

# BOMBAY HIGH COURT

G.J. Desai

Vs.

Abdul Mazid Kadri

O.C.J. Appeal No. 33 of 1950

(Chagla, C.J. and Tendolkar, J.)

05.10.1950

## JUDGMENT

### **Chagla, C.J.**

1. This is an appeal from an order of Bhagwati J. directing that a writ of mandamus be issued under Section 45, Specific Relief Act against the Special Land Acquisition Officer, City of Bombay and the Bombay Suburban District.

2. The Special Land Acquisition Officer made an award under the Land Acquisition Act. An appln. was made to him by the Petitioners to make a reference to the H. C. under Section 18 of the Act. The officer took the view that the petitioner's appln. was barred by limitation and refused to make a reference. Thereupon the Petitioners came to this Ct. with a petn. under Section 45 asking the Ct. to order the Officer to make a reference under Section 18. The learned Judge took the view that it was not open to the officer to consider whether the appln. was barred by limitation or not, and that once an appln. was made to him under Section 18, it was incumbent upon him to make a reference and the question whether the appln. was barred or not was a question which had to be determined by the civil Ct. With respect to the learned Judge the opinion he formed on the construction of Section 18 is not borne out either by the plain language of the section itself or by the decisions of this Ct. Now turning to the section itself it is clear, and the position is not disputed since the P. C. laid down in *Ezra v. Secretary of State*<sup>1</sup>, that the functions of the Collector in making an award are not judicial but administrative, and all that he does is to make an offer to the claimants with regard to the valuation of the property to be acquired. It is open to the claimants either to accept the order or to call upon the Collector to make a reference which would result in a judicial determination by a Ct. Now the power of the Collector to make a reference is circumscribed by the conditions laid down in Section 18 and one important condition is the condition to be found in the proviso. That proviso lays down the period within which the appln. has got to be made. Therefore if the appln. is made which is not

within time the Collector would not have the power to make the reference. In order to determine the limits of his own power it is clear that the Collector would have to decide whether the appln. presented by the claimants is or is not within time, and satisfies the conditions laid down by the proviso. Assuming that the Collector is wrong in the view that he takes as to the maintainability of

<sup>1</sup>32 I. A. 93 : (32 Cal. 605 P.C)

the petn. and refuses to make a reference, it would always be open to the claimants to come to Ct. and get the Ct. to compel the Collector to make a reference if they satisfy the Ct. that their appln. was within time. On an appln. under Section 45 what the Ct. will have to consider is whether the Collector failed to discharge his statutory duty, and one of his statutory duties is to make a reference if the appln. is within time. Therefore in order to decide the petn. under Section 45 the Ct. would have to consider the question of limitation and take a contrary view to the view taken by the Collector if the Collector was wrong in his decision. Equally so if a reference was made by the Collector which was not a proper reference under Section 18, it would be for the Ct. to determine the validity of the reference because the very jurisdiction of the Ct. to hear a reference depends upon a proper reference being made under Section 18, and if the reference is not proper, there is no jurisdiction in the Ct. to hear it. This seems to me to be the clear interpretation of the plain language of the section used by the Legislature.

3. Now turning to the authorities of this Ct. we have first a decision of Chandavarkar J. in *In re Land Acquisition Act*<sup>2</sup>, In that case a reference was made by the Collector of Bombay and the validity of the reference was challenged on behalf of the Govt. on the ground that the appln. made to the Collector was out of time. The learned Judge held that the appln. was out of time and therefore, there was no substantial compliance by the claimants with the conditions for a reference prescribed by Section 18 of the Act and the Collector had no power to make a reference and it was ultra vires. Therefore this decision clearly lays down that it is for the Ct. to consider the validity of the reference and as to whether the appln. made by the claimant under Section 18 is or is not within time.

4. Then there is a decision of a D. B. of this Ct. in *Balkrishna v. Collector, "Bombay Suburban"*<sup>3</sup>, This is a judgment of Macleod C. J. and Crump J., and what the D. B. held was that no revisional appln. was competent from an order of the Collector refusing to make a reference, and in coming to that conclusion both the Chief Justice and Crump J. took the view that the Collector was not a Ct. and he was not discharging judicial functions and therefore no revn. lay under Section 115, C. P. C. Certain observations of the Chief Justice are relied upon by the Advocate-General. These observations are that a H. C. had no power to compel the Collector to make a reference if he refused to do what seemed incumbent upon him to do under the provisions of Section 18, Land Acquisition Act, and the learned Chief Justice goes on to say that it was a pity that a subject had no remedy and it was for the Legislature to remedy the defect. Now it must be borne in mind that this was not a case from Bombay. The Collector whose order was challenged was the Collector of the Bombay Suburban District. Therefore the learned Chief Justice was not considering, as

indeed he could not consider, a question of mandamus or an order under Section 45, Specific Relief Act. As the law then was there was no power in the Ct. to compel a Collector to make a reference if the Collector was a Collector of a part of the province outside Bombay and if he refused to carry out his statutory duty under Section 18, Land Acquisition Act.

5. Then we have two recent decisions of this Ct.: The first is *Provident Investment Co. v. Land Acquisition Officer, Bombay*<sup>4</sup>, In that case the Land Acquisition Officer took the view that the appln. made by the claimants was not in proper compliance with the

<sup>27</sup> Bom. L. R. 697 : (30 Bom. 275).

<sup>437</sup> Bom. L. R. 465 : AIR 1935 Bom 319

<sup>325</sup> Bom. L. R. 398 : (AIR 1923 Bom 290)

provisions of Section 18 and refused to make a reference. A petn. was presented under Section 45, Specific Relief Act and the Ct. issued an order upon the Collector to make a reference holding that the appln. made by the claimants was in sufficient compliance of the terms of Section 18. Therefore this decision clearly lays down that if the Collector refuses to make a reference where it is incumbent upon him so to do the H. C. can compel him to do so. In that particular case, the question raised was as to the form of the appln.; but the question may well arise as to limitation. If the appln., is within time and if the Collector refuses to make a reference, then he would be failing to discharge his duty incumbent upon him under the statute The other case is *Mahadeo Krishna v. Mamlatdar of Alibag, i*<sup>5</sup>. In that case Beaumont C. J. and Rajadhyaksha J. held that it was the duty of the Ct. to see that the statutory conditions laid down in Section 18, Land Acquisition Act had been complied with, and that the Ct. was not debarred from satisfying itself that the reference which it was called upon to hear was a valid reference. The learned Chief Justice reviewed the authorities of the different H. Cs. amongst which there was a conflict and came to the conclusion that the Ct. was not precluded from considering the validity of the reference. In fact the learned Chief Justice bases his decision on the fact that it was only a valid reference which gave jurisdiction to the Ct. and therefore the Ct. had to ask itself the question whether it had jurisdiction to entertain the reference.

6. In view of these authorities it is clear that it was the duty of the learned Judge below to consider whether the Collector was right in refusing to make a reference, and in order to determine that it was incumbent upon the learned Judge to decide the question of limitation. If the learned Judge came to the conclusion that the appln. made by the claimants was within time, then undoubtedly he had a right to issue an order under Section 45, Specific Relief Act, upon the Collector compelling him, to make a reference at the instance of the claimants.

7. We, therefore, set aside the order of the learned Judge and send the petn. back to him and direct him to determine as to whether the appln. of the claimants was within time, and if he comes to the conclusion that the appln. was within time, then the learned Judge will issue an order under Section 45, Specific Relief Act. If on the other hand he comes to the conclusion that the Land Acquisition Officer was right and that the appln. was barred by limitation then, he will dismiss the petn.

8. Each party to bear his own costs.

Case remanded.

<sup>5</sup> I. R. (1944) Bom. 90 : (AIR 1944 Bom 200)