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AZMAT AZIM KHAN

v.

BOARD OF REVENUE, UTTAR PRADESH, ALLAHABAD & ORS.

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April 21, 1971

[C. A. VAIDIALINGAM AND A. N. RAY, JJ.]

U.P. Encumbered Estates Act, 1934—U.P. Abolition of Zamindari and Land Reforms Act, 1950 (Act 1 of 1951)—Compensation bonds payable to intermediary whether can be withheld and payment on them whether can be stopped in order to satisfy decree against intermediary under 1934 Act—Effect of ss. 23A, 23B of 1934 Act and s. 70 of 1950 Act.

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There was a decree under the provisions of the U.P. Encumbered Estates Act, 1934 against the appellant's father on the basis of a mortgage deed. The decree was transferred to the Deputy Commissioner for liquidation of debts. Meanwhile the U.P. Zamindari Abolition and Land Reforms Act, 1951 came into force. Compensation for proprietary rights as an intermediatery vested in the State Government became payable to the judg-
D ment debtor. On the death of his father the appellant and his brother became entitled to his property as well as the compensation payable to him. The appellant and his brother received bonds of the aggregate value of Rs. 64,000. Bonds of the face value of Rs. 32,000 remained with the compensation officer. In 1959 the decree-holder applied to the Collector for an order that the appellant and his brother do return the bonds which they had received from the compensation officer failing which their properties were to be attached. The matter went up to the Board of Revenue.
E The Board asked the Collector to take one or the other of three steps, namely, (1) to stop payment of instalment money on the bonds by the treasuries or (2) direct the compensation officer to hand over bonds of the face value of Rs. 32,000 remaining with him for the liquidation of the debts or (3) to attach the movable properties of the appellant and his brother for the liquidation of debts. The appellant thereafter made an application to the High Court under Art. 226 of the Constitution for an order quashing the order and direction to the Board of Revenue. The
F Division Bench, in appeal against the order of the Single Judge, quashed the direction of the Board of Revenue according to which the properties of the appellant and his brother were to be attached. The High Court upheld the other two orders of the Board of Revenue in regard to stoppage of payment of instalment money on the bonds by the treasuries and direction to the Compensation Officer to hand over the bonds of the face value of Rs. 32,000 remaining with him for liquidation of the debts. In
G appeal to this Court the appellant contended that the Board of Revenue did not have power to issue the said directions.

HELD: By reason of the provisions contained in s. 70 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and s. 23A of the U.P. Encumbered Estates Act, 1934 the compensation money is sent for by the Collector for the purpose of liquidation of secured debts on which decree is passed. The Compensation Officer under r. 77(1) of the Zamindari
H Abolition and Land Reforms Rules, 1953 could issue notices to the intermediary directing him to take the bonds because under s. 18 of the 1934 Act the decree holder becomes entitled to recover the amount of the decree in the manner and to the extent mentioned in 1934 Act. The proviso

to s. 18 of the 1934 Act enacts that the secured debt shall be recoverable from the compensation and rehabilitation grant as though the security had not been extinguished. [445C-D] A

Further, s. 23A and s. 23B of the 1934-Act require that the amount from the bonds on account of compensation or rehabilitation grant received by Collector shall be expended or utilised by the Collector in liquidation, of the amount of the secured debt. Under s. 23B of the 1934-Act the bonds are received by Collector in pursuance of the requisition under s. 23A of the 1934 Act. The absence of the service of a requisition cannot confer a right on the judgment debtor to take away the compensation money or bonds. The principle is *actus curia neminem gravabit.* [445E-F] B

The decree holder under the provisions of the relevant statutes was entitled to be paid out of the compensation grant monies in satisfaction of the decree. If the Collector had required the Compensation Officer under s. 23A of the 1934 Act to place at his disposal pursuant to s. 70 of the 1950 Act the compensation money, the bonds could not have been taken delivery of by the appellant. The Board of Revenue rightly gave the directions to secure compliance with the provisions of the statute and performance of the statutory duty by the Collector as well as the Compensation Officer. The appellants were not entitled to receive the bonds without satisfying the decree. That is why the Board of Revenue correctly directed the stoppage by the treasuries of payment of instalment on the bonds. [445G-H] C D

The other direction of the Board of Revenue requiring the Compensation Officer to hand over bonds remaining with the Compensation Officer was in aid of valid compliance with ss. 23A and 23B of the 1934 Act as well as s. 70 of the 1950 Act. [446A]

The jurisdiction and authority of the Board of Revenue touched directly on the performance of statutory obligations by statutory authorities. The High Court rightly upheld the directions of the Board of Revenue. [446B] E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2108 of 1966. F

Appeal from the judgment and decree dated January 15, 1965 of the Allahabad High Court, Lucknow Bench in Special Appeal No. 82 of 1963.

Danial A. Latifi and *M. I. Khowaja,* for the appellant.

C. B. Agarwala and *Akhtar Husain,* for respondent No. 3. G

The Judgment of the Court was delivered by

Ray, J.—This appeal is by certificate from the judgment dated 15th January 1965 of the Allahabad High Court.

The appellant son of Sardar Mujibul Rahman Khan a zamindar of a number of villages in the District of Kheri, Uttar Pradesh impeached the orders of the Board of Revenue of Uttar Pradesh dated 30 August, 1960 and 6 September, 1960 whereby the Board H

A issued three directions. The first was to stop payment of instalment money or the bonds by the treasuries. The second was to direct the Compensation Officer to hand over bonds of the face value of Rs. 32,000 reported to be remaining with him for liquidation of debts. The third was an order attaching movable and immovable properties belonging to the appellant and his brother
B for liquidation of debts.

The principal question in this appeal is whether the first respondent, the Board of Revenue Uttar Pradesh had authority to pass the order impugned in this appeal.

The third respondent Raja Shatranjai the decree-holder was
C a creditor of the appellant's father Sardar Mujibul Rahman Khan on the basis of a mortgage deed. Raja Shatranjai obtained a decree on the said mortgage debt for Rs. 1,31,040-1-0 and Rs. 1931-1-0 as costs. The decree is dated 28 September, 1939. The decree was passed under the provisions of the Uttar Pradesh Encumbered Estates Act, 1934 (hereinafter referred to as the
D 1934 Act). The decree was passed on the application of Sardar Mujibul Rahman Khan under section 4 of the 1934 Act for the liquidation of his debts. The debtor was a zamindar in the District of Lakhimpur Kheri. The decree was transferred to the Deputy Commissioner of Kheri for liquidation of debts.

Meanwhile the U. P. Zamindari Abolition and Land Reforms
E Act, 1951 (hereinafter referred to as the 1951 Act) came into force. The proprietary rights of the intermediaries vested in the State Government and the intermediaries were entitled to receive compensation in lieu thereof. The judgment-debtor was an intermediary. Notices were issued to the intermediaries to take delivery of the bonds or receive payment in cash on specified dates.
F The appellant on the death of his father became entitled to 2/3rd of the Zamindari property and compensation therefor. He took delivery of the compensation bonds of the value of Rs. 42,750/- from the Compensation Officer, Lakhimpur while bonds of the value of Rs. 21,250 were received by his brother Hikmat Hakim Khan. The total amount of bonds received by the appellant and his brother aggregated Rs. 64,000.
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On 14 April, 1959 the decree-holder applied to the Collector, Kheri for an order that the appellant and his brother do return the bonds which they had received from the Compensation Officer failing which their movable and immovable properties to the extent of these bonds be attached for liquidation of their debts.
H The Collector on 17 August, 1959 rejected the application. The decree-holder preferred an appeal. The appeal was dismissed by the Additional Commissioner, Lucknow on 17 February, 1960. The decree-holder thereupon commenced revision proceedings before

the Board of Revenue. On 30 August, 1960 a member of the Board of Revenue allowed the revision. On 6 September, 1960 another member of the Board of Revenue concurred in the order. The Board asked the Collector to take one or other of the three steps, namely, the treasuries to stop payment of money on instalment in respect of the compensation bonds or direct the Compensation Officer to hand over bonds of the face value of Rs. 32,000 reported to be remaining with him for the liquidation of the debts or to attach the movable properties of the appellant and his brother for the liquidation of debts.

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The appellant thereafter made an application to the High Court under Article 226 of the Constitution for an order quashing the order and directions of the Board of Revenue. The learned Single Judge quashed the order of the Board of Revenue save and except the direction directing the Compensation Officer to hand over bonds of the face value of Rs. 32,000 reported to be remaining with him for liquidation of debts.

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Thereafter the decree-holder preferred an appeal. The Bench of the High Court was divided in their opinion. The matter was placed before the third learned Single Judge. The order of the High Court was that direction No. 3 of the Board of Revenue, namely, attachment of movable and immovable properties of the appellant and his brother was quashed. The High Court upheld the other two orders of the Board of Revenue in regard to stoppage of payment of instalment money on the bonds by the treasuries and direction on the Compensation Officer to hand over the bonds of the face value of Rs. 32,000 remaining with him for liquidation of the debts.

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Counsel for the appellant contended that the Board of Revenue did not have any power to issue the directions. In the present case, the decree was passed under section 14 of the 1934 Act. Under section 19 of the 1934 Act the Special Judge passing the decree is to send the same to the Collector for execution in accordance with the provisions of Chapter V of the 1934 Act. The Special Judge under section 19 of the 1934 Act is also to inform the Collector of the nature and extent of the amount of the secured debt which is not legally recoverable otherwise than out of the compensation and rehabilitation grants payable to the Landlord in in respect of the mortgaged estate. The U. P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the 1950 Act) came into force on 26 January, 1951. As a result of the 1950 Act sections 23A and 23B were introduced into the 1934 Act. Section 23A speaks of compensation and rehabilitation grant to be placed at the disposal of the Collector. Section 23B

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speaks of liquidation of secured debts recoverable both from compensation and rehabilitation grant. The sections are set out hereunder :—

"23A. *Compensation and rehabilitation grant to be placed at the disposal of the Collector:*—The Collector shall require the Compensation Officer and Rehabilitation Grants Officer as may be necessary to place at his disposal in pursuance of section 70 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, the amount of compensation money and rehabilitation grant payable to the landlord in respect of his proprietary rights in land reported to be liable to attachment or sale under the provisions of sub-section (2) of section 19.

23B. *Liquidation of secured debt recoverable from compensation and under rehabilitation grant:*—(1) Without prejudice to the provisions of Section 8 of the U. P. Zamindar's Debt Reduction Act, 1952. the amount or the bonds on account of compensation or rehabilitation grant received by the Collector in pursuance of the requisition under Section 23-A shall be expended or utilised by the Collector in liquidation of the amount of the secured debt which having regard to the provisions of the U. P. Zamindar's Debt Reduction Act, 1952 was secured on the proprietary rights in land in respect of which such money has been received.

(2) If any balance out of the compensation and rehabilitation grant reecived by the Collector in pursuance of the requisition under Section 23-A remains in the hands of the Collector after utilising the same in accordance with the provisions of sub-section (1), such balance shall be utilised by the Collector in discharging the debts, other than the debts, referred to in the said sub-section in order of priority".

Both these sections of the 1934 Act refer to section 70 of the 1950 Act. Section 70 of the said Act is as follows :—

"Compensation money to be placed at the disposal of the Court or authority : Where before any Court or authority any suit or proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the compensation determined under Chapter III, the Court or authority may require the Compensation Officer to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such Court or authority".

The Collector, therefore, by reason of the provisions of the 1934 Act and the 1950 Act requires the Compensation Officer and the Rehabilitation Officer to place the amount of compensation at his disposal. The Collector on receipt of the grant is to expend or utilise the same in liquidation of the amount of the secured debt and if the balance remains it is to be utilised in discharging the debts other than those mentioned in section 23-B (1) of the 1934 Act, in order of priority.

By reason of the provisions contained in section 70 of the 1950 Act and section 23A of the 1934 Act the compensation money is sent for by the Collector for the purpose of liquidation of secured debt on which decree is passed. The Compensation Officer under rule 77(1) of the Zamindari Abolition and Land Reforms Rules, 1952 could issue notice to the intermediary directing him to take delivery of the bonds. The issue of a notice would not clothe the intermediary with the right to take away the bonds because under section 18 of the 1934 Act the decree-holder becomes entitled to recover the amount of the decree in the manner and to the extent mentioned in the 1934 Act. The proviso to section 18 of the 1934 Act enacts that the secured debt shall be recoverable from the compensation and rehabilitation grants as though the security had not been extinguished. The question, in the present case, is whether the appellant could lawfully obtain delivery of the bonds from the Compensation Officer. Sections 23A and 23B of the 1934 Act require that the amount or the bonds on account of compensation or rehabilitation grant received by the Collector shall be expended or utilised by the Collector in liquidation of the amount of the secured debt. Under section 23B of the 1934 Act the bonds are received by the Collector in pursuance of the requisition under section 23A of the 1934 Act. The absence of the service of a requisition cannot confer a right on the judgment-debtor to take away the compensation money or bonds. The principle is *actus curia neminem gravabit.*

The decree-holder under the provisions of the relevant statutes was entitled to be paid out of the compensation grant monies in satisfiaction of the decree. If the Collector had required the Compensation Officer under section 23A of the 1934 Act to place at his disposal pursuant to section 70 of the 1950 Act the compensation money, the bonds could not have been taken delivery of by the appellant. The Board of Revenue rightly gave the directions to secure compliance with the provisions of the statute and performance of statutory duty by the Collector as well as the Compensation Officer. The appellants were not entitled to receive the bonds without satisfying the decree. The appellants were wrong in doing so. The appellant could not take advantage of his own wrong. That is why the Board of Revenue correctly directed the

A stoppage by the treasuries of payment of instalment money on the bonds. The other direction by the Board of Revenue requiring the Compensation Officer to hand over the bonds remaining with the Compensation Officer was in aid of valid compliance with sections 23A and 23B of the 1934 Act as well as section 70 of the 1950 Act.

B The jurisdiction and authority of the Board of Revenue in the present appeal touched directly on the performance of statutory obligations by statutory authorities. The compensation bonds are required by the statute to go to the Collector for liquidation of secured debts. The judgment debtor is not entitled to the compensation bonds without liquidation of the debts in accord-
C ance with the provisions of the statute.

The High Court rightly upheld the directions of the Board of Revenue. The appeal is therefore dismissed. The parties will pay and bear their own costs in this Court.

D G.C. *Appeal dismissed.*