

ALLAHABAD HIGH COURT

Panna Lal

Vs.

Collector, Etah

Special Appeal No. 173 of 1957, against decision of Single Judge of this Court

(O.H. Mootham, C.J., Raghubar Dayal and A.P. Srivastava, JJ.)

14.03.1957. 07.03.1959

JUDGMENT

A.P. Srivastava, J.

1. The appellant No. 1 was the owner of some land lying within the Municipal Limits of Kasganj of which the appellant No. 2 was the tenant. The land was acquired under the provisions of the Land Acquisition Act for the construction of a Bus stand. The appellant No. 1 filed an objection under Section 5A of the Land Acquisition Act, but it was rejected. The Collector made his award under Section 11 of the Land Acquisition Act on the 21st of July 1954. On 11-8-1955 the appellants filed an application under Section 18 of the; Act requiring a reference to be made to the District Judge. In this application they alleged that they had come to know of the award only on the 5th of August 1955. By his order, dated 3-11-1955, the Collector rejected the application and refused to make the desired reference on the ground that the application was time-barred. The appellants then applied for a rehearing of the matter on the ground that it was not open to the Collector to himself consider the question of limitation and that he was bound to make the reference when an application was made to him under Section 18 of the Act. This application was again rejected by the Collector on 13-12-1955 on the ground that the contention put forward in it was not correct. The appellants then filed a petition under Article 226 of the Constitution in which they prayed that the orders of the Collector dated 3-11-1955 and 13-12-1955 be quashed by a writ of certiorari. on the ground that ho had no jurisdiction to refuse to make a reference to the District Judge when he was required to do so under Section 18 of the Act. The appellants also wanted the Collector to be directed by a writ of mandamus to make a reference to the District Judge. When the petition came up for hearing before Mr. Justice Chaturvedi, reliance was placed in support of it by the learned counsel for the petitioners on the case of *Ahmad Ali Khan v. Secretary of State*¹, The learned Judge conceded that the case supported the petitioners' contention but preferred to follow the contrary view which had been expressed in *Secretary of State v. Bhagwan Prasad*², and *Mahadeo Krishna Parkar v. Mamlatdar of Alibag*³, He therefore

took the view that it was for the Collector to decide whether the application for reference was within time or not and when he

¹ AIR 1932 Oudh 180

³ AIR 1944 Bom 200

²1932 All LJ 752 : AIR 1932 All 597

found that

the application was made beyond time he was bound to refuse the request for reference. As a result the petition of the appellants was dismissed. The appellants then filed this Special Appeal and in view of the fact that there was a conflict of opinion on the question raised in the appeal between this Court and the late Oudh Chief Court, the Division Bench before which the appeal came up for hearing referred the appeal to a Full Bench. That is how the case has come up before us.

2. The short question which therefore arises for our consideration is whether it is open to the Collector, when an application is made to him under Section 18 of the Land Acquisition Act requiring that the matter be referred for the determination of the Court, (District Judge), to reject the application and to refuse to make a reference.

3. Section 18 of the Land Acquisition Act reads as follows :

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

(2) The application shall state the grounds on which objection to the award is taken :
Provided that every such application shall be made :

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, 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".

4. Thus, though Section 18 confers jurisdiction on the Collector to make a reference to the Court when required to do so it also prescribes certain conditions which must be complied with before the reference can be made. These conditions are :

(1) a written application to the Collector,

(2) by a person who is

(a) interested,

(b) who has not accepted the award.

- (3) The application must state the grounds of the objection and these grounds can relate only to
- (a) measurement of the land.
 - (b) amount of compensation.
 - (c) the person to whom it is payable.
 - (d) apportionment of the compensation among the persons interested.
- (4) The application must be made within the period of time prescribed therefor under the proviso to Sub-Section (2) of the section.

5. The powers of the Collector to make the reference are therefore not unlimited. Compliance with the conditions mentioned in the section which are conditions precedent to the exercise of the power of reference is therefore necessary before that power can be invoked. In this connection it is necessary to bear in mind the observations made by their Lordships of the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan*⁴,

"Wherever jurisdiction is given to a Court by an Act of Parliament or by Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise."

Before exercising the jurisdiction conferred upon him by the section therefore, the Collector is bound to see whether the required conditions have been complied with, and if they have not been complied with, he cannot exercise the jurisdiction. The making of the application within the prescribed time being one of the conditions laid down in the section itself, if the application is not made within time, the Collector can in our opinion, reject the application as incompetent and refuse to make the reference.

Section 18 does not make the Collector a mere automatic transmitting authority bound to make the reference when required to do so without going into the question whether the requirements of the section have been complied with or not. In fact, so far as the application for making a reference under Section 18 of the Act is concerned, the Collector appears to be the only authority who has anything to do with it. It will be noted that he is not bound to send the application along with the reference when he makes it. The only thing he has to do is to submit a statement containing the particulars prescribed by Section 19. Those particulars do not include any facts relating to the conditions (including limitation) required in respect of the application under Section 18. There is therefore nothing to show that the Collector is not expected to apply his mind to the question whether the application fulfils the requirements of the law and that he is bound to refer the case simply on an application being made even though it is not in accordance with law. The contention of the appellants that the Collector could not go into the question of limitation and had no jurisdiction to reject the application on the ground that it was time-barred, thus appears to us to be wholly untenable.

6. In the case of AIR 1932 Oudh 180, on which great reliance is placed on behalf of the appellants, an application was made to the Collector under Section 18 of the Land Acquisition Act and was rejected on the ground that it was time-barred. Against the order of the Collector an impugnation was made to the Chief Court under Section 115 of the Civil Procedure Code. A preliminary objection was raised that in rejecting the application the Collector had not acted as a Court and the order sought to be revised was not a judicial order. The contention was that Section 115 of the Civil Procedure

⁴⁶ Moo Ind App 134 at p. 155

Code was not applicable at all. The contention was rejected and the view taken was that the order of the Collector was a judicial order of a Court subject to the revisional jurisdiction of the High Court. In that connection it was observed :

"The Land Acquisition Officer has no jurisdiction to refuse to make the reference even if in his opinion the application is not in time under Clause (a) or Clause (b) of Sub-Section (2) of Section 18. He should express that opinion and refer the matter to the Court for determination. The section nowhere provides that if the application contravenes Clause (a) or Clause (b), the Land Acquisition Officer shall reject the application, These clauses are placed in the section by way of a proviso to the substantive enactment contained in Sub-Section (1), Section 18 of the Act and relate to the form of the application and do not have the effect of taking away the right given by the substantive enactment to an interested person who has not accepted the award of requiring that the matter be referred for the determination of the Court."

Reliance was placed in support of this view on a Note added to R. 436 framed by the Local Government under the Land Acquisition Act.

7. With great respect the reasoning in our opinion, ignores that the proviso to Sub-Section (2) of Section 18 prescribes a condition of limitation which must be fulfilled before the application can be entertained by the Collector under Sub-Section (1). If the condition is not complied with, the application is not a competent application and cannot succeed. It was therefore not required to be stated anywhere in so many words that the Collector shall reject the application if the proviso is contravened. As was observed by the Full Bench of the Calcutta High Court in *Khetsidas Gangaram v. First Land Acquisition Collector*⁵, The section does not say that it is for the Collector to see if these conditions have been satisfied, nor that, if they are not satisfied, he may reject the application. But we think these powers are implied. Nor can it be said that the proviso takes away the right given by Sub-Section (1). The right is there, but is subject to the conditions laid down in the proviso and can only be exercised if the conditions are fulfilled. We are therefore unable to accept the interpretation put by the Oudh Court on the Section as correct.

8. A number of cases were referred to at the Bar, but it does not appear to be necessary to discuss

them. The specific question which is now before us does not appear to have arisen in any of them. Most of the cases deal with the question whether after a reference has been made by the Collector under Section 18 of the Land Acquisition Act its competency or vires can be questioned before the Court. Some of them deal with the question whether an order of the Collector making or refusing to make the reference can be questioned either under the writ jurisdiction of the High Court or under its revisional jurisdiction under Section 115 of the Civil Procedure Code. We are not concerned with those questions at present. There are, however, observations made in *Secretary of State v. Bhagwan Prasad*⁷, *Ravunny Nair v. State*⁸ *Narayanappa Naidu v. Revenue Divisional Officer*⁹, *Hari Krishan v. State of Pepsu*¹⁰, and AIR 1944 Bombay 200, which support the view we are taking on the question which has arisen in the present case.

9. Chaturvedi, J., was therefore in our opinion, justified in rejecting the contention of the appellants that the Collector was bound to make the reference as required by them and had no power to reject the application even though it did not comply with the conditions laid down under Section 18 of the Land Acquisition Act. The petition of the appellants

⁶ AIR 1946 Cal 508

⁸ AIR 1954 Trav-Co, 444 ¹⁰ AIR 1958 Pun 490

⁷ AIR 1929 All769: AIR 1932 All 597

⁹ AIR 1955 Madras 23

was thus rightly dismissed and the appeal must fail. It is accordingly dismissed with Appeal dismissed.