

In Re: Jodha Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/459816

Court : Allahabad

Decided On : Aug-16-1937

Reported in : AIR1937All769

Appellant : In Re: Jodha Singh and ors.

Judgement :

ORDER

1. This is a reference under Order 46, Section 1, Civil P.C., made by the learned Special Judge exercising jurisdiction under the U.P. Encumbered Estates Act. It appears that a certain person, claiming to be a landlord within the meaning of Section 4, U.P. Encumbered Estates Act, made an application to the Collector for action being taken under that section. The Collector entertained the application and, after the usual preliminary notices, accepted it and forwarded the same to the Special Judge. An objection was taken before the Special Judge by one of the creditors that the application to the Collector had not been 'duly made'. The ground on which this objection was based was that the applicant was not a recorded co-sharer and therefore not a 'landlord,' as contemplated by Section 4 of the Act. It was argued on behalf of the applicant that the Special Judge must proceed to dispose of the application in the manner laid down by the Act and that an objection of the kind made before him should have been made before and decided by the Collector. The Special Judge entertained some doubt on the question thus raised before him and made the reference which is before us. We express no opinion on the question as to whether only a recorded co-sharer can apply under Section 4,

Encumbered Estates Act. We are however of opinion that if the Collector entertains the application and accepts it, it is not open to the Special Judge, to whom it is forwarded under Section 6, to refuse to proceed with it on the ground that the applicant was not entitled to apply under Section 4 or that the Collector should not have treated the application as one 'duly made'. It seems to us clear that with the acceptance of the application by the Collector under Section 4 and his forwarding the same to the Special Judge, a definite stage of the proceedings terminates. Thereafter the Special Judge must observe the procedure laid down by the sections which follow Section 8 which makes it incumbent upon the Special Judge to call upon the applicant to submit, within a period to be fixed by him in this behalf, a written statement giving certain particulars. He is enjoined to issue certain notices to others concerned and to receive written statements to be filed by them. He is bound to examine such claims as may be put forward under the Act. The subsequent stages of the proceedings before him make it necessary for the Special Judge to exercise powers which he cannot disclaim. There is no provision in the Act which empowers a Special Judge to send back the application to the Collector for the decision of a question which should have been raised before the Collector originally but was not so raised and was subsequently raised before the Special Judge. Nor is it open to the Special Judge to question the jurisdiction of the Collector to entertain an application under Section 4. The jurisdiction of the two authorities are clearly demarcated by the Act. It is the Collector who is entitled to 'accept' applications under Section 4 and make reference to the Special Judge. Once the application is received by the Special Judge, he has no option but to follow the procedure laid down by the Act. This is our answer to the reference. Return the record with a copy of our order.