
(1950) 10 BOM CK 0007
In the Bombay High Court
Case No : O.C.J. Appeal No. 33 of 1950

G.J. Desai

APPELLANT

Vs

Abdul Mazid Kadri and Others

RESPONDENT

Date of Decision : 05-10-1950

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Specific Relief Act, 1877 — Section 45

Citation : AIR 1951 Bom 156 : (1951) 53 BOMLR 257 : (1952) ILR (Bom) 580

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : C.K. Daphtary, General, for the Appellant; Jamshedji Kanga and S.V. Gupte, for the Respondent

Judgement

Chagla, C.J.—This is an appeal from an order of Bhagwati J. directing that a writ of mandamus be issued u/s 45, Specific Relief Act against the Special Land Acquisition Officer, City of Bombay & the Bombay Suburban District

2. The Special Land Acquisition Officer made an award under the Land Acquisition Act. An appln. was made to him by the petnrs. to make a reference to the H. C. u/s 18 of the Act. The officer took the view that the petnr.'s appln. was barred by limitation & refused to make a reference. Thereupon the petnrs. came to this Ct. with a petn. u/s 45 asking the Ct. to order the Officer to make a reference u/s 18. The learned Judge took the view that it was not open to the officer to consider whether the appln. was barred by limitation or not, & that once an appln. was made to him u/s 18, it was incumbent upon him to make a reference and the question whether the appln. was barred or not was a question which had to be determined by the civil Ct. With respect to the learned Judge the opinion he formed on the construction of Section 18 is not borne out either by the plain language of the section itself or by the decisions of this Ct. Now turning to the section itself it is clear, & the position is not disputed since the P. C. laid down in *Ezra v. Secretary of State* 82 I A. 93 : 32 Cal. 605, that the functions of

the Collector in making an award are not judicial but administrative, & all that he does is to make an offer to the claimants with regard to the valuation of the property to be acquired. It is open to the claimants either to accept the order or to call upon the Collector to make a reference which would result in a judicial determination by a Ct. Now the power of the Collector to make a reference is circumscribed by the conditions laid down in Section 18 & one important condition is the condition to be found in the proviso. That proviso lays down the period within which the appln. has got to be made. Therefore if the appln. is made which is not within time the Collector would not have the power to make the reference. In order to determine the limits of his own power it is clear that the Collector would have to decide whether the appln. presented by the claimants is or is not within time, & 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 petn. & refuses to make a reference, it would always be open to the claimants to come to Ct. & get the Ct. to compel the Collector to make a reference if they satisfy the Ct. that their appln. was within time. On an appln. u/s 45 what the Ct. will have to consider is whether the Collector failed to discharge his statutory duty, & one of his statutory duties is to make a reference if the appln. is within time. Therefore in order to decide the petn. u/s 45 the Ct. would have to consider the question of limitation & 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 u/s 18, it would be for the Ct. to determine the validity of the reference because the very jurisdiction of the Ct. to hear a reference depends upon a proper reference being made u/s 18, & if the reference is not proper, there is no jurisdiction in the Ct. to hear it. This seems to me to be the clear interpretation of the plain language of the section used by the Legislature.

3. Now turning to the authorities of this Ct. we have first a decision of Chandavarkar J. in *In re Land Acquisition Act* 7 Bom. L. R. 697 : 80 Bom. 275. In that case a reference was made by the Collector of Bombay & the validity of the reference was challenged on behalf of the Govt. on the ground that the appln. made to the Collector was out of time. The learned Judge held that the appln. was out of time & therefore, there was no substantial compliance by the claimants with the conditions for a reference prescribed by Section 18 of the Act & the Collector had no power to make a reference & it was ultra vires. Therefore this decision clearly lays down that it is for the Ct. to consider the validity of the reference & as to whether the appln. made by the claimant u/s 18 is or is not within time.

4. Then there is a decision of a D. B. of this Ct. in *Balkrishna v. Collector*, "Bombay Suburban" 25 Bom. L. R. 398 : A. I. R. 1923 Bom. 290. This is a judgment of Macleod C. J. & Crump J., & what the D. B. held was that no revisional appln. was competent from an order of the Collector refusing to make a reference, & in coming to that conclusion both the Chief Justice & Crump J. took the view that the Collector was not a Ct. & he was not discharging judicial

functions & therefore no revn. lay u/s 115, C. P. C. Certain observations of the Chief Justice are relied upon by the Advocate-General. These observations are that a H. C. had no power to compel the Collector to make a reference if he refused to do what seemed incumbent upon him to do under the provisions of Section 18, Land Acquisition Act, & the learned Chief Justice goes on to say that it was a pity that a subject had no remedy & 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 u/s 45, Specific Relief Act. As the law then was there was no power in the Ct. to compel a Collector to make a reference if the Collector was a Collector of a part of the province outside Bombay & if he refused to carry out his statutory duty u/s 18, Land Acquisition Act.

5. Then we have two recent decisions of this Ct.: The first is *Provident Investment Co. v. Land Acquisition Officer, Bombay* 37 Bom. L. R. 465 : AIR 1935 Bom. 319. In that case the Land Acquisition Officer took the view that the appln. made by the claimants was not in proper compliance with the provisions of Section 18 & refused to make a reference. A petn. was presented u/s 45, Specific Relief Act & the Ct. issued an order upon the Collector to make a reference holding that the appln. made by the claimants was in sufficient compliance of the terms of Section 18. Therefore this decision clearly lays down that if the Collector refuses to make a reference where it is incumbent upon him so to do the H. C. can compel him to do so. In that particular case, the question raised was as to the form of the appln.; but the question may well arise as to limitation. If the appln., is within time & 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 Vs. The Mamlatdar of Alibag*, . In that case Beaumont C. J. & Rajadhyaksha J. held that it was the duty of the Ct. to see that the statutory conditions laid down in Section 18, Land Acquisition Act had been complied with, & that the Ct. was not debarred from satisfying itself that the reference which it was called upon to hear was a valid reference. The learned Chief Justice reviewed the authorities of the different H. Cs. amongst which there was a conflict & came to the conclusion that the Ct. was not precluded from considering the validity of the reference. In fact the learned Chief Justice bases his decision on the fact that it was only a valid reference which gave jurisdiction to the Ct. & therefore the Ct. had to ask itself the question whether it had jurisdiction to entertain the reference.

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

him, to make a reference at the instance of the claimants.

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

8. Each party to bear his own costs.