

In Re: Brahma Nand

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Court : Allahabad

Decided On : Oct-06-1937

Reported in : AIR1938All75; 173Ind.Cas.344

Appellant : In Re: Brahma Nand

Judgement :

Niamatullah, J.

1. This is a reference under Order 46, Rule 1, Civil P.C., by the learned Special Judge of Budaun. From the statement submitted to us it appears that Brahma Nand (applicant) obtained some zamindari property from one Ram Charan Lal on a theka. The theka raonoy was not paid by the fchekeदार and Ram Charan Lal had to bring a suit, No. 17/27 of 1933-34, in the Revenue Court for the recovery of arrears due by Brahma Nand. The suit was decreed and in execution of the decree some property of the judgment-debtor (applicant) was put up for sale. The property was eventually purchased by Mt. Shiam Lata but no confirmation of the sale has yet taken place. During the pendency of the aforesaid proceedings, Brahma Nand (applicant) applied to the Collector under Section 4, U.P. Encumbered Estates Act. The Collector being satisfied that the application was made according to the provisions of Section 4, forwarded it to the Special Judge under Section 6 of the Act. On the application of Brahma Nand the learned Special Judge issued an order to the Revenue Court to stay the confirmation of sale till the disposal of the application forwarded to him by the Collector under Section 6 of the

Act. The auction-purchaser Mt. Shiam Lata objected to the legality of the aforesaid order and alleged that the learned Judge had no jurisdiction to stay the proceedings relating to the confirmation of sale, because a thekedar is not included in the definition of 'landlord' under Section 2(g) of the Act. The applicant contested the objection and claimed to be entitled to the benefit of Section 7 of the Act. The learned Judge felt some doubt whether the proceedings in the Revenue Court should be stayed or not. He has therefore referred the following question to this Court:

Whether the theka money due by the applicant zamindar is to be taken as debt and proceedings about that are to be stayed in view of his application under the Encumbered Estates Act.

2. In our judgment the language of Section 7 of the Act is perfectly clear and lays down the consequences following an order under Section 6 passed by the Collector. Section 7(1) runs thus:

When the Collector has passed an order under Section 6, the following consequences shall ensue, (a) all proceedings pending at the date of the said order in any Civil or Revenue Court in the United Province, in respect of any public or private debt to which a landlord is subject...shall be stayed,

3. The obvious interpretation of this section is that the Courts whether Revenue or Civil shall stay proceedings to which this section applies as soon as an order under Section 6 has been passed. It is not the function of the Special Judge to send directions to the Courts in which such proceedings are pending against the applicant. It is for the applicant to move the Courts concerned to stay the proceedings provided that they come within the purview of Section 7 of the Act. It is for the Collector to decide whether an application under Section 4 is in order. The Special Judge has no jurisdiction to question the legality or otherwise of the orders of the Collector except as provided in Sections 45 and 46 of the Act, no proceedings of the Collector or Special Judge in this Act shall be questioned in any Court (Section 47). The appeal by any one dissatisfied with the decision, decree or order of the Collector under this Act shall lie to the Board of Revenue Section 45(3). From the scheme of the Act it is clear that the Collector's order

forwarding an application is conclusive proof of the fact that the applicant is entitled to the benefit of Section 7. If any one is aggrieved by the order of the Collector he may have recourse to such remedy as is provided by the Act. The Special Judge has to assume that the applicant is a person entitled to the benefits of the Act and he should proceed to adjudicate upon matters entrusted to him by the Act. In our opinion it is not necessary for us to decide the question referred to us as it does not arise in the proceedings that are pending before the learned Special Judge.

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