

(1991) 02 KAR CK 0048
In the Karnataka High Court
Case No : M.F.A. No. 1095 of 1984

Special Land Acquisition Officer

APPELLANT

Vs

Gurappa Channabasappa Paramaj

RESPONDENT

Date of Decision : 18-02-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 12 (2), 18, 54 (1)
Limitation Act, 1963 — Section 3 (1)

Citation : AIR 1992 Kar 97 : (1991) ILR (Kar) 1109 : (1991) 1 KarLJ 613

Hon'ble Judges : M. Rama Jois, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : H.J. Sundar Kumar, Govt, for the Appellant; Suresh S. Moodalgi, for the Respondent

Judgement

Rama Jois, J.—In this appeal preferred by the Special Land Acquisition Officer, Hidkal Dam Project, Hidkal, u/s 54(1) of the Land Acquisition Act, the following important question of law arises for consideration :--

Whether a reference made by a Land Acquisition Officer u/s 18 of the Land Acquisition Act, as amended by Karnataka Land Acquisition (Amendment) Act, 1961, after the right of the claimant to make an application before the Civil Judge praying for a direction to call for reference u/s 18 of the Act had become time barred is valid?

2. Brief facts of the case are these :-- The lands belonging to the respondent were acquired pursuant to a preliminary notification issued u/s 4 of the Land Acquisition Act on 22-7-1965. Thereafter the Land Acquisition Officer made an award on 21-3-1968. The respondent also received the compensation amount awarded shortly after the award was passed. After 14 years thereafter, a reference u/s 18 of the Act was made by the then Land Acquisition Officer to the Court of the Civil Judge, Chikodi on 5th April, 1982 enclosing thereto an application bearing the date 15-5-1968. Before the Civil Judge, an objection was taken to the effect that the reference was barred by time. But the learned Civil

Judge rejected the objection on the ground that the records relating to the service of notice and also filing of application which were all with the possession of the appellant were not produced. Thereafter the learned Judge proceeded to make the award. The Land Acquisition Officer had awarded a compensation at the rate of Rs. 2,500/- per acre in respect of certain categories of lands and at Rs. 1,000/- per acre regarding certain other categories of lands. The learned Judge enhanced the compensation in respect of all the lands at the rate of Rs. 11,000/- per acre. Aggrieved by the said award, the appellant has presented this appeal.

3. In this appeal, the learned Government Advocate appearing for the appellant urged the following two grounds :--

(1) Though the claim application mentions the date as 15-5-1968, actually it was presented some time in April, 1982 and therefore the application was time barred and therefore the reference made on the said application on 5-5-1982 was incompetent.

(2) Even on the basis that the application was actually presented on 15-5-1968, the reference made after the right of the respondent to make application before the Civil Judge, calling for reference u/s 18 of the Land Acquisition Act as amended by Karnataka Land Acquisition (Amendment) Act, 1961, was barred by time, was invalid and therefore the award passed on the basis of such time barred application is liable to be set aside.

4. In support of the first ground, the learned Counsel submitted that actually no application was made by the respondent on 15-5-1968 and the records in the office of the Land Acquisition Officer do not disclose that any such application was filed till April, 1982. An application has been made before this Court under Order 41, Rule 27 of the C.P.C. producing photo copies of the relevant portions of the registers, in which applications filed u/s 18 of the Act were entered in May, 1968. He has also produced a report made by the Special Land Acquisition Officer, which was made after investigation as directed by the Government on account of complaints it had received to the effect that the then Special Land Acquisition Officer had entertained large number of time barred applications in collusion with the claimants and had referred them to the Court. In the report the present Land Acquisition Officer has stated that several applications which were ante-dated so as to make it appear that the applications were filed in time, were entertained after long lapse of time, by the, the then Land Acquisition Officer and he had referred them to the Court on which awards had been passed by the then Civil Judge. The report made by the Land Acquisition Officer dated 5-5-1984 reads :--

"Confidential Office of the Spl. Most urgent Land Acquisition No. LAQ. Misc. REP/84 Officer, Hidkal Dam, Date: 5-5-1984.

To

The Special Deputy Commissioner, LAQ and RHN G and M Projects, Belgaum.

Sub:-- Spurious and Fraudulent references u/S. 18(1) of the L. A. Act to the Civil Judge, Chikodi.

Ref:-- 1. Lr. No. 41/82 dated 7-1-84 of the Civil Judge, Chikodi,

2. Lr. No. 114 of 1984 dated 11-1-84 of the Civil Judge, Chikodi.

Sir,

On 19-12-1983 two sets of applications 55, 34 in number respectively u/S. 18(1) of the L.A. Act were received in the Court of the Principal Civil Judge, Chikodi (List enclosed) since the correspondence was not under the signature of the present incumbent S.L. A.O. the Civil Judge Chikodi under the references cited above called for the explanation of the present SLAO on the references.

On perusal of the applications and verification with the office records, it was found that both the sets of applications (89) were found to be unregistered spurious and referred fraudulently keeping the office of the SLAO in dark. All the reference forms in Form No. 19 have been signed by Sri F. F. Varur, who was the SLAO Hidkal from 22-5-81 to 3-2-1983 which goes to say that Sri F. F. Varur sent references u/S. 18(1) to the Court as benami, SLAO Hidkal till after one year handing over charge of the office.

The second set of references (34 in number) were fraudulently referred to the Court by Sri R. C. Hiremath Circle Officer and Sri B. R. Barigal, FDC keeping the office of the SLAO in dark. Sri R. C. Hiremath, C.O. has colluded in this mischief even by going to the extent of signing unauthorisedly a number of copies of the award and award statement. Further on verification of the office registers and collecting possible particulars available in Court it is found that a large number of applications u/S. 18(1) of the L.A. Act which seemingly appear to have been received during the years 1961, 1962, 1965, 1970, 1971, 1972, 1974, 1975, 1976, 1977 and 1978 have been referred by Sri F. F. Varur, S.L.A.O. Hidkal during his tenure from 22-5-81 to 3-2-83 and benami even after till December, 1983. But as per the monthly office returns submitted by the SLAO Hidkal these applications could not have been pending unattended for such a long time. And since these have been sent unregistered and keeping the office of the SLAO in dark in a fraudulent way the references and the applications whose official custody for decades remains unexplained (under Sec. 18(1)) are spurious and concocted.

Similarly fraudulent references have been made u/s 18(3B) by Sri F. F. Varur in which there have been no order of the Court to make such references.

These large number of such fraudulent references u/S. 18(1) and u/S. 18(3B) made by Sri F. F. Varur have been at various stages viz.

1. Pre-hearing (List enclosed) (not exhaustive)

2. Under hearing (List enclosed) (not exhaustive)
3. Post Judgment (List enclosed) (not exhaustive)
4. Appeal stage (List enclosed) (not exhaustive)

Consequently the Government has been put in an embarrassing position as it has been made a scapegoat for paying undue interest for decades, in post judgment cases which is an under (utter?) loss to the tune of crores. As at present the SLAO Hidkal is facing execution petition and warrant of attachments as a consequent of these fraudulent references. Unfortunately as the mischief was not brought earlier to the notice of the Secretary to Govt. of Karnataka Dept. of Law and Parly. Affairs and Asst. Solicitor and Ex-Officio Under Secretary to Govt. Dept. of Law and Parly. Affairs, no appeal decisions have been taken by Government in a lot many cases. Hence it is requested that :--

1. Clear immediate instructions regarding action to be taken in such post judgment cases (specially as to whether decretal amount is to be deposited in the Court or not) and prejudgment cases may be solicited from Government.
2. The matter may be brought to the notice of the Divisional Commissioner, Belgaum, the Secretary Govt. of Karnataka, Dept. of Law and Parly. Affairs and Asst. Solicitor and Ex-Officio Under Secretary to Govt., Dept. of Law and Parly. Affairs, Secretary to Revenue Department, Advocate General and all the concerned. And action to investigate and enquire into the matter may be taken as the matter has criminal tinge and since the major records are in the custody of the Civil Courts the SLAO in the normal course of his duties cannot take any action.

It is surprising and unfortunate that most of such spurious references have been decreed earlier than the genuine ones.

The matter may kindly be treated as most urgent."

In fact, the learned Civil Judge did frame an issue as to whether the reference was time barred, but answered in favour of the respondent on the ground the relevant registers and records were not produced. If the Land Acquisition Officer himself entertained antedated application after 14 years and referred the matter as alleged, it is not surprising that he had failed to produce records. In the circumstances, we consider that in the interest of justice, we should receive the additional evidence. Accordingly, we receive them. In support of his submission that the application is ante-dated the learned Counsel also invited our attention to the stamp affixed on the application. He pointed out that a bare examination would show that the stamp affixed to some other document has been removed and affixed to this application. In the light of the additional evidence we have admitted a question of fact which arises for consideration is whether the application which was barred by time by over 14 years was ante-dated to make it appear that it was made within the time prescribed u/s 18(2) of the Act.

5. As far as the question as to whether the Court could decide as to whether reference was barred by time and therefore invalid is concerned, it is not res integra. The Supreme Court has considered the question in the case of Mohammed Hasnuddin Vs. State of Maharashtra, The relevant portion of the judgment reads :--

"11. It is contended on behalf of the appellant that a reference to the Court having been made by the Collector, the Court had no jurisdiction to question the validity of that reference and was bound to decide the matter on merits. In support of this contention certain authorities have been cited to us, in which it has been laid down that it is for the Collector, and the Collector alone, to determine whether to make a reference under S. 18, sub-sec. (1), and if he decides to make a reference, it is not open to the Court to go behind the decision of the Collector, and hold the reference to be out of time."

xx xx xx xx "28. If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in S. 18. Even if a reference is wrongly made by the Collector the Court will still have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends on a proper reference being made under S. 18, and if the reference is not proper, there is no jurisdiction in the Court to hear the reference. It follows that it is the duty of the Court to see that the statutory conditions laid down in S. 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.

29. In deciding the question of jurisdiction in a case of reference u/s 18 by [he Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to subsection (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference."

From the above decision, it is clear that the Court has not only the power but also the duty to consider as to whether reference is time barred and therefore invalid. There is also Section 3 of the Limitation Act. Relevant part of it reads :

"3(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."

From Section 3(1) also it is clear that it is the duty of the Court to decide whether the proceedings instituted before it was barred by time, even if plea of limitation is not taken by the opposite party.

6. In the first instance, we shall proceed to consider the question of law set out in the first paragraph of our judgment, namely, as to whether the reference made by the Land Acquisition Officer after the right of the claimant to make an application under subsection (3) of Section 18 of the Land Acquisition Act, as amended by Karnataka Land Acquisition (Amendment) Act, 1961, can be regarded as a valid reference.

7. In order to appreciate the question of law arising for consideration, it is necessary to set out the provisions of Section 18 of the Land Acquisition Act, as amended by Karnataka Land Acquisition (Amendment) Act, 1961. The said Section reads :--

"18. References to Court:--(1) Any person interested who has not accepted the award or amendment thereof, may by written application to the D. C. require that the matter be referred by the D. C. 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 within ninety days from the date of service of the notice from the Deputy Commissioner under sub-section (2) of Section 12.

(3) (a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under sub-section (1), make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix.

As can be seen from the proviso to subsection (2) of Section 18, an application seeking reference to the Court for enhancement of compensation is required to be made within 90 days from the date of service of notice under sub-section (2) of Section 12 of the Act. It is also well settled that even in the absence of actual service of notice u/s 12(2) of the Act if the claimant was present in person or through his counsel on the date of the making of the award, the limitation runs from that date. Similarly, if the claimant had received the award amount on any date or otherwise got the knowledge of the passing of the award on any date, the limitation runs from that date. There is no dispute that if any application is filed after 90 days after the date of service of notice or the date on which the

claimant had the knowledge of the award or the date on which he received the amount of compensation, it being time barred application no valid reference could be made on such application. In the reference application, marked as Ex.P2 before the Court below, it is expressly stated that the award notice was received by them on 21-3-1968. Therefore, the application for reference could have been made only before the expiry of 90 days from 21-3-1968. Clause (a) of subsection (3) of Section 18 requires the Deputy Commissioner to make a reference to the Court within 90 days from the date of receipt of the application and if the Deputy Commissioner fails to do so, clause (b) of Section 18(3) confers a right on the party to make an application before the Court seeking direction to the Deputy Commissioner to make a reference within such time as the Court may fix.

8. The first point for consideration is whether there is any limitation for filing an application before the Court by the party who had made an application before the Deputy Commissioner Land Acquisition Officer within the period prescribed u/s 18(2) of the Act. On this, we have the Judgment of the Supreme Court in the case of *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, the ratio of which fully covers the said question. In that case the Supreme Court considered the question as to whether an application to the Court for enhancement of compensation by a person who was dissatisfied with the grant of compensation under the Telegraph Act, the residuary Article 137 of the Schedule to the Limitation Act, 1963, which prescribes a period of three years for filing any application before a Court in respect of which there is no specific provision would apply or not. The Supreme Court held that in respect of every application required to be made to any Court under any law, the period of limitation prescribed under Article 137 would be attracted, which is 3 years and if an application was filed beyond 3 years, the application would be time barred and would be liable to be rejected in limine, as time barred. The relevant portion of the Judgment reads :--

"22. 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. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of the Article 137 of the 1963 Limitation Act."

In our opinion, the ratio of the aforesaid decision applies on all fours to an application required to be made under clause (b) of subsection (3) of Section 18 of the Act. The question has also been considered in the two decisions of this Court. In the case of *Muniswamappa v. Ramaiah* (1973) 1 Mys LJ 65 : (AIR 1973 Mysore 161) the question which was considered by this Court was, whether the application filed before the Court seeking a direction to the Deputy Commissioner

to make a reference was within the period of limitation. This Court held that Article 137 of the Schedule to the Limitation Act was applicable, and as in the said case the application was filed nearly after 6 years, the application was time barred. In that view of the matter, the award made by the Civil Judge, Bangalore District, was set aside and the application filed before the Court below u/s 18(3) (b) of the Act was dismissed. The relevant portion of the Judgment reads (at p. 162 of AIR):

"Art. 137 entitles a person to make an application within a period of three years when the right to apply accrues. In my view, a right to make an application under clause (b) of sub-section (3) of S. 18 accrues when the Deputy Commissioner does not make a reference within ninety days. Since statutorily the period of ninety days is fixed for the Deputy Commissioner to make a reference, if he does not make it, then the application must be filed within three years from the time of the expiry of the period of ninety days specified under sub-section (3)(a) of S. 18 of the Act. It would be wrong to hold that the period of limitation starts only from the time the Deputy Commissioner passes an order and refuses to make a reference and intimates such refusal to the party. Since under the Act the Deputy Commissioner is obliged to determine within 90 days and if he fails to determine it, the party is given a right under clause (3) of S. 18 of the Act, the question of communicating the refusal to the party does not arise. If the reference is not made within ninety days, the cause of action accrues to the party to go to the Court to obtain a direction from the Court to the Deputy Commissioner to make a reference. In the present case the application was filed nearly after six years and the only explanation given by the party is that he did not make the application, as he was not intimated of the result of his application made under sub-section (3)(a) of S. 18 of the Act. In my view, it is not necessary to communicate the refusal, as the refusal has to be assumed, if no reference is made within ninety days and "the party has got a period of three years to make an application thereafter. As the learned Judge has acted with material irregularity in the exercise of jurisdiction in holding that the application is in time, his decision becomes unsustainable."

In another case, namely, Chikkamuniramaiah v. Dy. Commr. Bangalore District (1978) 1 Kar LJ 181 also this Court held that Article 137 of the Schedule to the Limitation Act applies to an application u/s 18(3)(b) of the Act. Therefore, on the first point, we hold that Article 137 of the Schedule to the Limitation Act applies to an application u/s 18(3)(b) of the Land Acquisition Act and consequently any application made after the expiry of 3 years is liable to be dismissed on the ground it is barred by limitation.

9. In the present case, as stated earlier, the respondent did not make any application before the Court within the time permitted by law. Therefore, it is clear even assuming actually the application was made on 15-5-1968, after the expiry of 3 years and 90 days from the date of the application, the respondent had no right to make any application before the Court seeking for the issue of a

direction to call for reference and even if any application was filed by him, in view of the aforesaid decisions of this Court in *Muniswamappa* (AIR 1973 MysLJ 161) and *Chikkamuniramaiah* (1978 (1) Kar LJ 181) and the decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, the application was liable to be dismissed in limine. This position in law would not be and is not controverted by the learned Counsel for the respondent.

10. The learned Government Advocate contended that after the right of the party to make an application u/s 18(3)(b) of the Act comes to an end, the Land Acquisition Officer also could not make a reference and even if he did, it would not be a valid reference and such a reference is liable to be rejected on the ground that it was invalid. In support of his contention that no reference could be made by the Land Acquisition Officer after the expiry of 3 years and 90 days from the date on which the reference application was made before the Land Acquisition Officer, the learned Government Advocate relied on the Judgment of the Division Bench of this Court in the case of *Assistant Commissioner Vs. Lakshmi Bai*, In the said case, the Division Bench of this Court considered as to whether the view taken by Swami, J. in *The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmauva and Another*, to the effect that the power of the Land Acquisition Officer/Deputy Commissioner to make reference exists only so long as the right exists in the party to make an application before the Court under S. 18(3)(b) of the Act was correct or the view taken by Kulkarni, J. in *Uppara Basappa Vs. Spl. L.A.O.*, to the effect that the Land Acquisition Officer could not make a reference after the expiry of 90 days from the date of application fixed under S. 18(3)(a) was correct. The Division Bench affirmed the view taken by Swami, J. in *Gwalior Rayons*.

11. In the first instance, we shall refer to the Judgment of Swami, J., in *Gwalior Rayon's* case (MR 1982 Kant 347). In the said case, the learned Judge interpreted the provisions of sub-section 3(a) and (b) of Section 18 of the Act and held that 90 days fixed in clause (a) of Section 18(3) of the Act was for performing the duty by the Deputy Commissioner to make a reference and if he failed to discharge his duty, within the period of 90 days, the claimant would get a right to make an application before the learned Civil Judge, for which the period of limitation is 3 years in view of Article 137 of the Schedule to the Limitation Act and the power of the Land Acquisition Officer to make a reference continues to exist until the right of the party to seek reference ceases. The relevant portion of the Judgment reads (at p. 349 of AIR):--

"According to Article 137 of the Limitation Act, the party is entitled to make an application to a Civil Court within a period of 3 years after the expiry of 90 days from the date of filing an application u/s 18(1) of the Act, for a direction to the Deputy Commissioner to make a reference. In such an event, the Civil Court is required to give a direction to the Deputy Commissioner to make a reference if it is proved that a valid application for making a reference u/s 18 of the Act, is filed

before the Deputy Commissioner within the period allowed by sub-section (2) of Section 18 of the Act. Thus, the right to seek a direction from the Court to the Deputy Commissioner to make a reference, in a person interested, who has made an application u/s 18(1) of the Act, within the period allowed by subsection (2) thereof, before the Deputy Commissioner for making a reference continues to exist till the expiry of three years from the 91st day of the filing of the application before the Deputy Commissioner for making a reference. Consequently, the corresponding statutory obligation of the Deputy Commissioner to make a reference to a Civil Court u/s 18 of the Act, must be held to continue as long as the right to seek a reference continues to exist in a person interested."

As against this view in the case of Uppara Basappa Vs. Spl. L.A.O., Kulkarni, J. held that in view of clause (a) of Section 18(3) of the Act the Land Acquisition Officer had the power to make a reference only within 90 days from the date on which the application was made and thereafter he had no power to refer the matter to the Court. The learned Judge held that after the expiry of 90 days prescribed in Section 18(3)(a) of the Act the claimant alone had the right to make an application within a period of 3 years, but the Land Acquisition Officer could not make the reference. The correctness of the divergent views expressed by the two Judges were considered by the Division Bench of this Court in the case of Assistant Commissioner Vs. Lakshmi Bai, Venkatachaliah, J. (as he then was) speaking for the Court stated that (paras 1, 10 and 11) :--

"This appeal involves the question whether a reference made by the Land Acquisition Officer u/s 18(3)(a) of the Karnataka Land Acquisition (Extension and Amendment) Act, 1961 ("Act" for short) beyond the period of 90 days stipulated therein is, by that reason alone, an invalid reference. In Uppara Basappa Vs. Spl. L.A.O., a learned single Judge has taken the view that a reference made by the Land Acquisition Officer beyond 90 days contemplated in Section 18(3)(a) is an invalid reference.

Another learned single Judge, in Gwalior Rayon Silk Mfg. (Wvg.) The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another, has held such reference to be valid if the reference was within 3 years and 90 days from the date of filing of a valid application u/s 18(1) of the Act. There is thus a divergence of judicial opinion on the point, which requires to be resolved here."

XXX XXX XXX "What emerges from these pronouncements is that, the time-limit prescribed for performance of a duty is rarely mandatory. In the present case, as long as the right on the part of the person interested to compel a reference subsists -- that right must be held to subsist till the right to move the Court u/s 18(3)(b) is not lost -- a reference made by the L.A.O. even if it be after the period of ninety days prescribed in Section 18(3)(a), would require to be sustained."

XXX XXX XXX "11. We are, therefore, with great respect to the learned single

Judge, unable to bring ourselves to agree with the view taken of the matter in Uppara Basappa Vs. Spl. L.A.O., Statutory obligation to make a reference would continue and remain subsisting till the corresponding right on the part of the person interested to seek and compel a reference subsists Swami, J. in The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another, has held that this obligation continues till the expiry of the period of three years which is held to be the period of limitation for making an application u/s 18(3) (b). It appears to us that the view taken by Swami, J. should be preferred to the one taken in Uppara Basappa's case. If we prefer the view in Uppara Basappa's case undeserved injustice and hardship would be occasioned to the parties. We should, we think, avoid such a construction of the provisions. Indeed Supreme Court said American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another,

"...It is a well known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice or absurd inconvenience or anomaly...."

Sri Kothavale urged that the right of the person interested to compel a reference should not be held to come to an end even after the expiry of 3 years and 90 days and that a reference made by the L.A.O. even thereafter would be a valid one. It is unnecessary to go into and answer that question here. The reference in the present case is within the period of 3 years from the expiry of 90 days. We hold the reference to be valid. As long as the Gwalior Rayon's case continues to hold the field, Sri Kothavale's proposition will not be of assistance."

As can be seen from the above portion of the Judgment, the Division Bench affirmed the view taken by Swami, J. in The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another, We are in respectful agreement with the above view.

12. The learned Counsel for the respondent, however, relied on a subsequent Judgment rendered by Shivashankar Bhat, J., in Balappa v. Special Land Acquisition Officer . In the said case, the learned Judge took the view that there was no period fixed for the Land Acquisition Officer to make a reference and he could make a reference at any time even after the right of the party to make an application before the Court came to an end in view of Section 18(3)(b) of the Act read with Article 137 of the Schedule to the Limitation Act. The learned Judge held that the view expressed by the Division Bench in Assistant Commissioner Vs. Lakshmi Bai, to the effect that the power to make a reference comes to an end after the expiry of 3 years after the expiry of 90 days from the date of making application was an obiter, for the reason, even after expressing agreement with the view expressed by Swami, J. in The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another, the Division Bench had stated that actually the question did not directly arise for consideration in that case, and therefore it was not a binding precedent. The relevant portion of the Judgment reads :--

"16. The barring of the right to move the Court, after the period of limitation, u/s 18(3), cannot result in taking away the competence of the Deputy Commissioner to wake up to his responsibility and discharge the function of making the reference, so long as the initial application u/s 18(1) is pending undisposed of. In my view, this is a typical case of a remedy, under the Act, to enforce the right getting barred, without affecting the competence of the obligee to discharge his unenforceable obligation, a concept well-known in law. Such a reference in no way affects its validity."

The learned Counsel for the respondent submitted that we should prefer the view expressed by Shivashankar Bhat, J. in the case of Balappa in preference to the view expressed by Swami, J. which was affirmed in the case of Gwalior Rayon and the Division Bench in the case of Lakshmi Bai.

13. After giving our careful consideration to all the decisions, we are inclined to agree with the view expressed by the Division Bench of this Court in the case of Assistant Commissioner Vs. Lakshmi Bai, and hold that the power to make reference u/s 18(3) exists till the right of the party to make an application before the Court seeking a direction to the Deputy Commissioner to make reference exists and from this it follows, no power to make reference exists thereafter and if made it is invalid.

14. As stated earlier, Section 18 of the Central Act was amended by the Amending Act of 1961 enacted by this State. The Legislature of this State considered that in addition to the time within which an application seeking reference should be made it was expedient to fix not only a time within which the Deputy Commissioner/Land Acquisition Officer should discharge his duty of making the reference but a right should also be conferred on the party to approach the Court by making an application seeking a direction to the Deputy Commissioner/Land Acquisition Officer to make the reference. Once such a provision was made, there is no doubt that an application before the Court has to be made within 3 years after the expiry of 90 days from the date of the application and if any application is made beyond the time so fixed in view of Article 137 of the Schedule to the Limitation Act, it is liable to be rejected in limine. In other words, if no application is made within the time, the right to secure reference ceases. This position of law is incontrovertible in view of the ratio of the decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, and the two decisions of this Court in *Muniswamappa* (AIR 1973 Mys 161) and *Chikkamuniramaiah* (1978 (1) Kar LJ 181). The learned Counsel for the respondent does not dispute that in view of Article 137 of the Schedule to the Limitation Act, the right of the respondent to make an application before the Court u/s 18(3)(b) of the Act had come to an end, by 15-8-1971 and that the reference was made after more than 10 years and eight months. He, however, relying on the decision in *Balappa* contends that even after the right of the party comes to an end, the Land Acquisition Officer could make a reference at any time and it would be valid.

15. After careful consideration of the rival contentions, we respectfully disagree with the view taken by the learned Judge in Balappa . We are of the view that the reasonable construction of the provision is, as it has been construed in The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another, and Assistant Commissioner Vs. Lakshmi Bai, It is a well-recognized rule of construction that in order to ascertain the true meaning of a provision the intention of the Legislature, as ascertainable from the language of the provision is the safe guide. From the amendment of Section 18, it is clear that in addition to the time limit of 90 days fixed in Section 18, the Legislature intended to create a duty in the Deputy Commissioner to make a reference within 90 days and further if within the period the Deputy Commissioner/Land Acquisition Officer failed to make a reference, to confer a right on the party to make an application before the court seeking a direction to the Deputy Commissioner to make the reference. If that right is not exercised by the party within time, then the right ceases. Once the right of the party to get a reference is time barred, it would be incongruous to hold that the Deputy Commissioner can still make a reference, at any time even after decades. In our view, it is reasonable to construe the provisions to mean that the date on which the right of the party to get a reference comes to an end would also be the date on which the power of the Deputy Commissioner to make reference comes to an end. We are not persuaded to agree with the construction suggested for the respondent that the power of the officer continues even after the right of the party comes to an end and continues for ever. It means even after an application made before the Court after three years is rejected as the Court is powerless to entertain a time barred application, the Deputy Commissioner would have the power to make a reference, nullifying the order of the court rejecting the application as time barred. Such a construction would lead to a situation in which in one case the Deputy Commissioner could make a reference if he so desires and in another he could refuse to do so, if he so desires, in which event the party would be helpless. In other words, the Deputy Commissioner could act according to his whims and, fancies. It is difficult to agree that the Legislature intended to bring about such a result. Further, such a construction which brings about anomalous and incongruous results and gives ample scope for nepotism, favouritism and corruption should not be given. We have come across several references made after two decades, particularly after several additional benefits were conferred by Amending Act 68 of 1984 amending the Land Acquisition Act. In our opinion, the correct view to take is, just as the party loses the right to the reference if no application is made within 90 days in terms of Section 18(2), the party, who had made an application within 90 days loses the right to secure a reference if he fails to make an application within three years after the expiry of 90 days from the date of the reference application and consequently the power of the Deputy Commissioner/Land Acquisition Officer to make reference comes to an end. We are, therefore, of the view that the date of cessation of the right of the party to apply to the court seeking a direction to the Deputy Commissioner to make the reference also constitutes the date of cessation of power of the Deputy

Commissioner. To put it in a nut shell the latter comes to an end on the date on which the former ends and the award of the Land Acquisition Officer becomes final. Therefore, neither the party can seek a reference nor the Deputy Commissioner can make the reference after the expiry of 3 years and 90 days from the date of the reference application.

16. For the reasons aforesaid, we respectfully agree with the view taken in *The Gwalior Rayon Silk Manufacturing (Wvg.), Co. Ltd. Vs. Lakshmavva and Another*, and in *Assistant Commissioner Vs. Lakshmi Bai*, and further hold that the Deputy Commissioner/ Land Acquisition Officer has no power to make a reference u/s 18 of the Act after the right of the party to seek a direction from the court comes to end, and overrule the decision in *Balappa* .

17. Accordingly, we answer the question set out first as follows:

A reference made by a Land Acquisition Officer u/s 18 of the Land Acquisition Act, as amended by Karnataka Land Acquisition (Amendment) Act, 1961, after the right of the claimant to make an application before the Civil Judge praying for a direction to call for reference u/s 18 of the Act had come to an end is invalid.

In view of our answer as above, we hold that the reference made on 5-4-1982 of an application dated 15-5-1968 assuming that it was made on that date is invalid.

18. As the appeal has to be allowed, in view of our answer to the question of law, we consider it unnecessary to consider the question of fact raised by the appellant that the application was made in April 1982 antedating it to 15-5-1968 and therefore it was time barred in view of Section 18(2) of the Act and even so it was entertained and referred owing to collusion between the respondent and the then Land Acquisition Officer and on account of the fraudulent act of the then Land Acquisition Officer. Further, as the award of the learned Civil Judge is liable to be set aside on the ground that the reference was invalid, it is unnecessary to go into the merits also.

19. In the result, we make the following order:

(i) The appeal is allowed;

(ii) The award made by the learned Civil Judge in LAC No. 333 of 1982 is set aside.

20. Appeal allowed.