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# In Re: Brahma Nand

## None

**Court:** Allahabad High Court

**Date of Decision:** Oct. 6, 1937

**Acts Referred:**
Uttar Pradesh Encumbered Estates Act, 1934 â€" Section 4

**Citation:** AIR 1938 All 75 : 173 Ind. Cas. 344

**Hon'ble Judges:** Niamatullah, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

## Judgement

Niamatullah, J.
This is a reference under Order 46, Rule 1, Civil P.C., by the learned Special Judge of Budaun. Prom the statement

submitted to us it appears that Brahma Nand (applicant) obtained somo zamindari property from one Ram Gharan Lal on a theka. The theka

raonoy was not paid by the fchekedar 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 u/s 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 u/s 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 u/s 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"" u/s 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 u/s 6 passed by the

Collector. Section 7(1) runs thus:

When the Collector has passed an order u/s 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 Junder 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 u/s 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 j 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.