

# KERALA HIGH COURT

State of Travencore-Cochin

Vs.

Narayani Amma Ponnamma

A.S. No. 97 of 1956

(G. Kumara Pillai and T.K. Joseph, JJ.)

16.12.1957

## JUDGMENT

### **G. Kumara Pillai, J.**

1. This is an appeal by the State against the enhancement of an award in a Land Acquisition Case, and the only point urged by the learned Government Pleader is that the application to the Collector, who was the Land Acquisition Officer, to make the Reference to the District Court was barred by limitation under Proviso (b) to Section 18 (2) of the Travencore Land Acquisition Act and that the District Court should not have, therefore, entertained the Reference. This contention was not raised by the State in the District Court and was advanced for the first time in the memorandum of appeal filed here. But, according to the learned Government Pleader, the contention raises only a pure question of law and so it is open to him to raise it in this Court even though it was not taken in the lower Court.

2. The acquisition relates to 33.471 cents of land in S. No. 12/3 of Nellanad Pakuthy, Nedumangad Taluk. The notice under Section 9 of the Land Acquisition Act was issued by the Collector on 28-5-1952 requiring the parties to appear and state their claims on 6-6-1952 and it was served on them on 4-6-1952. On account of the extremely short notice they were not able to appear before the Collector and file any statement, and in their absence he passed an award, which bears the date 18-8-1953, fixing the value of the land at Rs. 3 per cent. and allowing Rs. 265-14 As. 8 pies in all on account of the value of land and trees. Notice of this award was issued from the Collector's Office on 26-4-1954 and was served on the parties on 9-5-1954, and on 18-5-1954 they made the application for Reference. The Collector made the Reference on 28-6-1954. These facts are seen from the records produced in the case and are beyond dispute.

3. But for the substitution of the words "Division Peishkar" in the Travencore Land Acquisition Act for the word "Collector" in the Indian Land Acquisition Act, and the words "two months" in the proviso to Section 18 (2) of the Travencore Act for the words "six weeks" in the proviso to Section 18 (2) of the Indian Act, there is no difference between the provisions in the two Acts relevant to the dispute in this appeal. The proviso to Section 18 (2) says that every application to the Collector for making a Reference to the District Court 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 (two months according to the Travencore Act) from the date of the Collector's award;

(b) in other cases, within six weeks (two months, according to the Travencore Act) 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 is earlier."

4. Both sides admit that in this case the parties were not present or even represented before the Collector at the time when he made the award and that Proviso (a) has therefore no application here. They further admit that the application for Reference was made within two months of the receipt of the notice of the award, but the learned Government Pleader contends that on account of the words "whichever period shall first expire" occurring at the end of Proviso (b) the application for reference had to be made not within two months of the date of the receipt of the notice but within six months from the date of the Collector's award which, according to him, was 18-8-1953, and that the time for making the application had expired on 18-2-1954 even before the notice of the award was issued by the Collector. If by the words "the date of the Collector's award" in the second part of Proviso (b) is meant the date on which the Collector writes and signs the award, that date in this case was 18-8-1953 - the date which the award bears - and in that case the application for Reference was undoubtedly barred by limitation under the second part of Proviso (b) as it was made more than six months after the said date. But on behalf of the Respondents it is contended that the words "the date of the Collector's award" cannot and do not mean the date on which the manual work of writing and signing it is done and can mean only the date on which the award is made according to law; and by way of analogy it is pointed out that the date of a judgment of a Court is the date on which the Judge pronounces it in open Court and not any previous date on which he might have happened to write it. The effect of the Provisos to Section 18 (2) and the meaning to be given to the expression "the date of the Collector's award" have come up for consideration in several cases and divergent judicial opinions have been expressed about them.

5. The earliest of the cases referred to at the Bar was a Punjab case, *Macdonald v. Secretary of State*<sup>1</sup>, (A). It was said in that case,

"Captain Sanford's conditional award was not communicated to the person interested, but Mr. Postonji contends that an award is "made" for the purposes of Sections 11, 12 and 18 of the Act as soon as it is written out and signed by the "Collector". In other words, an award is "made" even though it is not announced to the person or persons interested. Possibly the language of Sections 11 and 12 lend some color to this contention, but we cannot accept it.

We consider that it was the clear intention of the Legislature that the award should be

<sup>1</sup>14 Ind Cas 914

announced to such of the persons interested as were present when it was "made" and that due notice of it should be given to such of them as were not then present. In other words, that it is an essential part of the making of the award that it should be communicated to the interested parties.

An award under the Act is in the nature of a tender and obviously no tender can be "made" unless it is brought to the knowledge of the person to whom it is made. This proposition seems to us to be self-evident, but if support for it is needed, we would refer to the limitation provision of Section 18 of the Act. To hold that an award is "made" as soon as it is signed by the Collector would in many cases result in grave hardship, and we, therefore, feel fully justified in holding that an award is not made until it is announced or communicated to the person interested. We cannot believe that the Legislature intended that an award should be deemed to be "made" when the Collector signs the document and without saying a word about it, looks it up in his office. To take an extreme case: The Collector signs an award, and without announcing it files it with various other documents in his office. He is then transferred and it is only some seven months afterwards that his successor comes across the "award". Under Section 18 of the Act the persons interested would be barred from applying for a reference to the Civil Court as more than six months had elapsed from the "making" of the award. Looking, then, at the true character of the award in these cases, that is to say, that it is really a tender on behalf of Government, and having regard to the inconveniences and hardships that would, or might otherwise arise, we hold that an award is not made until it is announced to the persons interested. In the present case the 'award', even if it can be regarded as the award of the Deputy Commissioner, was not announced, after the Deputy Commissioner's approval, which alone would have made it an award, to the proprietor, Mr. Macdonald. It was, therefore, for this reason also no real award".

6. Two divergent opinions, which while differing not only from each other but also from the view taken in 4 Ind Cas 914 (Punj), led to the same conclusion, namely, that "the date of the Collector's award" mentioned in Section 18 (2) is not the date on which the Collector has merely written out and signed the award and which date is endorsed on the award, were expressed in *Secretary of State v. Bhagwan Prasad*<sup>2</sup>, In that case it was contended on behalf of the appellant, the Secretary of State, that the application for making the Reference was barred under the second part of Proviso (b) to Section 18 (2), and dealing with that contention Mukerji, J. has said,

"The second point taken on behalf of the respondents is that as a matter of right interpretation of Section 18, the petition of the respondents, under that section, before the Collector, was within time.

The argument is this. Under Clause (b), sub-section (2), Section 18, the application has to be made within six months from the date of the award. I may remind here that by the Collector's own default, the issue of a notice to the opposite parties was of no advantage to them, for the service was made after the alleged expiry of the period of limitation. To go back to the point under discussion, his question is, what is the date of the Collector's award? Is the date when the award is made, the date of the award or whether the date when the award is filed before the Collector, the said date? Section

<sup>2</sup> AIR 1929 All 769

11 of the Act requires the Collector to make an award under his hand. It is significant that it does not make any mention of the date of making the award. In other words, the section does not require the Collector to date the award. Section 12 requires that the award shall be filed in the Office of the Collector and then provides that a notice would forthwith be issued to the persons interested. The notice is to issue only after the filing of the award. Then, the question is whether the starting point of limitation is the date of the making of the award or is the date of filing of the

award? As already mentioned, Clause (b), Sub-S. 2, Section 18 is silent as to which would be the date of the Collector's award. The Collector being an executive officer has to move about his district. It is impossible to say at what place he would prepare his award. He may take time after making the enquiry or he may make private enquiries after a more or less public investigation as to the value has been made. In *Ezra v. Secy. of State*<sup>3</sup>, their Lordships of the Privy Council, pointed out that it was open to the Collector to hold private enquiries as to the value of the land. It is, therefore, impossible always to require the Collector to make his award at the headquarters. The most important point therefore that the law considers is the filing of the award. When the award is filed in the Collector's office, it is open to inspection by any members of the public, at least by the persons interested. If the limitation is to start, it ought to start from the date of the filing of the award and not from the making of it. The expression, "date of the award" being indefinite, I am of opinion that the respondent is right in contending that the legislature meant the date of the filing of the award to be the date contemplated in Clause (b), sub-section (2), Section 18." This view finds support from the case of *Kooverbai Sorabji v. Asst. Collector, Surat*<sup>4</sup>,

The head note is as follows :

"An award made by a collector .....becomes final and binding only when it is filed under Section 12, Land Acquisition Act, the mere signing of the award by the Collector does not make it conclusive. Before filing an award, it is open to the Collector to destroy one which he has already signed and to substitute another in its place."

As already stated before, the date of the filing of the award could not be traced. Evidently, the award was not filed immediately after it was made, for we find that the notices were not ordered to be issued till 30-10-1923. In the absence of any earlier date, we must take 30-10-1923 as the date of the filing of the award and in that case, the applications of the respondents to the Collector to make reference were within time." Niamatullah J., the other learned Judge who took part in AIR 1929 Allahabad 769, said-

"Assuming it is permissible for the court to decide the question of limitation in reference to "the application made by the owner of the land acquired under Section 18 of the Act, I agree with my learned brother that "the date of the award" has not been ascertained in this case. I am also of opinion that the expression "the date of the award" does not refer to the date endorsed on the document called award, as denoting the time when it was signed by the

Collector.

<sup>3</sup> ILR 32 Cal 605 (PC)

<sup>4</sup>(59) Ind Cas 429: AIR 1920 Bom 265

The words "the Collector's award mean the act of the Collector awarding compensation. The word "award" as it occurs in Section 18 is an abstract noun. The date of the award, therefore, is the date on which the Collector awards to the claimant the compensation for the land acquired under the Act. The Collector may sign his award in his private office where he might have prepared it; but that will not be the date when he "awards" compensation. A certain amount of mutuality is implied in the Act of awarding compensation to the person whose land has been

acquired and who may accept it or refuse to do so. If the claimant is present before the Collector in person or is represented by an authorized agent when the award is made, i.e., when the amount of compensation is declared to him, the law provides reasonable period of six weeks: vide Clause (a). If he is not present, the law provides a longer period of six months from the "date of the award", i.e., the date on which a formal declaration is made by the Collector of the amount of compensation and of the person to whom the same is payable. This period, however is curtailed if the six weeks following a notice required by Section 12 (2) expires before the expiry of the six months from "the date of the award." Sections 9 and 11 of the Act make it incumbent on the Collector to fix a date for enquiry and the "making of the award", of which date due notice must be given to all persons interested in the proceedings. It follows that the formal declaration of the amount awarded is to be made on a date made known to claimant, who can, if he chooses to be present to receive the award, and if he puts in appearance, the law gives him only six weeks, as already stated, but if he does not, an indulgence is given to him in the matter of limitation by giving the extended period of six months from the date the award is pronounced. It is not too much to expect that the person interested should turn up within a reasonable time after the date fixed for the making of the award, if he does not choose to be present on the date itself. With the utmost respect for my learned colleague, I am unable to agree with him that "the date of the award" is the date on which it is filed in accordance with the provisions of Section 12, Land Acquisition Act. A comparison of Sections 11 and 12 will show that the date of making an award is meant by the Act to be different from the date on which the award is to be filed. Section 18 (2) proviso refers to the former. It was contended on behalf of the respondents that the date of the award is the date on which the amount of compensation awarded is communicated to the owner of the land. I am unable to accept this contention either. There is nothing in the Act which justifies this interpretation of the simple words "the date of the award." The record, as it stands, does not show whether the Collector had fixed any date for the proceedings and the making of the award of which due notice might have been given under Section 9 of the Act, nor does it appear that "he made an award" in the manner laid down by Section 11, which I take to imply that the Collector should formally declare the amount of compensation and, other incidental matters referred to in Section 11, such declaration being the culminating stage of the proceedings to be taken under that section on the date fixed therefore. Under these circumstances, the appellant, the Secretary of State, has, in my opinion, failed to establish that the respondents made their application under Section 18, Land Acquisition Act, after the expiry of the period of limitation prescribed for them."

7. The conclusion that the date of the Collector's award is not the date on which he merely writes out and signs the award, has been reached by two learned Judges of the Madras and Andhra High Courts also sitting as single Judges. In the Madras case, *Lakshmana Rao v. Revenue Divisional Officer, Ranipet*<sup>5</sup>, it was said,

"The proviso takes into account three sets of cases (i) where the person making it was present or was represented before the Collector when the award was made, (ii) where he was not represented before the Collector at the time of the award but has received notice from the Collector under Section 12 (2) and (iii) other cases. Under Section 12 (2) to which we are referred by the proviso, the Collector is directed to give immediate notice of the award to such of the persons as are not present in person or by their representatives when the award is made. The provisions of Section 18 and the periods of limitation set

out therein have therefore to be read in conjunction with the duty cast upon the officer by the terms of Section 12(2).

Read in this light the only conclusion possible is (1) where notice of the date on which an award could be passed is intimated to a party and he or his representative is present at the time when the award is made, the reference application has to be filed within six months (six weeks) from the date of the award. In such a case, there will be no exclusion of time taken by the claimant in obtaining a copy of the award. (2) In cases where notice of the date on which the award would be made is not communicated to the claimant, the Collector has to send notice of the award to the persons interested under Section 12 (2). Where such notice has been issued, the claimant has six weeks from the receipt of the notice, under Section 12 (2) for the purpose of filing the reference application; (3) where the claimant has notice that an award would be made on a particular date, but was not present personally or by representative at the time the award was rendered, and the Collector has not served him with notice of the award under Section 12 (2) the claimant would have a period of six months from the date of the award to apply for the reference. In my opinion, this is the precise scope of the provision granting six months from the date of the award referred to in the concluding portion of the proviso to Section 18 (2); (4) In other cases, he would have six months from the time the claimant has information that an award has been passed.

5. The contention that is sought to be put upon it by the learned Government Pleader that the limitation period of six months applies even to cases where the claimant has had no notice that an award would be made on any particular date or has the notice served on him is, in my opinion, repugnant to common sense and contrary to the authorities on the point.

6. The instance now on hand furnishes adequate reason why the construction contended for by the learned Government Pleader is unreasonable and untenable. The enquiry in the present case was held and concluded on 12-6-1950 and the award was made about nine months thereafter. How the claimant who had no notice of the making of the award or of the award is to acquaint himself with the date on which the award was made so as to take action under Section 18 (2) passes one's comprehension. The Acquisition Officer cannot pass an order under Section 11, keep it filed in his office under Section 12 (1) and claim finality to it without the claimant's

<sup>5</sup> AIR 1954 Mad 942

having notice of the making thereof. On the other hand, it would be in consonance with common sense and a reasonable construction of the enactment to hold that the six months period in such a case would start only when the claimant has notice that an award has been made. This interpretation which I consider reasonable, is supported by decisions of this Court construing analogous provisions." In the Andhra case, *Seshachalam v. District Collector, Guntur*<sup>6</sup> It has been held that the reasonable construction to be put on the language of the proviso to Section 18 (2) is to construe it as six months from the date of knowledge of passing of the award, and the decision in the Madras case referred to above was cited with approval.

8. The earliest of the cases relied upon by the learned Government Pleader also is a decision of a single Judge *Nader Chand v. State of West Bengal*<sup>7</sup>, After referring to *Macdonald v. Secretary of State*, Sinha, J. said in AIR 1952 Calcutta 67.

"With great respect. I do not think that it is possible to say that an award is not "made"

under Section 11, until notice has been given under Section 12 (2). An Award is made when the Collector draws up and signs the award. The function is not a judicial one and there is no necessity of announcing it. Next comes the filing and lastly, a notice is served under Section 12 (2) upon persons who were not present (personally or through a representative) at the time of the making of the award.

The giving of notice is required by law and it must be given, but if not given, it cannot make the award invalid. This is clear from a consideration of Section 18 of the Act. That section says that where a person is present, "at the time" when the Collector made his award or where he got notice under Section 12 (2), the time limit to object to the award and ask for a reference is six weeks, otherwise it is six months. If there can be no award, if there is no notice, then prescribing the outside limit of six months becomes meaningless. In my opinion, the intention was to make the award binding in any event, after the expiry of six months from the award. The hypothetical cases enunciated in *Macdonald v. Secretary of State*, rather overlook the significance of "filing" an award. If it is filed as of record, parties have means of access to it. A party, whose objection has been inquired into under Section 11, is not entitled to sit down and just wait for the notice to be given." Three other cases relied upon by the learned Government Pleader are *Jehangir v. C. D. Gaikwad*<sup>6</sup>, *Raja Harishchandra v. Deputy Land Acquisition Officer*<sup>7</sup>, and *Ravunni Nair v. State of Travencore-Cochin*<sup>10</sup>, (J). In all these three cases, which are decisions of Division Benches, the contention that limitation runs under the Proviso only from the date of receipt of a notice of the award or from the date of actual knowledge of the award if no notice has been given, was negated.

9. It is plain from the language of the Proviso to Section 18 (2) that the Legislature has made a classification of applications for References into two classes on the basis whether there was appearance or representation of the applicant before the Collector

at the time when he made the award. The Proviso begins by saying "every such

<sup>6</sup>1955 Andh WR 912: (AIR 1957 And Pra 687)

<sup>8</sup>AIR 1954 Bom 419

<sup>7</sup>AIR 1952 Cal 67

<sup>9</sup>AIR 1957 All 112

<sup>10</sup>ILR (1954) Trav-Co 239: (AIR 1954 Trav Coc 444)

application shall be made", and Clause (a) thereof prescribes the period of limitation in cases in which there was appearance or representation of the party at the time the Collector made the award, and Clause (b) prescribes the period of limitation in all other cases. That clause begins with the words "in other cases" and it prescribes two alternative periods of limitation, one alone of which will apply in any particular instance, according as to which of the two alternative periods will first expire - in that instance, - that is to say, Clause (b) prescribes the period of limitation in all cases in which there was no appearance or representation of the party before the Collector when he made the award and the period of limitation in every such case would be two months from the date of the receipt of the notice under Section 12 (2) or six months from the date of the award whichever period would first expire. Clause (b) does not effect a further classification of the second class of applications (i.e. applications at the making of which there was no appearance or representation of the party before the Collector) into a sub-class in which notice under Section 12 (2) has been received and another in which such notice has not been received, and make the first of the two alternative periods of limitations prescribed therein applicable to the cases in which notice has been received and the second alternative period of limitation applicable only to cases in which no notice has been received. Even in a case in which

the "immediate notice" required by Section 12 (2) has been given by the Collector as soon as he made the award, the second of the two alternative periods of limitation prescribed in proviso (b) will become applicable and the first period will not apply at all if the service of the notice is delayed by any cause and the party receives it either after the expiry of six months from the date of the award or on a date two months from which would expire only after the expiry of six months from the date of the award. The use of the words "in other cases" at the beginning of Proviso (b) and the words "whichever period shall first expire" at its end clearly indicates that the two alternative periods of limitation are to apply to all cases not covered by Proviso (a) according as to which of the two periods first expire in any particular instance. In the Madras case referred to above, AIR 1954 Madras 942, the use of these expressions in Proviso (b) seems to have been entirely overlooked. The second of the four conclusions in that case, namely, where the notice under Section 12 (2) has been issued the claimant, has six weeks (two months as per the Travencore Act) from the receipt of that notice for filing the reference application, will hold good only in cases in which six weeks (two months as per the Travencore Act) from the date of the receipt of the notice will expire earlier than six months from the date of the award.

There is also no warrant, on the language used in the Proviso, for the third and fourth conclusions that the six months' period from the date of the award would apply only to cases where the claimant had notice that the award would be made on a particular date but was neither present nor represented at the time it was rendered and that in other cases the claimant would have six months from the time he has information of the award. In fact in 1955 Andh WR 912, where the fourth conclusion was accepted and given effect to following the Madras case, the learned Judge felt constrained to remark, "It is appropriate that the legislature makes the section clear in the light of these decisions". When two alternative and entirely different periods of limitation are prescribed in the same provision, one starting from the date of the award and the other from the date of the receipt of the notice thereof, it will be unreasonable and contrary to the expressed intention of the Legislature to hold that "the date of the award" is the same as the date of the receipt of the notice thereof or the date of obtaining knowledge or information about it. The argument based on the difficulties and hardships likely to ensue if the date of receipt of the notice of the award is not accepted as the date of the award, referred to in the passage from the judgment in AIR 1954 Madras 942, extracted in paragraph 7 above has been dealt with thus by Chagla, C.J. in AIR 1954 Bombay 419 :

"Now, the law of limitation is always a harsh law and it would be a mistake to look for ethical principles in that law. Meritorious claims have been barred because the law of limitation prescribes that such claims should be presented in Court within a particular period. Therefore, it would be a mistake to construe the law of limitation either from the point of view of the merits or demerits of the parties before the Court.

Limitation in its very nature is a technical law and it has to be construed technically and if the Court comes to the conclusion that the legislature clearly intended that an application should be barred after the lapse of a particular time, the Court must give effect to that provision of the law, however unmeritorious the defence to the claim may be and however well deserved the claim may be. In AIR 1957 Allahabad 112, it has been observed :

"We think it was the intention of the Legislature that, in the public interest, not merely the physical acquisition of land under the Act but the determination of compensation therefore should be completed without undue delay, and in our opinion Section 18 (2)

provides a period of limitation for all applications, the maximum period being six months from the date of the Collector's award."

To the extent that they hold that the date of the award is not the date of the receipt of the notice thereof by the person making the application or the date on which he obtained knowledge or information about it, we are in respectful agreement with the decision in AIR 1954 Bombay 419; AIR 1957 Allahabad 112 and ILR (1954) Trav-Co 239 (J).

10 But the question still remains "What is the date of the award, if it is not the date of the receipt of notice of the award or the date of knowledge or information, is it only the date on which the award was written out and signed by the Collector; or had the Collector to do any formal act in connection with the making of the award and is it the date on which those formalities were attended to?" The question in this specific form seems to have been considered only in 4 Ind Cas 914 (Punj) (A); AIR 1929 Allahabad 769 and AIR 1952 Calcutta 67. In the last of these cases, AIR 1952 Calcutta 67, it was said that an award is made when the Collector draws up and signs it, and that his function is not a judicial one and there is no necessity of announcing the award. Almost diametrically opposite views have been expressed in 4 Ind Cas 914 (Punj) (A) and AIR 1929 Allahabad 769, and the observation in the said cases about this matter have been extracted in paragraphs 5 and 6 above. Now Sections 9, 10 and 11 enjoin that the Collector should publish a notice and also give notice to the occupiers and other persons known to have an interest in the property fixing a day for their appearance before him and for filing statements in regard to their claims and that on the day so fixed or any other day to which the enquiry has been adjourned he should hold an enquiry into the objections, if any, filed by the persons and into the value of the land and pass an award under his hand; and Section 12 provides :

"12. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made." Reading these sections together it is clear that an award can be made only after a public enquiry and after public notice as well as special notice to the persons interested and that the award itself is to be not a secret matter but has to be filed in the Collector's Office so that it may become available for perusal to the public and the persons interested. The interested persons also have the right to challenge the propriety of the award by way of moving for and obtaining a reference to the Civil Court.

The enquiry may not be a judicial enquiry, and it may be that on account of the absence of a definite provision in the Statute there is no necessity to pronounce the award in the presence of the parties or with notice to them, but there can be no doubt of the fact the enquiry is to be a public enquiry and the award which embodies its result has also to be made public and available to the parties. It is to ensure this publicity and also notice of the award to such persons as may

care to make enquiries about it that the direction is made in Section 12 that it should be filed in the Collector's office. It is also significant that the award becomes final and conclusive and binding on the Collector only when he files it in his office. There can therefore be no doubt that the intention of the Legislature was that the filing in the Collector's Office was the most essential formality in connection with the making of the award.

That the legislature has also contemplated and even permitted a formal announcement of the award on a date on which the enquiry stood posted or adjourned or on a date of which the parties who had entered appearance before the Collector had been given previous notice, is clear from Section 18 (1) which prescribes an accelerated period of limitation in the case of awards made in the presence of the applicant or his representative. In the case of such a formal announcement the very announcement will amount to filing the award in the Collector's Office. Having regard to the language of Section 12 that on filing the award in the Collector's Office it becomes final and conclusive, except as otherwise provided, we feel clear that the date of the award referred to in Proviso (b) of Section 18 (2) is the date of its filing in the Collector's Office and not the date on which the Collector has only written or signed it. We are fortified in this view not only by the observations of Mukerji, J. extracted in paragraph 6 above but also by certain observations in AIR 1954 Bombay 419. In that case there was no discussion as to whether the date of the award is the date of its filing in the Collector's Office or whether its date is the date on which the Collector writes out and signs the award, but Chagla, C.J. has made these significant observations :

"An award made by the Collector is not a secret document. It is filed in the Collector's Office and it is open to any one's inspection. It is difficult to understand why the petitioners having filed their claim in November, 1949 took no action to find out whether any further proceedings had been taken with regard to the claim." Almost to the same effect is the last portion of the passage extracted in paragraph 8 above from the judgment of Sinha, J. in AIR 1952 Calcutta 67. In ILR (1954) Trav-Co 239, the question was raised whether the date of the award was the date of filing or not, but it was not decided in that case as the award therein was actually filed in the Collector's Office on the very date it was signed. The two last sentences in paragraph 14 of the judgment in that case read: "It is, however, not necessary to discuss the question in this case in view of the fact that the award in this case has been filed on the date on which it was signed by the Dewan Peishkar. It is seen that the number of this award is 126/1123 dated 9th August, 1948 which is the date on which it was signed by the Dewan Peishkar."

11 In the present case from the records before us it is not possible to ascertain when the award was filed in the Collector's Office. No presumption that it must have been filed on the date it was written out and signed or shortly afterwards can be made in view of the manner in which the proceedings were conducted by the Collector in utter disregard of the provisions of law. The date fixed for appearance of the party was only nine days after the issue of the notice under Section 9 although the Collector was bound to give fifteen days' time in the notice itself for that purpose. The "immediate notice" under Section 12 (2) was issued only 8 months after the date endorsed on the award as the date on which he signed it. In this state of affairs, and considering also the State's omission to raise the plea of limitation in the District Court, we are not satisfied that the award was filed in the Collector's Office six months before the date on which the application for

Reference was made. If the State had raised the plea in the District Court some evidence would have been adduced to prove when the award was filed in the Collector's Office or at least some attempt would have been made to ascertain that date.

12 In the circumstances we consider the appeal to be groundless and dismiss it with costs.

Appeal dismissed.