SUPREME COURT OF INDIA

State of Karnataka

Vs

Laxuman

Civil Appeal No. 2024 of 1999 Connected With Civil Appeal Nos. 4459 of 1999; 607 to 609 and 5547 of 2000 and 1566 and 1567 of 2001

(R.C.Lahoti (CJI) and G.P.Mathur)

25/10/2005

JUDGMENT

P. K BALASUBRAMANYAN, J.

All these appeals involve questions connected with the scope and effect of Section 18 of the Land Acquisition Act as amended and adopted in the State of Karnataka. The brief facts leading to the appeals are as under:

Civil Appeal No. 2024 of 1999

The State challenges the order of the learned Single Judge of the Karnataka High Court in Civil Revision Petition No. 3682 of 1995 by which the learned Judge dismissed the revision filed by the State challenging the order of the Civil Judge, being the land acquisition Court, purporting to condone the delay in filing an application under Section 18(3)(b) of the Land Acquisition Act, as amended in Karnataka. The Notice of the award under Section 12(2) of the Act was served on the claimant on 6-1-1984. Under Section 18(2) of the Act, the claimant had 90 days from the date of service of that notice, to seek a reference under that Section for enhancement of compensation. The respondent claimed that an application under Section 18(1) of the Act seeking a reference was filed on 15-3-1984, within 90 days of 6-1-1984, but the reference was not made by the Deputy

Commissioner within 90 days thereafter as enjoined by Section 18(3)(a) of the Act. The claimant approached the Civil Court under Section 18(3)(b) of the Act only in April 1994, more than 10 years after the receipt of the notice of the award. The claimant also purported to file an application for condoning the delay in making the application. This was in view of the fact that it had been held that an application to the Court under Section 18(3)(b) of the Act had to be made within three years of the expiry of 90 days of the date of making an application seeking a reference for enhancement of compensation. The State opposed the application for condoning the delay on the ground that Section 5 of the Limitation Act had no application and that, in any event, no ground was made out for condoning the long delay often years in filing the application. The Civil Judge proceeded to condone the delay and proceeded to direct the Deputy Commissioner to make a reference in terms of Section 18 of the Act. In revision, the High Court refused to interfere on the ground that Section 5 of the Limitation Act had application and there was no reason to interfere with the condoning of the delay by the Civil Judge. The High Court apparently without even a verification, merely accepted the evidence of P.W. 1 that he had made an application within 90 days of the receipt of the notice of the award under Section 12(2) of the Act. Feeling aggrieved by that order, this appeal by special leave has been filed by the State.

Civil Appeal No. 4459 of 1999

In this case, the Civil Judge dismissed the application made under Section 18(3)(b) of the Act by the respondent on the ground that the application was barred by limitation. This order of the Civil Judge was challenged in an appeal before the District Judge. It is not clear under what provision such an appeal was filed, since under Section 54 of the Land Acquisition Act as amended in Karnataka no appeal is provided to the District Court from such an order of the Civil Judge and an appeal is provided only against the award. The appellate Court is seen to have held that Section 5 of the Limitation Act was applicable and the learned Civil Judge was in error in dismissing the application for compelling the reference under Section 18(3)(b) of the Act without deciding the prayer for condonation of the delay in filing that application. This order of the District Judge was challenged in revision before the High Court. The High Court held that Section 5 of the Limitation Act had application and declined to interfere with the order of remand made by the Additional District Judge. The High Court, thus dismissed the revision filed by the State. Aggrieved by this order, the State has come up with this appeal by special leave.

Civil Appeal Nos. 607 to 609 of 2000

In the first case it appears that the application for reference under Section 18(1) of the Act itself was made only two years after the award. Another seven years thereafter an application for compelling a reference was made under Section 18(3)(b) of the Act. The Civil Judge dismiss the application on the ground that it was out of time. Ten years thereafter, the claimant filed a revision as C.R.P. No. 1505 of 1997 before the High Court. The High Court ignored the delay of ten years in filing the revision in a somewhat cavalier manner and allowing the revision remitted the reference application to the Land Acquisition Court for entertaining the application under Section 18(3)(b) of the Act. The others were cases of a similar nature. In all of them there was considerable delay in making the application for reference and also delay in approaching the Court. In these revisions also, same lack of application of mind was exhibited by the High Court and the revisions were allowed and the

applications remitted. The common order thus passed, is subjected to challenge in these appeals.

Civil Appeal No. 5547 of 2000

The State challenges the order of the High Court passed under the same circumstances leading to the challenge in C.A. No. 4459 of 1999.

Here the application for compelling a reference was dismissed on the ground that it was out of time. The District Court permitted the claimant to file an application under Section 5 of the Limitation Act and directed its consideration. The High Court refused to interfere.

Civil Appeal No. 1567 of 2001

In this appeal, the State of Karnataka challenges the order in Civil Revision Petition No. 956 of 1998. In this case also the Civil Judge dismissed the application under Section 18(3)(b) of the Act in view of the fact that it was not within time. An appeal was purported to be filed by the claimant under Order 43, Rule 1 of the Code of Civil Procedure. The same was allowed and the matter was remanded. Against the order of the District Court, the revision was filed by the State challenging the competence of the order. The High Court refused to interfere based on the same reasons it was adopted in the order giving rise to Civil Appeal No. 4459 of 1999. Feeling aggrieved, the State has filed this appeal by special leave.

Civil Appeal No. 1566 of 2001

This appeal challenges the decision of the Full Bench of the Karnataka High Court which by a majority held that even though the right to the claimant to apply for compelling a reference under Section 18(3)(b) of the Land Acquisition Act, as amended in the State of Karnataka may be lost, the Deputy Commissioner could still make a reference even if it be after ten years, if he so chose and that in such a situation, the Court could also compel a reference notwithstanding that the period for applying for reference has expired. The State challenges the above view adopted by the Full Bench by a majority and contends that the minority view holding that once the right to the claimant to apply has come to end, the question of reference does not arise, is the correct one and deserves to be accepted.

2. Section 18 of the Land Acquisition Act, 1894 (for short, "the Act") as amended by Act 68 of 1984 provided that a person interested in a land acquired and who has not accepted the award of compensation by the Collector, could apply to the Collector for a reference of his claim within six weeks of the date of the award if he was present at the time of making of the award and within six weeks of the notice from the Collector under Section 12(2) of the Act if he was not so present. In a case that may not be covered by either of the above situations, the claimant has to make his application within six months of the date of the award of the Collector. The State Legislature by an

amendment brought to Section 18 of the Act substituted the proviso to Section 18(2) by replacing the period of six weeks by a period of 90 days and making the starting point, the date of service of notice from the Deputy Commissioner under Section 12(2) of the Act. Sub-section (3) was added directing that the Deputy Commissioner should make the reference to the Court within a period of 90 days from the date of receipt of the application under sub-section (1) of Section 18 of the Act. If he failed to do so within the period of 90 days, the party was given a right under Section. 18(3)(b) of the Act to apply to the Court to direct the Deputy Commissioner to make the reference and the Court was conferred the power to direct the Deputy Commissioner to make the reference within such period as may be fixed by the Court. For the purpose of convenience it will be better to quote the section as amended in the State of Karnataka:

"18. Reference to Court.-(1) Any person interested who has not accepted the award or amendment thereof, may by written application to the Deputy Commissioner require that the matter be referred by the Deputy Commissioner for determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under sub-section (2) of Section 12.

3. (a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under sub-section (1) make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix".

The Court to which the application was to be made was the principal Civil Court of original jurisdiction.

3. As can be seen, no time for applying to the Court in terms of subsection (3) is fixed by the statute. But since the application is to the Court, though under a special enactment, Article 137, the residuary article of the Limitation Act, 1963, would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application. The position is settled by the decision of this Court in Additional Special Land Acquisition Officer, Bangalore v Thakoredas and Others1. It was held:

"Admittedly, the cause of action for seeking a reference had arisen on the date of service of the

award under Section 12(2) of the Act. Within 90 days from the date of the service of notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the Civil Court under Section 18. Under the amended sub-section (3)(a) of the Act, the Deputy Commissioner shall, within 90 days from September 1, 1970 make reference under Section 18 to the Civil Court which he failed to do. Consequently, by operation of sub-section (3)(b) with the expiry of the aforestated 90 days, the cause of action had accrued to the respondents to make an application to the Civil Court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in sub-section (3)(b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no Article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by clause (b) of sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e., the date on which cause of action had accrued to the respondent-claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in Town Municipal Council, Athani v Presiding Officer, Labour Court, Hubli, : : (SC), which has stood overruled, the order of the High Court is unsustainable".

This position is also supported by the reasoning in Kerala State Electricity Board v T.P. Kunhaliumma1. It may be seen that under the Central Act sans the Karnataka Amendment there was no right to approach the principal Civil Court of original jurisdiction to compel a reference and no time-limit was also fixed for making such an approach. All that was required of a claimant was to make an application for reference within six weeks of the award or the notice of the award, as the case may be. But obviously the State Legislature thought it necessary to provide a time frame for the claimant to make his clam for enhanced compensation and for ensuring the expeditious disposal of the application for reference by the authority under the Act fixing a time within which he is to act and conferring an additional right on the claimant to approach the Civil Court on satisfying the condition precedent of having made an application for reference within the time prescribed.

4. A statute can, even while conferring a right, provide also for a repose. The Limitation Act is not an equitable piece of legislation but is a statute of repose. The right undoubtedly available to a litigant becomes unenforceable if the litigant does not approach the Court within the time prescribed. It is in this context that it has been said that the law is for the diligent. The law expects a litigant to seek the enforcement of a right available to him within a reasonable time of the arising of the cause of action and that reasonable time is reflected by the various article of the Limitation Act.

5. On a plain understanding of the scheme of Section 18 of the Act as amended in Karnataka, it is apparent that a claimant has to make an application for reference within a period of 90 days of the service of notice under Section 12(2) of the Act. The section casts a duty on the concerned officer to make a reference within 90 days of the receipt of the application for reference. The mere inaction on the part of the officer does not affect or straightaway extinguish, the right of the claimant-applicant. The claimant is conferred the right to approach the Court but he has to do so, within three years of his having made an application for reference in view of the general law of limitation. It is in this context that it has been held that the time available to a claimant for approaching the Court for getting a reference made, is in all, three years and 90 days from the date of the accrual of the cause of action. That accrual is when he makes an application for reference within the time prescribed by

Section 18(2) of the Act. The controversy that is generated in these appeals is whether on the expiry of the said period of three years and 90 days, the right of the Deputy Commissioner to make a reference and that of the claimant to move the Court, get extinguished. It is to be remembered that the claimant had made his application for reference within the 90 days prescribed by the statute. Should a construction be adopted which will lead to a position that a claimant who has done his part, loses his right on the failure of the Deputy Commissioner to make the reference within 90 days of the receipt of the application for reference? That will depend on the statutory scheme. If we construe the provision as conferring on the litigant a further right to approach the Court for getting the matter referred, in case a Deputy Commissioner fails to make a reference within 90 days of the receipt of the application, we have prima facie to say that on his failure to approach the Court and get the reference made, he would lose his right to have a reference for enhancement of compensation. Obviously, the mischief that was sought to be averted by the Legislature was the causing of undue delay by Deputy Commissioners in making references and the making of highly belated references, sometimes based on applications clandestinely received long after the award itself had been made. If we keep this object in view, the conclusion possible is that, if a claimant does not get his claim referred to the Court within three years of his making the application before the Deputy Commissioner within the period fixed and the accrual of a cause of action, his right to claim enhancement of compensation would get extinguished. In the context of Section 28-A of the Act, there will be no irreparable prejudice caused to the claimant since he can always make a claim for more based on any enhancement of award by a Court in any other reference arising out of the acquisition under the same notification. The difference may be only in the matter of interest and the like.

6. Section 18 of the Land Acquisition Act as amended in Karnataka is self-contained. The amendments substantially alter the position as obtaining under Section 18 of the Central Act. Under the Central Act, there is only an obligation on the claimant who is not satisfied with the award of compensation and receives it under protest, to make an application-to the Collector for making a reference of his claim for enhancement to the Court and to ensure that his application is made within the time provided under sub-section (2) of that section. In other words, once an application has been made for making a reference for enhancement, no further right is conferred on him, except, may be that he can approach the High Court in its writ jurisdiction, seeking the issue of a writ of mandamus directing the Collector to perform the duty imposed on him by Section 19 of the Act, by making an appropriate reference. Even in such a case, it is open to the High Court to decline to issue a writ as sought for by a claimant, when the approach to the High Court is unduly delayed or the petitioner is guilty of laches.

7. Under the Karnataka scheme, the period for making an application for reference has been enhanced from six weeks to 90 days and the terminus a quo is the receipt of notice from the Collector under Section 12(2) of the Act. The Section proceeds further and imposes a duty on the Deputy Commissioner to make the reference to the Court within 90 days from the date of receipt of the application under Section 18(1) of the Act. Though it may be not be conclusive what one has to notice is that expression used is "shall" and not "may". The scheme does contemplate a situation where the Deputy Commissioner, inspite of the peremptory nature of the duty cast on him, still fails to make the reference within the time stipulated by sub-section (3)(a) of Section 18. The claimant is, therefore, given the right to approach the Court, namely, the Court that is to deal with the claim on the reference being made, to direct the Deputy Commissioner to make the reference within a time to be fixed by the Court. This right to apply to the Court which is to deal with the reference, is not

available under the Central Act.

8. Whatever might have been the controversy in the High Court in that regard, after the decision of this Court in the Thakoredas case, the time for approaching the Court under Section 18(3)(b) of the Act stand crystallised. The application has to be made within three years of the expiry of 90 days from the date of application under Section 18(1) of the Act made by the claimant. If the application is not made within that time the right to move is lost. In that case, the Court dismissed the application under Section 18(3)(b) of the Act. We have, therefore, to proceed on the basis that the remedy of approaching the Court under Section 18(3)(b) of the Act gets extinguished on the expiry of the period limited therefor.

9. This Court has also held that in proceedings under the Land Acquisition Act before the authorities under that Act, Section 5 of the Limitation Act has no application (See Officer on Special Duty (Land Acquisition) and Another v Shah Manilal Chandulal and Others). Therefore, Section 5 of the Limitation Act cannot be resorted to while making an application under Section 18(1) of the Act and the application has to be made within the period fixed by Section 18(2) of the Act.

10. The Division Bench of the High Court in Special Land Acquisition Officer v Gurappa Channabasappa Paramraj2, held that the reference Court has not only the power, but also the duty, to consider whether the reference was time barred and therefore invalid. It also held that Article 137 of the Limitation Act applies to an application under Section 18(3*)^) of the Act, a position approved by this Court. Then the Division Bench held that the power to make a reference under Section 18(3) subsists till the right of the party to make an application before the Court seeking a direction to the Deputy Commissioner to make a reference exists and from this it followed that there is no power in the Deputy Commissioner to make a reference thereafter and if such a reference is made by the Deputy Commissioner, it is invalid. An application to the Court not made within 3 years after the expiry of 90 days from the date of the application under Section 18(1) of the Act, had to be rejected in limini. The Division Bench laid down the law thus.-

"It is a well-recognized rule of construction that in order to ascertain the true meaning of a provision the intention of the Legislature, as ascertainable from the language of the provision is the safe guide. From the amendment of Section 18, it is clear that in addition to the time-limit of 90 days fixed in Section 18, the Legislature intended to create a duty in the Deputy Commissioner to make a reference within 90 days and further if within the said period the Deputy Commissioner/Land Acquisition Officer failed to make a reference, to confer a right on the party to make an application before the Court seeking a direction to the Deputy Commissioner to make the reference. If that right is not exercised by the party within time, then the right ceases. Once the right of the party to get a reference is time barred, it would be incongruous to hold that the Deputy Commissioner can still make a reference, at any time even after decades. In our view, it is reasonable to construe the provision to mean that the date on which the right of the party to get a reference comes to an end would also be the date on which the power of the Deputy Commissioner to make reference comes to an end. We are not persuaded to agree with the construction suggested for the respondent that the power of the officer continues even after the right of the party comes to an end and continues for ever. It means even after an application made before the Court after three years is rejected as the Court is powerless to entertain a time barred application, the Deputy Commissioner would have the

power to make a reference, nullifying the order of the Court rejecting the application as time barred. Such a construction would lead to a situation in which in one case the Deputy Commissioner could make a reference if he so desires and in another he could refuse to do so, if he so desires, in which even the party would be helpless. In other words, the Deputy Commissioner could act according to his whims and fancies. It is difficult to agree that the Legislature intended to bring about such a result. Further, such a construction which brings about anomalous and incongruous results and gives ample scope for nepotism, favourtism and corruption, should not be given. We have come across several references made after two decades, particularly after several additional benefits were conferred by Amending Act 68 of 1984 amending the Land Acquisition Act. In our opinion, the correct view to take is, just as the party loses the right to the reference if no application is made within 90 days in terms of Section 18(2), the party, who had made an application within 90 days loses the right to secure a reference if he fails to make an application within three years after the expiry of 90 days from the date of the reference application and consequently the power of the Deputy Commissioner/Land Acquisition Officer to make reference comes to an end. We are, therefore, of the view that the date of cessation of the Deputy Commissioner to make a reference also constitutes the date of cessation of power of the Deputy Commissioner. To put it in a nutshell the latter comes to an end on the date on which the former ends and the award of the Land Acquisition Officer becomes final. Therefore, neither the party can seek a reference nor the Deputy Commissioner can make the reference after the expiry of 3 years and 90 days from the date of the reference application".

11. In view of some differences of opinion that subsequently arose mainly because of the failure to appreciate the reasoning of the Division Bench as above, the question was referred to a Full Bench. The Full Bench, by a majority has overturned the above view. That decision of the Full Bench in Hanamappa and Others v Special Land Acquisition Officer, Upper Krishna Project, Narayanapur, Surapur Taluk, Gulbarga District1. That decision is challenged in Civil Appeal No. 1566 of 2001.

12. While one of the Judges agreed with the position expounded by the Division Bench in G. C. Paramraj's case, two of the learned Judges proceeded to hold that the Division Bench in G. C. Paramraj, did not lay down the correct law. It is seen that while holding so, the Court stated that there was no mandatory obligation on the Deputy Commissioner to make a reference within 90 days as provided under Section 18(3)(b) of the Act and there is no provision for loss of right in the claimant once he had made an application for reference under Section 18(1) of the Act within the time prescribed by Section 18(2) of the Act. The consequences flowing from the claimant not seeking to enforce his right under Section 18(3)(b) of the Act in a case where the reference was not made within the time mandated by the statute was got over by invoking the theory that there was no provision for extinguishment of the right and that a party cannot be penalised for the failure of the Deputy Commissioner to make the reference. The majority stated that the decision in Thakoredas case, rendered by this Court would not in any manner suggest that the view they are adopting was erroneous. The question whether the expression "shall" used in Section 18(3)(a) of the Act made it mandatory for the Deputy Commissioner to make a reference within 90 days or whether the provision was only directory was discussed at length. The presiding Judge, on the other hand, adopted the approach made in Paramrafs case and held that there was no reason to reconsider the view expressed therein. The learned Judge noticed that even in the matter of issue of a writ of mandamus under Article 226 of the Constitution of India, in State ofMadhya Pradesh and Another v Bhailal Bhai1, this Court had held that after the expiry of the period of limitation and on the ground of uncondonable laches, the same cannot be sought for or issued.

13. The majority, in our view, was not justified in mixing up the position obtaining under Section 18 of the Central Act and the position obtaining under Section 18 of the Act as amended in Karnataka. The Court had to consider the scheme of Section 18 as obtaining in Karnataka, the scope of the relevant provisions and the consequences arising from it, unaffected by what might be the position under Section 18 of the Central Act. Section 18 of the Act as in Karnataka, in fact, confers additional rights on a claimant by providing an extended time for making a claim for reference, .possibly considering the situation available in the State and a further right on the claimant to approach the Land Acquisition Court for directing a reference to it, based on the application already made by him before the Deputy Commissioner. The High Court, in our view, erred in proceeding on an enquiry as to whether the obligation under Section 18(3)(a) of the Act on the Deputy Commissioner was mandatory or directory. In fact, if one were to go by the use of the expression "shall", and the introduction of Section 18(3)(b) and the right conferred thereunder, there is no difficulty even in taking the view that it is mandatory for the Deputy Commissioner to make the reference within 90 days of receipt of the application for reference. When he fails to perform the mandate of the statute, the provision gives the claimant a right to approach the Court which could compel the reference to be made by the Deputy Commissioner who had failed to perform his duty under Section 18(3)(a) of the act and in that process, even award costs of the proceedings against the Deputy Commissioner, and in appropriate cases, to be recovered from him personally. But what is relevant is not the question whether the duty cast on the Deputy Commissioner under Section 18(3)(a) of the Act as in Karnataka in mandatory orit is directory. On its scheme, the Deputy Commissioner is expected to make the reference within 90 days of the receipt of the application. On his failure to do so, the claimant has to approach the Land Acquisition Court for getting the matter referred.

14. Extinguishment of a right can be expressly provided for or it can arise by the implication from the statute. Section 18 of the Act as in Karnataka sets out a scheme. Having made an application for reference within time before the Deputy Commissioner, the claimant may lose his right by not enforcing the right available to him within the time prescribed by law. Section 18(3)(a) and Section 18(3)(b) read in harmony, casts an obligation on the claimant to enforce his claim within the period available for it. The scheme brings about a repose. It is based on a public policy that a right should not be allowed to remain a right indefinitely to be used against another at the will and pleasure of the holder of the right by approaching the Court whenever he chooses to do so. When the right of the Deputy Commissioner to make the reference on the application of the claimant under Section 18(1) of the Act stands extinguished on the expiry of 3 years and 90 days from the date of application for reference, and the right of the claimant to move the Court for compelling a reference also stand extinguished, the right itself loses its enforceability and thus comes to an end as a result. This is the scheme of Section 18 of the Act as adopted in the State of Karnataka. The High Court is, therefore, not correct in searching for a specific provision bringing about an extinguishment of the right to have a reference and on not finding it, postulating that the right would survive for ever.

15. Under the scheme of Section 18 of the Act as in Karnataka, thus the claimant loses his right to move the Court for reference on the expiry of three years and 90 days from the date of his making an application to the Deputy Commissioner under Section 18(1) of the Act within the period fixed by Section 18(2) of the Act. This position is now settled by the decision of this Court in Thakoredas case. This loss of right to move the Court precludes him from seeking a remedy from the Court in terms of Section 18 of the Act. This loss of right in the claimant puts an end to the right of the

claimant to seek an enhancement of compensation. To say that the Deputy Commissioner can make a reference even after the right in that behalf is lost to the claimant, would be incongruous. Once the right of the claimant to enforce his claim itself is lost on the scheme of Section 18 of the Act, there is no question of the Deputy Commissioner who had violated the mandate of sub-section (3)(a) of Section 18 of the Act, reviving the right of the claimant by making a reference at his sweet-will and pleasure, whatever be the inducement or occasion for doing so. On a harmonious understanding of the scheme of the Act in the light of the general principle that even though a right may not be extinguished, the remedy may become barred, it would be appropriate to hold that on the expiry of three years and 90 days from the date of an application for reference made within time under Section 18(1) of the Act, the remedy of the claimant to have a reference gets extinguished and the right to have an enhancement becomes unenforceable. The Deputy Commissioner would not be entitled to revive a claim which has thus become unenforceable due to lapse of time or non-diligence on the part of the claimant.

16. The object of bringing in Section 18 in the amended form in Karnataka has been highlighted in the decisions of that Court. The object was to ensure that underhand deals did not take place in the office of the Deputy Commissioner and to prevent belated applications and pre-dated applications being received by his office and references made, years after the acquisition is completed. The object was also to ensure that all matters in connection with an acquisition were completed within a reasonable time and claims for enhancement did not hang like Damocles sword over the Government or over a company for the benefit of which the acquisition is undertaken. Therefore, any interpretation based on which the Deputy Commissioner is given the power to revive a claim which has become unenforceable, would defeat the very purpose for which Section'18 in the form in which it is, was enacted in the State of Karnataka. The majority in the Full Bench was, therefore, in error in thinking that the Deputy Commissioner could make a reference at any time at his sweet-will and pleasure, notwithstanding the fact that the right to move the Court in that behalf has been lost to the claimant himself.

17. The majority, in our view, has not properly appreciated the position highlighted in the decision of that Court in Assistant Commissioner v Lakshmi Bai1, that the power to make a reference under Section 18(3) subsists till the right of the party to make an application before the Court seeking a direction to the Deputy Commissioner to make a reference exists and that the cessation of the right of the party to apply to the Court for seeking a direction to the Deputy Commissioner to make a reference, is also the point at which the power of the Deputy Commissioner to refer, ceases. We think that this position logically emerges from the scheme of Section 18 of the Act as adopted in Karnataka.

18. In language of Section 18 is plain as indicated by the High Court. But the question is what is the scheme that has been formulated by Section 18 of the Act vis-a-vis a claim for enhancement. The scheme under Section 18 in Karnataka is a departure from the Central Act and the Scheme in Karnataka has to be understood, based on the provisions in Section 18 as in Karnataka and the consequences emerging from it. The question whether the time fixed under Section 18(3)(a) is mandatory or directory and whether time fixed for performance of a duty is generally considered directory or mandatory are all questions that may not have much relevance in the context of the scheme of Section 18 of the Act. Whether mandatory or directory, on the failure of the Deputy Commissioner to make a reference within 90 days from the date of an application under Section 18(1) of the Act, the claimant is given the right to approach the Land Acquisition Court seeking the

compelling of a reference by the Deputy Commissioner. Once the right to move for a compelled reference is lost to the claimant, on the scheme of Section 18, the very right to have a claim for enhancement, would come to an end in view of the fact that the remedy in that behalf becomes barred. Thereafter, the Deputy Commissioner cannot revive that right to a reference.

19. The High Court has made much of the fact that there is no obligation on the Deputy Commissioner under Section 18 of the Act to convey the information to the claimant about the making of the reference or the declining of the application for reference. Once a claimant has made his application for reference within the period prescribed by Section 18 of the Act, and he does not get any notice from the Reference Court regarding the reference made to that Court for enforcement of his claim for enhanced compensation, it is for the claimant to move the concerned Court for getting a reference made in terms of Section 18 of the Act. If he gets intimation from the Reference Court about the lodging of the reference, obviously, it becomes unnecessarily for him to approach the Court for compelling a reference. But in a case where he gets no intimation from the Reference Court about the reference having been made, it is for him to invoke the jurisdiction of the Reference Court under Section 18(3)(b) of the Act within the time prescribed therefore by law. The extinguishment of the remedy by way of moving the Civil Court is not dependent on receipt or otherwise of an intimation from the Deputy Commissioner about the fate of his application for reference.

20.The view we have taken, after all, - does not deprive a claimant who had protested, of his right to enhanced compensation in view of the introduction of Section 28-A of the Land Acquisition Act. He could seek an enhancement based on any award that might have been made within the time prescribed therefor in respect of land covered by the same notification.

21. Then the question is, whether in the context of Section 18 of the Karnataka amendment, the decision of this Court in Thakoredas case and our discussion as above. Section 5 of the Limitation Act could be invoked or would apply to an application under Section 18(3)(b) of the Act. This Court has held that Section 5 of the Limitation Act has no application to proceedings before the Collector or Deputy Commissioner here, while entertaining an application for reference. We see no reason not to accept that position. Then arises the question whether Section 5 could be invoked before the Land Acquisition Court while making an application under Section 18(3)(b) of the Act. We have held in agreement with the earlier Division Bench of the Karnataka High Court, that the right to have a reference enforced through Court or through the Deputy Commissioner becomes extinguished on the expiry of three years and 90 days from the date of the application for reference made in time. Consistent with this position it has necessarily to be held that Section 5 of the Limitation Act would not be available since the consequence of not enforcing the right to have a reference made on the scheme of Section 18 of the Act as obtaining in Karnataka, is to put an end to the right to have a reference at all. Since in that sense it is an extinguishment of the right, the right cannot be revived by resorting to Section 5 of the Limitation Act. We may incidentally notice that in Thakoredas case, this Court rejected the application under Section 18(3)(b) of the Act which was beyond time, though, of course, there was no specific discussion on this aspect.

22. An application under Section 18(3)(b) of the Act is to compel a reference by the Deputy Commissioner. We have held that on the expiry of three years and 90 days from the date of the

application for reference seeking enhancement the right of the Deputy Commissioner to make the reference comes to an end. In that context, and in the context of the fact that the claimant himself loses his right to move the Court for compelling a reference, it is not possible to hold that by invoking Section 5 of the Limitation Act before the Land Acquisition Court the claimant can get over the bar to the remedy created by Section 18 of the Act. We are, therefore, of the view that Section 5 of the Limitation Act would have no application while approaching the Court under Section 18(3)(b) of the Act and if the application-is not within the time as indicated above, the same has only to be dismissed as was done in Thakoredas case.

23. In the light of our discussion as above, we hold that the High Court was in error in holding that the Deputy Commissioner could make a reference even after the expiry of three years and 90 days from the date of the application for reference made by the claimant within the time prescribed by Section 18(2) of the Act. We uphold the view of the High Court in Paramrnj's case that the remedy having become barred the right could not thereafter be enforced. In that context, we hold that the claimant while approaching the Court under Section 18(3)(b) of the Act would not be entitled to invoke Section 5 of the Limitation Act. In the light of these, we allow these appeals and set aside the orders of the High Court. We dismiss the applications for reference made by the claimants. We also uphold the view of the Land Acquisition Court that a reference made beyond the expiry of the three years and 90 days from the date of application for reference by the Deputy Commissioner is incompetent. We hold that the respondents are not entitled to claim any enhancement by recourse to Section 18 of the Act. In the circumstances we make no order as to costs.

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