
(1965) 11 KL CK 0034
In the High Court Of Kerala
Case No : A.S. No"s. 53 and 54 of 1962

Idicheria Sosa, Pulippara

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-11-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Travancore Land Acquisition Act, 1089 — Section 18(2)

Citation : AIR 1966 Ker 278

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K. George Varghese and Thomas V. Jacob, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—In both these appeals, on behalf of the claimant appellant, Mr. Thomas V. Jacob, learned counsel challenges the award of the learned District Judge of Quilon declining to consider the claim for enhanced compensation, on the ground that the applications filed by the appellant u/s 18 of the Travancore Land Acquisition Act, seeking a reference to the civil court, are barred by limitation.

2. The subject-matter of the two appeals relates to the acquisition of certain lands belonging to the appellant, who is the same in both the appeals, for the purpose of constructing the Omalloor Upper Primary School. Inasmuch as the two acquisitions were made for the same purpose, they were the subject of two references to the civil court, namely L.A.R. Nos. 31 and 82 of 1960. The award itself was on 28-3-1960, and the applications filed by the appellant seeking a reference to the civil court u/s 18 of the Travancore Land Acquisition Act, are Exts. D-5 and D-9.

3. Pausing here for a minute, it is necessary to refer to the period of limitation provided for u/s 18 (2) Proviso of the Travancore Land Acquisition Act, under

which these two acquisitions were made. Unfortunately the learned District Judge, to whom the references were made, has proceeded on the basis that it is the Proviso to Section 18 (2) of the Land Acquisition Act, 1894 (Central Act 1 of 1894), that applies; and it is on that basis that he has ultimately considered the question as to whether the applications made for reference are barred by limitation or not. And it is on that basis also that the learned District Judge has ultimately held that the applications filed by the appellant are barred by limitation. There has been a misconception in the mind of the learned District Judge regarding the exact statute that applies, because the acquisition being under the Travancore Land Acquisition Act, the period of limitation for making a reference, is as provided for in the Proviso to Section 18 (2) of the said Act. No doubt the learned Government Pleader pointed out that though the learned District Judge has considered the question only from the point of view of Section 18 of the Central Act, even applying the provisions of the Travancore Act, the applications filed by the appellant are barred by limitation. This aspect will be considered by me in the latter part of this judgment.

4. I have already stated that it is desirable to refer to the proviso to Sub-section (2) of Section 18 of the Travancore Act, which prescribes, under particular circumstances, the period within which an application for reference to the civil court is to be made by a party. Clause (a) of the said proviso does not come into the picture at all for the purposes of these appeals. It is only the first part of Clause (b) of the proviso that applies to the matters on hand. Under that part of Clause (b), the party should file an application asking for reference, within two months of the receipt of the notice from the Division Peishkar u/s 12, Sub-section (2).

5. In the present case, the award itself was passed on 28-3-1960. It is also established that as contemplated in Sub-section (2) of Section 12 of the Act, notice of the award has been personally served on the appellant in both the appeals, on 7-4-1960. Therefore, inasmuch as the notice has been served u/s 12, Sub-section (2), it follows that under the first part of Clause (b) of the proviso to Section 18 (2) the appellant in both these appeals should have applied to the Collector for making a reference to the civil Court within two months of the receipt of the notice, which was on 7-4-1960, and therefore the last date for filing the applications was 7-6-1960.

6. In both these matters, it is seen that the appellant has no doubt submitted two applications, namely Exts. D-5 and D-9, requesting the Officer to refer the claim for enhanced compensation to the civil court. These applications do not bear any date; on the other hand, there are initials of the Officer who, according to the State, received the applications on presentation to him, and has entered the date of receipt as 4-8-1960 and has also entered the same date and put his initials on the court-fee stamps affixed on these applications, for the purpose of cancelling the stamps. These two applications were in respect of the two acquisitions, on the basis of which, ultimately the Officer made two references,

namely L.A.R. Nos. 31 and 32 of 1960.

7. The State, in its written statement in both these matters, apart from raising the contention that the claim for enhanced compensation made by the plaintiff is not justified, has also specifically stated that the applications for reference to the civil court, filed by the party, are barred by limitation. That is contained in paragraph 3 of the written statement filed by the State in each of these matters. But notwithstanding the fact that the State had raised this plea, it is seen that originally the trial court had set for consideration only two issues, viz., (1) as to whether the plaintiff is entitled to any enhanced compensation; if so, to what extent, and (2) relief and costs.

8. The State filed a common application namely C.M.P. No. 981/1961, stating that a plea that the applications for reference to civil court made by the party are barred by limitation has been raised in the written statement filed by it, but no issue as such has been raised by the court regarding that plea. The State in that application has further referred to the fact that though notice u/s 12 (2) has been served on 7-4-1960, the applications filed by the party, requesting the Land Acquisition Officer to make references, have been filed long out of time; and therefore the State requested the court to frame an additional issue to the effect "Is the reference application barred by limitation?" That application no doubt was filed only on 15-7-1961. But it must be emphasised that it is not as if the State had, for the first time, raised the contention by means of that application that the claim of the party for enhanced compensation should not be investigated because the reference applications are barred by limitation; on the other hand, as I have already indicated, in each of the written statements filed by the State in these references, it has specifically raised this contention. Therefore the request made by the State in the application referred to above, was only to invite the attention of the court to the plea that was already taken by the State in its written statement and to adjudicate on the same.

8A. The learned District Judge, in his judgment, has no doubt referred to the provisions contained in Section 18 of the Central Land Acquisition Act. I have already pointed out that the correct provisions applicable to the present case, on the basis of which the question as to whether an application made by a party requesting the officer to make a reference to the civil court is barred by limitation or not is to be considered, are those contained in the proviso to Sub-section (2) of Section 18 of the Travancore Land Acquisition Act, Act 11 of 1959. That Act gives a slightly enlarged period of limitation in respect of certain matters than the Central Act itself. Therefore I will have to consider the question as to whether, on the findings recorded by the learned District Judge, the application filed by the appellant in each of these matters, requesting the Land Acquisition Officer to make a reference to the civil court, is barred by limitation, having due regard to the period provided for such an application in the Travancore Land Acquisition Act. And that is why I have already mentioned that in accordance with the provisions contained in the Travancore Act, and inasmuch

as admittedly the notice of the award u/s 12 (2) of the said Act has been served on the party on 7-4-1960, the application for reference in both the references should have been filed on or before 7-6-1960. The question in this case is whether the evidence in this case establishes that the appellant has filed the applications before that time.

9. The learned District Judge no doubt adverts to the claim made by the appellants for enhanced compensation. But later on he concentrates his attention regarding the contention of the State that the reference application itself is barred by limitation. In that connection, the learned Judge adverts to the fact that the Revenue Divisional Officer, who passed the award in question, is not alive, and the Head Clerk who was in charge of the Revenue Divisional Officer's Office at the material time is also not alive; and therefore the State examined the then Revenue Divisional Officer, Adoor as Dw. 4, and the Village Menon as Dw. 5. Dw. 5 was examined only for the purpose of establishing that the notice of the award passed on 23-8-1960 has been served on the appellant personally in each of these matters, as is seen from Exts. D-7 and D-18. So far as that is concerned, as already mentioned, there is no controversy that the notices were served on the appellant on 7-4-1960.

10. The evidence of Dw. 4 was relied on by the State for the purpose of establishing that the applications filed by the appellant in each of these matters, namely Exts. D-5 and D-9, were long after the period of limitation provided for u/s 18 of the Act. That is, according to the State, the practice in the office was for the Head Clerk to receive applications as and when they are received, and put his initials and date both on the applications as well on the stamps affixed to the applications. According to Dw-4, Exts. D-5 and D-9 bear the initials of the Head Clerk, who was in charge at the particular time, and the date 4-8-1960 found on these two applications as well as on the stamps affixed on them, was entered by the Head Clerk, whose signature and handwriting the witness claims to be familiar with. According to Dw. 4, the entry of the date as 4-8-1960 on Exts. D-5 and D-9 shows that they have been received in the office only on that date.

The learned District Judge is prepared to accept the evidence of Dw-4, having due regard to the fact that in two other applications filed by the appellant, namely Exts, D-6 and D-10, requesting the officer to disburse the amount, the date 1-8-1960 has been put, whereas in Exts. D-5 and D-9 no date at all has been put, The learned Judge is prepared to believe the evidence of Dw. 4 regarding the practice obtaining in his office. And in fact, that the initials and date contained in Exts. D-5 and D-6 have been put by the Head Clerk, who received those applications, and particularly the entry regarding the date 4-8-1960, will also establish that the applications Exts. D-5 and D-9 were made by the appellant only on 4-8-1960. which is nearly two months after the expiry or the period of limitation.

11. The learned District Judge no doubt adverts to the fact that a criticism was levelled as against the evidence of the Revenue Divisional Officer, Dw. 4, to the

effect that the best evidence in the case, namely the registers maintained in the office in connection with receipt of papers, has not been produced before the court. But nevertheless, the learned Judge is of the view that the evidence of Dw. 4 can be accepted. No doubt the learned Judge also refers to, what is stated by the appellant in Exts. D-6 and D-10, the applications filed by her on 1-8-1960, requesting the officer to disburse the amounts that had been awarded as compensation. And from the wording of Exts. D-6 and D-10 the learned Judge also infers that on that date, viz., 1-8-1960, the appellant could not have filed any applications for reference. No doubt that also is a circumstance taken into account by the learned Judge to come to a conclusion that Exts. P-5 and D-9 have been filed only after Exts. D-6 and D-10 were filed before the officer by the appellant. For these reasons, the learned District Judge ultimately came to the conclusion that the applications Exts. D-5 and D-9 are barred by limitation.

12. Mr. Thomas V. Jacob, learned counsel for the appellant raised two contentions, namely one of law, and another on fact. The first contention, which is one of law, is to the effect that when a reference has been made by the Land Acquisition Officer on the basis of a request made by the party concerned, the civil court has no jurisdiction to consider as to whether the application made by the party to the Collector u/s 18 or the Act is barred by limitation or not I understood the learned counsel to urge that when once the Land Acquisition Officer, irrespective of the fact whether the application filed by the party is barred by limitation or not -- and even contrary to the provisions contained in the statute itself -- has chosen to make a reference to the civil Court, the latter is bound to adjudicate only upon one or other of the aspects referred to in Section 18 of the Act, No doubt the learned counsel was prepared at a later stage to modify this proposition, by stating that in any event the principle that the civil court is entitled to go behind the reference and consider as to whether the application is barred by limitation or not, cannot be applied at least to the particular circumstances of this case. So far as the latter aspect is concerned, in my opinion, the application of the proposition of law, namely the jurisdiction of the court to consider whether the application for reference is barred by limitation or not, cannot be whittled down to the particular circumstances of a case, because it is a matter which relates to the jurisdiction of the court; and if that jurisdiction is recognised, as I will presently show, the contention that that principle cannot be applied to the facts of the present case will have no significance whatsoever.

13. The second contention of the learned counsel for the appellant, as I have already pointed out, is one of fact, namely that the finding of the learned District Judge that the applications filed by the appellant are barred by limitation, is not justified by the evidence on record. Regarding that aspect I will advert to later, after expressing my views on the question of jurisdiction raised by the learned counsel for the appellant as the first contention.

14. Normally I should think that the legal contention raised by the learned

counsel for me appellant, that when once a reference has been made by the Collector to the civil Court, the latter has no jurisdiction to consider as to whether the application for reference is barred by limitation or not, is concluded as against the appellant, by the decision of the Madras High Court and also of some of other High Courts But more than that, in the Full Bench decision of our High Court, reported in Kochukunju Padmanabhan Vs. State of Kerala, which decision was rendered by M. S. Menon, C.J., sitting with Joseph and Govindan Nair, JJ., -- a similar contention was taken before the learned Judges, namely that when once a reference has been made by the Collector u/s 18 of the Travancore Land Acquisition Act, the civil court has no jurisdiction to go behind the reference, except to adjudicate upon the points adverted to in Section 18 of the Act. That contention was rejected by the learned Chief Justice speaking for the court. The learned Chief Justice has referred to the decisions of the Madras High Court, as well as to the observations of the Privy Council in the decision reported in Nusserwanjea Pestonjee v. Meer Mynodeen Khan, (1855) 6 Ind App. 134 . The Full Bench has not chosen to adopt the views expressed by the Allahabad, Punjab, and Peshawar High Courts.

The learned Chief Justice, in particular, refers to the provisions of Section 18 of the Central Land Acquisition Act, 1894, which are substantially in accordance with the provisions contained in Section 18 of the Travancore Land Acquisition Act, excepting that in the latter Act the period of limitation is slightly larger. The learned Chief Justice emphasises that the view of the Bombay and Madras High Courts, adverted to in the judgment of the Full Bench, clearly establishes that "wherever jurisdiction is given to a court by an Act, and such jurisdiction is only given upon certain specified terms contained in the Act itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they are not complied with the jurisdiction does not arise". In fact the above extract is an observation of the Privy Council in the decision reported in (1855) 6 Ind App. 134 which has been quoted by the learned Chief Justice.

The learned Judges of the Full Bench have emphatically expressed their assent with the view expressed by the Bombay and Madras High Courts, which High Courts have categorically held that the conditions prescribed by Section 18 of the Act, are the conditions to which the power of the Collector to make a reference is subject, and unless those conditions are fulfilled, the court will get no jurisdiction to entertain a reference. And the learned Judges declined to follow the view expressed by the Allahabad, Peshawar and Punjab High Courts. In the Full Bench decision the learned Judges have also held that the essential condition, which gives jurisdiction to a civil Court to entertain a reference and adjudicate upon the claim for enhanced compensation, is the making of an application as enjoined by the statute. Therefore, it will be seen that a Full Bench of this Court, has clearly recognised the jurisdiction of the court, to whom a reference is made, to consider as to whether the application for reference has been made within time or whether it is barred by limitation.

15. Mr. Thomas V. Jacob learned counsel for the appellant pointed out that some doubts have been cast on the correctness of the Full Bench decision of this Court, by the observation of the Supreme Court in the decision reported in *State of Bihar and Another Vs. Kundan Singh and Another*, . I have gone through me said decision of the Supreme Court. In my opinion, no such doubt at all has been cast upon the view expressed by the Full Bench decision of this Court referred to earlier. The Supreme Court refers to the scheme of the Land Acquisition Act, 1894, and adverts to the fact that Section 18 (1) of that Act provides for any person interested, who has not accepted the award, to make a written application to the Collector, for referring the matter for determination of the court, and the nature of the objections that could be raised is also laid down in Section 18. After referring to these provisions, Gajendragadkar, J., (as he then was) adverts to the fact that from the matters mentioned in Section 18, it is clear that the scope of the enquiry under Sub-section (1) of that Section, is specifically indicated by the Section itself, and the court, on a reference made to it u/s 18, can only consider any one of the objections which was raised and which has been referred for consideration of the court.

It is in that context that the Supreme Court refers to the observation of their Lordships of the Judicial Committee in AIR 1930 64 (Privy Council) to the effect that Section 18 of the Land Acquisition Act clearly specifies four different grounds of objection which can be the subject-matter of an enquiry in reference proceedings. The learned Judges of the Supreme Court wind up the discussion on this aspect by stating that they cannot accept the contention of counsel's argument in that case that in dealing with the reference proceedings u/s 18 (1), the court can also consider the pleas raised by the owner of the property u/s 49 of the Act. So far as I could see, excepting emphasising as to what is the nature of the objections that could be raised u/s 18 (1) of the Act, and as to the manner in which the reference has to be made, as also the jurisdiction of the civil court to adjudicate upon it the learned Judges of the Supreme Court, in my opinion, had absolutely no occasion to consider in the above decision as to whether, when a reference is made to the court, the latter has got jurisdiction to consider as to whether the reference itself is barred by limitation or not. But I must indicate that in an earlier decision, namely that reported in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, the Supreme Court does advert to the fact that there is a marked conflict of judicial opinion on the question as to whether, when a reference is made to the civil Court u/s 18 of the Act, the court in that reference can go into the question of limitation.

The learned Judges merely refer to the fact that there is on one side a line of decisions starting from *In re., Land Acquisition Act*, ILR (1906) 30 Bom. 275 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; and there is, on the other side, a line of decisions wherein it has been held 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, and that the latter line of decisions is represented by the view expressed by the Allahabad High Court in the decision reported in Secy. of State Vs. Bhagwan Prasad and Another . But the point to be noted, so far as I could see, is that the Supreme Court has not expressed its view one way or the other, nor has it expressed its dissent from the views referred to by it as representing the two lines of cases as indicated in State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, .

16. It will also be seen that in a very recent decision reported in K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others, , the Supreme Court again refers to the provisions of Section 18 of the Land Acquisition Act, and also adverts to the observations of the Privy Council in (1855) 6 Ind App 134 to the effect that wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. The Supreme Court had occasion to consider in that decision as to whether, when a reference has been made u/s 30 of the Central Land Acquisition Act, 1894, regarding apportionment of the compensation, the civil court has got jurisdiction to go behind the award of the Land Acquisition Officer and re-determine the quantum of compensation. In that case, it will be seen that the civil Court did consider that aspect, and the State does not appear to have raised any objection. And before the Supreme Court, it is seen that the party appears to have challenged the decision on the ground that the State has no right to raise the contention that the trial court had no jurisdiction to go into this matter, inasmuch as they did not raise this as a ground of objection when the proceedings were pending before the trial court.

It is in that context that the Supreme Court after referring to Section 18 of the Act, as well as the other Sections dealing with jurisdiction of the civil Court which entertains a reference made u/s 18. refers to the observation of the Privy Council in (1855) 6 Ind App 184 and ultimately winds up by saying that in the case before it, it is a case of lack of inherent Jurisdiction, because there, was no reference at all by the claimant u/s 18 of the Act; in which case alone the court will have jurisdiction to consider the question of compensation, and the reference being one u/s 30, the court had no jurisdiction at all to consider the question of quantum of compensation. Therefore, the Supreme Court observes that when there is lack of inherent Jurisdiction, the failure of the State to object to the proceedings before the court on the around of an absence of reference in so far as the determination of compensation was concerned, cannot certainly amount to waiver or acquiescence. The Supreme Court winds up the discussion on this aspect by stating that "Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence". I am only referring to the observations of the Supreme Court, because the extract quoted by the Full Bench of this Court in : Kochukunju Padmanabhan Vs. State of Kerala, from the decision of the Privy Council in (1855) 6 Ind App 134 have again been

quoted with approval by the Supreme Court in AIR 1965 SC 804 . Therefore, in my opinion, the contention of the learned counsel for the appellant, that any doubt has been cast upon the correctness of the Full Bench decision of this Court in : Kochukunju Padmanabhan Vs. State of Kerala, , cannot certainly be accepted.

17. In the present case, it will be seen --and I have already referred to it in the earlier part of this judgment -- that even in the very first written statement filed by the State in each of these matters, it was specifically pleaded in paragraph 3 thereof that the application for reference made by the party is barred by limitation. But unfortunately no issue as such was framed by the trial court, and that necessitated the State filing the application C.M.P. 981/1961; and in consequence of that, issue No. 3 regarding the plea of limitation was raised, and was also adjudicated by the trial court. Therefore, that the court had ample jurisdiction to consider the contention raised on behalf of the State that the application for reference is barred by limitation, is amply borne out by the decisions referred to above. But as to whether finding recorded by the trial court on that aspect is correct or not, in a matter which I will consider when dealing with the second contention raised by learned counsel for the appellant.

18. Mr. Thomas V. Jacob, as I have already indicated, urged that the trial court's finding that the application filed by the appellant is barred by limitation, is not borne out by the evidence on record. So far as this is concerned, it is seen, and as pointed out by the learned Government Pleader on behalf of the State, that the Revenue Divisional Officer, who was in charge of the acquisition proceedings at the material time, was no more, and the Head Clerk in the office who was receiving the papers at the material time, was also no more, and therefore their evidence could not be made available to the court. The learned Government Pleader pointed out that the next best that the State could do in these circumstances, was to adduce the evidence of the then Revenue Divisional Officer, namely Dw. 4, to speak to the practice obtaining in the office and to speak to the fact that the initials as well as the date found on the applications Exts. D-5 and D-9 were put by the men Head Clerk, and also to establish, in particular, that the date put on Exts. D-5 and D-9 represented the date on which those applications were received in the office of the Revenue Divisional Officer. The learned counsel for the appellant urged that no question had been put to Pw. 5 in cross examination as to when exactly his mother filed the applications and as to whether the applications were filed only on 4-8-1960 or not, Prima facie this contention may appear to be justified. But it is seen that the appellant herself has not given evidence in these proceedings. Her son as P. W. 5 has given evidence on her behalf.

Pw. 5 has spoken to the fact that the applications for reference, were filed, as also certain other applications for drawing the amount awarded as compensation were also filed by his mother. He has also stated that while in Exts. D-6 and D-10 -- i.e. the applications filed by his mother for drawing the amount of compensation -- dates are found, so far as Exts. D-5 and D-9 are concerned,

which are admitted by him as applications filed by his mother for making reference to the court they do not bear any date. No doubt there is a further contention raised by the learned counsel for the appellant that Exts. D-6 and D-10 have been misunderstood and misconstrued by the trial court for coming to the conclusion that as on the date of those applications, namely 1-8-1960, the applications for reference would not have been made. I am prepared to assume that this contention of the learned counsel for the appellant is justified and that the learned District Judge has misunderstood the recitals contained in Exts. D-6 and D-10. But nevertheless, the question does arise whether there is any other evidence on record, on the basis of which the learned Judge could have come to a conclusion that the applications, Exts. D-5 and D-9, filed by the appellant asking for a reference to court, were filed only after the period of limitation. So far as that is concerned, Dw. 5 has spoken to the fact that notices of the award u/s 12(2) of the Act were served personally on the appellant on 7-4-1960. That is borne out by Ext. D-18. It is also admitted by the appellant herself.

19. But there is controversy regarding the date when the applications Exts. D-5 and D-9 were received in the Collector's office. There is no positive evidence on the side of the appellant on this aspect. But the practice obtaining in the office of the Revenue Divisional Officer is spoken to by Dw. 4. Dw. 4 has identified the initials and also the date put on Exts. D-5 and D-9 as those put by the then Head Clerk, who is now no more. He has also spoken to the fact that all such applications are received by the Head Clerk, who immediately puts his initials as well as the date on the applications, and also puts the initials and date on the stamps affixed to the applications, in order to cancel the stamps forthwith. No doubt in cross examination this witness has been asked as to whether there is any register kept in the office of the Revenue Divisional Officer which will show the entries regarding the applications received in his office, and the witness admitted frankly that there is a register. But so far as I could see, this aspect was not pursued further, and the matter has been allowed to rest there. That means that the appellant was perfectly satisfied with the answers given by the witness regarding the procedure adopted in his office and also regarding the maintenance of the registers regarding receipts of such applications.

No doubt I should frankly state that the State, especially when it had raised the plea of limitation and was taking up a position against the entertaining of the claim by the appellant could have very well produced before court the necessary registers, so that there would be no criticism at all as against the attitude adopted by it. Unfortunately, in this case, the State has not produced those registers. But nevertheless, there is no suggestion made to Dw. 4 that the procedure stated by him as obtaining in his office is not correct, or that he is not familiar with the handwriting of the Head Clerk who is stated to have put his initials and date in Exts. D-5 and D-9. If the appellant had any doubt regarding the truth of the evidence given by Dw. 1, it was perfectly open to him to have made a request to the trial court to direct the witness to produce the registers, so that the court may satisfy itself regarding the truth of the evidence given by

Dw. 4, it was perfectly open to him to have made a request to the trial court to direct the witness to produce the registers, so that the court may satisfy itself regarding the truth or otherwise of the version given by that witness.

In the absence of any such suggestion and any request made by the appellant herself for producing any further evidence and establish that Exts. D-5 and D-9 were filed not on 4-8-1960, as contended by the State, but even before 7-6-1960, her contention cannot be accepted, And as pointed out by the learned Government Pleader, even in the memorandum of grounds of appeal filed in this Court the appellant has no grievance whatsoever that any evidence that she wanted to adduce to establish that Exts. D-5 and D-9 were filed within time, has been illegally or erroneously shut out by the trial court or that no opportunity was given to her to adduce such evidence. I am again referring to this aspect, because the learned counsel for the appellant strenuously urged that the evidence on record is absolutely one-sided and the State has not produced the best evidence, namely the registers in the office of the Revenue Divisional Officer, and that his client has had no opportunity of adducing evidence to rebut the evidence adduced on behalf of the State. If the appellant really wanted to adduce any evidence on her side, or if she wanted the State to produce any further documentary evidence, a request in that behalf should have been made by her to the trial court. So far as I could see, no such request has been made by the appellant, and it is now too late in the day for her to request this Court to send back the matter to the trial Court for further consideration.

20. The position ultimately as it stands, is that the view of the trial court that the applications, Exts. D-5 and D-9, filed by the appellant asking for reference to the civil court in these matters, are barred by limitation, inasmuch as they were filed before the Collector only on 4-8-1960. The fact that the Collector, on the basis of the time-barred applications, forwarded the same to the civil court, does not take away the jurisdiction of the court as the law at present stands to consider the contention of the State that the reference applications are barred by limitation.

21. The result is that both the appeals fall and stand dismissed. But parties will bear their own costs.