Supreme Court of India
Mohammad Hasnuddin vs State Of Maharashtra on 7 November, 1978
Equivalent citations: 1979 AIR 404, 1979 SCR (2) 265
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
MOHAMMAD HASNUDDIN

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT07/11/1978

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
SINGH, JASWANT
PATHAK, R.S.

CITATION:
1979 AIR 404 1979 SCR (2) 265
1979 SCC (2) 572
CITATOR INFO :
F 1982 SC 61 (3)
R 1986 SC1164 (5)

ACT:
Land Acquisition Act, 1894, Ss. 14 and 18-Power of Collector to make a reference under s. 18 circumscribed by fulfilment of conditions laid down therein-Duty and jurisdiction of court to go behind the reference made on time barred application and decline to answer it.

HEADNOTE:
The appellant's land was acquired by the State Government under s. 5 of the Hyderabad Land Acquisition Act, A notification under s. 3(1) was published on the 28th February, l958 and on the 13th of January, 1962 the Land Acquisition officer, Aurangabad, made an award directing payment of compensation inclusive of 15% solatium to the appellant at the rate of 37 n.p. per sq. yard as against his claim for payment of compensation at the rate of RS.10/- per sq. yard. the award was communicated to the appellant on the 20th of January, 1962 and on the 5th February, 1962 he filed an application for review before the Land Acquisition officer who made a recommendation through the Collector to

the Secretary to the State Government that the award be reconsidered. But, the Collector by his order dated the 23rd of March, 1962 declined to forward the same. On the 14th of May, 1962 the appellant applied for reference under s. 14(1) of the Hyderabad Land Acquisition Act which is in pari materia with s. 18 of the Land Acquisition Act, 1894, praying that the period spent in the proceedings for the review be excluded while computing the period of limitation prescribed under s. 14 of the Limitation Act. The Assistant Collector, Aurangabad, who was the Land Acquisition officer, made a reference to the District Court of Aurangabad, .without opining Whether the application was time barred or not. The Government raised a preliminary objection the application being time barred. the reference was incompetent. The objection prevailed, both the District Court and the High Court.

The appellant contended that while dealing with a reference under s. 14(1) of the Hyderabad Act, the court cannot go into the question that the application was time barred under s. 18(2) of the anAcquisition Act, 1894 and tbereby refuse to entertain the reference.

Dismissing the appeal, the Court

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HELD: (1) The power of the Collector to make a reference under s. 18 is circumscribed by the conditions laid down therein. These conditions are matters of substance and their observance is a condition precedent to the Collector's power of reference. The fulfilment of these conditions, particularly the one regarding limitation are the conditions, subject to which the power of the Collector to make the reference exists. Therefore, the making of are application for reference within the time prescribed by proviso to s. 18(2) is a sine qua non for a valid reference by the Collector. [269G-H, Z71B, 278FGl

Abdul Sattar `Sahib v. Special Dy. Collector, Vizagapatam Harbour Acquisition, ILR 47 Mad. 357 (FB); BalKrishna Daji Gupta v. The Collector,Bom

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bay Suburban, ILR 47 Bom. 699; Jagarnath Lall v. Land Acquisition Dy. Collector Patna, ILR Pat. 321; S. G. Sapre v. Collector Saugar, ILR 1938 Nag. 149; Amar Nath Bhardwaj v. The Governor General in Council, ILR 1941 Lah. 100; Kashi Parshad v. Notified Area of Mahoba, ILR 54 All 282, Bhagwan Dass Shall v. First Land Acquisition Collector, [1937] 41 CWN 130I, and Gopi Nath Shah v. first Land Acquisition Collector, [1937] 41 CWN 212; approved.

Secy. Of State v. Bhagwan Prasad, ILR 51 All. 96; State of U.P. v. Abdul Karim, AIR 1963 All. 556; Panna Lal v. The Collector of Etah, ILR [l959] 1 All. 628; Venkateshwarasawami v. Sub-Collector, Bezwada, AIR 1943 Mad. 327 and Hari Krishan Khosla v. State of Pepsu, ILR [19S8] 1 Punj. 844; over-ruled.

Krishna Das Roy v. Land Acquisition Collector Pabna, 16 CWN 327; Upendra Nath Roy v. Province of Bengal, 45 CWN 792; Leath Elias Joseph Solomon v. H. C. Stork, 38 CWN 844; disapproved.

Pramatha Nath v. Secretary of State, ILR 57 Cal. 1148; Ezra v. Secretary of State for India ILR 32 Cal. 60S and ILR 30 Cal. 36; Harish Chandra v. Deputy Land Acquisition officer, [1962] 1 SCR 676; and The Administrator General of Bengal v. The Land Acquisition Collector, 24 Parganas, [1907-8] 12 CWN 241; referred to.

2. Where the tribunal derives its jurisdiction from the statute that creates it and that statute also defines the condition under which the tribunal can function, it is bound to see that such statutory conditions have been complied with. The court functioning under the Act, being a tribunal of special juris-diction, it us its duty to see that the reference made to it by the Collector under s. 18 complies with the conditions laid down therein. [279B-C, D]

Even if a reference is wrongly made by the Collector the court will still have to determine its validity, because the very jurisdiction of the court to hear a reference depends on a proper reference being made under s. l8 and if the reference is not proper, there is no jurisdiction in the court. to hear the reference. The court has jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-s. (2) of s. 18 of he Act, and if it finds that it was so made, deoline to answer reference. [279EG]

The Queen v. Commissioner for Special Purposes of the Income Tax, LR [1888] 21 QBD 313; Jagdish Prasad v. Ganga Prasad, [1959] Supp. 1 SCR 733 and Nusserwanfee Pestonjee v. Meer Mynoodeen Khan, LR [1855] 6 M.I.A. 134; applied.

Re. Land Acquisition Act, ILR 30 Bom. 275; Sukhbir Singh v. Secretary of State, ILR 49 All. 212; Mahadeo Krishna v. Mamlatdar of Alibag, ILR 1944 Bom. 90; G. J. Desai v. Abdul Mazid Kadri, AIR l951 Bom. 156; A. R. Banerjee v. Secy. of State, AIR 1937 Cal. 680, K. N. Narayanappa Naidu v. Revenue Divisional officer Sivakasi, AIR 195S Mad. 20; State of Rajasthan v. L. D. Silva, ILR [19S6] 6 Raj. 6S3; Sheikh Mohommad v. Director of Agri culture; M.P., 1966 MPLJ 433; Ramdeval Singh v. State of Bihar AIR 1969 Pat. 131; Anthony D' Silva v. Kerala State, AIR l971 Ker. 51; Swatantra L. & F. Pvt. Ltd., v. State of Haryana, ILR [1974] 2 Punj. 7S; Swami Sukhanand v. Samaj Sudhar Samiti, AIR 1962 J & K 59; and Abdul Sattar v. Mt. Hamida Bibi Pak. L.R. l95O Lah. 568 (FB); approved.

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State of Punjab v. Cst. Qaisar Jahan Begam & Anr. [1964] SCR 971, and A State of U.P. v. Abdul Karim, [CA No. 2434/1966 decided on . 3-9-1969] referred to.

Secretary of State v. Bhagwan Prasad, ILR 52 All. 96; State of U.P. v. Abdul Karim, AIR 1963 All. 556; Pannalal v. True Collector of Etah, ILR 11959] 1 All. 628;

Venkateswaraswami v. Sub-Collector, Bezwada, AIR 1943 Mad. 327; and Hari Krishna Khosla v. State of Pepsu, ILR [1958] 1 Punj. 8S4; over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1926 of1969.

(From the Judgment and Decree dated S 2 68 of the Bombay High Court in First Appeal No. 4S1 of 1964).

Shaukat Hussain and Mohd. Mian for the appellant. R. H. Dhebar and M. N. Shroff for the respondent. The Judgment of the Court was delivered by SEN, J. This appeal by certificate is directed against a judgment of the Bombay High Court, and it involves an important question namely, whether a court in dealing with a reference under s.14, Sub-s. (1) of the Hyderabad Land Acquisition Act, 1309 Fasli, corresponding to s. 18, sub-s. (1) of the Land Acquisition Act, 1894, can go behind the reference made by the Collector if the application on which the reference has been made is beyond the period of limitation prescribed therein.

The material facts giving rise to this appeal are as follows: The case arises from that part of the erstwhile princely State of Hyderabad, known as Marathwada, which merged in the State of Bombay under the States Re- organisation Act, l956. The land belonging to the appellant admeasuring 2057 sq. yards in the city of Aurangabad, has been acquired by the State Government under s.5 of the Hyderabad Land Acquisition Act for the construction of a building for the medical college at Aurangabad. The Government published a Notification under s. 3 (1) on the 28th of February, 1958. On the 13th of January, 1962 the Land Acquisition officer, Aurangabad made an award directing payment of Rs. 1,318.11 P. inclusive of 15 per cent solatium as compensation to the appellant at the rate of 37 np. per sq. yard, as against his claim for payment of compensation at the rate of Rs. 10/- per sq. yard. The said award was communicated to the appellant on the 20th of January, 1962. The appellant instead of making an application for reference under s. 14, sub-s. (1) of the Act, filed an application for review before .he Land Acquisition officer on the 5th of February, 1962 requesting him 'to revise the award' stating further that in case it was not revised he would seek his remedy in a court of law'. The Land Acquisition officer obviously felt that the amount fixed by him was too low and accordingly on the 17th of February, 1962 made a recommendation, through the Collector, to the Secretary to the State Government that the award be reconsidered. But, the Collector by his order dated the 23rd of March, 1962 declined to forward the same and informed the appellant that he must seek his remedy in! a court of law.

Eventually, on the 14th of May, 1962 the appellant made an application for reference under s. 14, sub-s. (1) of the Act and prayed that the period spent in the proceedings for the review before the Land Acquisition Officer subsequent to the date of the award be excluded while considering the question of limitation under s. 14 of the Limitation Act. A reference was made under section 14, sub-s. (1) of the Act to the District Court of Aurangabad. The Assistant Collector, Aurangabad, who

was the Land Acquisition officer, while making a reference made no expression of his opinion whether the application was time-barred or not, evidently taking the view that the point should be left for the decision of the court. He, however, while making the reference gave a complete narration of facts and left the question open. A preliminary objection was raised by the Government that the reference was incompetent, the application being time-barred. This objection prevailed and the contention of the appellant based on1 s. 14 of the Limitation Act was negatived both by the Civil Judge, Senior Division Aurangabad by his order dated the 28th of June, 1962, and by the High Court of Bombay by its order dated the 5th of February, 1968 holding that the time taken between the 5th of February, 1962 and the 23rd of March, 1962 could not be excluded while computing the period of limitation prescribed under s. 14, sub-s. (1) of the Act inasmuch as s. 14 of the Limitation Act was not applicable to the proceedings, and further, that even if it applied the appellant was not entitled to the benefit of s. 14 of the Limitation Act, stating that good faith, which is also a necessary ingredient under s. 14, was not established.

The learned Civil Judge raised an issue whether the application for reference was barred by limitation under s. 14, sub-s. (1) of the Act, and he answered that issue in the affirmative, and we have no doubt, whatever that his decision on that point, as well as that of the High Court affirming it, was right. The application was clearly out of time.

Section 14, Sub-s. (1) of the Hyderabad Land Acquisition Act, 1309 Fasli provides that:

> "Every person interested, who is displeased with the Taluqdar's award may, within two months from the date of receiving notice of the award, apply to the Taluqdar in writing to refer the case to the court for determination, whether his objection be to the measurement of the land, or to the amount of the compensation, or to the persons to whom it is payable or to the apportionment of the compensation among the persons interested."

Section 15, sub-s. (1) enjoins that the Taluqdar in making the reference shall forward to the Court a statement in writing, containing certain particulars. Sub-section (2) there of provides that to the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively.

It is conceded for our present purposes that s. 14, sub-s. (1) of the Hyderabad Land Acquisition Act is in pari materia with the provisions of s. 18 of the Land Acquisition Act, 1894. Hence hereinafter reference will be made only to the provisions contained in the Land Acquisition Act, 1894, 'the Act'.

Learned counsel for the appellant rested his submission on the .ground that the court while dealing with a reference under s. 14, sub-s. (1) of the Act, cannot go behind the reference and decline to answer it. The point regarding applicability of s. 14 of the Limitation Act was rightly not pressed before us. Nor was any contention raised by him that the application for review made by the appellant before the Land Acquisition officer on the 9th of February, 1962, asking him to revise the award should, in law, be regarded as an application under s. 14, sub-s. (1) of the Act.

The short question that falls for determination in the appeal is whether the court can go into a question that the application for reference was not made to the Collector within the time prescribed in s. 18, sub-s. (2) of the Land Acquisition Act; and if so, can it refuse to entertain the reference if it finds it to be barred by time. There was at one time a great divergence of judicial opinion on the question. But almost all the High Courts have now veered round to the view that the court has the power to go into the question of limitation. It not only has the power but also the duty to examine whether the application for reference was in accordance with law i.e., whether it was made within time prescribed under the proviso to sub-s. (2) of s. 18 of the Act or not. The view taken by them is that a Collector's jurisdiction is circumscribed by the conditions laid down in s. 18, sub-s. (1), that if he makes a reference even though the application for reference was not in accord ance with the provisions of s. 18, the court acquires no jurisdiction to hear the reference and that it can refuse to hear it if it was made on a time-barred application.

The matter came up twice before this Court in State of Punjab v. Mst. Qaiser Jehan Begum & Anr.(1) and the State of U.P. v. Abdul Karim(2) in which the conflict of judicial opinion in the High Courts was noticed but not resolved as the Court in both the case,s rested its decision on a narrower ground namely that the application for a reference was not barred by time. In Mst. Qaiser Jehan Begum's case (supra) it was observed:

> "In the view which We have taken on the question of limitation, it is unnecessary for us to decide the other question as to whether the civil court, on a reference under s. 18 of the Act, can go into the question of limitation. We have al-ready stated that there is a conflict of judicial opinion on that question. There is no one side a line of decisions following the decision of the Bombay High Court in re. Land Acquisition Act, which have held that the civil court is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. There is, on the other side, a line of decisions which say that the jurisdiction of the civil court is confined to considering and pronouncing upon any one of the four different objections to an award under the Act which may have been raised in the written application for the reference. The decision of the Allahabad High Court in Secretary of State v. Bhagwan Prasad is typical of this line of decisions. There is thus a marked conflict of judicial opinion on the question 'This conflict, we think, must be resolved in a more appropriate case on a future occasion". In the case before us the question doe6 not really arise and is merely academic and we prefer not to decide the question in the present case.

That question now directly arises.

It is contended on behalf of the appellant that a reference to the Court having been made by the Collector, the court had no jurisdiction to question the validity of that reference and was bound to decide the matter on merits. In support of this contention certain authorities have been cited to us, in which it has been laid down that it is for the Collector, and the Collec-tor alone, to determine whether to make a reference under s. 18, sub-s. (1), and if he decides to make a reference, it is not (1) [1964] 1 S.C.R. 971.

(2) Civi] Appeal No. 2434 of 1966 decided on 23-9-1969.

open to the court to go behind the decision of the Collector, and hold the reference to be out of time. Illustrative of this line of decisions is that of Allahabad High Court in Secretary of State v. Bhagwan Prasad(1). That view has been reiterated by the Full Bench of the same High Court in the State of U.P. v. Abdul Karim(2) and in its earlier decision in Panna Lal v. The Collector of Etah(3), and the decisions in Venkateswaraswami v. Sub-Collector, Bezwada(4), Hari Kishan Khosla v. State of Pepsu(5).

Chandravarkar J. in re Land Acquisition Act(6) held that it is clear from section 18 that the formalities are matters of substance and their observance is a condition precedent to be Collector's power of reference. He held that the court is bound to go into the question whether the reference under s. 18 was within time. He also held that the court was not only entitled, but bound, to satisfy itself that the conditions laid down in s. 18 have been complied with. In stating the principle, Chandravarkar J. Observed:

> "These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the court can have jurisdiction to entertain the reference."

The principle laid down by him in that case was acted upon in Sukhbir Singh v. Secretary of State(7). In that case the Collector had made a reference, although there was no application before him as required by s. 18 and the Division Bench held that being so, there was no valid reference. But in a latter case which came before another Division Bench in Secretary of State v. Bhagwan Prasad (supra), it was held that it was not open to the court under s. 18 to go behind the reference, that it was for the Collector to decide whether the conditions justifying reference have been complied with and if he thought that they had been, the court was bound to answer the reference. This view found favour with a Single Judge of the Madras High Court in Venkateswaraswami v. Sub-Collector Bezwada (supra) and a Single Judge of the Punjab High Court in Hari Krishan Khosla v. State of Pepsu (supra). All these decisions clearly do not lay down good law.

(1) ILR 52 All. 96.

(2) AIR. 1963 All. 556.

(3) ILR [1959] 1 All. 628.

(4) AIR 1943 Mad. 327.

(5) ILR [1958] 1 Punj. 854.

(6) I.L.R. 30 Bom. 275, 285, 286 (7) ILR 49 All. 212.

In State of U.P. v. Abdul Karim (supra) the Full Bench of the Allahabad High Court, on its view of the scheme of the Act, declined to follow the decision of Chandavarkar, J. in re Land Acquisition Act (supra) and the long line of decisions taking the same view. It preferred to rest its decision on the earlier view of its Full Bench in Panna Lal v. The Collector of Etah (supra) and that in Secretary of State v. Bhagwan prasad (supra). In the light of these decisions, it held that the Collector's jurisdiction to make a reference is not circumscribed by the conditions laid down in s. 18, sub-s. (1) and (2), that if he makes a reference even though the application for reference was not in accordance with the provisions of s. 18, the court acquires jurisdiction to hear the reference, and that it cannot refuse to hear it even if it was made or. a time-barred application. Upon its view, it held that the court has no power to determine or consider a question of limitation as its jurisdiction is strictly limited by the terms of the section as laid down by the Privy Council in Pramatha Nath v. Secretary of State(1). It further held that the legislature having contemplated the Collector to be an agent of the Government, as that is the position assigned to him by the Privy council in Ezra v. Secretary of State for India(2), his status is certainly not changed by the mere fact that he is required to make a reference under s. 18 if the application is within prescribed time and complies with certain conditions. That being so, even if the Collector wrongly decides that an application is within time or satisfies other conditions, the Government as its principal, may have a remedy against him but was bound by his act so long as it remains. The act being of the agent is their own and they are bound by it. The Government cannot, therefore, be permitted to contend at the hearing of the reference before the court that it was illegally made. In view of all this, the Full Bench was of the view that this class of case does not fall within the class of cases where the jurisdiction of an inferior authority depends upon the existence of a certain state of facts, as indicated by Lord Eshar, M. R. in The Queen v. Commissioners for Special Purposes of the Income-tax(1).

On principle, apart from authority, it is difficult to accept the line of reasoning of the Allahabad High Court, namely, whatever might be the defects and imperfections in the reference made, once it is before the court, the court is debarred from enquiring into its validity or otherwise. The decision in Abdul Karim's case (supra) proceeds on a com-

(1) ILR 57 Cal. 1148.

(2) ILR 32 Cal. 605.

(3) L.R. (1888) 21 QBD 313.

plete misunderstanding of the decision of the Privy Council in Pramatha Nath v. Secretary of State (supra), where the Judicial Committee interpreting s. 21 observed:

> "Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken, is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

All that the Privy Council intended to lay down was that the jurisdiction of the court in dealing with a reference under s. 18 is restricted by the terms of the section, as enjoined by s. 21. That decision cannot be interpreted to mean that the court while, hearing a reference under s. 18 cannot enquire into competency or otherwise of the reference made by the Collector, i.e., whether the conditions precedent to the exercise of power by the Collector, and, therefore, of the court, and in particular the condition regarding limitation, are fulfilled or not.

In Ezra v. Secretary of State for India (supra) the Privy Council, while dealing with the functions of the Collector in making an award under s. 11 laid down that the functions of the Collector 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. In that context, it did not think it necessary to repeat the reasoning of the judgment under appeal where the sections and the questions as a whole were very satisfactorily stated, and observed:

> "The proceedings of the Collector resulting in the 'award' are administrative and not judicial. The award in which the enquiry results is merely a decision (binding only on the collector) as to what sum I shall be tendered to the owner of the lands and if a judicial ascertainment is decided by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court."

These observations, however, related to proceedings under Part II of the Act and not under Part III.

Ameer Ali and Stephen JJ., in delivering the judgment under appeal, explained the functions of the Collector under s. 11 in Ezra v. Secretary of State for India(1) where they said:

(1) ILR 30 Cal. 36.

> "throughout the proceedings the Collector acts as the agents of Government for the purposes of acquisition....He is in a sense of the term, a judicial officer, nor is the proceeding before him a judicial proceeding.... he is not a Court.... The Government .... at whose instance the land is being taken up is not entitled to demand a reference.. The reason of this is plain. The Collector acts as the agent of the Government.... and they are accordingly bound by the award of their agent.
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> ..... the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and ....consequently, although the Government .... is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded."

On the basis of the Privy Council decision in Ezra's case (supra), this Court in Harish Chandra v. Deputy Land Acquisition officer(1) held that the Collector in making an award acts as an agent of the Government, and that the legal character of the award made by the Collector was that of a tender or offer by him on behalf of the Government.

The Allahabad High Court has read more into the decision of the Privy Council in Ezra's case (supra) than is there. Merely because the Collector while making an award under s. 11 or in serving a notice of the owner of the land under s. 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the court under s. 18, he acts in the capacity of an agent of the Government. While it is true that the Collector in making the award under s. 11 acts as an agent of the Government, he in making a reference to the court under s. 18 acts as a statutory authority. Section 18, sub-s. (1) of the Act entrusts to the Collector the statutory duty of making a reference on the fulfilment of the conditions laid down therein. The Collector, therefore, acting under s. 18, is nothing but a statutory authority exercising his own powers under the section.

In the context, we may advert to the controversy that had arisen as a result of the Privy Council's decision in Ezra's case (supra) holding. that the Legislature had assigned to the Collector the position of an: (1) [1962] 1 S.C.R. 676.

agent of the Government while making an award under s. 11. The problem that arose was that the claimants were left with no remedy where the Collector improperly declines to make a reference although the application fulfilled the requirements of s. 18. In The Administrator General of Bengal v. The Land Acquisition Collector, 24-Parganas(1) the Calcutta High Court while dealing with the question tried to draw a distinction between the functions of the Collector under Part Il of the Act land that under Part III, and observed:

> "It is admitted that up to and including the time of making his award the Collector was in no sense a judicial officer and that the proceedings before him were not judicial proceedings(Ezra v. Secretary of State) and however irregular his proceedings were, we cannot interfere with his award made under s. 11 of the Act.
>
> But when an application is made to the Collector requiring him to refer the matter to the Civil Court, the Collector may have to determine and, it seems to us, determine judicially whether the person making the application was represented or not when the award was made, or whether a notice had been served upon the applicant under sec. 12(2) and what period of limitation applies and whether the application is under the circumstances made within time. The Collector's functions under Part III of the Act are clearly distinguishable from those under Part II. Part III of the. Act relates to proceedings in Court. In our opinion the Collector in rejecting the application was a Court and acting judicially and his order is subject to revision by this Court. To hold otherwise would be to give finality to an award under sec. 11 even in cases in which the Collector acts irregularly and contrary to law and then refuses on insufficient grounds to make a reference under Part III of the Act. The party aggrieved may be left without remedy which is implied by a judicial trial before the Judge."

These observations were no doubt made in a different context but they bear some relevance to the point at issue.

The question at issue was whether the Collector's order refusing to make a reference could be interfered with by the High Court under s. 115 of the Code of Civil Procedure or s. 107 of the Government of India Act, 1919. The Calcutta High Court's view that the Collector's power was a judicial power and that the Collector was a Court subordinate to the High Court was obviously wrong but it persisted in taking (1) (1907-8) 12 CWN 241 that view to obviate injustice: Krishna Das Roy v. Land Acquisition Collector, Pabna;(1) Upendra Nath Roy v. Province of Bengal,(2) Leeth Elias Joseph Solomon v. H. C. Stork(3). The Calcutta High Court tried to exercise its supervisory jurisdiction to provide the subject with a remedy. The power of the Collector to make an order under s. 18 was not judicial in nature, nor was the Collector a court subordinate to the High Court. The other High Court, therefore, expressly dissented from the view of the Calcutta High Court: Abdul Sattar Sahib v. Special Deputy Collector, Vizagapatnam Harbour Acquisition, (4) Balkrishna Daji Gupta v. The Collector, Bombay Suburban,(5) Jagarnath Lall v. Land Acquisition Deputy Collector, Patna,(6) S. G. Sapra v. Collector, Saugar;(7) Amar Nath Bhardwaj v. The Governor General in Council,(8) Kashi Pershad v. Notified Area of Mahoba.(9). Even the Calcutta High Court later changed its view: Bhagwan Das Shah v. First Land Acquisition Collector,(10) Gopi Nath Shah v. First Land Acquisition Collector.(11) It was held that the functions of the Collector under s. 18 were statutory or quasi-judicial in nature.

The construction placed by the Allahabad High Court on s. 18 of the Act is not borne out either by the plain language of the section itself or by accepted principles. The following observations appear in Abdul Karim's case (supra):

> "There is no support for the proposition that the necessary sine qua non of a reference is an application for Reference made in accordance with the provisions of section 18."
>
> "There is no provision. which bars the Collector's power to make a reference, if he is inclined to make one on a time barred application.
>
> "If the Collector decides to make a reference the Land Acquisition Court cannot go behind the reference." "A Collector and a Collector alone has jurisdiction to make a reference and a reference by him is not a nullity merely because it is based on a time-barred application."

(1) 16 CWN 327.

(2) 45 C.W.N. 792.

(3) 38 C.W.N. 844.

(4) I.L.R. 47 Mad. 357 (F.B.) (5) ILR 47 Bom. 699.

(6) I.L.R. Pat. 321.

(7) ILR (1938) Nag. 149.

(8) ILR (1941) Lah. 100 (9) ILR 54 All. 282.

(10) (1937) 41 C.W.N. 1301.

(11) (1937) 41 C.W.N. 212 "The facts regarding limitation of an application for reference are not required to be stated by the Collector in his reference, and indeed he is not bound to send the application along with the reference. All that the Court has to do on receipt of the reference or can do is to hear it after giving notice of the date. The word 'thereupon' in Section 19 must be interpreted to mean "as soon as the collector makes a reference and states for the information of the Court various matters set out in Section 19."

"A District Judge gets jurisdiction not from the Collector but from the receipt of a reference from him. It is the receipt of the reference that confers jurisdiction upon him and not any finding of the Collector."

"The Court has to perform a ministerial act of causing a notice to he given to the objector. There is no provision entitling it to examine the question whether the Collector's order was correct on the question of the application having been made within the prescribed time."

The jurisdiction of the Court under the Act is a special one and strictly limited by the terms of section 18 to 21. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. A Court undoubtedly has certain jurisdiction over the reference, but it does not include any appellate jurisdiction over the Collector in respect of the reference made by him without statutory sanction." It is difficult to subscribe to these propositions which are not warranted by law.

In his celebrated judgment in The Queen v. Commissioners for Special Purposes of the Income Tax (supra) Lord Esher, M.R., while dealing with statutory Tribunals, divided them into two categories, namely:

> (i) "When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislatures has to consider what powers it will give that tribunals or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.
>
> (ii) The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do

> something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for other wise there will be none."

The law as enunciated by Lord Eshar has been accepted by this Court as laying down the true principle in Jagdish Prasad v. Ganga Prasad (1) The word "require" in s. 18 of the Act implies. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under s. 18 on the fulfilment of certain 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 objection is which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference under s. 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.

The conditions laid down in s. 18 are 'matters of substance and their observance is a condition precedent to the Collector's power of reference', as rightly observed by Chandavarkar J. in re Land Acquisition Act (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to s. 18. Sub-s. (2) is a sine qua non for a valid reference by the Collector.

From these considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under s. 18 complies with the conditions laid down therein so as to give the court jurisdiction (1) [1959] Supp. 1 S.C.R. 733.

to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in Abdul Karim's case (supra).

Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in Nusserwanjee Pestonjee v. Meer Mynoodeen Khan,(1) wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act 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.

If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time, and satisfies the conditions laid down in s. 18. Even if a reference is wrongly made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under s. 18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in s. 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference It is ` only a valid reference which gives jurisdiction to the court, and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.

In deciding the question of jurisdiction in a case of reference under s. 18 by the Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and (1) LR (1855) 6 M.I.A. 134.

proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the, proviso to sub-s. (2) of s. 18 of the Act, and if it finds that it was so made, decline to answer reference Beaumont C. J., delivering the judgment of the Division Bench in Mahadeo Krishna v. Mamlatdar of Alibag,(1) agreed with the view of Chandavarkar J. and observed:

> "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 mat 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."

The same view has been reiterated by almost all the High Courts except the Allahabad High Court :G. J. Desai v. Abdul Mazid Kadri(2) A. R. Banerjee v. Secretary of State,(3) K. N. Narayanappa Naidu v. Revenue Divisional Officer, Sivakasi;(4) State of Rajasthan v. L. D'Silva,(5) Sheikh Mohommad v. Director of Agriculture, Madhya Pradesh;(6) Ramdeval Singh v. State of Bihar,(7) Anthony D'Silva v. Kerala State;(8) Swatantra L. & F. Pct. Ltd. v. State of Haryana,(9) and Swami Sukhanand v. Samaj Sudhar Samiti.(10) This is also the (1) TLR (1944) Bom. 90.

(2) AIR' 1951 Bom 156.

(3) A.I.R. 1937 Cal. 680.

(4) A.I.R. 1955 Mad. 20.

(5) I.L.R. (1956) 6 Raj. 653.

(6) 1966 MPLJ 433.

(7) A.I.R. 1969 Pat. 131.

(8) A.I.R. 1971 Ker. 51.

(9) I.L.R. (1974) 2 Punj. 75.

(10) A.I.R. 1962 J. & K. 59 view expressed by a Full Bench of the Lahore High Court in Abdul Sattar v. Mt. Hamida Bibi.(1) The view to a contrary effect taken by the Allahabad High court in Secretary of State v. Bhagwan Prasad (supra), Panna Lal v. The Collector of Etah (supra) and State of U.P. v. Abdul Karim (supra) and by a Single Judge of the Madras High Court in Venkateswaraswami v. Sub-Collector, Bezwada (supra) and by a Single Judge of the Punjab High Court in Hari Krishan Khosla v. State of Pepsu (supra) clearly do not lay down good law and these decisions are" therefore, over-ruled.

It is impossible not to feel sorry for the appellant in this case, who was guilty of almost incredible folly by not filing an application for reference under s. 14, sub-s. (1) of the Hyderabad Land Acquisition Act, 1309 Fasli within the time prescribed therein, and is thus precluded from claiming what may be legitimately due to him by way of compensation. But, the decision must depend upon the construction of the section and the law must take its course. We trust that, as assured by its counsel, the State Government of Maharashtra will be generous enough to consider whether it should make an ex gratia payment to the appellant of a sufficient amount by way of compensation which will be Commensurate with the market value of the land acquired as on the 28th of February, 1958. It certainly was a piece of land of some value as it was situate in the city of Aurangabad.

The result, therefore, is that the appeal must fail and is dismissed. There shall be no order as to costs of this appeal and of the courts below.

M. R. Appeal dismissed.

(1) Pak L.R. 1950 Lah. 560 (F.B)

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