

**(1998) 01 BOM CK 0055**

**In the Bombay High Court**

**Case No : Writ Petition No. 6341 of 1997**

|                                               |            |
|-----------------------------------------------|------------|
| Ramchandra Genu Thorat (deceased) and another | APPELLANT  |
| Vs                                            |            |
| The State of Maharashtra and another          | RESPONDENT |

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**Date of Decision : 22-01-1998**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Land Acquisition Act, 1894 — Section 12(2), 18(1), 18(2)  
Limitation Act, 1963 — Section 29(2), 5

**Citation :** (1998) 1 ALLMR 685 : (1998) 2 BomCR 601 : (1998) 2 MhLj 69

**Hon'ble Judges :** Vishnu Sahat, J; A.V. Savant, J

**Bench :** Division Bench

**Advocate :** Miss. Rajshree Kankanwar and S.P. Thorat, for the Appellant; R.D. Rane, A.G.P., for the Respondent

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## Judgement

A.V. Savant, J.—Rule. By consent, rule made returnable forthwith and heard both the learned Counsel.

2. The questions of law which arise for our consideration are :--

(i) Whether in entertaining an application u/s 18(1) of the Land Acquisition Act, 1894 praying for a reference being made to the Court, the Collector acts as a Court ? and

(ii) Whether the provisions of section 5 of the Limitation Act, 1963 apply to such an application made u/s 18(1) of the Land Acquisition Act, 1894?

Section 18 of the Land Acquisition Act, 1894, which is a Central legislation, reads as under:-

18 (1) Any person interested who has not accepted the award or the amendment thereof may be 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 person 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 or the amendment 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 or the amendment within six weeks from the date of the Collector's award or the amendment.

(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 or the amendment, whichever period shall first expire.

Sub-section (3) has been added in section 18 in its application to the State of Maharashtra by virtue of the Maharashtra Act No. 38 of 1964. Said sub-section (3) reads as under :---

(3) Any order made by the Collector on an application under this section shall be subject to revision 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, 1908.

Section 5 of the Limitation Act, 1963 reads as under :---

"5. Extension of prescribed period In certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period".

3. The facts, which are not in dispute, are that the Award was declared on 31st December, 1993. It is stated in para 2 of the application for reference that the applicant was not present when the award was declared. It is then stated that the notice u/s 12(2) of the said Act was served on the applicant on..... The date is left blank and this is followed by a bald statement therefore the petition is in time". The application for reference was made as late as on 26th November, 1996 by the heirs of the original claimant Ramchandra Genu Thorat who had expired on 10th January, 1996. The Special Land Acquisition Officer has rejected the application on the ground that the application was filed beyond the period of limitation prescribed u/s 18(1) proviso (b) of the said Act. It has also been observed that the requisite award was not annexed nor was the requisite stamp affixed. In the circumstances, the petitioners' prayer for making a reference to the Court for determination of the compensation was rejected. It is this letter dated 7th January, 1997 which is challenged in the present petition.

4. On the questions of law mentioned in para 2 above, there was a divergence of views in this Court, as is evident from the Judgment of the Division Bench in Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land

Acquisition Officer and Another, , which was overruled by the Full Bench decision of this Court in Bhupal Premchand Shah and others Vs. State of Maharashtra, . However, it is necessary for us to now refer to the decision of the Apex Court in Officer on Special Duty (Land Acquisition) and another v. Shah Manilal Chandulal etc., reported at 1996(1) Mh.L.J 609 . It has been held by the Apex Court that in view of the specific limitation provided under the two provisos to section 18 of the Land Acquisition Act, sub-section (2) of section 29 of the Limitation Act cannot be applied to the said provisos. The Collector/Land Acquisition Officer, therefore, is not a Court when he acts as a statutory authority u/s 18(1) of the Land Acquisition Act. Section 5 of the Limitation Act cannot, therefore, be invoked for extending the period of limitation prescribed under the provisos to sub-section (2) of section 18 of the Land Acquisition Act. A contrary view taken by this Court has been held motto be good law. The Apex Court has referred to its earlier decisions in Mohammed Hasnuddin Vs. State of Maharashtra, ; and State of Punjab and Another Vs. Satinder Bir Singh, where the view taken was that in entertaining the application u/s 18 of the Land Acquisition Act the Collector acts as a statutory authority. If the application is not made within time, the Collector will have no power to make a reference. Reliance has also been placed by the Apex Court in its decision in Shah Manilal Chandulal's case on several other decisions under different enactments on the question as to whether the provisions of section 5 of the Limitation Act could be made applicable to the proceedings under some special enactments where the view expressed by the Apex Court was that section 5 of the Limitation Act could not be invoked.

5. In view of the above, with respect, we do not think that the view expressed by the Full Bench of this Court in Bhupal Premchand Shah and others Vs. State of Maharashtra, is good law. It is of some relevance to note that the Full Bench considered the view expressed by the Division Bench of this Court in Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land Acquisition Officer and Another, and concluded in para 14 of the judgment on page 322 as under:

In our view, therefore, the Division Bench decision in Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land Acquisition Officer and Another, was wrongly decided and we hold that the provisions of the Limitation Act, 1963, and of section 5 in particular, are applicable to an application made to the Collector u/s 18(1) of the Land Acquisition Act requiring him to refer the matter for the determination of the Court.

It is interesting to note that the Apex Court in its judgment in Shah Manilal Chandulal's case (supra) considered the view expressed by the Division Bench of this Court in Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land Acquisition Officer and Another, and in para 15 of the judgment at page 614 in 1996(1) Maharashtra Law Journal, approved the view expressed by the Division Bench of this Court in P.W. Gadgil's case which was also the view expressed by the Andhra Pradesh High Court in Special Deputy Collector Land

Acquisition, Anantapur Vs. K. Kodandaramacharlu, . The question of the effect of amendment to section 18 by inserting sub-section (3) in section 18 of the Land Acquisition Act, 1894 has been considered by the Apex Court in Shah Manilal Chandulal's case.

6. In the view of the of the above, our answers to the two questions framed at the beginning of para 2 of this decision are that (i) the Collector in entertaining an application u/s 18 of the Land Acquisition Act, 1894 acts as a statutory authority and is not a Court; and (ii) in view of our answer to question No. (i) above, the provisions of section 5 of the Limitation Act, 1963 cannot be invoked while entertaining the application for reference u/s 18(1) of the Land Acquisition Act.

7. We may also refer to a Division Bench decision of this Court in Smt. Laxmibai Narayan Patil and another Vs. State of Maharashtra and another, where, relying upon the decision of the Apex Court in Shah Manilal Chandulal's case this Court has taken the view that the provisions of section 5 of the Limitation Act had no application to the proceedings before the Collector u/s 18(1) of the Land Acquisition Act, 1894.

8. In this view matter, there is no merit in this petition. Rule is accordingly discharged with no order as to costs.

9. Rule discharged.