

ALLAHABAD HIGH COURT

Kashi Parshad

Vs

Notified Area

(Mukerji , J.)

22 July, 1931

JUDGMENT

Mukerji, J.

1. This petition in revision is on behalf of Kashi Prasad, and is directed against the Notified Area of Mahoba, in the following circumstances. A certain piece of land was acquired by the Government for the benefit of the Notified Area of Mahoba, and compensation was awarded to the applicant, Kashi Prasad, by an order dated 11th October 1930. Kashi Prasad did not accept the award, and applied on 10th December 1930 that a reference should be made to the District Judge in the matter. The Collector made an order of reference to the District Judge on 23rd December 1930. Thereupon, the President of the Notified Area made an application to the Collector pointing out that the application of Kashi Prasad on which the Collector had acted was beyond time, and thereupon the Collector, professing to review his own judgment, by an order dated 23rd February 1931 cancelled his order of 23rd December 1930, and in effect refused to make a reference to the District Judge. Kashi Prasad appears before this Court, and his contention is that the Land Acquisition Officer should not have cancelled his own order, because he had no power of review, and that he was wrong in holding that the application of the applicant was barred by time.

2. Three points arise for determination in this application. The first point is one of jurisdiction of this Court; the second question is whether the application of 10th December 1930 was within time, and the third is whether the Collector could review his own judgment. On the first point, the question is whether the Collector is subordinate to this Court., It was argued that when an application is made to the Collector under Section 18, Land Acquisition Act, asking him to make a reference to the civil Court, the Collector in passing orders acts judicially, and not merely as a ministerial officer. I need not decide the question whether in acting under Section 18 the Collector acts judicially or ministerially. But supposing that he acts judicially, how does he become a Court subordinate to the High Court within the meaning of Section 115, Civil P.C. There are some decisions in which it was held that the Collector must be treated as subordinate to

the High Court, when he is acting under Section 18, for the reason that if the High Court was denied the power of correcting the Collector there would be no remedy left in the matter. One of these cases is *Administrator General of Bengal v. Land Acquisition Collector*¹ A contrary view has however been taken in the Pull Bench case of *Abdul Sattar Sahib v. Special Deputy Collector, Vizagapatam*² and a Division Bench case of Bombay in *Balkrishna Daji Gupta v. Collector, Bombay Suburban*³ In the Madras case it was pointed out that if the Collector improperly refused to make a reference the party suffering was without remedy, and it was suggested that the legislature might very well amend the Act and provide some remedy. But the fact that there was no remedy did not induce the Pull Bench to come to the conclusion that the High Court must have jurisdiction to correct the Collector. I entirely agreed with the Madras and Bombay cases, and hold that this Court has no jurisdiction to correct the Collector, if he improperly fails to make a reference, or, having made a reference, withdraws the reference before the reference has reached the District Judge. The second point is whether the application of the applicant before the Collector was within time. Section 18 gives six weeks' time to the applicant who has notice from the Collector under Section 12 for filing an application for reference. It is conceded that this rule applies to this particular case, and the application made on 10th December 1930 was made more than 42 days from 11th October 1930. In calculating the period fixed for making an application under Section 18, Land Acquisition Act, the Collector has added the time occupied in granting a copy of the Collector's award to the applicant.

3. Even allowing for this time, the Collector found that the application of 10th December 1930 was beyond time. Dr. Agarwala, on behalf of Kashi Prasad, urged that the applicant had made a previous application for a copy on 11th November 1930, and his application was rejected because of some defect. He asks that the time during which his application remained pending, and the time up till he got information of the fact that the application had been rejected, should be excluded. It is a very doubtful proposition, but before it can be entertained, the question is, is the applicant at all entitled to an exclusion of time? On this Dr. Agarwala relies on Section 29(2), Lira. Act, and says that by portion (a), Clause (2), Section 29, Section 12, Lim. Act becomes applicable to an application under the Land Acquisition Act, and therefore the applicant is entitled to deduction of the time occupied in obtaining a copy. But Section 12, Lim. Act refers to an application for leave to appeal and an application for review of judgment and to no other application.

4. We can read an application for reference under Section 18, Land Acquisition Act, as coming within the purview of Section 12, Lim. Act, only by materially modifying the language of Section 12. I am of opinion that Section 29, Lim. Act does not apply to an application under Section 18, Land Acquisition Act, and therefore the time of six weeks could not be extended. On this point, again, there is some conflict of opinion; but the later opinion entertained by the Lahore High Court in *Nafisuddin v. Secy. of State*⁴ is a better opinion than a decision of the Burma High Court quoted in the case of Nafisuddin. I agree with the decision of the Lahore High Court and hold that the time could not be extended.

5. The third point is whether the Collector could review his own order. The Collector in doing so, professed to act under Section 53, Land Acquisition Act. But that section applied to "the Court." "The Court" is defined in the Land Acquisition act as the principal Court of civil jurisdiction, namely, the Court of the District Judge. The Civil Procedure Code therefore did not in terms apply to the proceedings before the Collector. The Collector therefore it seems, had no power to review his own order. The Collector's 'ultimate order that the applicant's' application was beyond time was correct. This would be a sound ground for my not interfering with the order on revision. Besides, I have held that this Court has no jurisdiction to interfere. For both the reasons the petition fails, and it is hereby dismissed with costs.

Cases Referred.

- 1[1908] 12 C.W.N. 241
- 2A.I.R. 1924 Mad. 442
- 3A.I.R. 1923 Bom. 290
- 4A.I.R. 1927 Lah. 858