

SUPREME COURT OF INDIA

Mohammed Hasnuddin

Vs.

State of Maharashtra

C.A.No.1926 of 1969

(Jaswant Singh, R. S. Pathak and A. P. Sen, JJ.)

07.11.1978

JUDGEMENT

A. P. SEN J.:-

1. This appeal by certificate is directed against a judgment of the Bombay High Court, and it involves an important question namely, whether a court in dealing with a reference under S. 14, sub-s. (1) of the Hyderabad Land Acquisition Act, 1309 Fasli, corresponding to S. 18, sub-s. (1) of the Land Acquisition Act, 1894, can go behind the reference made by the Collector if the application on which the reference has been made is beyond the period of limitation prescribed therein.

2. The material facts giving rise to this appeal are as follow: The case arises from that part of the erstwhile princely State of Hyderabad, known as Marathwada, which merged in the State of Bombay under the States Reorganisation Act, 1956. The land belonging to the appellant admeasuring 2057 sq. yards in the city of Aurangabad, has been acquired by the State Government under S. 5 of the Hyderabad Land Acquisition Act for the construction of a building for the medical college at Aurangabad. The Government published a notification under S. 3 (1) on the 28th of

February, 1958. On the 13th of January, 1962 the Land Acquisition Officer, Aurangabad made an award directing payment of Rs. 1,318,11P. inclusive of 15 per cent solaium as compensation to the appellant at the rate of 37 np. per sq. yard, as against his claim for payment of compensation at the rate of Rs. 10/- per sq. yard. The said award was communicated to the appellant on the 20th of Jan., 1962. The appellant instead of making an application for reference under Section 14, sub-s. (1) of the act, filed an application for review before the Land Acquisition Officer on the 5th of February, 1962 requesting him 'to revise the award' stating further that 'in case it was not revised he would seek his remedy in court of law'. The Land Acquisition Officer obviously felt that the amount fixed by him was too low and accordingly on the 17th of Feb., 1962 made a recommendation, through the Collector, to the Secretary to the State Government that the award be reconsidered. But, the Collector by his order dated 23rd of March, 1962 declined to forward the same and informed the appellant that he must seek his remedy in a court of law.

3. Eventually, on the 14th of May 1962 the appellant made an application for reference under Sec. 14, sub-sec. (1) of the Act and prayed that the period spent in the proceedings for the review before the Land Acquisition Officer subsequent to the date of the award be excluded while considering the question of limitation under S. 14 of the Limitation Act. A reference was made under S. 14, sub-sec. (1) of the Act to the District Court of Aurangabad. The Assistant Collector, Aurangabad, who was the Land Acquisition Officer, while making a reference made no expression of his opinion whether the application was time-barred or not, evidently taking the view that the point should be left for the decision of the court. He, however, while making the reference gave a complete narration of facts and left the question open. A preliminary objection was raised by the Government that the reference was incompetent, the application being time-barred. This objection prevailed and the contention of the appellant based on S 14 of the Limitation Act was negative both by the Civil Judge, Senior Division, Aurangabad by his order dated the 28th of June, 1962, and by the High Court of Bombay by its order dated the 5th of Feb. 1968 holding that the time taken between the 5th of Feb., 1962 and the 23rd of March, 1962 could not be excluded while computing the period of limitation prescribed under S. 14, sub-s. (1) of the Act inasmuch as S. 14 of the Limitation Act was not applicable to the proceedings, and further, that even if it applied the appellant was not entitled to the benefit of S. 14 of the Limitation Act, stating that good faith, which is also a necessary ingredient under S. 14, was not established.

4. The learned Civil Judge raised an issue whether the application for reference was barred by limitation under Section 14, sub-s. (1) of the Act, and he answered that issue in the affirmative, and we have no doubt, whatever, that his decision on that point, as well as that of the High Court affirming it, was right. The application was clearly out of time.

5. Section 14, sub-s. (1) of the Hyderabad Land Acquisition Act, 1309 Fasli provides that :

"Every person interested, who is displeased with the Taluqdar's award may, within two months from the date of receiving notice of the award, apply to the Talukdar in writing to refer the case to the

court for determination. whether his objection be to the measurement of the land, or to the amount of the compensation, or to the person to whom it is payable or to the apportionment of the compensation among the persons interested."

6. Section 15, sub-s. (1) enjoins that the Taluqdar in making the reference shall forward to the Court a statement in writing, containing certain particulars. Sub-section (2) thereof provides that to the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively.

7. It is conceded for our present purposes that S. 14, sub-s. (1) of the Hyderabad Land Acquisition Act is in pari materia with the provisions of S. 18 of the Land Acquisition Act, 1894. Hence hereinafter reference will be made only to the provisions contained in the Land Acquisition Act, 1894. 'the Act'.

8. Learned counsel for the appellant rested his submission on the ground that the court while dealing with a reference under S. 14, sub-s. (1) of the Act, cannot go behind the reference and decline to answer it. The point regarding applicability of S. 14 of the Limitation Act was rightly not pressed before us. Nor was any contention raised by him that the application for review made by the appellant before the Land Acquisition Officer on the 5th of Feb., 1962, asking him to revise the award should, in law, be regarded as an application under S. 14 sub-s. (1) of the Act.

9. The short question that falls for determination in the appeal is whether the court can go into a question that the application for reference was not made to the Collector within the time prescribed in S. 18, sub-s. (2) of the Land Acquisition Act; and if so, can it refuse to entertain the reference if it finds it to be barred by time. There was at one time a great divergence of judicial opinion on the question. But almost all the High Courts have now veered round to the view that the court has the power to go into the question of limitation. It not only has the power but also the duty to examine whether the application for reference was in accordance with law i. e., whether it was made within time prescribed under the proviso to sub-sec. (2) of S. 18 of the Act or not. The view taken by them is that a Collector's jurisdiction is circumscribed by the conditions laid down in S. 18, sub-sec. (1), that if he makes a reference even though the application for reference was not in accordance with the provisions of S. 18. the court acquires no jurisdiction to hear the reference and that it can refuse to hear it if it was made on a time-barred application.

10. The matter came up twice before this Court in *State of Punjab v. Mst. Qaisar Jehan Begum* (1964) 1 SCR 971 : (AIR 1963 SC 1604), and the *State of U. P. v. Abdul Karim*, Civil Appeal No. 2434 of 1966 decided on 29-9-1969 (SC) in which the conflict of judicial opinion in the High Courts was noticed but not resolved as the Court in both the cases rested its decision on a narrower ground namely that the application for a reference was not barred by time. In *Mst. Qaisar Jehan Begum's case* (supra) it was observed (at. p. 1607)

"In the view which we have taken on the question of limination, it is unnecessary for us to decide the other question as to whether the civil court, on a reference under S. 18 of the Act, can go into the question of limitation. We have already stated that there is a conflict of judicial opinion on that question. There is on one side a line of decisions following the decision of the Bombay High Court in re, Land Acquisition Act ((1906) ILR 30 Bom 275), which have held that the civil court is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. There is, on the other side, a line of decisions which say that the jurisdiction of the civil court is confined to considering and pronouncing upon any one of the four different objections to an award under the Act which may have been raised in the written application for the reference. The decision of the Allahabad High Court in Secy, of State v. Bhagwan Parsed (AIR 1929 All 769) is typical of this line of decisions. There is thus a marked conflict of judicial opinion on the question. 'The conflict, we think, must be resolved in a more appropriate case on a future occasion'. In the case before us the question does not really arise and is merely academic and we prefer not to decide the question in the present case."

The question now directly arises.

11. It is contended on behalf of the appellant that a reference to the court having been made by the Collector, the court had no jurisdiction to question the validity of that reference and was bound to decide the matter on merits. In support of this contention certain authorities have been cited to us, in which it has been laid down that it is for the Collector, and the Collector alone, to determine whether to make a reference under S. 18, sub-s. (1), and if he decides to make a reference, it is not open to the court to go behind the decision of the Collector, and hold the reference to be out of time. Illustrative of this line of decisions is that of Allahabad High Court in Secy. of State v. Bhagwan Prasad, ILR 52 All 52 All 96 : (AIR 1929 All 769). That view has been reiterated by the Full Bench of the same High Court in the State of U. P. v. Abdul Karim, AIR 1963 All 556 and in its earlier decision in Panna Lal v. Collector of Etah, ILR (1959) 1 All 628 : (AIR 1959 All 576) (FB) and the decisions in Venkateswaraswami v. Sub-Collector, Bezwada, AIR 1943 Mad 327 ; Hari Krishan Khoshla v. State of Pepsu, ILR (1958) Punj 854: (AIR 1958 Punj 490).

12. Chandavarkar J. in re Land Acquisition Act (1906) ILR 30 Bom 275 held that it is clear from S. 18 that the formalities are matters of substance and their observance is a condition precedent to the Collector's power of reference. He held that the court is bound to go into the question whether the reference under S. 18 was within time. He also held that the court was not only entitled, but bound, to satisfy itself that the conditions laid down in Section 18 have been complied with. In stating the principle, Chandavarkar J. observed:

"These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the court

can have jurisdiction to entertain the reference."

The principle laid down by him in that case was acted upon in *Sukhbir Singh v. Secy. of State*, ILR 49 All 212 : (AIR 1926 ALL 766). In that case the Collector had made a reference, although there was no application before him as required by S. 18 and the Division Bench held that that being so, there was no valid reference. But in a latter case which came before another Division Bench in *Secy. Of State v. Bhagwan Prasad* (supra) it was held that it was not open to the court under S. 18 to go behind the reference, that it was for the Collector to decide whether the conditions justifying reference have been complied with and if he thought that they had been, the court was bound to answer the reference. The view found favour with a single Judge of the Madras High Court in *Venkateswaraswami v. Sub-Collector Bezwada* (supra) and a Single Judge of the Punjab High Court in *Hari Krishan Khosla v. State of Pepsu* (supra). All these decisions clearly do not lay down good law.

13. In *State of U. P. v. Abdul Karim* (AIR 1963 All 556) (supra) the Full Bench of the Allahabad High Court, on its view of the scheme of the Act, declines to follow the decision of Chandavarkar J. in re Land Acquisition Act (1906) ILR 30 Bom 275 (supra) and the long line of decisions taking the same view. It preferred to rest its decision on the earlier view of its Full Bench in *Panna Lal v. The Collector of Etah* (AIR 1959 All 576) (supra) and that in *Secy. of State Bhagwan Prasad* (AIR 1929 All 769) (supra). In the light of these decisions, it held that the Collector's jurisdiction to make a reference is not circumscribed by the conditions laid down in S. 18, sub-Ss. (1) and (2), that if he makes a reference even though the application for reference was not in accordance with the provisions of S. 18, the court acquires jurisdiction to hear the reference, and that it cannot refuse to hear it even if it was made on a time barred application. Upon its view, it held that the court has no power to determine or consider a question of limitation as its jurisdiction is strictly limited by the terms of the section as laid down by the Privy Council in *Paramatha Nath v. Secy. of State*, ILR 57 Cal 1148: (AIR 1930 PC 64). It further held that the legislature having contemplated the Collector to be an agent of the Government, as that is the position assigned to him by the Privy Council in *Ezra v. Secy. of State for India*, (1905) ILR 32 Cal 605 his status is certainly not changed by the mere fact that he is required to make a reference under S. 18 if the application is within prescribed time and complies with certain conditions. That being so, even if the Collector wrongly decides that an application is within time or satisfies other conditions, the Government as its principal, may have a remedy against him but was bound by his act so long as it remains. The act being of the agent is their own and they are bound by it. The Government cannot, therefore, be permitted to contend at the hearing of the reference before the court that it was illegally made. In view of all this, the Full Bench was of the view that this class of case does not fall within the class of cases where the jurisdiction of an inferior authority depends upon the existence of a certain state of facts, are indicated by Lord Esher, M. R. in *R. v. Commrs, for Special Purposes of the Income-tax* (1888) 21 QBD 313.

14. On principle, apart from authority, it is difficult to accept the line of reasoning of the Allahabad High Court, namely, whatever might be the defects and imperfections in the reference made, once it is before the court, the court is debarred from enquiring into its validity or otherwise. The decision

in Abdul Karim's (AIR 1963 All 556) (FB) (supra) proceeds on a complete misunderstanding of the decision of the Privy Council in Pramatha Nath v. Secy. of State (supra), where the Judicial Committee interpreting Sec. 21 observed :

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award. and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

All that the Privy Council intended to lay down was that the jurisdiction of the court in dealing with a reference under S. 18 is restricted by the terms of the section, as enjoined by Sec. 21. That decision cannot be interpreted to mean that the court while hearing a reference under S. 18 cannot esquire into competence or otherwise of the reference made by the Collector, i. e., whether the conditions precedent to the exercise of power by the Collector, and, therefore, of the court, and in particular the condition regarding limitation, are fulfilled or not.

15. In Ezra v. Secy. of State for India (1905) ILR 32 Cal 605 (supra) the Privy Council, while dealing with the functions of the Collector in making an award under S. 11 laid down that the functions of the Collector are not judicial but administrative and all that he does is to make an offer to the claimants with regard to the valuation of the property to be acquired. In that context, it did not think it necessary to repeat the reasoning of the judgment under appeal where the sections and the questions as a whole were very satisfactorily stated, and observed:

"The proceedings of the Collector resulting in the "award" are administrative and not judicial. The award in which the enquiry result is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands and if a judicial ascertainment is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court."

These observation, however, related to proceedings under Part II of the Act and not under Part III.

16. Ameer Ali and Stephen JJ., in delivering the judgment under appeal, explained the functions of the Collector under S. 11 in Ezra v. Secy, of State for India (1905) ILR 32 Cal 605 (PC) where they said :

"Throughout the proceedings the Collector acts as the agent of Government for the purposes of acquisition..... He is in no sense of the term, a judicial officer nor is the proceeding before him a judicial proceedings..... he is not a Court The Government..... at whose instance the land is

being taken up is not entitled to demand a reference..... The reason of this is plain. The Collector acts as the agent of the Government and they are accordingly bound by the award of their agent

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.....the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and..... consequently, although the Governmentis bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded."

17. On the basis of the Privy Council decision in Ezra's case (1905) ILR 32 Cal 605 (supra), this Court in Harish Chandra v. Deputy Land Acquisition Officer, (1962) 1 SCR 676 : (AIR 1961 SC 1500) held that the Collector in making an award acts as an agent of the Government, and that the legal character of the award made by the Collector was that of a tender or offer by him on behalf of the Government.

18. The Allahabad High Court has read more into the decision of the Privy Council in Ezra's case (1905) ILR 32 Cal 605 (supra) than is there. Merely because the Collector while making an award under S. 11 or in serving a notice on the owner of the land under S. 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the court under S. 18, he acts in the capacity of an agent of the Government. While it is true that the Collector in making the award under S. 11 acts as an agent of the Government, he in making a reference to the court under S. 18 acts as a statutory authority. Section 18, sub-section (1) of the Act entrusts to the Collector the statutory duty of making a reference on the fulfillment of the conditions laid down therein. The Collector, therefore, acting under Sec. 18, is nothing but a statutory authority exercising his own powers under the section.

19. In the context, we may advert to the controversy that had arisen as a result of the Privy Council's decision in Ezra's case (1905) ILR 32 Cal 605 (supra) holding that the legislature had assigned to the Collector the position of an agent of the Government while making an award under S. 11. The problem that arose was that the claimants were left with no remedy where the Collector improperly declines to make a reference although the application fulfilled the requirements of S. 18. In Administrator General of Bengal v. Land Acquisition Collector, 24-Parganas, (1908) 12 Cal WN 241 the Calcutta High Court while dealing with the question tried to draw a distinction between the functions of the Collector under Part II of the Act and that under Part III, and observed :

"It is admitted that up to and including the time of making his award the Collector was in no sense a

judicial officer and that the proceedings before him were not judicial proceedings (*Ezra v. Secy. of State*) and however irregular his proceedings were, we cannot in therefore with his award made under Section 11 of the Act.

But when an application is made to the Collector requiring him to refer the matter to the Civil Court. the Collector may have to determine and, it seems to us, determine judicially whether the person making the application was represented or not when the award was made, or whether a notice had been served upon the application under S. 12 (2) and what period of limitation applies and whether the application is under the circumstances made within time. The Collector functions under Part III of the Act are clearly distinguishable from those under Part II. Part III of the Act relates to proceedings in Court. In our opinion the Collector in rejecting the application was a Court and acting judicially and his order is subject to revision by this Court. To hold other wise would be to give finality to an award under S. 11 even in cases in which the Collector acts irregularly and contrary to law and then refuses on insufficient grounds to make a reference under Part III of the Act. The party aggrieved may be left without remedy which is implied by a judicial trial before the Judge ."

These observations were no doubt made in a different context but they bear some relevance to the point at issue.

20. The question at issue was whether the Collector's order refusing to make a reference could be interfered with by the High Court u/s. 115 of the Code of Civil Procedure or S. 107 of the Government of India Act, 1919. The Calcutta High Court's view that the Collector's power was a judicial power and that the Collector was a Court subordinate to the High Court was obviously wrong but it persisted in taking that view to obviate injustice: *Krishan Das v. Land Acquisition Collector, Patna* (1912) 16 Cal WN 327, *Upendra Nath Rai v. Province of Bengal*, (1941) 45 Cal WN 792, *Lath Elias Joseph Solomon v. H.C. Stork*, 38 Cal WN 844 : (AIR 1934 Cal 758). The Calcutta High Court tried to exercise its supervisory jurisdiction to provide the subject with a remedy. The power of the Collector to make an order under S. 18 was not judicial in nature, nor was the Collector a court subordinate to the High Court. The other High Courts, therefore, expressly dissented from the view of the Calcutta High Court : *Abdul Sattar Sahib v. Special Dy. Collector, Vizagapatam*, ILR 47 Mad 357 : (AIR 1924 Mad 442) (FB), *Balkrishna Daji Gupte v. Collector, Bombay Suburban*, ILR 47 Bom 699, (AIR 1923 Bom 290); *Jagarnath Lall v. Land Acquisition Deputy Collector, Patna*, ILR 19 Pat 321 : (AIR 1940 Pat 102) (SB), *S. G. Sapre v. Collector Saugor*, ILR (1938) Nag 149 : (AIR 1937 Nag 12) *Amar Nath Bhardwaj v. Governor General in Council*, ILR (1941) Lah 100: (AIR 1940 Lah 299). *Kashi Parshad v. Notified Area of Mahoba*, ILR 54 All 282: (AIR 1932 All 598). Even the Calcutta High Court later changed its view : *Bhagwan Das v. First Land Acquisition Collector*, 41 Cal WN 1301 : (AIR 1937 Cal 705), *Gopi Nath Shah v. First Land Acquisition Collector*, 42 Cal WN 212 : AIR 1938 Cal 250. It was held that the functions of the Collector u/s. 18 were statutory or quasi-judicial in nature.

21. The construction placed by the Allahabad High Court on S. 18 of the Act is not borne out either by the plain language of the section itself or by accepted principles. The following observations

appear in Abdul Karim's case (AIR 1963 All 556) (FB) (supra) (at pages 560-561) :

"There is no support for the proposition that the necessary sine qua non of a reference is an application for reference made in accordance with the provisions of S. 18.

"There is no provision which bars the Collector's power to make a reference, if he is inclining to make one on a timebarred application.

"If the Collector decides to make a reference the Land Acquisition Court cannot go behind the reference.

"A Collector and a Collector alone has jurisdiction to make a reference and a reference by him is not a nullity merely because it is based on a timebarred application.

"The facts regarding limitation of an application for reference are not required to be stated by the Collector in his reference, and indeed he is not bound to send the application along with the reference. All that the Court has to do on receipt of the reference or can do is to hear it after giving notice of the date. The word "thereupon" in Sec. 19 must be interpreted to mean "as soon as the Collector makes a reference and states for the information of the Court various matters set out in S. 19."

"A District Judge gets jurisdiction not from the Collector but from the receipt of a reference from him. It is the receipt of the reference that confers jurisdiction upon him and not any finding of the Collector.

"The Court has to perform a ministerial act of causing a notice to be given to the objection. There is no provision entitling it to examine the question whether the Collector's order was correct on the question of the application having been made within the prescribed time.

"The jurisdiction of the Court under the Act is a special one and strictly limited by the terms of Ss. 18 to 21. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. A Court undoubtedly has certain jurisdiction over the reference, but it does not include any appellate jurisdiction over the Collector in respect of the reference made by him without statutory sanction."

It is difficult to subscribed to these propositions, which are not warranted by law.

22. In his celebrated judgment in *R. v. Commrs. for Special Purpose of the Income-Tax* (1888) 21 QBD 313 (supra) Lord Esher, M. R., while dealing with statutory Tribunals, divided them into two categories, namely :

(i) "When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.

(ii) The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none."

23. The law as enunciated by Lord Esher has been accepted by this Court as laying down the true principle in *Chaube Jagdish Prasad v. Ganga Prasad*, 1959 Supp (1) SCR 733 : (AIR 1959 SC 492).

24. The word 'require' in S. 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under S. 18 on the fulfilment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third conditions are as to the time within which the application shall be made. The power of the Collector to make a reference under S. 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limination to be found in the proviso.

25. The conditions laid down in S. 18 are 'matters of substance and their observance is a condition precedent to the Collector's power of reference', as rightly observed by Chandavarkar J. in *Re Land Acquisition Act* (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application

for reference within the time prescribed by proviso to S. 18, sub-sec. (2) is a sine qua non for a valid reference by the Collector.

26. From these considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under S. 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in Abdul Karim's case (AIR 1963 All 556) (FB) (supra).

27. Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in *Nusserwanjee Pastonjee v. Meer Mynodeen Khan*, (1855) 6 Moo Ind App 134, wherever jurisdiction is given to a court by an act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, an order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise.

28. If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in S. 18. Even if a reference is wrongly made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under S. 18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in S. 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.

29. In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to

decide whether the reference was made beyond the period prescribed by the proviso to sub-sec. (2) of S. 18 of the Act, and if it finds that it was so made, decline to answer reference.

30. Beaumont C. J., delivering the judgment of the Division Bench in Mahadeo Krishna v. Mamlatdar of Alibad, ILR (1944) Bom 90 : (AIR 1944 Bom 200), agreed with the view of Chandavarkar J. and observed (at page 201 of AIR) :-

"It seems to me that the Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions, so as to give to Court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the decision of the Collector; it is a question of the Court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the Court cannot entertain it. I have myself some difficulty in seeing on what principle the Court is to be bebarred from satisfying itself that the reference, which it is called upon to hear, is a valid reference. I am in entire agreement with the view expressed by Chandavarkar J. that it is the duty of the Court to see that the statutory conditions have been complied with."

31. The same view has been reiterated by almost all the High Courts except the Allahabad High Court : G. J. Deasi v. Abdul Mazid, AIR 1951 Bom 156, A. R. Banerjee v. Secy, of State, AIR 1937 Cal 680, K. N. Narayanappa Naidu v. Revenue Divisional Officer, Sivakasi, AIR 1955 Mad 23; State of Rajasthan v. L. D'Silva, ILR (1956) 6 Raj 653 : (AIR 1957 Raj 44); Sheikh Mohammed v. Director of Agriculture, Madhya Pradesh, 1966 MPLJ 433 ; Ramdayal Singh v. State of Bihar, AIR 1969 Pat 131; Anthony D'Silva v. Kerala State, AIR 1971 Ker 51; Swatantra L. and F. Pvt. Ltd. v. State of Haryana, ILR (1974) 2 Punj 75 : (AIR 1975 Punj and Har 52) (FB) and Swami Sukhanand v. Samaj Sudhar Samiti, AIR 1962 J and K 59. This is also the view expressed by a Full Bench of the Lahore High Court in Abdul Sattar v. Mt. Hamida Bibi, Pak LR 1950 Lah 568 : (AIR 1950 Lah 229).

32. The view to a contrary effect taken by the Allahabad High Court in Secy, of State v. Bhagwan Prasad (AIR 1929 All 769) (supra), Panna Lal v. Collector of Etah (AIR 1959 All 579) (FB) (supra) and State of U. P. v. Abdul Karim (AIR 1963 All 556) (FB) (supra) and by a single Judge of the Madras High court in Venkateswaraswami v. Sub-Collector. Bezwada (AIR 1943 Mad 327) (supra) and by a single Judge of the Punjab High Court in Hari Krishna Khosla v. State of Pepsu (AIR 1958 Punj 490) (supra) clearly do not lay down good law and these decisions are, therefore, overruled.

33. It is impossible not to feel sorry for the appellant in this case, who was guilty of almost incredible folly by not filing an application for reference under S. 14, sub-sec. (1) of the Hyderabad Land Acquisition Act, 1309 Fasli within the time prescribed therein, and is thus precluded from claiming what may be legitimately due to him by way of compensation. But, the decision must depend upon the construction of the section and the law must take its course. We trust that, as

assured by its counsel the State Government of Maharashtra will be generous enough to consider whether it should make an ex gratia payment to the appellant of a sufficient amount by way of compensation which will be commensurate with the market value of the land acquired as on the 28th of February, 1958. It certainly was a piece of land of some value as it was situate in the city of Aurangabad.

34. The result, therefore, is that the appeal must fail and is dismissed. There shall be no order as to costs of this appeal and of the courts below.

Appeal dismissed.