ALLAHABAD HIGH COURT

State of U.P

Vs.

Sri Abdul Karim

First Appeal No. 26 of 1953, against judgment and decree of Addl. Dist. J., Kumaun

(M.C. Desai, C.J. and B. Dayal and J.N. Takru, JJ.)
24.09.1952 05.02.1963

JUDGMENT

Desai, C.J.

1. The following question has been referred to a Full Bench by two of us :

> "Whether the District Judge, in a reference under Section 18 of the Land Acquisition Act, can go into a question that the application for reference was not made to the Collector within the time prescribed in Section 18 (2) of the Land Acquisition Act : and if so, can it refuse to entertain the reference if it finds it to be time-barred?"

The question arises in an appeal from a decree passed by a District Judge on a reference made to him under Section 18 of the Land Acquisition Act. The respondent, who was the owner of the land acquired, claimed a certain amount of compensation in proceedings before the Collector under Section 11. On 23-11-1950 the Collector decided that the owners of the land be given compensation of Rs. 20,000/- and odd and that an award be prepared accordingly. The respondent was not present when the decision was given and it is not known on what date the award was actually prepared by the Collector and signed by him, if at all. Under Section 11 a Collector is required to inquire into an objection by an owner of the land acquired and to "make an award under his hand of . . . . . the compensation which in his opinion should be allowed for the land" and "the apportionment of the said compensation among all the persons known or believed to be interested in the land". "Such award shall be filed in the Collector's office" and "the Collector shall give immediate notice of his award to such

of the persons interested as are not present personally or by their representative when the award is made", vide Section 12. Section 18 reads as follows :

> "(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.....
> 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 shall first expire."

On or about 25-8-1951 the respondent applied to the Collector under Section 18 (1) for referring the matter to the court. He filed an affidavit in support of his application affirming that he did not receive any information about the Collector's decision dated 23-11-1950. The Collector referred the matter to the District Judge in accordance with the provisions of Section 19, which are to the effect that in making the reference the Collector shall state for the information of the court certain matters and shall attach a schedule to the statement" giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively". Section 20 provides that the Court "shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection" and directing appearance before it on a certain day of the applicant, the Collector, etc. to be given. The learned District Judge on receiving the reference by the Collector issued a notice calling upon the respondent and the Collector to appear before him. The Collector appeared and filed a written statement pleading inter alia that the respondent's application under Section 18 (1) having been filed more than six months from the date of the award the reference by himself was barred by limitation. He did not state what was the date of his award. Since he pleaded that the application was time-barred because it was made more than six months after the date of the award, he accepted that the respondent was not present or represented before him at the time when he made his award, that proviso (b) governed the question of limitation and that if he had given notice required by Section 12 (2) to the respondent, six weeks had not expired since the receipt of the notice before the expiry of six months from the date of his award. Section 21 is to the effect

that

> "the scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection",

Section 22 requires the proceedings to take place in open court and Section 23 lays down that in determining the amount of compensation to be awarded the court shall take into consideration certain matters, while Section 24 forbids it to take into consideration certain other matters. Section 25 lays down certain rules as to the amount of compensation and then comes Section 26 providing that

> "every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of Section 23....." and that
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> "every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment".

The learned District Judge heard the reference. He refused to entertain the Collector's objection against the respondent's application for reference being barred by time because he thought that his jurisdiction was restricted to finding the amount of compensation to be awarded to the respondent and did not permit his going into the question whether the reference was legally made by the Collector or not. He awarded a higher amount of compensation to the respondent and this appeal was filed by the State Government from the award and the decree.

2. It was argued before us by Srimati Ramo Devi that really the application made by the respondent under Section 18 (1) was not barred by time because "the date of the award" within the meaning of the proviso (b) to section 18 means the date when the award was either communicated to the respondent or was known by him actually or constructively, as held by the Supreme Court in *Harish Chandra v. Dy. L.A. Officer* [1] and the award had become known to him within six months of the date of his application. Only a specific question has been referred to a Full Bench by the Bench seized with the first appeal and it is not open to us to go into the question whether the application was really barred by time or not. Our jurisdiction is solely to answer whether a District Judge hearing a reference has jurisdiction to decide that the reference was illegally made to him by the Collector because the application made under Section 18 (1) was barred by time, and not to answer whether the application

was really barred by time or not. It will be for the learned Judges, who are seized with the first appeal to decide whether the respondent's application was really barred by time or not.

3. I have reproduced all the relevant provisions in the Act. How the District Judge is required to proceed on receipt of a reference, what he has to determine and what decree he has to pass and what matters he has to consider and what matters he is forbidden to consider are all exhaustively laid down in the provisions referred to above. Section 18 is not sensibly drafted; it contains a provision for an application for reference being made to the Collector and a provision about the time within which it should be made, but contains no provision whatsoever requiring the Collector to make a reference. Not only is there no provision laying down in what circumstances he must or may or must not or may not make a reference, but also there is no provision containing any reference to his making a reference. It refers to what an owner of land aggrieved by an award may do, and the next section lays down what the Collector should do in making a reference; there is no provision which expressly confers any jurisdiction upon him to make a reference and such a jurisdiction is left to be inferred from Sections 18 and 19. When there is no provision laying down that a Collector can make a reference only when certain circumstances exist or cannot make a reference when certain circumstances exist it cannot be said that his making a reference is illegal on account of the existence or absence of certain circumstances. An owner is certainly required to make an application for a reference within a certain time, but this may only mean that if he makes an application within the time it must be considered on its merits by the Collector and that if it is made after the expiry of the time it may be ignored by the Collector regardless of its merits, and it may not, , in the absence of any express statutory provision about the Collector's jurisdiction to make a reference, mean that he cannot make a reference if an application is made after the expiry of the time. The view that if an application is made within the time the Collector must make a reference and that if it is made after the expiry of the time it is left to his discretion and he may or may not make a reference does not militate against any provisions of the Act. The Legislature could have intended that if an owner claims a reference as a matter of right he must claim it within certain time; otherwise the matter would be at the discretion of the Collector. What is imposed as a limitation upon an owner's right need not be treated as a corresponding limitation on the Collector's jurisdiction when the latter is not made wholly dependent upon the owner's right. Whether an application is made within the prescribed time is one question and whether a reference can legally

be made on an application made after the expiry of the prescribed time is another question and no provision connects the latter with the former. One cannot hold a reference illegal simply on the ground that the application on which it was made was presented after the expiry of the prescribed time. Legality is a matter of law and there is no express provision of law forbidding a reference on a time-barred application.

4. There is no provision conferring jurisdiction upon a District Judge hearing a reference to determine the question whether it was legally made to him or not or to refuse to determine it on the ground that it was made on a time-barred application. It stands to reason that when the legislature did not enact any provision illegal, it did not enact a provision empowering a District Judge to refuse to answer a reference on the ground that it was made on a time-barred application. Under Sections 20, etc. a District Judge is bound to proceed to determine a reference on receipt of it; the word "thereupon" in Section 20 obviously means "receipt of the reference referred to in Section 19". Once a reference is made a District Judge is required to proceed as laid down in Secs. 20, etc., and none of the sections contains any provisions empowering him to refuse to answer the reference. He must issue notice fixing a date for the hearing of the reference and he must do so even though he might find from the reference itself that it had been made on a time-barred application. Actually the Collector is not required to state in the reference, or the Schedule attached to it the date of his reference the date of the receipt of the notice issued under Section 12 (2) and the date of the application for reference made to him. He is required to give in the schedule particulars of notices served upon owners of land, but it is doubtful if this includes a notice given under Section 12 (2). Reading "notices served upon" with "statements in writing made" one may think that the notices meant are those served before the statements in writing are made, e.g. notices referred to in Sections 4, 5-A and 9. No useful purpose would be served by a Collector's informing the District Judge of the date on which he served upon an owner of land a notice of the award under Section 12 (2) unless he also informed him of the date of the award and the date of the application for reference. If it be the correct interpretation of Section 19 (2) that no particulars of the notice mentioned in Section 12 (2) are to be given in the schedule, the Collector is not required to give to the District Judge any information relating to the legality of the award. In *Panna Lal v. Collector, Etah,* [2] a Full Bench held that the particulars required to be submitted by a Collector under Section 19 do not include any facts relating to the conditions including limitation required in respect of an application under Section 18. When no information relating to the legality is

required to be given to a District Judge and he is required to proceed to hear the reference immediately on receipt of it, it follows that he cannot refuse to hear it on the ground that it was not made legally.

5. Though the main object of Section 21 seems to be to prevent a District Judge's considering interests of persons other than those affected by the objection to the award, the restriction imposed by it is in wide terms. When a District Judge is required to consider only interests of persons affected by the objection, it may be said that he is debarred from considering not only interests of other persons but also other matters. When the scope of the inquiry is exhaustively defined in Section 21, no inquiry outside the scope can be made by a District Judge. A consideration of the interests of the persons affected by the objection does not include consideration of the questions whether an application for reference was time-barred or not and whether a reference made on a time-barred application is legal or not.

6. It is clear from Sections 23 to 26 that all that a District Judge has to do is to determine the amount of compensation to be awarded for the land acquired and to incorporate it in an award. He is bound to make an award; he has no option to refuse to make one. In an award he must mention the amount of compensation to be paid to the objector; again he has no option to refrain from doing so. To say that he can refuse to determine the amount of compensation and to make an award on the ground that the reference was made to him on a time-barred application would be to go counter to the language used by the Legislature in Sections 23 to 26.

7. It must be conceded that the above interpretation leads to the result that the State Government is without any remedy if the Collector erroneously holds that an application for reference is not barred by time and makes a reference which he would not have made if he had not committed the error. There is no right of appeal or revision granted against a reference made by him on an erroneous view that an application for reference was not barred by time. But if the Legislature has refrained from providing for a remedy against an erroneous decision by a Collector it is not for this Court to provide one by judicial legislation or twisting of the language employed by the Legislature. It may very well be that the Legislature never contemplated a Collector's committing an error in deciding whether an application for reference was within time or not, or that it did not intend to make a reference illegal on account of its having been made on a time-barred application, or that it considered that as a

Collector acts as an agent of the State Government there should be no statutory remedy against any error committed by him.

8. The Legislature has not provided any remedy in the Act against any refusal on the part of a Collector to make a reference on an erroneous finding that the objector's application was barred by time. It does not appear that the Legislature's refusal to provide a remedy was based on the existence of a remedy under some other law, such as Section 45 of the Specific Relief Act or an application for mandamus or a suit. High Courts other than those in Presidency Towns had no jurisdiction to issue mandamus previously. When, as pointed out earlier, there is no positive duty cast upon a Collector to make a reference in a given circumstance it is doubtful if issue of a mandamus was thought by the Legislature to be a remedy. The result of a suit by an objector, whose application for reference is refused on an erroneous finding of its being barred by time, is also a matter of doubt. The Legislature having attempted to lay down the law regarding acquisition of land exhaustively would not have left a person aggrieved by an award to seek elsewhere his remedy against an erroneous refusal to make a reference if it thought that he was entitled to a remedy. It seems that the Legislature did not consider it necessary to provide for any relief against erroneous reference or erroneous refusal to make reference.

9. It is for a Collector to decide whether an application is barred by time and whether to make a reference; the District Judge to whom the reference would lie or is made does not exercise any appellate jurisdiction over him and has not been given any jurisdiction to set aside his finding in respect of the application being within time and his right to make a reference on its basis. It has been held that a Collector acts administratively when making a reference, vide *Maung Myun v. Collector of Mandalay,* [3] but even if he acts judicially he is in no sense subordinate or inferior to the District Judge and the latter cannot revise any finding of his except as provided in Sections 23 to 26. He assumes jurisdiction on receipt of any reference and not necessarily a reference made on an application made within the time prescribed under Section 18 (2). There is no provision connecting a District Judge's jurisdiction to hear a reference with an application for reference made by an owner of land and it cannot be contended that a District Judge has jurisdiction only if the owner's application was made within the prescribed time. If he finds that what he received was a reference purporting to have been made under the Land Acquisition Act he will assume jurisdiction and he will find that the reference was made under the Land Acquisition

Act even though it was made on a time-barred application, I do not at all agree that a Collector confers jurisdiction upon him when he accepts an application for reference and makes a reference to him. 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. After finding that the application for reference was within time he makes a reference and the District Judge is concerned only with the fact of his making the reference and not with any preliminary fact, such as that it was made on a time-barred application.The contention that a Collector cannot confer jurisdiction upon a District Judge by erroneous finding is the result of a confusion of the principle that a court cannot assume jurisdiction by an erroneous finding with the principle that one cannot confer jurisdiction upon a court by estoppel or acquiescence. 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 time-barred application. An order of an authority is a nullity only if the authority lacked inherent jurisdiction to make it; see *Merla Ramanna v. Nallaparaju* [4] *Balakrishnayya v. Linga Rao* [5] *Kiran Singh v. Chaman Paswan* [6] and *Hira Lal Patni v. Kali Nath* [7] In the last case Sinha, C. J. observed at page 201 :

> "Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking it is a case of inherent lack of jurisdiction."

In the preceding case of Kiran Singh, AIR 1954 Supreme Court 340 Venkatarama Ayyar, J. said at page 342 :

> "It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity . ..... A defect of jurisdiction, or whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree."

The Collector did not inherently lack jurisdiction when he made the reference even though the application for reference might have been barred by time and the reference was not a nullity and could not be treated as such by the District Judge. The District Judge could ignore the reference only if it were a nullity; otherwise he was bound to proceed to hear it. In the case of Panna Lal AIR 1959 Allahabad 576, A. P. Srivastava, J., speaking for the Full Bench, said at page 578 :

> "Before exercising the jurisdiction ... 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."

The question before the Full Bench was whether a Collector could refuse to make a reference on the ground that the application was barred by time and the Full Bench answered it in the affirmative. By saying "he cannot exercise jurisdiction" it did not mean that he lacked inherent jurisdiction if the application was barred by time. It did not even mean that he could not possibly make a reference; all that it meant was that he could refuse to make a reference. The question before it was of his right to refuse and not of his duty to refuse.

10. The view that I take is fully supported by *Secretary of State v. Bhagwan Prasad,* [7] Mukherji, J., with whom Niamatullah, J. agreed, said at page 770 :

> "When the reference has been made it would be the Court's duty to issue notice, after fixing a date for determination of the objections . . . neither Sections 18 to 20 nor any other provision of the Land Acquisition Act, anywhere state that the Court is entitled to go behind the reference and to see whether the Collector acted or not properly in referring the matter to the Court. The Court is required to decide the grounds on which the applicant objects to the award.....
> It is entirely for him and him alone to decide whether he will make a reference . . .The Court does not sit on appeal over the Collector and the Land Acquisition Act does not give any authority to the Court either in express term or by implication, to go behind the reference and see whether the Collector acted rightly or wrongly."

In *Secretary of State v. Bhagwan Prasad,* [8] Mukerji and Bennet, JJ. followed the above decision, disapproving *Ahmad Ali Khan v. Secretary of State,* [9] In *Venkateswaraswami v. Sub-Collector, Bezwada* [10] Kuppuswami Ayyar, J. accepted the above view and laid down that if the Collector decides to make a reference it is not open to the land acquisition court to go behind it. The learned Judge pointed out that if

a High Court or any other authority cannot interfere with the Collector's refusal to make a reference, his making a reference must be equally final when he decides to make one. In *Lila Mahton v. Sheo Govind Singh,* [11] Rai and R.K. Prasad, JJ. referred to the provision of Section 21 and observed at page 110 that the jurisdiction of a District Judge under the Act is a special one strictly limited to the terms of Sections 20 and 21 and is confined to a consideration of the objection. They pointed out that a District Judge does not sit on appeal over the Collector and the Act does not give him any authority expressly or impliedly to go behind the reference and to see whether the Collector acted rightly or wrongly. In *Hari Krishan v. State of Pepsu,* [12] Grover, J., with whom Bishan Narain, J. concurred, pointed out that facts regarding limitation of an application for reference are not required to be stated by the Collector in his reference and that he is not bound to send the application along with the reference and observed that all that a District Judge has to do on receipt of the reference or can do is to fix a date for its hearing and proceed to hear it after giving notice of the date. The learned Judge interpreted the word "thereupon" in Section 19 to mean "as soon as the Collector makes the reference and states for the information of the court various matters set out in Section 19" and observed that the court has to perform a ministerial act of causing a notice to be given to the objector and that 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 period. In *Pramatha Nath v. Secretary of State* [13] their Lordships of the Judicial Committee referring to the provisions of Section 21 observed as follows :

> "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."

These observations support the view that a District Judge cannot enquire into the question whether the application made to the Collector was within time or not. A special bench of the Patna High Court had to consider in *Jagarnath Lall v. Land Acquisition Deputy Collector Patna* [14] whether a Collector can refuse to make a reference on a ground other than that the application made to him for reference was

not in accordance with the provisions of Section 18, and decided in the negative. Then the special bench considered whether it had any jurisdiction under Section 115 C. P. C. to interfere with the Collector's refusal, and again decided in the negative. While discussing this question Harris, C. J., with the concurrence of Dhavale and Manohar Lall, JJ., observed at page 102 that the Collector did not act in proceedings under Section 18 as a Court and at page 106 that he was

> "not subject to the appellate jurisdiction of the High Court and the High Court has no power whatsoever over him."

If the High Court has no power over him a District Judge has all the more no power over him and it follows that he cannot revise any finding of his as to whether the application for reference was barred by time or not. A District Judge undoubtedly has a 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.

11. It must be conceded that there is overwhelming authority contrary to the view that I am taking, for instance *Sukhbir Singh v. Secretary of State,* [15] *Mahadeo Krishna v. Mamlatdar of Alibag,* [16] *Narayanappa v. Revenue Divisional Officer, Sivakasi,* [17] *G. J. Desai, v. Abdul Mazid,* [18] *State of Rajasthan v. L. D. Silva,*[19] *Boregowda v. Subbaramiah,*[20] *Sukhanand v. Samaj Sudhar Samiti,* [21] and *Kochukunja Padmanabhan v. State of Kerala,* [22] The view generally taken in these decisions is that a Collector's jurisdiction to make a reference is circumscribed by the conditions laid down in Section 18 (1), that if he makes a reference even though the application for reference was not in accordance with the provisions of Section 18 the District Judge acquires no jurisdiction to hear the reference and that he can refuse to hear it if it was made on a time-barred application. In the case of AIR 1926 Allahabad 766 (supra) Kanhaiyalal and Ashworth, JJ. held that a District Judge is not precluded from holding that the application was not in accordance with the law because the Collector was not entitled to waive the requirements of the law on behalf of the Government. This view was not accepted by later benches of this Court in the cases of AIR 1929 Allahabad 769 and AIR 1932 Allahabad 597. The view taken by the Oudh Chief Court in the case of Ahmad Ali Khan AIR 1932 Oudh 180 is as follows :

> "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), sub-section 2, Section 18, Land Acquisition Act. 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" (181)

and that a Collector's refusing to make a reference is a judicial order. That an order refusing to make a reference is a judicial order is not a view acceptable to a majority of the High Courts. Wazir Hasan C. J. and Kisch, J. purported to accept the decision of the Privy Council in *Ezra v. Secretary of State,* [23] according to which the proceedings up to the stage of the making of an award are administrative. It is difficult to understand that the subsequent proceedings resulting in the making of a reference or the refusal to make a reference suddenly become judicial. Merely because the Collector is required to make a reference only if certain conditions are fulfilled, it cannot be said that he suddenly becomes a judicial authority. An administrative authority does not cease to be an administrative authority because it has to decide something. Further there is no basis for the view taken by the Oudh Chief Court that a Collector cannot refuse to make a reference on the ground that the application was not in accordance with the law. The learned Judges relied upon the absence of a provision entitling him to reject an application on the ground that it was not made in accordance with the law but did not rely upon the absence of a provision laying down that he must make a reference on every application or a provision that the District Judge to whom he makes the reference will have jurisdiction to decide whether the objector was entitled to the reference or not. The learned Judge's observation that a right has been given "by the substantive enactment to an interested person . . . . . requiring that the matter be referred for the determination of the Court" (p. 181) is not borne out by the language of any of the relevant section; there is no section which even refers to any right to have the matter referred to a District Judge. A right to apply for a reference is given, but, as I pointed out earlier, no corresponding duty is expressly imposed upon the Collector to make a reference. And in any case the right given to an interested person is subject to the condition that he applies within the prescribed time.

In the case of Mahadeo Krishna, AIR 1944 Bombay 200 Beaumont, C. J., and Rajadhyaksha, J. thought that –

> "the Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions, so as to give the 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."

With great respect I am unable to agree; I repeat that there are no provisions laying down that a Collector can make a reference only if the conditions mentioned in Section 18 are satisfied, that a District Judge to whom the reference is made must satisfy himself that it was made legally and that he has jurisdiction to decide whether the Collector's finding that the application for reference was in order was correct or not. Of course a District Judge has jurisdiction only if a reference is made to him but it is quite a different matter to say that he has jurisdiction only if he finds that the reference was made legally and is not bound by the Collector's finding that he was making it legally. It may be that he has to satisfy himself that the reference made to him is one which he is required to hear but this does not necessarily mean that he must see anything beyond that it is made by a Collector at the instance of an owner of land. In the case of Narayanappa, AIR 1955 Madras 23 Govinda Menon and Ramaswami, JJ. overruled the case of Venkateswaraswami, AIR 1943 Madras 327, disagreed with the cases of Bhagwan Prasad AIR 1929 Allahabad 769 and Bhagwan Prasad AIR 1932 Allahabad 597 and observed at page 28 :

> "When there is such an impelling and binding provision to the effect that the application for making the reference shall be made within the period specified in the Act, it is difficult to see how a party who makes an application after the expiry of such a period can ask the Collector to make the reference. The necessary 'sine qua non' of the reference is the basic fact that the application for such a reference must be made in accordance with the provisions of Section 18 of Land Acquisition Act and within the period specified in the first proviso to that section and if those provisions are not complied with, there cannot be any valid application at all and necessarily if such an application does not exist, a positive reference is incapable of existence.....

No Court can be compelled to adjudicate upon matter which does not come before it in

strict conformity with the requirements of law and it is within the inherent power of the Court to find out whether the matter that comes before it, is in the proper form and in accordance with the requirements of particular statutes."

If an owner of land does not apply for reference within the prescribed time he cannot compel the Collector to make a reference but the learned Judges have not considered whether there is any provision which bars the Collector's power to make a reference, if he is inclined to make one, on a time-barred application. From the proposition that an authority is not bound to do an act it does not necessarily follow that it cannot do the act even if it wants to do it. 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 Section 18. Jurisdiction is a matter of statutory provision and not of inherent powers; therefore, whether, a District Judge can inquire into whether the collector's finding was correct or not is a matter of statutory authority and not of inherent right. In the case of G. J. Desai, AIR 1951 Bombay 156 Chagla, C. J. and Tendolkar, J. only assumed that "the power of the Collector to make a reference is circumscribed by the conditions laid down in Section 18" and that "one of his statutory duties is to make a reference if the application is within time." The learned Judges relied upon the cases of Mahadeo Krishna Parkar, AIR 1944 Bombay 200 and In re, Government and Nanu Kothare, ILR 30 Bom 275. In the latter case Chandavarkar, J. had assumed that the formalities prescribed by Section 18 were matters of substance and their observance was a condition precedent to the Collector's power of making a reference. The judgments in the cases of L.D. Silva, AIR 1957 Rajasthan 44 and Boregodwa, AIR 1959 Mysore 265 do not contain any new argument. In the case of AIR 1962 Jammu and Kashmir 59 Gopalakrishnan Nair, J. with whom Wazir, C. J. agreed said that a Collector can make a reference "only if certain facts exist and are shown to exist", that if they do not exist he cannot by wrongly saying that they do give himself jurisdiction and that if he does so the District Judge can hold that he had no jurisdiction to make the reference because "it is not for the Collector conclusively to decide whether the state of facts exists or not". No reasons have been given by the learned Judges for their view that the Collector cannot conclusively decide whether the state of facts exists or not. Even if he has jurisdiction to make a reference only if certain facts exist, there is no reason for saying that it is not for him to decide whether they exist or not and that his decision one way or the other is subject to a decision on the same question by the District Judge. According to the learned Judges the principle applicable is that laid down by Lord Esher in *R. v. Commissioners for Special*

Purposes of the Income-tax, [24] to the effect that when an inferior body which has to exercise the power of deciding facts is established by the Legislature, and it says that if a certain state of facts exists it shall have jurisdiction to exercise the power conferred upon it, it is not for the body conclusively to decide whether that state of facts exists or not. We have two bodies before us, the Collector and the District Judge, and let us apply this principle to each of them. The Collector, even if treated as a "court, tribunal or body", is certainly not inferior to the District Judge; the District Judge exercises neither appellate nor revisional or supervisory jurisdiction over him. Further, the Collector has not been invested with any power of deciding anything when an application for reference is made to him. The Legislature has not even conferred, by any express words, any power upon him to make a reference. Much less has it said that he will exercise the power only if a certain state of facts exists. Therefore, the principle enunciated by Lord Esher is not applicable when he makes a reference. Coming to the District Judge, he is undoubtedly an inferior Court in relation to this Court hearing an appeal from a decree passed by him. The Legislature has conferred upon him the power of determining the amount of compensation, but all that it has laid down as to when the power shall be exercised is that it shall be exercised on receipt of a reference from the Collector. So the only condition precedent for his exercising the power is the receipt of a reference. The Legislature has nowhere laid down that he shall exercise the power only if a Collector has made a reference to him on an application fulfilling the conditions mentioned in Section 18. If he exercises the power by wrongly holding that a reference has been made to him, he cannot conclusively decide that he has received a reference; if he wrongly decides that he has received a reference an appellate Court can set aside his decree. As I said earlier a reference made on a time-barred application is still a reference even if the law were that no reference can be made on time-barred application. Therefore, when this Court examines whether there was a reference before the District Judge or not, it will have to uphold his finding about the existence of a reference in spite of its having been made on a time-barred application and bringing the present case within the first of the two categories mentioned by Lord Esher will not result in the decree passed by the District Judge being set side on the ground that he had no jurisdiction because the application for reference was time-barred.

12. Under Section 66 of the Income Tax Act an assessee may by an application made within a certain time require the Appellate Tribunal to refer to the High Court any question of law arising out of an order passed by it under Section 33 (4) and the

Appellate Tribunal is required to draw up a statement of the case and refer it "within ninety days of the receipt of such application" and the High Court is required upon the hearing of "any such case" to decide the questions of law raised thereby. In *Commissioner of Income Tax, Madras v. Sevugan,* [25] Gentle, C. J. and Yahya Ali, J. refused to hear a statement of a case on the ground that it was made on a time-barred application. The only reason given by the learned Judges is that they could not subscribe to the view that even if an Appellate Tribunal deliberately ignores the requirements about limitation and refers a case to the High Court on an application made long after the expiry of the period prescribed for it, the High Court is powerless to do anything and must hear the statement. It is now settled that Section 66 (5) does not compel a High Court to hear a case if it is referred to it by an Appellate Tribunal in contravention of the provisions of Section 66 (1), for instance if it refers a question of fact or a question of law not arising out of its order made under Section 33 (4). But the Legislature has itself conferred this power of refusing to hear a case upon a High Court by repeatedly using the word "Such". A High Court has jurisdiction to hear only that case that has been referred to it under Section 66 (1) and an Appellate Tribunal can refer a case only on receipt of that application that is made within the prescribed time and requires it to refer any question of law arising out of its order. The links constituted by the use of the word "Such" between the High Court's jurisdiction to refuse to hear a case and the illegality in the statement of the case are missing in the relevant sections of the Land Acquisition Act.

13. Earlier I hinted at the Legislature's having contemplated the Collector to be an agent of the Government; that is the position assigned to him by the Judicial Committee. In the case of Ezra, ILR 32 Cal 605 (PC) Lord Robertson stated the general scheme of the Act and observed at page 629 :

> "When the sections relating to this matter are read together, it will be found that the proceedings resulting in this 'award' are administrative and not judicial; that the 'award' ..... is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands; and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court. The sections directly relevant . . . . . are the 11th, 12th, 13th, 14th, 15th and 18th. These sections, and the question as a whole, are very satisfactorily discussed in the judgment under appeal, and their Lordships do not think it necessary to repeat the reasoning."

The judgment under appeal was given by Ameer Ali and Stephen, JJ. in *Ezra v. Secretary of State,* [26] and the following observations seem to have been approved by the Judicial Committee :

> "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 proceeding ..... 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. (p. 85).
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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 Government ... is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land of the compensation to be awarded". (p. 86)

In the case of Raja Harish Chandra, AIR 1961 Supreme Court 1500 the Supreme Court said the same thing when dealing with the legal character of an award. Gajendragadkar, J. said at p. 1503 :

> ".....the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property."

The Supreme Court approved of the decisions in the cases of Ezra, ILR 32 Cal 605 (PC) and Ezra, ILR 30 Cal 36. When a Collector makes an award and gives notice of it he acts as an agent of the Government. An application for reference has to be made to him; this means that it is to be made to him as an agent of the Government because nothing has happened in the interval that would have the effect of changing his status. Now, if he receives an application for reference as an agent he disposes of it also as an agent. Again, nothing happens between his receipt and his decision to change his status. His status is certainly not changed by the mere fact that he is required to make a reference if the application is made within the prescribed time and complies with certain other conditions. If he wrongly decides that an application is within time or satisfies other conditions the Government, as his principal, may have remedy against

him but are bound by his act so long as it remains. The act being of the agent is their own and they are bound by it. They cannot, therefore, contend at the hearing of the reference before the District Judge that it was illegally done. In the case of Bhagwan Prasad, AIR 1929 Allahabad 769 Mukerji, J. said at page 771 :

> "When he makes the reference, he makes it on behalf of the Government. Having made the reference.....it is 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 High Courts of Bombay, Madras and Rajasthan took a different view in the cases of Nanu Kothare, ILR 30 Bom 275, Narayanappa, AIR 1955 Madras 23 and L. D. Silva, AIR 1957 Rajasthan 44. In the Madras case Govinda Menon, J. could not see how the Collector functioning in a semi-judicial capacity could be treated as an agent of the Government. If the reasons given by the learned Judge for treating him when making a reference, as a judicial authority are applied to him when making an award, he would have to be held to be a judicial authority but as he has been held to be an agent he could not be held to be a judicial authority. In the case of Nanu Kothare, ILR 30 Bom 275 Chandavarkar, J. said at page 289 :

> "He cannot bind Government by stepping outside the limits of the power given by Section 18. If he does step outside them, his action is illegal : and no waiver on his part can atone for the failure of the claimant to fulfill the statutory conditions which the law required them to fulfill before their right to require the Collector to make a reference could come into existence."

I respectfully disagree because a principal would be bound by an agent's act within the scope of his authority and cannot excuse himself on the ground of an error of judgment on the agent's part. If he leaves him to Judge, he is bound by his judgment Ranawat, J. (as he then was) in L. D. Silva's case, AIR 1957 Rajasthan 44 refused to apply the general law of principal and agent when there is a specific provision of law; there are specific provisions in the Act regarding a Collector's making an award and if he still is held to be an agent there is no reason for saying that he is not an agent when making a reference merely because it is governed by a specific provision of law.

14. My answer to the first limb of the question is "no" and the second limb does not arise.

B. Dayal, J. :

15. I entirely agree.
J. N. Takru, J.

16. I concur and have nothing to add.

Reference answered accordingly.

Cases Referred.

1. AIR 1961 SC 1500
2. AIR 1959 All 576
3. AIR 1939 Rangoon 6
4. AIR 1956 SC 87
5. AIR 1943 Mad 449
6. AIR 1954 SC 340
7. AIR 1929 All 769
8. AIR 1932 All 597
9. AIR 1932 Oudh 180
10. AIR 1943 Mad 327
11. AIR 1956 Pat 108
12. AIR 1958 Pun 490
13. AIR 1930 PC 64
14. AIR 1940 Pat102
15. AIR 1926 All 766, AIR 1932 Oudh 180
16. AIR 1944 Bom 200
17. AIR 1955 Mad 23
18. AIR 1951 Bom 156
19. AIR 1957 Raj 44
20. AIR 1959 Mys 265
21. AIR 1962 Jam and Kash 59
22. AIR 1963 Ker 3 (FB)
23. ILR 32 Cal 605 (PC)
24. (1888) 21 QBD 313

25. 1948-16 ITR 59: AIR 1948 Mad 418
26. ILR 30 Cal 36