

(1965) 09 KL CK 0007
In the High Court Of Kerala
Case No : A.S. 252 of 1961

Melkanganam Tahsildar, Trivandrum

APPELLANT

Vs

Govindan Nair and Another

RESPONDENT

Date of Decision : 23-09-1965

Acts Referred:

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

Citation : (1965) KLJ 1090

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

Bench : Single Bench

Advocate : G. Viswanatha Iyer and N. Ananthakrishna Iyer, for the Appellant;
K.S. Paripoorman for Respondent 1 and Gov. Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—In this appeal, on behalf of the 2nd plaintiff appellant, Mr. G. Viswanatha Iyer, learned counsel, challenges the decree of the learned Subordinate Judge of Trivandrum holding that the application by the appellant, asking for a reference u/s 18 of the Travancore Land Acquisition Act is barred by limitation. Pausing here for a minute, it may be stated that the learned Subordinate Judge has held that if the application for reference filed by the appellant is considered to be within time, then he will be entitled to enhanced compensation at Rs. 125/-per cent. There is also an attack: leveled by the learned counsel for the appellant, as against the increase in the apportionment of the compensation, in favour of the 1st plaintiff, who is the 1st respondent in this appeal. The subject-matter of the acquisition relates to 50 cents comprised in Section No. 352 of Muttathara Village in Trivandrum Taluk. The acquisition was for the purpose of providing accommodation to the Kamaleswaram Primaray School. The acquisition, as already mentioned, was under the Travancore Land Acquisition Act, Act XI of 1089. The declaration u/s 6 of the said Act was published on 19-8-1958. The appellant 2nd plaintiff claimed value for the land at

Rs. 200/- per cent. The 1st respondent who is the tenant of the property, claimed value of improvements and also compensation for the Kuthakapattom lease being terminated by virtue of the acquisition.

2. The land Acquisition Officer made an award of Rs. 75/- per cent on 18-10-1958, and a total sum of Rs. 4,696.60P. was awarded to the appellant. From and out of this amount, the Land Acquisition Officer had directed, that the 1st respondent 1st plaintiff, who, as I already stated, is the kuthakapattom lessee, is entitled to a sum of Rs. 110/- being value of the improvements effected by him on the property. Both the parties appear to have asked for a reference to court, the details of which will be mentioned a little later. So far as the application for reference filed by the 1st respondent is concerned, no controversy has been raised that it is in any manner barred by limitation; and that related only to the question of the apportionment in the sense that he wanted a higher amount to be paid to him from and out of the total compensation amount to be paid to the appellant. So far as the appellant 2nd plaintiff is concerned, it is necessary to state a few dates in order to consider the correctness or otherwise of the reasons given by the learned Subordinate Judge that there has been no proper application filed by him within the period mentioned in Section 18 of the Travancore Land Acquisition Act.

3. The award was passed on 18-10-1958, and it is seen from Ext. D2, dated 28-11-1958 that the appellant made a request for drawing the amount under protest, and ultimately it is also in evidence that he so received the amount on 3-12-1958. According to the 2nd respondent State, notice of the making of the award, as is required u/s 12" (2) of the Travancore Act, was served on the Samprathy in the office of the appellant 2nd plaintiff on 6-11-1958. The appellant filed an application on 8-1-1959 u/s 18 (2) of the Act asking for a reference to be made to the civil court. According to the appellant, he is entitled to get additional compensation in respect of the property acquired, and he has also raised a contention that the 1st plaintiff is not entitled to claim any share from and out of the compensation amount.

4. In the original written statement, the State no doubt raised an objection that the appellant is not entitled to claim any enhanced compensation, inasmuch as, according to the state, the award fixing Rs. 75/- per cent is perfectly reasonable and proper. The State also took up the position that the apportionment of the compensation amount has also been properly done as between the 1st plaintiff and the 2nd plaintiff and that also does not require interference by court. Later on, the State filed a supplementary written statement wherein they have raised a specific contention that the application filed by the 2nd plaintiff on 8-1-1959 is beyond the period of two months provided for in the first part of clause (b) of the proviso to sub-section (2) of Section 18 of the Travancore Land Acquisition Act. Therefore it was urged on behalf of the State that the question as to whether the appellant is entitled to any compensation does not at all arise for consideration.

5. Before the learned Subordinate Judge, the appellant appears to have raised a

contention that the application filed by him on 8-1-1959 is perfectly valid and within the period of six months provided for in the latter part of clause (b) of the proviso to sub-section (2) of Section 18 of the Travancore Act, and that service of notice of the award, stated to have been effected on the Samprathy in the office of the appellant, is not proper, because the service is not in the manner provided for in Section 40 of the Travancore Act. Alternatively the appellant also raised a contention that in any event, the application filed by him on 28-11-1958 evidenced by Ext. D2, can itself be considered to be an application for reference made within time, and that therefore there is no question of any bar of limitation, inasmuch as that application has been filed within two months from the date of the award itself.

6. The learned Subordinate Judge has taken the view that the appellant's claim that the application Ext. D2 is to be treated as an application asking for reference to the civil court cannot be accepted inasmuch as it does not make any such request, nor does it contain the necessary particulars, as is mandatory in an application provided for in Section 18 of the Travancore Act. Then the learned Judge is of the view that in this case, even on the evidence furnished by the appellant 2nd plaintiff, the Samprathy in his office was entitled to receive notices on his behalf, and therefore service of notice of the making of the award on 6-11-1958 on the Samprathy and his acceptance of the said notice must be considered, in law, to have been properly effected; and therefore, inasmuch as the appellant has asked for a reference beyond the period of two months of receipt of the notice, i.e., only on 8-1-1959, the application filed by the appellant for reference is barred by limitation. The learned Subordinate Judge has also held, after a fairly elaborate consideration of the various items of evidence placed before him by the parties, that if the appellant is otherwise entitled to claim enhanced compensation, the proper value that has to be fixed for the land acquired is not at Rs. 75/- per cent as held by the Land Acquisition Officer, but really at an enhanced rate of Rs. 125/-per cent. The learned Judge did not pass a decree in favour of the appellant for this enhanced amount, because he held that the application for reference made by the appellant is barred by limitation. The learned Judge then considers the claim made by the 1st plaintiff for a further enhancement, and he has ultimately awarded an additional amount of Rs. 165/- in favour of the 1st plaintiff.

7. In this appeal, as I have already stated the appellant attacks the reasoning of the learned Judge holding that the application filed by him on 8-1-1959 is barred by limitation, as also the further enhancement by Rs. 165/- awarded by the learned Judge in favour of the 1st respondent 1st plaintiff.

8. Mr. Viswanatha Iyer, learned counsel for the appellant raises three contentions in this appeal, namely (1) that the view expressed by the lower court that the application filed by the appellant on 8-1-1959 for reference u/s 18 of the Travancore Land Acquisition Act is barred by limitation is erroneous, (2) The second contention of the learned counsel is that even if the said application is

barred by limitation, nevertheless the application filed by this client on 28-11-58, under Ext. D2 and which has been filed within two months of the date of the award, has itself to be treated as an application for reference filed u/s 18 of the Travancore Act, (3) the third and the last contention of the learned counsel for the appellant relates to the slight enhancement granted by the learned Judge in favour of the 1st plaintiff, namely in the sum of Rs. 165/-

9. The first and the second contentions adverted to above have been controverted by the learned Government Pleader appearing for the State, the 2nd respondent herein. The stand taken by the learned counsel for the appellant as well as by the learned Government Pleader regarding these aspects will be adverted to by me a little later. But before I deal with the first and second contentions raised by the learned counsel for the appellant, it is desirable that the third contention raised by the learned counsel for appellant is disposed of, which, as I mentioned already, relates to the question of the further enhancement made by the learned Subordinate Judge in favour of the 1st appellant in the sum of Rs. 165/-. So far as that is concerned, according to the learned counsel for the appellant the 1st plaintiff is a person who has taken the property in question on Kuthakapattom lease evidenced by Ext. P.4. The learned counsel pointed out, with reference to clause 15 thereof, that it is stated therein among various other matters that the lessee shall not be entitled to any compensation for the improvements effected by him, in the event of the lease being determined or on the expiry of the period of the lease. According to the learned Counsel for the appellant, these provisions will clearly show that the 1st plaintiff is not entitled to claim as against the landlord, namely the appellant, any compensation for improvements, and therefore according to the learned counsel, if the 1st plaintiff cannot make any such claim, it follows that he is not entitled also to a share in the apportionment of the compensation that has been awarded in favour of the appellant. The learned counsel also pointed out that the Land Acquisition Officer has awarded a sum of Rs. 110/- in favour of the 1st plaintiff towards his claim for compensation, more out of a concession, so to say, made by the appellant, and that cannot certainly be considered as recognising a right in law in favour of the first plaintiff to agitate the matter any further. Regarding the actual enhancement that has been made by the lower court in favour of the 1st plaintiff, the learned counsel for the appellant pointed out that in paragraphs 3 to 6 of the written statement filed by the 1st plaintiff he has claimed various amounts. The only aspect that requires to be noted and which has been recognised by the lower court, relates to what is mentioned in paragraph 4 of the said written statement. In that paragraph, the 1st plaintiff has stated that he has effected improvements in the property at heavy cost and that he has also put up kayyala walls on two sides and fence on the remaining sides. He has also stated therein that the said work has cost him Rs. 150/-. The learned counsel for the appellant pointed out that the trial court was not impressed by the evidence adduced by the first plaintiff in respect of this claim or, for the matter of that, in respect of the various other items claimed by him in the written statement. But

the learned counsel pointed out that the lower court has, on the basis of a guess, so to say, made by a retired Melkanganam Parvathiam as P.W. 2, accepted that evidence and recognised a claim in favour of the 1st plaintiff in sum of Rs. 150/-. The learned counsel also pointed out that on the basis of the statement made by P.W. 4, namely the appellant, regarding the approximate expenses of the fence, the lower court has recognised an additional sum of Rs. 15/-, and so a total sum of Rs. 165/- has been awarded in favour of the 1st plaintiff. The learned counsel pointed out that the evidence of P.W. 2, if properly considered, will clearly show that he does not know very much about the actual nature of the work done or the expenses incurred, and having rejected the evidence of the 1st plaintiff, the evidentiary value of P.W. 2 is absolutely of no avail. The learned counsel also pointed out that P.W. 4, namely the appellant, has also stated that for the purpose of putting up the kayyala walls, approximately only a sum of Rs. 25/- may be necessary. According to the learned counsel, this aspect also has not been given due consideration by the lower court.

On all these grounds the learned counsel urged that the recognition in favour of the 1st plaintiff of his being entitled to an additional sum of Rs. 165/-, is not justified.

10. Mr. K. S. Paripoornan, learned counsel for the 1st respondent 1st plaintiff pointed out that the question as to whether his client is entitled to all to value of improvements, based upon the provisions contained in clause 15 of Ext. P.4, is purely academic, because even the appellant has accepted that the 1st plaintiff will be entitled to the value of improvements, as will be seen from the award of the Land Acquisition Officer, in the sum of Rs. 110/-, on the basis of the concession made by the appellant 2nd plaintiff. The learned counsel also pointed out that both P.Ws. 2 and 4 categorically admit that at the lime when the property was leased, i.e., in or about 1124, there were no kayyala walls or fences in the property and both these witnesses also accept the position that at the time of acquisition the kayyalas and fences had been put up on the property. If so, the learned counsel points out, that work must have been done only by the 1st plaintiff. The learned counsel also pointed out that P.W. 2 has categorically stated that the approximate expenses for putting up the kayyala walls and fences will be about Rs. 150/-, and the witness has also stated in cross-examination that the length of the kayyalas will be about 70 koles. According to the learned counsel, P.W. 2 has also given the approximate labour that must have been put in for these two items of work. The learned counsel pointed out that even according to P.W.4, there is a kayyala and fence put up, though the estimate given by him is very low. Therefore the learned counsel pointed out that the trial court, though it was not prepared to accept the oral evidence adduced by the 1st plaintiff, has acted upon the evidence of P.Ws. 2 and 4, and therefore the finding based upon that evidence should not be interfered with by this Court.

11. After considering all these aspects placed before me by learned counsel on both sides, in my opinion, only a slight modification will have to be made under

this head. No doubt the lower court has not chosen to accept the testimony of the 1st plaintiff. But it has accepted the evidence of P.W. 2 as well as the estimate given by him, and more especially when P.W. 4, the appellant, also accepts that there were no kayyala walls or fences when the property was leased and those items existed when the property was acquired. Therefore the only inference that is possible is that the 1st plaintiff has done these items of work. But the aspect to be noted is that under this head the 1st plaintiff claims in paragraph 4 of his written statement, only a sum of Rs. 150/- whereas the learned Subordinate Judge has granted a total sum of Rs. 165/- in that regard, i.e., Rs. 150/- being the cost of the kayyalas, and Rs. 15/- being the cost of fence. When the party, namely the 1st plaintiff, himself has no such case, in my opinion, the enhancement at a figure higher than that claimed by him, cannot be justified. Therefore the only modification that requires to be made by this court is that as against the additional sum of Rs. 165/- awarded by the learned Subordinate Judge in favour of the 1st plaintiff, he will be entitled to get only a sum of Rs. 150/-. In other respects the finding recorded by the learned Subordinate Judge in this regard will have to be accepted.

12. Coming, now, to the first two contentions raised by the learned counsel for the appellant, it is necessary to refer to the scheme of the Travancore Land Acquisition Act. That Act has been modelled more or less on the Central Act, The Land Acquisition Act, 1894 (1 of 1894), excepting that the period provided for in the earlier part of clause (b) of the proviso to sub-section (2) of Section 18 in the Travancore Act, is slightly longer than that provided for under the Central Act. The Travancore Land Acquisition Act will hereafter be referred to as the Act. In Section 12, sub-section (I) it is provided that an award made under the Act shall be filed in the Diwan Peishkar's office. Under sub-section (2) of that Section it is provided that the Diwan Peishkar shall give immediate notice of the award to such of the persons interested as are not present personally, or by their representatives when the award is made. Therefore it will be seen that it is obligatory on the part of the Land Acquisition Officer to give notice of the award, under sub-section (2) of Section 18, to the persons referred to therein. Section 18 provides for reference to court and procedure thereon. Sub-section (1) of that Section provides for the various matters which are required to be stated in an application that has to be made by the party concerned, requiring the officer to refer the matter for determination of the civil court. It will also, be seen that the ingredients of sub-section (1) of Section 18 are (a) that there must be a requirement in the written application that the matter be referred to the Diwan Peishkar for determination of the District Court concerned and (b) that the said application must state as to whether the objection is to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. I am particularly referring to these aspects because one of the questions that arise for consideration in the appeal is as to whether the communication dated 28-11-1958 under Ext. D2 can be considered to be an application made for

reference u/s 18 (1) of the Act. Sub-section (2) of Section 18 provides for the application stating the grounds on which objection to the award is taken. The proviso to this sub-section deals with the period within which the application is to be made. In clause (a) of the proviso it is provided that if the party was present or was represented before the Diwan Peishkar at the time when the award was made, the application for reference must be made within two months from the date of the award. In clause (b) of the proviso it is provided that in other cases the application must be made within two months of the receipt of the notice from the Diwan Peishkar under sub-section (2) of Section 12, or within six months from the date of the award, whichever period shall first expire. The provisions that will apply to this case are those contained in the 1st part of clause (b) of the proviso to Section 18 (2) of the Act; because there is no controversy in this case that the applicant was not present, nor was he represented before the Diwan Peishkar at the time when the award was made. Therefore it was obligatory on the part of the Land Acquisition Officer to issue notice of the award u/s 12(2) of the Act. If that is so, the period of limitation for filing the application for reference to Court will be, either within two months of the receipt of notice from the Diwan Peishkar, or within six months from the date of the award whichever period shall first expire.

13. According to the learned counsel for the appellant in this case, even if the application made on 8-1-1959 is treated as the first application for reference made by the appellant, nevertheless, inasmuch as there has been no proper service of notice of the award on him, as is required u/s 40 of the Act-to which reference will be made latter-and he has filed the application within two months of the date of the award, the provisions contained in the latter part of clause(b) of the proviso to sub-section (2) of Section 18 of the Act apply, and therefore the application is within time. On the other hand, the stand taken by the learned Government Pleader appearing on behalf of the State is, that it is the period provided for in the earlier part of clause (b) of the proviso to Section 18(2) that is applicable to the present case, inasmuch as the notice of the award u/s 12(2) has been received by the appellant, through his Samprathy on 6-11-1958, as admitted by the appellant as P.W.4 in these proceedings.

14. The only other provision that has to be noted is Section 40 of the Act which, deals with service of notice by the Diwan Peishkar. Sub-section (2) of Section 40 provides for service of notice being made on the person concerned as far as practicable. Sub-section (3) provides for service of notice being made in the manner provided therein, when such person cannot be found. Pausing here for a minute, it may be stated that in the case before me strictly and technically, service of notice of the award, has not been effected in accordance with the provisions of sub-section (3) of Section 40 of the Act. There is also a proviso to sub-section (3) wherein provision is made for notice being sent by registered post by the Diwan Peishkar to the party concerned. That method also has not been adopted in this case

15. Therefore, the first question that arises for consideration in the appeal, as I have already indicated, is as to whether the view of the lower court that the application filed by the appellant on 8-1-1959 is barred by limitation, inasmuch as it was sent after the expiry of two months from the date of receipt of notice of the award, namely 6-11-1958, on the appellant is correct or not.

16. Mr. Viswanatha Iyer learned counsel for the appellant points out that inasmuch as the provisions contained in Section 18(2) provide for the period of limitation being reckoned and will practically deprive persons like the appellant of their remedy of asking for reference to court, it is obligatory on the part of the State to establish that service of notices, in the manner provided for in Section 40 of the Act, has been made; and therefore unless that is established the appellant is entitled to file the application within six months from the date of the award, as is provided for in the latter part of clause (b) of the proviso to sub-section (2) of Section 18 of the Act. In this connection the learned counsel referred me to the decision of the Madras High Court reported in Papamma Rao v Revenue Divisional Officer (A. I. R. 1918 Madras 589). In that case it is seen that the Manager of the office of the receiver, who was a party to the land acquisition proceedings, received notice of the award. The question was as to whether it was proper service on the Receiver under the corresponding provision in the Central Act, namely Section 45. Wallis, C. J., and Kumaraswami Sastri, J., who dealt with the matter, are ultimately of the opinion that service of notice of the award on the manager, cannot be considered to be proper service u/s 45 of the Central Act; and that even assuming that the manager in that case was authorised to receive notice, such service was not valid. I am particularly referring to this observation of the learned Judges, because the learned counsel for the appellant has placed considerable reliance on that observation. According to the learned counsel, the mere fact that in this case the State is relying upon the admission made by the appellant, as P.W.4, that during his absence the Samprathy in his office has been authorised to receive notice and that the Samprathy has received the present notice on his behalf, and that the Samprathy has also received the previous notice, u/s 9(3) is of no consequence whatsoever, so long as the service has not been in accordance with the provisions in Section 40 of the Act. No doubt prima facie the observation of the learned Judges contained in the decision of the Madras High Court referred to above may appear to support the stand taken by the learned counsel for the appellant. The learned counsel also drew my attention to the decision of Ramaswami C. J., (as he then was), and R. K. Choudhary J., of the Patna High Court, reported in Bansari v Bihar State (A. I. R. 1959 Patna 83). In that case the learned Judges had to consider the question whether service of notice of the award on the party's nephew was valid in view of Section 45 of the Central Act. And the learned Judges have held that it is not proper service. There is also a decision of My Lord the Chief Justice and Mathew J., reported in Gopala Pillai v State of Kerala (1963 KLT 171) wherein the question as to whether service of notice on the wife, u/s 40(3) of the Aegean constitute good service on the husband when both of them were co-owners and

whether it can be considered to be proper service, was considered, and the learned Judges have held that it is not proper service, so far as the husband is concerned. The learned counsel also drew my attention to a decision of a Single Judge of the Bombay High Court reported in *Jankibai v Nagpur Improvement Trust* (A.I.R. 1960 Bombay 499), wherein service of notice of the award by affixture was held to be not valid in the circumstances of that case. Based upon all these decisions, the learned counsel for the appellant pointed out that in the present case inasmuch as service of notice of the award has not been effected on the appellant in the manner provided for in Section 40 of the Act, it cannot certainly be taken into account by the State for putting out of court the claim for reference made by the appellant, on the ground that the application is barred by limitation. Therefore, according to the learned counsel his client is entitled to claim the larger period of limitation provided for in the latter part of clause (b) of the proviso to Section 18(2) of the Act, namely six months from the date of the award.

17. I may also state that there is a Division Bench decision of the Madras High Court consisting of Rajamannar C. J., and Rajagopala Ayyangar J., (as he then was), reported in *A. P. S. Karuppalah Nadar v Special Deputy Collector for Land Acquisition* (A. I. R. 1955 Madras 406). In that case it will be seen that a proper notice issued u/s 9(3) of the Central Act was served not on the party, but on the servant of the party, and in response to that notice the party appeared and took part in the further proceedings connected with the land acquisition. Later on the party attempted to challenge the service of notice as not being in accordance with the provisions contained in Section 45 of the Central Act. The learned Judges repelled that contention and express the view that the utmost that can be said, regarding the manner in which the service was effected on the party, is that the service is irregular. The learned Judges also hold that if a party, notwithstanding such irregular service, has participated in the further proceedings connected with the land acquisition, he is bound by those proceedings.

18. The learned Government Pleader, on the other hand, drew my attention to the specific stand taken by the appellant as P.W. 4 wherein he has categorically stated that notice u/s 9(3) was received on his behalf by the Samprathy, and he has also admitted that during his absence the Samprathy was authorised and entitled to receive notice. The learned Government Pleader also pointed out that the appellant has further admitted that notice of the award issued u/s 12(2) of the Act, has been received, on his behalf by his Samprathy on 6-11 - 1958. If that is so, the learned Government Pleader pointed out that the only point that requires to be considered by this Court is as to whether the appellant has asked for reference within two months from the date of receipt of notice of the award, as is mandatory under the first part of clause (b) of the proviso to sub-section (2) of Section 18 of the Act. The fact that the appellant himself admits that notice of the award issued u/s 12 (2) of the Act was received on his behalf by his Samprathy on 6-11-1958, is a clear admission, according to the learned

Government Pleader, made by the appellant that he himself received notice on that day. If that is so, the learned Government Pleader urged, the fact that there is some irregularity in the manner in which service of notice was made, is of no consequence whatsoever.

19. In my opinion the contention of the learned Government Pleader will have to be accepted. The decisions referred to by Mr. Viswanatha Iyer, learned counsel for the appellant and adverted to above, do not cover the direct question that arises for consideration in this appeal, namely as to whether, when the party himself admits before court, that another individual, namely in this case his Samprathy has been authorised to receive notice on his behalf issued u/s 12(2) of the Act, and the Samprathy has also received such notice, it can be stated in the circumstances that the party is not bound to ask for a reference to court within the period provided in the earlier part of clause (b) of the proviso to sub-section (2) of Section 18 of the Act. The only decision wherein no doubt, there is an observation to the effect that even if there has been authorisation given by the receiver to the Manager to receive notice, service of notice on such manager, cannot be considered to be proper service u/s 45 of the Central Act corresponding to Section 40 of the Travancore Act, is the one found in *Papamma Rao v Revenue Divisional Officer* (A.I.R. 1918 Madras 589). In my opinion, the observation of the learned Judges in that decision is too wide. If the learned Judges intended to lay down that even when a party admits that another individual has been authorised to receive notice on his behalf and that individual received a particular notice on his behalf, even then it has to be held to be invalid, with respect I differ. The other decisions adverted to above do not deal with the particular aspect that arises for consideration now before me. But I have already indicated the view taken by the learned Chief Justice and Rajagopala Ayyangar J., (as he then was), in the decision of the Madras High Court reported in *A. P. S. Karuppalah Nadar v Special Deputy Collector for Land Acquisition* (A. I. R. 1955 Madras 406). I have also pointed out that even if there is an irregular service and one not in accordance with the provisions contained in Section 45 of the Central Act. the learned Judges have held that if the party, in; response to the said notice, participates in the further proceedings before the Land Acquisition Officer, he cannot turn round and attack the proceedings on the ground that the service of notice is not proper u/s 45 of the Central Act, with that decision I respectfully agree. That is the position so far as this matter is concerned.

20. The appellant, as pointed out by the learned Government Pleader, has categorically admitted that the Samprathy in his office was authorised to receive notice on his behalf. He has also admitted that the notice issued u/s 12(2) of the Act has been received, on his behalf by the Samprathy. If that is so, in my opinion, the only question is as to whether the appellant has filed an application asking for reference to court within two months from the date of receipt of the notice from the Collector, as is mandatory under the earlier part of clause (b) of the proviso to sub-section (2) of Section 18 of the Act. The Samprathy has

received notice on 6-11-1958 issued u/s 12(2) of the Act. The application filed by the appellant asking for reference is beyond the period of two months provided for in the first part of clause (b) of the proviso to sub-section (2) of Section 18 of the Act, inasmuch as it was only on 8-1-1959. No doubt, the period of limitation, when it is put against a party, always works hardship. The fact that the application filed by the appellant is two days after the expiry of two months, has no doubt operated to the prejudice of the appellant. But the period of limitation provided for in the statute cannot be enlarged by the court, because the provisions of Section 5 of the Limitation Act do not apply. If that is so, it follows that the view of the lower court that the application filed by the appellant on 8-1-1959 asking for reference to court is barred by limitation, is perfectly correct.

21. As already indicated by me, the learned counsel for the appellant, alternatively urged that the application filed by him on 28-11-1958, namely Ext. D2, must itself be treated as an application for reference u/s 18 of the Act. I have gone through the said application. I have already adverted to the provisions contained in Section 18(1) of the Act and the ingredients thereof. Having due regard to those provisions I do not think that the application dated 28-11-1958, namely Ext. D2 can be treated as an application for reference under those provisions. In the said communication the appellant draws the attention of the Deputy Collector to the communication dated 17-9-1958 and requests the officer to arrange for payment of compensation fixed by him. It is also seen that he is receiving the amount under protest. There is absolutely no request made by the appellant in Ext. D2 asking for a reference to civil court, nor does it contain any of the particulars referred to in Section 18(1) of the Act. If that is so, it follows that the decree of the trial court holding that the claim for enhanced compensation made by the appellant cannot be entertained because there has been no proper application for reference filed by him within time, has to be sustained.

22. No doubt it is a very hard case because the learned Subordinate Judge on the merits has accepted the claim of the appellant and fixed a higher value-if he is entitled to-in the sum of Rs. 125/- per cent. But that benefit the appellant does not get because the application filed by him has been held by me to be barred by limitation. The result is that excepting the small variation that has been made by me as against the claim of the 1st respondent-1st plaintiff, wherein I have held that as against the sum of Rs. 165/- awarded in his favour by the lower court, he will be entitled only to a sum of Rs. 150/-, in all other respects the decree of the lower court will have to be sustained and this appeal dismissed. The parties will bear their own costs.