, dated 11th and 21st November 1914, there was no requisition to refer but merely a desire which is not sufficient. In the letter of the 11th November 1914, Messrs. Little & Co. say to the Collector that their client "does not accept the award and he is desirous that the question of compensation should be referred by you for the determination of the Tribunal of Appeal and that grounds of such objection will be forwarded in due course." Then in the letter of the 21st November 1914, Messrs. Little & Co. again state that "their client does not accept the award and is desirous that the question of compensation should be referred for the determination of the Tribunal of Appeal and state some of the grounds of objection." From the terms of these letters I am asked to hold that there was no formal requisition to the Collector as contemplated by section 18 of the Land Acquisition Act. I must confess I do not see any particular charm in the word "require"; it seems to me what the Court has got to see is that the provisions of section 18 of the Land Acquisition Act have been sufficiently complied with and I have no hesitation in holding that under the circumstances of the case the conditions of section 18 of the Act have been sufficiently complied with and that also in a clear and intelligible way. The next point to be considered is that if the moneys are not with the Special Collector and, therefore, he cannot deposit them in the Tribunal, can he make the reference? In other words, is the deposit of moneys by the Collector a condition precedent to the reference? It is true that under section 31 (2) of the Land Acquisition Act it is provided that the Collector shall deposit

the amount of compensation in the Court but it seems to me inconceivable that the Legislature by this could have intended that deposit in Court should be a condition precedent to a reference under section 18 of the Land Acquisition Act if the requirements of that section are complied with and if any of the contingencies enumerated in section 31 (2) arises. Further, the provisos to the very section contemplate payment in certain cases. I, therefore, hold that deposit of the amount in Court is not a condition precedent to the making of the reference by the Collector and, therefore, the Tribunal of Appeal had jurisdiction to entertain the reference. Then, lastly, it is contended that before the plaintiff can maintain this suit he should have exhausted all his remedies including the right of appeal under section 48 (11) of Act IV of 1898. It seems to me that this cuts both ways. From the point of view of the plaintiff he got what he wanted from the Tribunal of Appeal. Therefore, I do not see what further benefit he could have derived by preferring an appeal from the order of the Tribunal. And it seems to me that the defendant thinking that there was no mode by which the plaintiff could have derived the benefit of the order of the Tribunal in his favour also chose not to appeal and left the plaintiff to take such steps as he was advised. On this I hold that the suit is not premature because the plaintiff did not avail himself of the right of appeal given to him under section 48 (11) of Act IV of 1898. Then the question arises how is the plaintiff to receive the amount which he is declared to be entitled by the Tribunal of Appeal? It is clear that he cannot execute it by enforcing it as a decree of Small Causes Court as provided in section 48 (10) of Act IV of 1898. It is not necessary for me to consider whether the decision in *Gobindaraneé Dasee v. Brinda Raneé Dasee*<sup>(1)</sup> is good law or not. Mr. Campbell

(1) (1908) 35 Cal. 1104.

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referred me to an unreported judgment of Batchelor and Shah JJ. (*Anandrao Bhaui Jare v. Ganpati Bhaui Jare*<sup>(1)</sup>) in which the decision in *Gobindarane's case*<sup>(2)</sup> was not followed. It appears that *Anandrao Bhaui's case*<sup>(1)</sup> is distinguishable from the case of *Gobindarane's case*<sup>(2)</sup>. That was a reference under section 30 of the Land Acquisition Act by the Assistant Collector who by mistake awarded compensation according to the shares 19/20 to one Ananda and 1/20 to one Ganu while their actual shares were *vice versa*. The District Judge held that as it was a pure error and mistake on the part of the Collector he ordered a refund and held that he had power to adjudicate upon the reference and did not refer the parties to a civil suit. The present case is not a case of pure error and mistake; it is a case on a different basis of valuation; the Tribunal has allowed the plaintiff more than the Collector. Mr. Campbell very fairly admitted that if law was not against the plaintiff, equities were entirely in his favour. I have already held that law, as it stands, is not against the plaintiff and his remedy is by a suit in the civil Court and this Court has inherent powers to entertain such suit and has jurisdiction to try it.

The result is that there will be a decree for plaintiff for Rs. 2,960-10-0 with interest thereon at 6 per cent. per annum from 29th April 1915 till judgment. Costs and interest on judgment till payment.

Solicitors for plaintiff: Messrs. *Vacha & Co.*

Solicitors for defendant: Messrs. *Surveyor & Co.*

*Suit decreed.*

G. G. N.

(1) (1913) Unreported, F. A. No. 16 of 1913, decided on 25th June 1913.

(2) (1908) 35 Cal. 1104.