ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

1950
October 5

G. J. DESAI, APPELLANT *v.* ABDUL MAZID KADRI AND OTHERS RESPONDENTS, (ORIGINAL PETITIONERS).*

Land Acquisition Act (I of 1894), s. 18—Collector's powers of reference to the High Court—Collector must decide if application of claimant for reference is within time and complies with the conditions under s. 18—Claimant's right to petition to the High Court under s. 45, Specific Relief Act (I of 1877)—Duty of the Court, to consider whether the decision of the Collector is right.

The Collector's powers to make a reference to the High Court under the Land Acquisition Act are circumscribed by the conditions laid down in s. 18. It is the statutory duty of the Collector to make a reference to the Court when a claimant is not satisfied with his award; but before he can make a reference he must be satisfied that the claimant has complied with the conditions laid down in s. 18 and one of the conditions is whether the application is made within time.

If the Collector finds that the application is out of time, it is his duty to refuse to make a reference.

In such a case it is open to the claimant to make a petition to the Court under s. 45 of the Specific Relief Act for a writ of mandamus to compel the Collector to make a reference on the ground that the Collector has failed to discharge his statutory duty to make a reference to the Court. The Court will then consider whether the Collector should make a reference and for that purpose the Court will have to decide whether the Collector was right in holding that the application was out of time. If the Court finds that the Collector was wrong in his decision, the Court will direct him to make a reference otherwise the Court must dismiss the petition.

The jurisdiction of the Court to hear a reference depends on the reference being valid and if the reference is not proper the Court has no jurisdiction to hear it. Therefore, it is for the Court to determine the validity of the reference.

An application made by the petitioners (respondents) to the Special Land Acquisition Officer to make a reference to the High Court under s. 18 of the Land Acquisition Act in connection with his award, was rejected by him on the ground that it was time-barred.

The petitioners thereupon filed a petition under s. 45 of the Specific Relief Act to compel the Officer to make the reference. The trial Court held that once an application was made to the Officer to make a reference, he was bound to do so under s. 18 without considering whether the application was barred or not.

Held, that under s. 18 it was incumbent upon the Officer to decide whether the application was time-barred or not and if he decided that it

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* O. C. J. App. No. 33 of 1950; Mis. Appn. No. 236 of 1949.

was time-barred, it was his statutory duty not to make a reference; but if he decided that the application was in time it was equally his statutory duty to make a reference.

Held, therefore, that it was the duty of the Court to determine whether the Officer was right in refusing to make a reference and for that purpose to decide the question of limitation.

In re *Land Acquisition Act*[1]; *Balkrishna* v. *Collector, Bombay Suburban*[2]; *Provident Investment Co.* v. *Land Acquisition Officer*[3] and *Mahadeo Krishna* v. *Mamlatdar of Alibag.*[4]

The petitioners were owners of certain immoveable properties at Mahim. These properties were notified for acquisition under s. 6 of the Land Acquisition Act on December 19, 1946. On April 1, 1949, the appellant G. I. Desai the Special Land Acquisition Officer made his award.

The petitioners being aggrieved applied to the officer to make a reference to the High Court. This was done on August 22, 1949. On September 23, 1949, the officer held that the application was time-barred and refused to make a reference.

The petitioners thereupon filed a petition under s. 45 of the Specific Relief Act to compel the Officer to make a reference.

The petition was heard by Bhagwati J. who held that the officer was wrong in rejecting the application and that he ought to have made a reference to the Court and ought to have left it to the Court to decide the question whether the application was out of time or not. His Lordship therefore issued a writ of mandamus.

The Special Land Acquisition Officer appealed.

C. K. Daphtary, Advocate General appeared for the appellant.

Sir Jamshedji Kanga with *S. V. Gupte*, appeared for the respondents.

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

The Special Land Acquisition Officer made an award under the Land Acquisition Act. An application was made to him

[1] (1905) 7 Bom. L. R. 697, s. c. 30 Bom. 275.
[2] (1923) 25 Bom. L. R. 398, s. c. 47 Bom. 699.
[3] (1935) 37 Bom. L. R. 465.
[4] [1944] Bom. 90.

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by the Petitioners to make a reference to the High Court under s. 18 of the Act. The Officer took the view that the Petitioners' application was barred by limitation and refused to make a reference. Thereupon the Petitioners came to this Court with a petition under s. 45 asking the Court to order the Officer to make a reference under s. 18. The learned Judge took the view that it was not open to the Officer to consider whether the application was barred by limitation or not, and that once an application was made to him under s. 18 it was incumbent upon him to make a reference and the question whether the application was barred or not was a question which had to be determined by the Civil Court. With respect to the learned Judge the opinion he formed on the construction of s. 18 is not borne out either by the plain language of the section itself or by the decisions of this Court. Now turning to the section itself it is clear and the position is not disputed since the Privy Council laid down in *Ezra* v. *Secretary of State for India*,[1] 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 offer or to call upon the Collector to make a reference which would result in a judicial determination by a Court. Now the power of the Collector to make a reference is circumscribed by the conditions laid down in s. 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 s. 45 what the Court will have to consider is whether the Collector failed to discharge his statutory duty and one of

[1] (1905) 32 Cal. 605.

his statutory duties is to make a reference if the application is within time. Therefore in order to decide the petition under s. 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 s. 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 s. 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.

Now turning to the authorities of this Court we have first a decision of *Chandavarkar* J. in In Re. *Nanu Kothare*[1] In that case a reference was made by the Collector of Bombay and the validity of the reference was challenged on behalf of the Government on the ground that the application made to the Collector was out of time. The learned Judge held that the application was out of time and therefore there was no substantial compliance by the claimants with the conditions for a reference prescribed by s. 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 Court to consider the validity of the reference and as to whether the application made by the claimant under s. 18 is or is not within time.

Then there is a decision of a Division Bench of this Court In *Balkrishna Daji Gupte* v. *The Collector of Bombay*[2] This is a judgment of Macleod C. J. and Crump J. and what the Division Bench held was that no revisional application 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 Court and he was not discharging judicial functions and therefore no revision lay under s. 115 of the Civil Procedure Code. Certain observations of the Chief Justice are relied upon by the Advocate General. These observations are that a High Court 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 s. 18

(1) (1905) 7 Bom. L. R. 697. (2) (1923) 25 Bom. L. R. 398.

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of the Land Acquisition Act and 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 s. 45 of the Specific Relief Act. As the law then was there was no power in the Court 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 s. 18 of the Land Acquisition Act.

Then we have two recent decisions of this Court. The first is *the Provident Investments Co.* v. *The Land Acquisition Officer*[1]. In that case the Land Acquisition Officer took the view that the application made by the claimants was not in proper compliance with the provisions of s. 18 and refused to make a reference. A petition was presented under s. 45 of the Specific Relief Act and the Court issued an order upon the Collector to make a reference holding that the application made by the claimants was in sufficient compliance of the terms of s. 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 High Court can compel him to do so. In that particular case the question raised was as to the form of the application; but the question may well arise as to limitation. If the application 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 Parkar* v. *The Mamlatdar of Alibaug.*[2] In that case Beaumont C. J. and Rajadhyaksha J. held that it was the duty of the Court to see that the statutory conditions laid down in s. 18 of the Land Acquisition Act had been complied with, and that the Court 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 High Courts amongst which there was a conflict and came to the conclusion that the Court was not precluded from considering the validity of the reference. In fact the learned Chief Justice bases his decision

(1) (1935) 37 Bom. L. R. 465. (2) [1944] Bom. 90.

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on the fact that it was only a valid reference which gave jurisdiction to the Court and therefore the Court had to ask itself the question whether it had jurisdiction to entertain the reference.

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 application made by the claimants was within time then undoubtedly he had a right to issue an order under s. 45 of the Specific Relief Act upon the Collector compelling him to make a reference at the instance of the claimants.

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

Each party to bear his own costs.

Petition dismissed.

A. J. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

COMMISSIONER OF INCOME-TAX, APPELLANT *v.* THE CENTURY SPINNING AND MANUFACTURING CO. LTD., RESPONDENT.*

1951 *March* 29

Business Profits Tax Act (XXI of 1947), r. 2 (1) in Sch. II—Capital of a Company—"Reserves" meaning of—Setting aside a part of profits.

The language used in rule 2 (*1*) in Schedule II of the Business Profits Tax Act is not "reserve fund" but "reserves" and "reserves" does not mean the same thing as "reserve fund".

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* Income-tax Ref. No. 27 of 1950.