

BOMBAY HIGH COURT

Mahadeo Krishna Parkar

Vs

The Mamlatdar of Alibag

(John Beaumont, Kt., C.J. Rajadhyaksha, J.)

12.07.1943

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an appeal from a decision of the Assistant Judge of Thana, and it raises a question under Section 18 of the Land Acquisition Act, 1894. A reference was made under that section to the District Court of Thana. The Land Acquisition Officer, who was the Mamlatdar of Alibag, considered; the application for reference to be time-barred, but the Collector decided to make a reference to the District Court with an expression of opinion that the application was time-barred and that the point should be left for the decision of the Court. In so acting I think the Collector was wrong. It was for him to decide in the first instance whether the case fell within the terms of Section 18, and if he thought it did not, he should have declined to make a reference. The learned Assistant Judge raised an issue whether the application for reference was barred by limitation under Section 18, Sub-section (2), of the Land Acquisition Act, and he answered that issue in the affirmative, and I have no doubt whatever that his decision on that point was right; the application was clearly out of time.

2. But Mr. Sakhardande on behalf of the appellant in a careful and lucid argument has maintained that the Court has no jurisdiction to consider that question. His contention, supported by certain authorities, is that it is for the Collector, and the Collector alone, to decide whether to make a reference under Section 18, Sub-section (12), and if he decides to make a reference, then the Court must assume that the reference is a valid reference, and it is not open to the Court to go behind the decision of the Collector and hold the reference to be out of time. There has been a conflict of opinion in the High Courts in India on that question. In *In re Land Acquisition Act*¹ Mr. Justice Chandavarkar held that the Court was bound to go into the question whether the reference under Section 18 was in time. He held that the Court was not only entitled, but bound, to satisfy itself that the conditions laid down in Section 18 had been complied with. The principle acted upon in that case was followed by a bench of the Allahabad High Court in *Sukhbir Singh v.*

*Secretary of State for India in Council*². In that case the Collector had made a reference, although there was no application before him such as is required by Section 18, and the Court held that that being so, there was no valid reference. But in a later case, which came before another bench of the Allahabad High Court, *Secretary of State for India in Council v. Bhagwan Prasad*³ the Court held that it was not open to the District Court under Section 18 to go behind the reference, that it was for the Collector to decide whether the conditions justifying a reference had been complied with, and if he thought that they had been, the Court was bound to accept that conclusion. That view has found favour with a single Judge in the Madras High Court in *Venkateswaraswami v. Sub-Collector, Bezwada*⁴

3. There being a conflict in the High Courts, it is desirable to consider the matter afresh. Section 18(1) provides that 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 of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. Then Sub-section (2) provides that the application shall state the grounds on which objection to the award is taken. Then there is a proviso that every such application shall be made within the time specified. Then Section 19 provides the information which the reference is to contain. Section 20 provides that the Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection to be served, amongst others, on the applicant.

4. The basis of the appellant's argument is that the Collector, acting under Section 18, is not a Court, or at any rate not a Court subordinate to the District Court or to this Court, and that the Court cannot interfere with his decision either in appeal or in revision. That, no doubt, is true, but that is not really the position. The Collector has power to make a reference on certain specified conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award, the second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. It seems to me 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 or; 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. I have myself some difficulty in seeing on what principle the Court is to be debarred from satisfying itself that the reference, which it is called upon to hear, is a valid reference. I am in entire agreement with the view expressed by Mr. Justice Chandavarkar that it is the duty of the Court to see that the statutory conditions have been complied with. In my

opinion, therefore, the learned Assistant Judge was right in dismissing the reference on the ground that it was out of time.

5. The appeal, therefore, must be dismissed with costs.

Rajadhyaksha, J.

6. I agree.

Cases Referred.

1(1905) I.L.R. 30 Bom. 275 : s.c. 7 Bom. L.R. 699

2(1926) I.L.R. 49 All. 212

3(1929) I.L.R. 52 All. 96

4[1943] A.I.R. Mad. 327