

ALLAHABAD HIGH COURT

Secy. of State

Vs

Bhagwan Prasad

(Bennet. J.)

15.06.1932

JUDGMENT

Bennet, J.

1. This is a first appeal by the Secretary of State against an order of the learned Subordinate Judge of Mirzapur under the Land Acquisition Act awarding a certain sum as further compensation to the applicant. The point which has been urged before us is:

that the suit as brought by the plaintiff-respondent is barred by six months' limitation as provided in Section 18(2), Land Acquisition Act and secondly that the appellant is not estopped from pleading limitation even after the reference made by the Collector to the civil Court for adjudication.

2. The language quoted is that of the appellant, but it is obvious that the matter was not a suit but an application. The facts of the present case are that the Land Acquisition Officer made an award on 14th June 1923. The applicant was absent and was not represented at the time. Accordingly, under Section 18(2)(b), Land Acquisition Act, the application should have been made within six weeks of the receipt of the notice from the Collector under Section 12, Sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

3. Notice was served on the applicant on 18th January 1924 and his objection was filed on 12th February 1924. He therefore complied with the term of six weeks from receipt of the notice, but he did not comply with the term of six months from the date of the Collector's award. The application therefore was barred by limitation under the proviso quoted. The Land Acquisition officer did not notice this point and he forwarded the reference to the civil Court in the ordinary way. When the reference came before the civil Court, on behalf of Government the point was taken that the application was barred under Section 18(2), Land Acquisition Act. The Court dismissed this objection. It is again taken in appeal. As far as this Court is concerned, the matter has been decided by a Bench in *Secy. of State v. Bhagwan Prasad*¹ in which it was held by a Bench of which one of us was a member that when a reference had been made under the Land

Acquisition Act it was not open to the Collector or the Secretary of State to say that the reference was wrongly made although the ground for saying so may be that the application by the owner was belated. The "Court" does not sit on appeal over the Collector and the Act does not give any authority to the "Court," either in express term or by implication, to go behind the reference and to see whether the Collector acted rightly or wrongly. It is the province of the Collector alone to decide for himself whether he should make the reference or refuse to do so. Various rulings on the subject had been considered in that case and there is no need for us to consider them again.

4. We are in agreement with the principles of law laid down in that case. The only new case that has been brought to our notice is one of the Oudh Chief Court in *Ahmad Alt Khan Alawi v. Secy. of State reported in²* in which it has been held that the Land Acquisition Officer cannot refuse to make a reference, even if it is time-barred and that his duty is to bring the matter to the notice of the Court. We note that that is the principle which is laid down by Board Circulars I-VIII, para. 28 note 2. In our opinion, this direction of the Board Circulars is founded on a misconception of law. We also note that the ruling of *Secy. of State v. Bhagwan Prasad* A.I.R. 1929 All. 769(Supra), was not mentioned in the recent case in the Oudh Chief Court. We dismiss this appeal with costs.

Cases Referred.

1A.I.R. 1929 All. 769

2A.I.R. 1932 Oudh. 180