
(1993) 08 GUJ CK 0005
In the Gujarat High Court

Memon Ibrahim Haji Latif Sukhediwala	APPELLANT
Vs	
Officer on Special Duty (Land Acquisition) and Another	RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 15, 18, 18, 18
Limitation Act, 1963 — Section 24

Citation : (1994) 1 GLR 296

Hon'ble Judges : S. Nainar Sundaram, C.J;S.D. Dave, J;R.K. Abichandani, J

Bench : Full Bench

Judgement

S. Nainar Sundaram, C.J.—In this Reference, the question that engages our attention and calls for an answer at our hands is as to whether the Collector u/s 18 of the Land Acquisition Act, 1894 (Act No. 1 of 1894), hereinafter referred to as "The Act", has got the power to condone the delay in preferring an application asking for reference to Court. Section 18 of the Act, in its entirety, reads as follows:

18. Reference to Court:

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made;-

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Finding divergence in the opinion expressed on the question by one set of pronouncements of this Court and another set of pronouncements, including one of this Court and two other binding pronouncements of the High Court of Bombay, the Bench has deemed fit to ask for a reference to a Larger Bench. The pronouncements of this Court, which have indicated a position to hold that there is a power for the Collector to condone the delay in preferring the application asking for a reference to Court, are as follows:

(i) Mahajibhai Jivanbhai Vaghri v. Shri M.C. Shah, Special Land Acquisition Officer, (M.C). Nadiad ILR 1968 Guj 348;

(ii) Mohan Vasta Vs. State of Gujarat, ;

(iii) Gopalblai Becharbhai Vs. State of Gujarat and Another, ;

(iv) Bhikhubhai and Ors. v. State of Gujarat and Anr. AIR 1989 Guj 8 1988 (2) GLR 688; and

(v) Ishwarbhai Motibhai Bhatt Vs. State of Gujarat and Another, .

The pronouncement of this Court, which has taken a contrary view, is found expressed in the report in Mohan Mulji Vs. Special Land Acquisition Officer, Rajpila and Another, . The binding pronouncements of the High Court of Bombay are found in:

(i) Balakrishna DajiGupte v The Collector, Bombay Suburban 25 1923 BLR 398; and

(ii) G.J. Desai v. Abdul Mazid Kadri LIH 1951 BLR 257.

The Bench, in the present case, formulated the questions as follows and referred them to a Larger Bench:

(i) Whether Collector/Land Acquisition Officer acting under Sec, 18 of the Act while entertaining the application for reference is acting as "Court" so as to exercise power under Sections 4 to 24 of "the Limitation Act, 1963.

(ii) Whether decisions of the Division Benches of this Court in A Special Civil Application No. 404 of 1967 dated 29th August 1967 Mohan Vasta Vs. State of Gujarat, are not laying down correct law or are per incurium in view of the decisions of the Division Bench of this Court in the case of Mohan Mulji Vs. Special Land Acquisition Officer, Rajpila and Another, , decisions of the Division Benches of the Bombay High Court in the case of Balakrishna Daji Gupte v. The Collector, Bombay Suburban reported in 25 BLR 398 and G.J. Desai v. Abdul Mazid Kadri reported in 53 BLR 257 and also the decision of the Supreme Court of India in the case of Mohammed Hasnuddin Vs. State of Maharashtra, and in the case of Sakuru Vs. Tanaji, .

2. It would be in order if we first advert to the pronouncements of the Apex Court speaking on the subject of applicability of the provisions of the Limitation Act, 1963 to Quasi Judicial Tribunals and Executive Authorities other than Courts, governed by the Code of Civil or Criminal Procedure. The law on the subject has been greatly exemplified and expatiated in the pronouncements of the Apex Court and they form a complete guidance for us to provide answers, for the questions which we are required to answer.

3. In *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , two learned Judges of the Apex Court were asked to consider the question as to whether Article 137 of the Limitation Act, 1963 could govern an application u/s 33C(2) of the Industrial Disputes Act, 1947. They referred to the earlier pronouncements of the Apex Court in *Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.*, and in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , wherein it was ruled that Article 181 of the Old Limitation Act, 1908 (to which Article 137 of the Limitation Act, 1963 corresponds), applies only to applications made under the Code of Civil Procedure, and chose to follow the same rule, even in respect of Article 137 of the Limitation Act, 1963, despite some alterations brought in by it and declined to apply the said Article 137 to applications u/s 33C(2) of the Industrial Disputes Act, 1947. The learned Judges of the Apex Court looked at the question from another angle also, and their discussion, useful for our present purpose, is found at paragraph 11 of the report as follows:

This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908 governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles. 158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to Courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to Courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not Courts and they are in no way governed either by the CPC or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than Courts, are now to be governed for purposes of limitation by Article

137.

4. In *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , the question that arose before three learned Judges of the Apex Court was as to whether Article 137 of the Limitation Act, 1963, would apply to an application u/s 33C(2) of the Industrial Disputes Act, 1947. The learned Judges of the Apex Court were content to answer the question in the negative, by adopting only the second ground given by the Apex Court in the earlier pronouncement in *Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, that it is only applications to Courts that are intended to be covered under Article 137 of the Limitation Act, 1963. Their discussion is found in paragraph 3 of the report as follows:

xxx In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a Court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the Court is closed". Again u/s 5 it is only a Court which is enabled to admit an application after the prescribed period has expired if the Court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts, and that the Labour Court is not a Court within the Indian Limitation Act, 1963. xx xx xx

The learned Judges did not deem it necessary to express their views as to whether applications to Courts under other provisions, apart from the Code of Civil Procedure, are included within Article 137 of the Limitation Act, 1963 or not. From these two pronouncements of the Apex Court, viz., in *Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, . and in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , the proposition, which emerges clearly, is that the Limitation Act applies only to applications to Courts and its provisions cannot be enlarged to include within them applications to bodies other than Courts, such as quasi judicial Tribunals or even Executive Authorities.

5. In *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, , two learned Judges of the Apex Court were concerned with proceedings u/s 3 of the Kosi Area (Restoration of Lands to Raiyats) Act, 1951. The High Court of Patna was prepared to extend the provisions of Section 5 of the Limitation Act, 1963 to an application before the Collector under the above Act. This was discountenanced in the following terms:

xxx The third ground on which the decision of the High Court rests relates to the applicability of Section 5 of the Limitation Act, 1963. We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965

by the first respondent. u/s 5 of the Limitation Act an appeal or application "may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period". The Collector to whom the application was made was not a Court, though Section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise. We therefore think that the High Court misdirected itself in referring to Section 5 of the Limitation Act. xxx

The above passage reiterates the proposition that the provisions of Section 5 of the Limitation Act, 1963, will apply only to applications to Courts. The mere vesting of certain powers under the CPC on the Collector does not elevate him to a Court.

6. In the Kerala State Electricity Board, The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , three learned Judges of the Apex Court were asked to deal with the question as to whether Article 137 of the Limitation Act, 1963 would apply to a petition before the District Judge u/s 16(g) of the Indian Telegraph Act, 1885 to enhanced compensation. There was a reference to the view taken by the two learned Judges of the Apex Court in Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., that Article 137 would apply only to applications under the Code of Civil Procedure, and to the doubt over the above view, expressed by the three learned Judges of the Apex Court in Nityanand Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and the need felt by them for a serious consideration of this question. Thereafter, the question was answered as follows:

xxx The alteration of the division as well as the change in the collocation of the words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the CPC other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a Court for the reason that Sections. 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application during such period xxx

The view taken by the two learned Judges on this question in Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., was differed from as follows:

xxx This Court in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, has rightly thrown doubt on the two Judge-Bench decision of this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, where this Court construed Art 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word "applications". These petitions and applications can be under any special Act as in the present case.

The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a Civil Court. With respect we differ from the view taken by the two Judge Bench of this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the CPC xx

7. In *Mohammed Hasnuddin Vs. State of Maharashtra*, , the question arose as to whether the Court dealing with a reference u/s 14(1) of the Hyderabad Land Acquisition Act, 1809 Fasli, corresponding to Section 18(1) of the Act can go behind the reference made by the Collector if the application on which reference has been made is beyond the period of limitation prescribed therefor. It was held that the conditions laid down in Section 18 are "matters of substance" and their observance is a condition precedent to the Collector's power of reference. In this connection the following observations of Chandavarkar, J. in *re Land Acquisition Act (1906)* ILR 30 Born. 275 were approved:

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

8. As to how the statutory Tribunals are conferred with jurisdiction to do certain things, there was advertance to their division into two categories as follows, as done by Lord Esher M.R. in *R. v. Commissioners for Special Purpose of the Income Tax (1888)* 21 QBD 313:

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

proceed further or do something more. When the legislatures are establishing such a tribunal or body with limited jurisdiction they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none.

Then it was noted that:

The law as enunciated by Lord Esher has been accepted by this Court as laying down the true principle in *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, .

9.- The Apex Court itself recapitulated the conditions u/s 18 of the Act on fulfilment of which alone, the Collector acquires the power to make reference, in the following terms:

The word "require" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference u/s 18 on the fulfilment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted "he award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference u/s 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.

Then the Apex Court held:

xxx We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, Sub-section (2) is a sine qua non for a valid reference by the Collector.

From these considerations, it follows that the Court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference.

10. The Apex Court in *Mohammed Hasnuddin Vs. State of Maharashtra*, did not approve the view of the High Court of Calcutta in *Administrator General of Bengal v. Land Acquisition Collector*, 24-Parganas (1908) 12 Cal.WN 241, that the Collector's power was a judicial power under Part III of the Act, so as to be amenable for review u/s 115 of the CPC or Section 107 of the Government of India Act, 1919, and the Apex Court held:

xxx The Calcutta High Court's view that the Collector's power was a judicial power and that the Collector was a Court subordinate to the High Court was

obviously wrong but it persisted in taking that view to obviate injustice xxx

The Apex Court categorically opined:

xxx The Calcutta High Court tried to exercise its supervisory jurisdiction to provide the subject with a remedy. The power of the Collector to make an order u/s 18 was not judicial in nature, nor was the Collector a Court subordinate to the High Court. The other High Courts, therefore, expressly dissented from the view of the Calcutta High Court xxx

The first proposition deducible from the pronouncement of the Apex Court in Mohammed Hasnuddin Vs. State of Maharashtra, is that one of the conditions prerequisite for the exercise of power u/s 18 of the Act is, the application for reference ought to have been made within the time prescribed therefor, and the making of an application for reference within the time prescribed is a sine qua non for a valid reference by the Collector. When such is the rigour of the rule, we do not think that it could be watered down on an assumption of a power to condone the delay or, in other words, to extend the time. No such power is discernible for him. The second proposition deducible from the above pronouncement is; the Collector exercises u/s 18 of the Act, no judicial power and the Collector is not a Court subordinate to the High Court. The earlier pronouncements of the Apex Court, already referred to, have settled the rule that the provisions of the Limitations Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies, other than Courts, such as quasi judicial Tribunals or Executive Authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Code of Civil Procedure, or the Code of Criminal Procedure.

11. In Sakuru Vs. Tanaji, , there was an endeavour by Counsel to extend the provisions of Section 5 of the Limitation Act, 1963 to appeals before the Collector under the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950. It was found that the said Statute, by itself, has not made Section 5 of the Limitation Act, 1963 applicable to proceedings before the Collector under the said Statute. The endeavour was repelled in the following terms:

xxx It is well settled by the decisions of this Court in Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., . Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and Smt. Sushila Devi Vs. Ramanandan Prasad and Others, that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings

before him.

The Apex Court approved the ruling of the High Court of Andhra Pradesh in *K. Venkaiah and Others Vs. K. Venkateswara Rao and Another*, .

12. Broadly speaking, from the analysis of the principles settled by the pronouncements of the Apex Court, they can be summarised as follows:

(i) The provisions of the Limitation Act, 1963 do not, by themselves, apply to quasi judicial Tribunals or Executive Authorities;

(ii) The provisions of Limitation Act, 1963 apply only to Courts governed by the Codes of Civil or Criminal Procedure;

(iii) Regarding applications which would fall under Article 137 of the Schedule to the Limitation Act, 1963, it could be not necessarily under the Codes of Civil or Criminal Procedure and they could also be applications under other Acts; but it has to be an application to a Court;

(iv) The Collector, u/s 18 of the Act, discharges only administrative functions and not judicial functions and he could not have the character of a "Court" for the purpose of invoking the provisions of the Limitation Act, 1963;

(v) The fulfillment of the conditions, including the condition prescribing the time limit for asking for a reference u/s 18 of the Act, is a sine qua non for the exercise of the power by the Collector to make a reference;

And

(vi) If the Collector commits an error in making the reference in that he has not adhered to the fulfillment of the conditions, the Court dealing with reference can, still, examine it and throw out the reference, if the conditions are found to have not been fulfilled.

13. We find that the pronouncements of the Apex Court have been diligently followed by the other High Courts. It would be worthwhile to refer to a few of them.

14. In *Raman Pilial Thankappan Pilial v. Special Tahsildar, Land Acquisitions, Collectorate, Quilon and Anr.* AIR 1982 Kar 350, dealing with the question of power of condonation of delay for the Land Acquisition Officer under the Kerala Land Acquisition Act, invoking Section 5 of the Limitation Act, 1963 in respect of an application for making reference, it was held that he has no such power. The opinion expressed is to the effect that the Limitation Act, 1963 applies only to Courts and not to Tribunals or other authorities.

15. In *Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land Acquisition Officer and Another*, , it was noticed that so far as the State of Maharashtra is concerned, there is an amendment to Section 18 of the Act by the Maharashtra Act 38 of 1964 by the introduction of Sub-section (3) into it, to make any order made by the Collector u/s 18 revisable by the High Court as if

the Collector were a Court subordinate to the High Court, within the meaning of Section 115 of the Code of Civil Procedure. After considering the language of Sub-section (3) introduced by the Maharashtra Amendment, it was opined:

xx We see merely an intention on the part of the legislature to provide a remedy of revisional application to the High Court against any order passed by the Collector in the discharge of his statutory duty under Sub-section (1) and we are also of the opinion that while the Collector so discharges his statutory duty he is not a Court under the CPC attracting the provisions of the Limitation Act. xx

It was only after referring to the pronouncements of the Apex Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , and in *Mohammed Hasnuddin Vs. State of Maharashtra*, the above view was expressed.

16. In *Mary D'souza Vs. The Land Acquisition Officer and Assistant Commissioner, Kundapur and another*, , a Bench of the High Court of Karnataka was dealing with the question as to whether the provisions of Sac. 5 of the Limitation Act, 1963 can be invoked to condone the delay in filing an application for reference u/s 18 of the Act, as amended by Karnataka Amendment Act of 1961. There was an attempt to bring into play the provisions of Section 29(2) of the Limitation Act, 1963, The Bench of the High Court of Karnataka referred to the decision of the Apex Court in *Mohammed Hasnuddin Vs. State of Maharashtra*, , to say that one of the conditions for a valid reference is the filing of the application therefore within the time set therefor; and the Land Acquisition Officer lacks jurisdiction to condone the delay. There was also a reference to the decision of the Apex Court in *Sakuru Vs. Tanaji*, to hold that the Land Acquisition Officer is not a Court and the provisions of the Limitation Act, 1963 have no applicability to proceedings before him.

17. In *Sukhdeo and others, Vs. State of U.P. and others*, , a Bench of the High Court of Allahabad was asked to examine the propriety of the invocation of Section 5 of the Limitation Act, 1963 to an application u/s 28A, as inserted by Act 68 of 1984 into the Act. By insertion of Section 28A into the Act, a statutory right is given to a person aggrieved by the amount of compensation offered by the Collector and who has not made an application u/s 18 to get the matter reopened by the Collector on the fulfillment of the conditions, including the time limit for making the application, as mentioned in Section 28A. The invocation of the provisions of Section 5 of the Limitation Act was characterised as a mistaken legal concept. The relevant passage in the pronouncement of the High Court of Allahabad runs as follows:

xxx It appears that the petitioners invoked the provisions of Section S of the Limitation Act under a mistaken legal advice. It is now well settled that the word "Court" in Section 5 of the Limitation Act signifies a "Court" in *siricto aensu*. In

Sakuru Vs. Tanaji, , relying upon the 3 earlier decisions, it is held that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeal or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the CPC or Criminal Procedure xxx

18. Now, we will take up the pronouncements of this Court and binding pronouncements of the High Court of Bombay, which have expressed views not in derogation of the principles which have come to be settled by the pronouncements of the Apex Court, but are in tune with them.

In Balakrishna Daji Gupte v. The Collector, Bombay Suburban 1923 25 Bom 398, the question that came up for consideration before a Bench of the High Court of Bombay was as to whether the Collector under the Act, refusing to make a reference u/s 18 thereof, is a Court and as such, subject to powers of revision or superintendence of the High Court u/s 115 of the Code of Civil Procedure. It was held that the Collector discharges no judicial act and, in any event, his act is not a judicial act of a Court subordinate to the High Court. There was a reference to the case of the Privy Council in Ezra v. Secretary of State for India (1905) 7 Bom 422 to say that the functions of the Collector in making an award are administrative and not judicial. This pronouncement is in accord with the proposition of law laid down by the Apex Court.

19. In G.J. Desai v. Abdul Mazid Kadri 1951 53 Bom 257, the Special Land Acquisition Officer refused to make a reference, as asked for u/s 18 of the Act, on the ground the application was barred by limitation. Thereupon, the applicants came to the High Court under Section 45 of the Specific Relief Act. The learned single 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 u/s 18 of the Act, 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. The Bench of the High Court of Bombay held:

xxx 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 Const. Now tinning 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 in Council that the functions of the Collector in making an award are not judicial but administrative, and all that he dees is to take 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 deteimination by a Court. Now the power of the Collector to make a reference is circumscribed by the conditions laid down in Section 18 and one important condition is the condition to be found in the proviso. That proviso lays down the pelied 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, xx

With respect, we agree with the view of the Bench of the High Court of Bombay and we find that it is in consonance with the pronouncements of the Apex Court, where the functions of such officer were held to be administrative and not judicial and his power to make reference was held circumscribed by the conditions laid down u/s 18 of the Act, and one condition is, the application has to be made within the period prescribed. The Bench of the High Court of Bombay referred to the pronouncement of the earlier Bench of the same High Court in *Balakrishna Daji Gupte v. The Collector. Bombay Suburban* (1923) 25 Bom 398.

20. In *Mohan Mulji Vs. Special Land Acquisition Officer, Rajpala and Another*, a Bench of this Court was asked to examine a contention that the Collector is a Court, and an application for reference to him being to a Court, the obligation to pay Court-fees under the Bombay Court Fees Act, 1959 should be exonerated in view of a Notification. The contention got formulated as follows:

The Special Land Acquisition Officer discharging the functions of a Collector u/s 18 of the Land Acquisition Act is a Civil Court discharging judicial functions and the applications made by the appellants to the Special Land Acquisition Officer were therefore applications filed in a Civil Court and consequently by virtue of the Notification No. CFA 1061/3529-D dated 13th September, 1963 the applications were not liable to bear any Court-fee stamp under the Bombay Court-fees Act, 1959.

This pronouncement, though not dealing with the question of limitation, proceeds on the correct track when it held that the Collector is not a Court and he is not discharging judicial functions. The pronouncements of the High Court of Bombay, referred to in the above passage, have been already adverted to by us as having correctly appreciated the position in law.

21. The pronouncements of this Court, which have struck a discordant note, departing from the well laid down principles of the Apex Court, require advertance to by us for the purpose of showing that they could not have any sanctity as binding precedents on the question.

22. In *Mahijibhai Jivanbhai Vaghri v. M.C. Shah, Special Land Acquisition Officer, (M.C)*, Nadiad ILR 1968 Guj 348, a Bench of this Court was called upon to look into the question as to whether the Collector has power u/s 18 of the Act to condone the delay in making an application for reference. There was no

advertance to the question and there was no endeavour to point out as to whether the Collector exercises any judicial power and as to whether he could fill in the character of a Court, so as to make the provisions of the Limitation Act, 1963 applicable to the exercise of power by him. The matter was proceeded with on the assumption that Section 29(2) of Limitation Act, 1963 would come into play and it was held that by virtue of that, the Collector would acquire the power of condonation of delay u/s 5 thereof. We cannot subscribe our support to this theory at all, since it runs counter to the propositions settled by the Apex Court on the subject.

23. In *Mohan Vasta Vs. State of Gujarat*, , a Bench of this Court fell into the same fallacious thinking as in *Mahijibhai Jivanbhai Vaghri v. M.C. Shah, Special Land Acquisition Officer, (M.C), Nadiad* ILR 1968 Guj 348, and on an assumption that Section 29(2) of the Limitation Act, 1963 would apply to proceedings u/s 18 of the Act before the Collector, the applicability of Section 5 of the Limitation Act, 1963 was upheld. This pronouncement also could not have our approval.

24. Before the Bench in this pronouncement, learned Assistant Government Pleader representing the State ventured to suggest that a remedy of revision to this Court is available as against the order of the Collector and hence, this Court should refrain from entertaining a petition under Article 226 of the Constitution of India. Sub-section (3) of Section 18 of the Act, which is only in the State of Maharashtra, was pointed out in this behalf. There is no dispute that Sub-section (3) is not in the Statute Book so far as this State is concerned. Even if it is to be there, that could serve only the limited purpose of making the revisional remedy available as against the order of the Collector in the discharge of his statutory duty, and, certainly, its purpose could not be enlarged to make the Collector a "Court", within the meaning of the Limitation Act, 1963. Such is also the view of the Bench of the High Court of Bombay, where the Maharashtra Amendment, placing Sub-section (3) in the Statute Book is there ? vide *Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land Acquisition Officer and Another*, .

25. In *Gopalbhai Becharbhai Vs. State of Gujarat and Another*, , a Bench of this Court chose to follow the pronouncement of the earlier Bench in *Mohan Vasta Vs. State of Gujarat*, , to opine that Section 5 of the Limitation Act, 1963 would apply to an application for reference u/s 18 of the Act. There was no further investigation into this question. For the same reasons, expressed already, we cannot subscribe our support to this pronouncement.

25.1 In *Bhikhubhai and Ors. v. State of Gujarat and Anr.* AIR 1989 Guj 8 , a Bench of this Court had implicitly followed decision of the earlier Bench in *Mohan Vasta Vs. State of Gujarat*, , to hold that Section 5 of the Limitation Act, 1963 would apply to an application for reference u/s 18 of the Act. For the reasons already expressed, we have to hold that this decision has not laid down the correct law.

25.2 In *Ishwarbhai Motibhai Bhatt Vs. State of Gujarat and Another*, , a Bench of this Court, merely following the earlier pronouncements in *Mohan Vasta Vs. State of Gujarat*, , and in *Gopalblai Becharbhai Vs. State of Gujarat and Another*, , held that the Land Acquisition Officer under the Act has power to condone the delay u/s 5 of the Limitation Act, 1963 in the making of an application for reference. This pronouncement also does not lay down the correct law.

26. Mr. S.N. Soparkar, learned Counsel for the petitioner, followed by Mr. G.M. Amin, learned Counsel intervening, were in the field of persuading us to hold that the Collector is a "Court", because, he has been saddled with powers or he has been given the trappings analogous to a Court. This line of thinking cannot have countenance at our hands, because, the same line of argument has been expressly discountenanced by the pronouncements of the Apex Court, already referred to. There was also an endeavour on the part of the learned Counsel to say that the Collector can only act as an agent to forward papers by way of reference to the Court, leaving it to the Court to decide the question of limitation. This endeavour also could not succeed, and as pointed out in *G.J. Desai v. Abdul Mazid Kadri* 1951 53 Bom 257, the question has got to be squarely dealt with by the Collector himself and if he finds that the application, asking for reference, was not made within time, the Collector would not have power to make a reference at all.

27. Thus, as per our preceding discussion, we answer question No. (i) in the negative and we answer question No. (ii) in the affirmative. In question No. (ii), reference to 30(2) GLR 9 is, obviously, a mistake, since there is no such report in that volume on the question.

28. Now that we have answered the reference, the Special Civil Application will have to go before the Bench hearing such Special Civil Applications, to deal with the same on merits, since we have been notified that there are other aspects, which may require attention of the Court. The Registry of this Court shall also marshal all such matters, where these questions are awaiting answers, and they shall be posted as expeditiously as possible before the appropriate Court for being dealt with in accordance with law.