PATNA HIGH COURT

Ramdeyal Singh

Vs

State of Bihar

A.F.O.D. No. 576 of 1963

(N.L. Untwalia and S. Wasiuddin, JJ.)

19.08.1968

JUDGMENT

S. Wasiuddin, J.

1. This appeal arises out of Land Acquisition Case No. 94/13 of 1963/1960. A piece of land measuring 1.24 acres has been acquired by the Government for the construction of Forest Department building in village Lakharawan, District Shahabad by declaration No. 5554 dated 10-5-1958 published in the Gazette on 11-7-1958. The appellant is the awardee and the Collector awarded a sum of Rs. 3598.25 P. as compensation and Rs. 539.74 P. as additional compensation, the total amount being Rs. 4137.99 P. The awardee being dissatisfied made a prayer before the Collector for making a reference under Section 18 of the Land Acquisition Act. The Collector accordingly made the reference and before the Land Acquisition Judge a point was taken on behalf of the respondent, that is, the State of Bihar that the reference was barred by limitation. It may be mentioned here that the findings of the Land Acquisition Judge have not been challenged with regard to the dates of the service of the notice of award etc, and at the time of the hearing of this appeal also these dates have not been challenged. The award was made on 21-7-1959 and the notice of the award as contemplated by sub-section (2) of Section 12 of the Land Acquisition Act (hereinafter to be referred to as the Act) was served on 25-7-1959 on the awardee. The petition was filed by the awardee before the Collector for making the reference under Section 18 of the Act on 14-9-1959, that is to say, more than six weeks after the receipt of the notice of the award. It was, therefore, in such circumstance, urged before the Land Acquisition Judge that the application for making the reference was barred by limitation under clause (b) of sub-section (2) of Section 18 of the Act. The Land Acquisition Judge examined this matter and he has discussed in his judgment about the application being barred by limitation and relying on a decision of the Bombay High Court in the case of *Mahadeo Krishna Parkar v. Mamlatdar of Alibag*[1], was of opinion that if the reference does not comply with the terms of the Act then the Court cannot entertain the objection and see whether the statutory conditions have been complied with and the reference is within time. It may be mentioned here that it has been urged on behalf of the Appellant that once the Collector had made the reference it was beyond the competence and the jurisdiction of the Land Acquisition Judge to go into the question about the application being within time or not. The Land Acquisition Judge held that the application was not within time and,

therefore, the reference which had been made was without jurisdiction and as such the Land Acquisition Judge had no jurisdiction to look into the matter contained in the petition. As regards the quantum of compensation in respect of which the reference was made, the Land Acquisition Judge also recorded a finding which is in favor of the appellant and this finding has also not been challenged here in this appeal.

2. This appeal was put up before a single Judge Shambhu Prasad Singh, J. who heard the matter and by his order dated 30-1-1968, he has referred the appeal to a Division Bench because it involves a question of law of some importance which should be settled at rest by a Division Bench. It was pointed out in that order that there was a conflict in the opinion of the different High Courts on the question whether the Land Acquisition Judge could or could not go into the question of limitation when once the reference had been made. It is, therefore, in such circumstance, that this appeal has been heard by a Division Bench and the question which has to be decided is really of importance because of the conflict of opinion between the different High Courts and there being no direct decision of our High Court on this point or of the Supreme Court. The question which needs decision is as follows:-

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

3. Now, before I take up a discussion of the different decisions of the High Courts on this point it will be better if I first of all refer to the relevant provisions of the Act. Part III of the Act deals with the "Reference to Court and procedure thereon", and the first relevant provision in this connection is Section 18 which is as follows :-

> "18(1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
> (2) The application shall state the grounds on which objection to the award is taken; Provided that every such application shall be made :-
> (a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire".

4. For the purpose of the matter under consideration sub-section (2) with its two provisos are important. Sub-section (2) lays down that the grounds on which objection to the award is taken. So this means that first of all there should be an application before the Collector and this

application must contain the grounds on which the objection to the award has been taken. There are two provisos to this section, and we are concerned here with proviso (b) to this sub-section which lays down that in other cases the application shall be made within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire. As far as this proviso is concerned, it means that in a case where a notice has been served on the awardee under sub-section (2) of Section 12, then he has to present the application before the Collector for making the reference within six weeks from the date of the receipt of the notice. As stated above, here in the present case, the admitted position is that the notice was served on the awardee on 25-7-1959 and the application for making the reference was filed on 14-9-59. Section 19 of the Act lays down that in making the reference the Collector shall state, for the information of the Court, in writing about the certain matter as laid down in the section under clauses (a) to (d). Sub-section (2) of Section 19 lays down that to the said statement shall be attached a schedule giving particulars of the notices served upon and of the statements in writing made or delivered by the parties interested respectively. Section 20 lays down that on receipt of the reference the Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the persons named in the section under clauses (a), (b) and (c). Section 21 of the Act is also important because it lays down that the scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection. It has been urged by the learned counsel appearing for the appellant that the provisions of the sections, mentioned above, and particularly the provisions of Section 21 of the Act putting restrictions on the scope of the proceeding show that once a reference has been made, the Land Acquisition Judge cannot go into the question that is behind the reference to see whether the application for reference was filed within time or not. It has also been urged that the Collector in making the reference acts as an agent of the State Government and once the reference has been made by such an agent no objection thereafter can be taken relating to the maintainability of such application for making the reference as being time-barred. It is true that Section 21 puts down a restriction on the scope of a proceeding, but this section cannot be divorced and read separate from the other provisions of the Act. Section 18 along with its provisos clearly show that the section circumscribes certain conditions the fulfillment and the compliance of which are essential and, in my opinion, there are pre-requisite conditions and the application for reference would itself not be entertain able if those conditions are not complied with and one of the important conditions is that it should be within the time specified under clauses (a) and (b) of the provisos. In this connection, I may refer to a decision of the Privy Council in the case of *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan*[2], where it was held by the Privy Council which is as follows :-

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

In my opinion, the application for making the reference has to be filed within the time limit as

prescribed by clauses (a) and (b) of the Provisos to Section 18 and if the application is not within time, then it will be an incompetent reference if the Collector in spite of this bar of limitation chooses to make the reference.

5. A question here also arises for consideration whether this condition which has been laid down, viz. the period within which the application for reference should be filed can be regarded as mandatory or directory, and I may in this connection refer to a decision of our own High Court in the case of *Mahesh Pd. Sinha v. Manjay Lal*[3], where the question for consideration was whether the provision to the petition to be accompanied by an affidavit in the prescribed form under Section 83(1) of the Representation of the People Act 1951 was mandatory or not and there was a full discussion about the interpretation regarding the statutes being mandatory or directory. Reference also in that case was made to Article 656 of the Halsbury's Laws of England, 3rd Edition, Volume 36 at page 435 which is as follows :-

> "No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question in relation to the general object to be secured.

Although no universal rule can be laid down, provisions relating to the steps to be taken by the parties to legal proceedings in the widest sense have been construed with some regularity as mandatory; and it has been observed that the practice has been to construe provisions as no more than directory, if they relate to the performance of a public duty, and the case is such that to hold null and void acts done in neglect of them would work serious general inconvenience, or injustice, to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature."

6. In interpreting whether a certain provision of law can be regarded as mandatory or directory the intention of the legislature, as quoted above, has to be ascertained, and in this present case, in my opinion, it appears that the legislature by enacting the two provisos of Section 18 of the Act obviously intended to specify the period within which the application for reference should be filed and did not consider it proper that such application should be filed at any time depending on the choice of the party concerned. A reference under Section 18 of the Act is for the determination of the question of the quantum of compensation and naturally the matter cannot be left in an indefinite position and it cannot be left to the sweet will of the awardee to come to court at any time and if such be the position, it would mean that even after several years the awardee may come and file an application for making a reference. It could not therefore, have been the intention of the legislature that such provision restricting
the period in which such application should be filed be only directory and not mandatory. I may also point out here that there is a distinction between a reference under Section 18 of the Act and under Section 30 of the Act. There is no prescribed limit of time under section 30 of the Act as has also been pointed out in a decision of the Supreme Court in the case of *Dr. G. H. Grant v. State of Bihar*[4], A reference under Section 30 of the Act can be also made suo motu by the Collector, but that does not appear to be the position with regard to a reference under section 18 of the Act.

7. As it will appear from the quotations from Halsbury's Laws of England that when there is a

provision relating to the steps to be taken by the parties to legal proceedings they in the widest sense have been construed with some regularity as mandatory; and it has been observed also that the practice has been to construe provisions as no more than directory, if it relates to a performance of a public duty because in such a case to hold such act null and void would work serious general inconvenience, or injustice, to person who has no control over those entrusted with the duty, without at the same time promoting the main object of the legislature.

8. Here in this case the time limit has been imposed under the section which applies to the awardee and, therefore, an awardee has to file the application within such time. It may also be mentioned here that there does not seem to be any provision in the Act for the extension of such time or condonation of such delay and, therefore, it can be said that the legislature never intended that there should be any relaxation with regard to the position of the limitation of time in this respect. It has also been vehemently argued by the learned counsel appearing for the appellant that the position of the Collector while making the reference is that of an agent and in some decisions, as I will presently discuss, it has, no doubt, been observed that the position of the Collector is of an agent or a mouthpiece of the Govt. and, therefore, it has been urged that that if the Collector acting as an agent makes a reference although the application is barred by limitation, the State Government cannot turn round and say that the reference is incompetent as it is beyond limitation because once the reference has been made by such an agent the Land Acquisition Judge cannot as urged by the learned counsel for the appellant go into the question whether such application is barred by limitation or not. In my opinion, this contention also does not seem to be correct and I may in this connection refer to the case of *State of Rajasthan v. L. D. Silva*[5]. where also a similar point had been urged. It was held there that a Collector can only make a reference in accordance with the provisions of law and if he transgresses those provisions, it is open to the Government to challenge his action in Court and it is open to the court to examine the question of the validity of the order of reference. It was also held there that though the Collector acting under the Land Acquisition Act is an agent of the Govt. the Government is bound by the acts of its agent only in so far as those acts are in accordance with law and the Govt. is not bound by the acts of his agent which are contrary to the provisions of law. It was also pointed out that when there is a specific provision of law the general law of principal and agentcannot be applied and the Government cannot be estopped from pleading that certain provisions of law have not been followed merely because at some stage or the other it directed the Collector to make a reference. In my opinion, the same

principle should apply in this present case also and as the reference of the Collector
was contrary to the provisions of law, so the Govt. cannot be bound even though the Collector be taken as an agent and the reference by him would be without jurisdiction, inasmuch as, it was entertained by him in direct violation of the law as laid down in this respect in Section 18 of the Act.

9. I will proceed to discuss the different decisions of the High Courts on this point and before I do so it will be better if I take up a discussion of the decisions of our own High Court. It appears that there are only two relevant decisions in this case (sic) of our High Court, but not directly on the point and these are in the case of J*agarnath Lall v. Land Acquisition Deputy Collector, Patna*[6], and the other in the case *Lila Mahton v. Sheo Govind Singh*[7], In Jagarnath's case, AIR 1940 Patna 102 (SB) a petition for revision was filed against an order passed by the Land Acquisition Deputy Collector of Patna refusing to refer an objection to an award for

determination by the Civil Court. There the question was, therefore, whether such an application for revision against the order of Collector was entertainable and it was held by the Special Bench of our High Court that the wording of Section 18(1) leaves the Collector no alternative but to refer the matter if the application is made within the periods prescribed by the Section and is not barred by proviso 2 to Section 31 of the Act. It may be mentioned here that as far as the present case relates we are not concerned with the provisions as made in Section 31 of the Act. The Special Bench further held that the Land Acquisition Deputy Collector had no right whatsoever to refuse to refer the matter on the grounds that the objections to the award were not *bona fide* and were frivolous. It was also held that the land acquisition proceedings upto the time when the award is made are administrative proceedings and not judicial proceedings. On the question whether such a revision application was maintainable or not, it was held that the High Court did not have the revisional jurisdiction even if the Deputy Collector might have been acting judicially because it does not confer power as contemplated under section 115 of the Code of Civil Procedure . The point which has to be decided in this present case did not arise in that case because it was a different matter, but the observations of this Special Bench do show that the jurisdiction of the Collector comes into force only if an application is made within the period prescribed by the section, that is to say, by the provisos (a) and (b) of sub-section (2) of Section 18 of the Act, as mentioned above. In Lila Mahton's case AIR 1956 Patna 108, the question which came up for consideration was whether the Land Acquisition Judge had jurisdiction to go behind the reference and to see whether the dispute between the parties was or not about Shikmi right and it was held that there was no such jurisdiction. I may also refer here in this connection to certain observations in this judgment at page 110 which were to the effect that 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 terms or by implication to go behind the reference and to see whether the Collector acted rightly or wrongly. It is true that a Land Acquisition Judge while hearing a reference under Section 18 of the Act does not sit in appeal or revision against the order of the Collector, but if the application before the Collector for making the reference is beyond the period of limitation, then
it will naturally affect the jurisdiction of the Collector to make the reference. The
question which arises for consideration in this present case did not come up for a decision in that case and further it may also be pointed out that the case, referred to above, was in a reference under Section 30 of the Act and not under section 18 of the Act. I may now refer to the decisions of the other High Courts and I may mention here that the views of the High Courts of Bombay, Madras, Kerala, Calcutta, Rajasthan, Jammu and Kashmir are of the same as are being held by me in this case. The Allahabad High Court has more or less consistently taken a different view and the matter was considered by a Full Bench decision of the Allahabad High Court in the case of State of Uttar Pradesh through the *Collector of Nainital v. Abdul Karim*[8], where, no doubt, after a consideration of the various decisions of the High Courts and of the Allahabad High Court it was held that the Land Acquisition Judge cannot go into the question of limitation once the reference has been made. I may first of all discuss the views of the other High Courts and then in the end the views of the Allahabad High Court and I may also mention here that the views of the Punjab High Court seem on the line with the views of the Allahabad High Court. I will first of all refer to a decision of the Calcutta High Court in the case of *Ananta Ram Banerjee v. Secretary of State*[9] and I may refer to the observations of the Calcutta High Court at pages 685 and 686, which are as follows :-

"When the jurisdiction of a court is challenged, that Court has the power and it is its duty

to decide it. The Special Judge derives his jurisdiction from the reference made under section 18 by the Collector. If the reference made by the Collector is ultra vires, the Special Judge would have no jurisdiction to proceed further and must stop the reference in limine. If the question of power of the Collector to make the particular reference be raised before the Special Judge, he must decide it. It is on this principle that the Special Judge must decide the question, if raised, as to whether the Collector made the reference beyond time and if he finds it to be so, reject the reference without proceeding further (1906) ILR 30 Bom 275. In the matter of Government and Nanu N. Kothare. If the question raised by the Secy. of State before the Special Judge is that the reference had been made by the Collector by mistake at the instance of a person who had accepted the award, and if the claimant's case be that he had not accepted the award, the question of fact as to whether the claimant had accepted the award must be gone into by the Special Judge and if he decides that question in the affirmative, he must throw out the reference on that ground. The case before us does not come within the strict terms of Section 18, for there was no acceptance of the award by the appellant, but is within an inch of the bar imposed by that section and it would not be wrong for the learned President to say that the contract alleged in the case being established, the reference was not to be further proceeded with."

In the Calcutta High Court case, AIR 1937 Calcutta 680 the question of limitation did not come up for consideration because the question was whether the award was ultra vires. But that is also a matter which affected the decision of the Collector, and it has been observed there, as quoted above, that the Special Bench derives the jurisdiction
from the reference made under section 18 by the Collector and if the reference made
by the Collector is ultra vires, the Special Judge would have no jurisdiction to proceed further. It would therefore, follow that if an application for reference is barred by limitation then the reference by the Collector is without jurisdiction and if it is without jurisdiction the Land Acquisition Judge cannot entertain such a reference.

10. The Court below while holding that the application was barred by limitation relied on a decision of the Bombay High Court in the case of AIR 1944 Bombay 200. In that case the Collector made a reference under Section 18 of the Act, but at the same time while making the reference he made a note of his opinion that it was barred by limitation, the Bombay High Court in the aforesaid ruling held that the Collector was wrong in doing this and if the Collector thought that it was barred by limitation, then he should have declined to make the reference. In that case this question also arose for consideration whether the Land Acquisition Judge can go into the question and it was held that it is not the question of sitting in appeal or revision and the Land Acquisition Judge can go into the question to see if the conditions laid down in the Act have been duly satisfied. The judgment in the case was delivered by Beaumont C. J. (as he then was) and his observations in the last concluding paragraph of his judgment at page 201 are as follows :-

"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 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. 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 Chandavarkar, J., 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. The appeal therefore must be dismissed with costs."

I may also refer here in this connection to another decision of the Bombay High Court in the case of *G. J. Desai v. Abdul Mazid Kadri*[10], and the judgment in that case was delivered by Chagla C. J. (as he then was) and his observations in that judgment were as follows :-

"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 application has got to be made. Therefore if the application 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 application 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 the petition and refuses to make a reference, it would always be open to the claimants to come to Court and get the Court to compel the Collector to make a reference, if they satisfy the Court that their application was within time. On an application under Section 45 what the Court 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 application is within time. Therefore in order to decide the petition under section 45 the Court 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 Court to determine the validity of the reference because the very jurisdiction of the Court 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 Court to hear it. This seems to me to be the clear interpretation of the plain language of the section used by the Legislature."

11. I have already stated above, that the Madras view has also been on the lines of the Bombay High Court and I may refer here to the case of *Kana Navanna Narayanappa Naidu v. Revenue Divisional Officer, Sivakasi*[11], In that case also the application for making the reference under section 18 was filed after the expiry of six weeks from the date of the receipt of the notice of the award. Many decisions have been considered in this case also by the Madras High Court and there was also an observation to the effect that "there was cleavage of Judicial opinion on the question, whether a court, can or cannot go behind the reference." In that case arguments were advanced to the effect that the Court cannot compel the Collector' to make a reference (as it stood before the Constitution) and so once the reference is before the Court it is not at liberty to find out whether the application was within time. It has already been noted in this decision that this question has agitated the minds of the courts for nearly fifty years and there has been difference of Judicial opinion. It was held in that case that a perusal of Section 18 shows that certain conditions are to be complied with and all these are matters of substance and their compliance is a condition precedent to the exercise of the power of reference under the section. One of the arguments also advanced before the Madras High Court was that the Collector acted as an agent and this was also not acceptable by the Madras High Court. The observations and the final conclusions in the decision were to the effect as follows :-

> "On principle apart from authority it is difficult to accept the line of reasoning
> contained in the cases laying down, that whatever might be defects and imperfections in the reference made, when once it is before the Court, that tribunal is debarred from finding out whether a valid reference has been made. It is no doubt true that under sub-section (1) of Section 18 of the Land Acquisition Act, a person interested who has not accepted the award may by written application require the Collector to make a reference regarding the matters enumerated later on in that sub-section but the first proviso to that section is imperative in stating that every such application shall be made within six weeks from the date of the award, if the person making it was present or represented before the Collector at the time when he made the award. We are not concerned with the second proviso (b)."

12. The Rajasthan High Court in the case of AIR 1957 Rajasthan 44 took the same view as of the Madras and the Bombay High Courts, and it was held by the Rajasthan High Court also that the Collector can make a reference only when it is in accordance with the provisions of law. I have already stated above in the earlier part of my judgment that one of the arguments advanced in that case also was that the Collector was acting as an agent, and it was held that the Government cannot be bound by the acts of the agents which are contrary to the provisions of law.

13. In a Full Bench decision in the case of *Kochukunju Padmanabhan v. State of Kerala*[12], this High Court also followed the views of the Madras and the Bombay High Courts. The Full Bench of Jammu and Kashmir in the case of *Swami Sukhanand v. Samaj Sudhar Samiti*[13], has also followed the Madras and Bombay High Courts' views and it was held in this case that "a Land Acquisition Court is entitled to go behind a reference made to it by the Collector and determine whether the reference fell within the scope and ambit of the jurisdiction conferred upon him by the statutory provision under which the reference was purported to be made and that if the court

comes to the conclusion that the reference is ultra vires, the Court will have no jurisdiction to proceed further with the reference and is bound to reject it in limine."

14. The Punjab and Allahabad High Courts have taken a different view and the Punjab High Court has followed the Allahabad High Court's view and I may refer here to the case of *Hari Krishna Khosla v. State of Pepsu*[14], It was held in this case that the proviso, which prescribes the period within which the application is to be presented and occurs in sub-section (2) is purely procedural, and the real matters on which the reference can be required being stated in sub-section (1) and that the provision relating to the period within which the application has to be made cannot be regarded as a condition precedent to the exercise of the jurisdiction by the Collector in the same manner as the conditions on which a creditor can make a petition under Section 9 of the Provincial Insolvency Act. The decisions of the other High Courts have been considered by the Punjab High Court and the view expressed by the Allahabad High Court in ILR 52 All 96 was held to be correct and it was followed by the Punjab High Court. The Punjab High Court, therefore, has relied on the view and the reasonings for the view expressed by the Allahabad High Court and in a Full Bench decision of the Allahabad High Court in the case of AIR 1963 Allahabad 556 (FB) all the decisions of the Allahabad High Court and of the other High Courts were considered and it was held that that the Land Acquisition Judge cannot go into the question of limitation once the reference has been made. I may give here in brief some of the reasoning's on which this view has been held by the Allahabad High Court on the basis of the arguments which were advanced in that case. The Allahabad High Court held that the Section was not sensibly drafted, as there was no provision requiring the Collector to make the reference or laying down in what circumstances he must or may or must not or may not make the reference. It also appears that the view of the Allahabad High Court was that the interpretation of the section is that if the application for reference is made within time it must be considered on merits by the Collector and if made after the expiry of the period, it may be ignored regardless of the merits, and that this view did not militate against any provision in the statute and it may not be treated as a corresponding limitation on the Collector, and there was no express provision for forbidding a reference on a time barred application. I have already referred to the provisions of Section 18 of the Act and true it is that the section does not lay down as to what would the consequence if an application is filed beyond the expiry of the period laid down in clauses (a) and (b) of the Proviso to this Section. But reading the section as it stands, it clearly implies as has been held by the other High Courts also that one of the pre-requisite conditions can confer a jurisdiction on the Collector to make the reference is that the application should be made within time, and in this view of the matter and in agreement with tile views of the other High Courts, which I have discussed above with due respect I have to say that I do not agree with the view of the Allahabad High Court in this respect.

15. It also appears that one of the arguments which was advanced and which appealed to the Allahabad High Court was that no jurisdiction was conferred on the District Judge (Land Acquisition Judge) to go into the question behind the reference and that once a reference is made, he has to proceed as laid down in Section 20 of the Act. I have already referred in the earlier part of my judgment to the provisions of section 20 of the Act which lays down that the Court shall cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, and that this notice has to be served on the persons named in the section, viz, the applicant and all the persons interested in the objection and if the objection is in regard to the area of the land or to the amount of the

compensation, notice to the Collector also. In my view Section 20 prescribes as to what the Land Acquisition Judge has to do after a reference by the Collector under section 18 of the Act has been received. But it does not necessarily imply or mean that the Land Acquisition Judge has to shut his eyes and has no jurisdiction at all to see whether the pre-requisite conditions as laid down in section 18 of the Act had been complied with or not. It also appears that one more argument which had been advanced and which had been accepted by the Allahabad High Court was on the basis of the provision of Section 21 of the Act. This section lays down as follows :-

> "Restriction of scope of proceedings :- The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection."

This, in my opinion, only means that the Land Acquisition Judge has to confine himself in the enquiry to a consideration of the interests of the persons affected by the objection, but it in no way debars his jurisdiction to see whether the pre-requisite conditions as laid down in section 18 of the Act have been complied with or not. The view of the Allahabad High Court was also to the effect that the wording and the language of sections 23 to 26 show that the District Judge has to determine the question of the amount of compensation and refusal to do so because the application is time barred runs counter to the language of the section. Here again, I may state with due respect that I do not agree with this opinion of the Allahabad High Court.

16. It also appears that this view was also acceptable to the Allahabad High Court that the Collector is acting administratively in making the award and the reference and even if he be acting judicially while making the reference, he is not subordinate or inferior to the District Judge and the latter cannot revise any finding of his as provided in sections 23 to 26 of the Act. In my opinion, if an objection is taken before the Land Acquisition Judge that the pre-requisite conditions as laid down in the section have not been complied with, such as, that the application was beyond the period prescribed therein and the Land Acquisition Judge examines the question whether the conditions were complied or fulfilled or not will not mean that the Land Acquisition Judge would be sitting in appeal or revision against the order of making the reference by the Collector, but he would be only examining if the pre-requisite conditions as laid down in section 18 of the Act have been complied with or not and thereby to see whether the Collector had the jurisdiction or not to make the reference. The argument about the Collector being an agent was also acceptable to the Allahabad High Court, but I have discussed this aspect of the matter also earlier.

17. On a consideration of the entire matter, such as the relevant provisions of the Act and the decisions of the different High Courts, it will be clear that the majority of the High Courts are in favour of this view that a Land Acquisition Judge in a reference under Section 18 of the Act can go into the question whether the application for reference was made within the time prescribed under sub-section (2) of Section 18 of the Act. In an agreement with the majority view of the High Courts and with respect in disagreement with the Allahabad and Punjab High Courts, I am also of opinion that the necessary sine qua non of the reference by the Collector under Section 18 of the Act is that it must be made in accordance with the provisions of that section, such as, within the period prescribed by the two provisos of sub-section (2) of the section, and as a necessary corollary it follows that if the Land Acquisition Judge finds on the materials placed

before him that the application is barred by limitation in the sense that it was not presented within the period prescribed under the two provisos of sub-section (2) of Section 18 of the Act, then he can refuse to entertain the reference and can also reject the reference on this ground. The point which I have formulated and which arises for consideration by this Bench is, therefore, answered on the lines indicated above. In result, therefore, it follows that this appeal has no merit and it is dismissed, but in the circumstances of the case no order for costs is made.

Untwalia, J.

18. I agree.

Appeal dismissed.

Cases Referred.

[1] AIR 1944 Bom 200
[2](1855) 6 Moo Ind App 134 (PC)
[3]AIR 1964 Pat 53
[4]AIR 1966 SC 237
[5]AIR 1957 Raja 44
[6] AIR 1940 Pat 102 (SB)
[7]AIR 1956 Pat 108
[8]AIR 1963 All 556 (FB)
[9] AIR 1937 Cal 680
[10]AIR 1951 Bom 156
[11] AIR 1955 Mad 23
[12] AIR 1963 Ker 3 (FB)
[13] AIR 1962 Jam and Kas 59
[14] AIR 1958 Pun 490