REVISIONAL CIVIL

Before Bishan Narain and Grover JJ.

HARI KRISHAN KHOSLA,—*Petitioner.*

v.

THE STATE OF PEPSU,—*Respondent.*

Civil Rivision No. 144/P of 1954.

1957

Nov. 20th

Land Acquisition Act (I of 1894)—Sections 18 and 19—Application to Collector for reference to Court—contents of—Application barred by time—Question of limitation, whether can be referred to the Court or should be decided by the Collector—Reference made to the Court—Duty of Court on receipt thereof—Court, whether can reject the reference on point of limitation—Indian Limitation Act (IX of 1908)—Section 12(4)—Whether applicable to applications for reference to Court.

Held, that it is clear from the express provisions of section 19 of the Land Acquisition Act, 1894 that the Collector has to state for the information of the Court only such matters as are set out in subsection (1) (a) to (d). The Collector is not required to state any information with regard to the question whether the application under section 18 complies with the proviso to sub section (2) of that section. The matter, which can be referred by the Collector, can only relate to such matters as are set out in section 18(i) which does not include the question of limitation. It is, therefore not open to the Collector to refer the question of limitation or the matter of compliance with the provisions of the proviso to sub section (2) of section 18 to the Court. It is a matter which the Collector has to decide himself and there is no provision or machinery provided in the Statute by which any such reference can be made to the Court.

Held also, that there was no machinery in the Land Acquisition Act which gave any authority to the Court in express terms or by implication to go behind the reference and to see whether the Collector acted rightly or wrongly. The making of a reference was an act within the jurisdiction and authority of the Collector who might make a mistake in the use of his discretion, but he was entitled to decide rightly or wrongly. The functions which the Collector performed under the Land Acquisition Act, were

administrative and not judicial. The Court consequently could not go behind the reference to ascertain whether the application in pursuance of which it was made was within limitation or not. Section 18 constitutes the Collector the sole authority for making the reference. In the statement which he has to make under section 19, the question of limitation is not one of these matters which he is required to state at all. As soon as the Collector makes the reference and states for the information of the Court the various matters set out in section 19, the Court has to perform a ministerial act, namely, of causing a notice of the nature mentioned in section 20. There is no other provision in the Statute which entitles the Court to re-examine the question whether the Collector's order was correct on the question of an application having been made within the period prescribed. The Court's jurisdiction is confined to considering and pronouncing upon any of the four different objections to an award under the Act which may have been raised in the written application for reference.

Held further, that application to make a reference under section 18 of the Land Acquisition Act cannot be regarded as equivalent to an application to set aside an award. The Collector is only to make the reference in which the award may be confirmed or a different award may be given by enhancing the amount of compensation. Section 12(4) of the Indian Limitation Act would therefore not cover the case of an application under section 18 of the Land Acquisition Act.

Secretary of State v. *Bhagwan Prasad and another* (1), *Sri Venkateswaxaswami Voru* v. *Sub-Collector* (2), *Province of Bengal* v. *P. L. Nun* (3), relied upon. I.L.R. 1944 Bom. 90 (4), *A. K. Subramania Chettiar* v. *Collector* (5), *Samuel Burge* v. *Improvement Trust* (6), not followed. *Ghulam Muhyuddin and another* v. *Secretary of State* (7), *In the matter of Government and Naru Kathare and another* (8), distinguished. *Pandit Amar Nath* v. *Governor-General in Council* (9), *Pramathanath Mahb* v. *Secretary of State* (10), referred to.

(1) I.L.R. 52 All. 96
(2) A.I.R. 1943 Mad. 327
(3) A.I.R. 1945 Cal. 312
(4) I.L.R. 1944 Bom. 90
(5) A.I.R. 1946 Mad. 184
(6) A.I.R. 1924 Oudh. 127
(7) A.I.R. 1914 Lah. 394
(8) I.L.R. 30 Bom. 275
(9) A.I.R. 1940 Lah. 299
(10) I.L.R. 57 Cal. 1148

Petition under section 115 of Civil Procedure Code for revision of the order of Shri Narinder Singh, District Judge Patiala, dated the 22nd March, 1954, rejecting the reference.

Reference regarding Acquisition of Land in village Malomajra Tahsil and District Patiala for Bhakra Main Line Canal.

In person Petitioner.

MURARI LAL Assistant Advocate-General for Respondent.

ORDER

GURNAM SINGH, J. In the land acquisition case the petitioner raised certain objections before the Land Acquisition Officer and after hearing the objections award was given by the officer concerned. The petitioner made an application under section 19 of the Act before the Land Acquisition Officer for referring the matter to the Court for determination. This application was submitted on 8th May, 1953. On 21st May, 1953, the Land Acquisition Officer forwarded the reference to the Court. The period prescribed for filing such application under section 19 of the Act is six weeks from the date of the award. The application submitted, *prima facie*, was seventeen days beyond the period of limitation allowed to the petitioner. When the case came up for hearing before the Court, an objection was raised by the counsel for the State that the reference was invalid as the application was submitted after the expiry of the period of limitation. The petitioner controverted this fact on the ground (a) that the Court could not go into the question of limitation after the reference has been made by the Collector; and (b) that the application was within time after the period for obtaining the copy was excluded. It is not denied by the counsel for the parties that there is a conflict of opinion

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on these two points in the various High Courts. The counsel also agree that there is no case decided by this Court in relation to the two points involved in the case. The question involved is of considerable importance. It is proper that the points be determined by a larger Bench. I, therefore, refer the case to a larger Bench for determination of question mentioned in (a) and (b). The case be laid before the Hon'ble the Chief Justice for constitution of the Bench.

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JUDGMENT

GROVER, J. In order to appreciate the points of law involved in this petition for revision, which has been referred to Division Bench by Gurnam Singh, J., it is necessary to state the facts briefly. Under section 4(1) of the Patiala and East Punjab States Union Land Acquisition Act, 2006 Bk. (hereinafter called the Act) a notification was published on 14th February, 1952, that the land in dispute was needed for a public purpose. Its notice was served on the petitioner on 24th March, 1952. A declaration under section 7 that the land was required for public purposes was then issued on 1st April, 1952. This was followed by a notice under section 10. On 22nd November, 1952, notice under subsection 3 of the aforesaid section was served on the petitioner. On 9th March, 1953, the Land Acquisition Officer gave his award. The petitioner applied for a copy of the award on 14th March, 1953, which was supplied to him on 8th April, 1953. On the 8th of May, 1953, he filed an application under section 19 of the Act, requiring the Collector to make a reference to the Court.

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According to the proviso to section 19 of the Act (which is the same as section 18 of Land Ac-

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quisition Act) an application requiring the Collector to make a reference to the Court on the matters specified in subsection 1 of section 19 is to 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 under subsection (2) of section 12, or within six months from the date of the Collector's award whichever period shall first expire.

It is common ground that the application having been made on 8th May, 1958, was belated by 17 days. Before the District Judge, Patiala, to whom the matter was referred being the Court under the Act, an objection was raised on behalf of the State that the reference was invalid inasmuch as it had been made after the expiry of the period prescribed. The Court entertained the objection and after noticing the conflict of authorities held that it was competent to decide whether the reference made by the Collector was valid and whether the application for reference was within time. The petitioner had claimed benefit of section 12 of the Limitation Act and sought to exclude the time taken in obtaining a copy of the Collector's award. On this point, the Court was of opinion that section 12 of the Limitation Act did not apply to an application filed under section 19 of the Act. In the result, the Court found that the reference was invalid on the ground that the application made by the petitioner to the Land Acquisition Officer was barred by limitation. The reference was, therefore, rejected. The matter came up in revision before Gurnam Singh, J., who referred the matter

for determination by a larger Bench in view of the conflict of opinion prevailing in the various High Courts on the two points involved ; (1) whether the Court could go into the question of limitation after the reference had been made by the Collector, and (2) whether the application was within time after the period for obtaining the copy of the award was excluded.

It may be stated that sections 19, 20 and 21 of the Act are identically the same as sections 18, 19 and 20, respectively of the Land Acquisition Act of 1894 and, therefore, the decisions which have been given with regard to the questions involved on an interpretation of the sections of the Indian Act would be relevant and helpful in deciding the points that have arisen in this case. Part III of the Land Acquisition Act provides for reference to Court and procedure thereon. Section 18 provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred for the determination of the Court whether his objection be to—

(i) the measurement of the land,
(ii) the amount of compensation,
(iii) the person to whom it is payable, and
(iv) the apportionment of the compensation among the persons interested.

Then follows the proviso, which lays down the period within which the application must be presented. Section 19, subsection (1) is as follows:—

"In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings, or standing crops thereon;

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(b) the names of the persons whom he has reason to think to be interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined."

Section 20 provides that the Court shall *thereupon* cause a notice specifying the day on which it will proceed to determine the objection.

The conflict, which has arisen between the different High Courts, is with regard to the competency of the Court to consider the questions whether the reference was validly made and whether the Court can refuse to entertain the reference when it finds that the reference did not comply with the provisions of section 18 of the Land Acquisition Act. This is a very wide issue and in the present case we are confined to the narrow point with regard to the competency of the Court to reject the reference on the ground that the application to the Collector was made beyond the period prescribed and the reference was invalid and ought not to be entertained. The only decision of the Lahore High Court, which has a direct bearing on the point and which has been brought to our notice, is reported in *Ghulam Muhyuddin and another* v. *Secretary of State* (1). It was held by Rattigan and Scott-Smith, JJ., that it was not open to the Collector to waive the objection of limitation and the Court could hold that

(1) A.I.R. 1914 Lah. 394

an application to the Collector for reference could not form the basis of a reference under sections 18 and 19 as it was barred by time. No other reasoning was given in support of the view expressed nor were the relevant provisions of the Land Acquisition Act fully examined with regard to their true import and scope. The learned Judges followed the decision of Chandavarkar, J. *In the matter of Government and Naru Kathare and another* (1), and an unreported judgment of the Chief Court in Civil Appeal No. 276 of 1913. The basis of the Bombay decision was that the conditions prescribed by section 18 of the Indian Act are the conditions to which the power of the Collector to make the reference is subject and these conditions must be fulfilled before the Court can have jurisdiction to entertain the reference. In that case the learned Judge decided the matter more on the facts. The question was whether the letter of the claimant's attorney asking for a reference met the requirements of section 18. It was found that the letter contained only an intimation to the Collector of the claimant's intention for determination to make the reference. It was further found that the Collector was left completely in the dark as to what the objection was; whether it was to the measurement of the land or to the amount of the compensation or to the persons to whom it was payable. It was, therefore, found that there was no substantial compliance with the conditions prescribed by section 18 of the Land Acquisition Act. It will be noticed that the precise point, which arises in the present case, was not determined in the aforesaid decision, though certain observations were made which support the view that the Collector cannot bind the Government by stepping outside the limits of the power given by section 18 and if he does so his action is illegal. However, in *Mahadeo*

(1) I.L.R. 30 Bom. 275

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Krishna Parkar v. *Mamlatdur of Alibag* (1), Beaumont, C. J., and Rajadhyaksha, J. considered the question whether the Court could decide the point of limitation after a refernce had been made. In that case the Collector decided to make a reference with an expression of opinion that the application was time-barred and left that point for decision of the Court. The Court raised an issue whether the application for reference was barred by limitation under section 18(2) of the Land Acquisition Act and it answered that issue in the affirmative. Before the Bench, the contention was raised that it was for the Collector alone to decide whether to make a reference under section 18(1), and if he decided to make the reference then the Court must assume that the reference was valid and it was not open to it to hold the reference to be out of time. Chief Justice Beaumont did not accept the view of the Allahabad High Court, *Secretary of State* v. *Bhagwan Prasad and another* (2), and of the Madras High Court, *Sri Venkateswaxaswami Varu* v. *Sub-Collector* (3), which supported the view that the Court could not examine the question of the bar of limitation with regard to the reference and based his decision on the ground that the Court was entitled to satisfy itself that the reference made by the Collector complied with the specified conditions so as to give the Court jurisdiction to hear the reference. It will be observed that the learned Chief Justice took it for granted that the proviso to subsection (2) of section 18, laying down the period within which the application for reference must be presented, contained a specified condition on which the Collector had the power to make the reference.

(1) I.L.R. 1944 Bom. 90
(2) I.L.R. 52 All. 96
(3) A.I.R. 1943 Mad. 327

With utmost respect to him it is not possible to accept this view as correct for the reasons which I shall state later. In the Madras High Court itself there is a conflict of opinion on the point in question. Kuppusami Ayyar, J., in *Sri Venkateswaxaswami Varu* v. *Sub-Collector* (1), followed the Allahabad view and held that once the Collector decided to make the reference, it was not open to the Court to determine whether the application for reference had been made within the prescribed period or not. According to this decision, it is not the application of the party which gives jurisdiction to the Court but it is the reference made under section 18 of the Land Acquisition Act which gives it power and authority to proceed further. He considered the question from various aspects, including the competency of the High Court under section 115 of the Code of Civil Procedure to revise an order of the Collector refusing to make a reference. According to him it was the duty of the Collector to decide on the materials before him whether he should make the reference and once he decided to do so it was not open to the Court to go behind it. However, in *A. K. Subramania Chettiar* v. *Collector* (2), a Division Bench of the Madras High Court came to the conclusion that, in a reference made by a Collector under section 18, the Court had the power to go into the question of limitation. In this case the Collector had himself included the question of limitation as a part of the reference and had not decided it himself. The Allahabad decision, *Secretary of State* v. *Bhagwan Prasad and another* (3), was not considered correct by the Madras Bench on the ground that the Allahabad Judges had not correctly read the decision of the Privy Council in *Ezra* v. *Secre-*

(1) A.I.R. 1943 Mad. 327
(2) A.I.R. 1946 Mad. 184
(3) I.L.R. 52 All. 96

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tary of State for India (1). The Bench considered that the observations of the Full Bench in *Abdul Stattar Saluh* v. *The Special Duty Collector* (2), were clear that when the Land Acquisition Officer purported to act under Part III of the Act, he acted as a judicial officer and not merely as an agent or mouthpiece of the Government. The decision of Beaumont, C. J., in *Mahadeo Krishna Parkar* v. *Mamlatdar of Alibag* (3), was followed and it was further observed that the Collector had expressly referred the question of limitation to the Court and that it was desirable that the question of limitation, if disputed, should always be referred to the Court. This case is clearly distinguishable inasmuch as in the present case the Collector has not referred the question of limitation. Even otherwise, with all respect, some of the reasons given by the learned Judges of the Madras High Court cannot be regarded as sound. It is clear from the express provisions of section 19 of the Land Acquisition Act, 1894, that the Collector has to state for the information of the Court only such matters as are set out in subsection (1)(a) to (d). The Collector is not required to state any information with regard to the question whether the application under section 18 complies with the proviso to subsection (2) of that section. Moreover the matter, which can be referred by the Collector, can only relate to such matters as are set out in section 18(i) which does not include the question of limitation. It is, therefore, not open to the Collector to refer the question of limitation or the matter of compliance with the provisions of the proviso to subsection (2) of section 18 to the Court. In other words, that is a matter which the Collector has to decide himself, and there is no provision or machinery

(1) I.L.R. 32 Cal. 605
(2) I.L.R. 47 Mad. 357
(3) I.L.R. 1944 Bom. 90

provided in the statute by which any such reference can be made to the Court. The Madras Judges were also influenced by the view that the Land Acquisition Officer acted as a judicial officer when he made a reference under Part III of the Land Acquisition Act. This view is directly opposed to that of the Lahore High Court which has not been departed from by this Court. In *Pandit Amar Nath* v. *Governor-General in Council* (1), Dalip Singh and Din Mohammad, JJ., held that a Collector under section 18 could not be treated as a Court. Dalip Singh, J. noticed the anomaly arising out of the fact that points of limitation etc., were to be decided solely by the Collector. It would, therefore, seem that the earlier decision of the Madras High Court in *Sri Venkateswaxaswami Voru* v. *Sub-Collector* (2), lays down the law on a more correct basis than the bench decision discussed above. The Court of the Judicial Commissioner of Oudh. held in *Samuel Burge* v. *Improvement Trust* (3), that the Land Acquisition Officer in that case never intended to waive the question of limitation and if a demand for a reference by a written application had not been made within the prescribed time, it was open to the Court to examine the question of limitation. Reliance was placed on the Bombay decision in *In the matter of Government and Naru Kathare and another* (4), and the decision of the Lahore Chief Court in *Ghulam Mohyuddin and another* v. *Secretary of State* (5). It was taken for granted that the question of limitation was one of the conditions prescribed by section 18 of the Land Acquisition Act to which the power of the Collector to make the reference was subject and those conditions must be fulfilled

(1) A.I.R. 1940 Lah. 299
(2) A.I.R. 1943 Mad. 327
(3) A.I.R. 1924 Oudh. 127
(4) I.L.R. 30 Bom. 275
(5) A.I.R. 1914 Lah. 394

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before the Court could have jurisdiction to entertain the reference. No other independent reasons were given.

An identical question came up for consideration before a Division Bench of the Allahabad High Court in *Secretary of State* v. *Bhagwan Prasad and another* (1). After examining the decision of their Lordships of the Privy Council in *Ezra* v. *Secretary of State for India* (2), the learned Judges of the Allahabad High Court held that the Collector was the agent or the mouthpiece of the Government. After the notification as to acquisition had been issued, it was for him to assess the value and offer it to the owner of the land. If the owner did not accept the offer and required the Collector to make a reference to the Court for a judicial determination of the value of the land, the Collector had to see if in the circumstances of the case it was his duty, as laid down in section 18 of the Act, to make a reference. If the application was beyond time, the Collector need not make a reference. For the purposes of determination as to whether the application is within time, the Collector has to consider the facts and come to a decision. If he decided that the application was within time and otherwise in order, he would make a reference. It was entirely for him to decide whether he would make a reference. A reference having been made, it was not open to the Collector or to the State to say that the reference had been wrongly made nor could the Court sit in appeal over the Collector. There was no machinery in the Land Acquisition Act which gave any authority to the Court in express terms or by implication to go behind the reference and to see whether the Collector acted rightly or wrongly.

(1) I.L.R. 52 All. 96
(2) I.L.R. 32 Cal. 605

The making of a reference was an act within the jurisdiction and authority of the Collector who might make a mistake in the use of his discretion, but he was entitled to decide rightly or wrongly. The functions, which the Collector performed under the Land Acquisition Act, were administrative and not judicial. The Court consequently could not go behind the reference to ascertain whether the application in pursuance of which it was made was within limitation or not. The view of the Allahabad High Court appears to be completely in accord with the provisions of the Land Acquisition Act. Section 18 constitutes the Collector the sole authority for making the reference. In the statement, which he has to make under section 19, the question of limitation is not one of those matters which he is required to state at all. He is not even bound to send the application which is to be made under section 18 along with the reference which he makes. All that the Court then has to do or can do under section 20 is to *thereupon* cause a notice specifying the date on which the Court will proceed to determine the objection. It has been argued by Mr. Lachman Dass Kaushal that the word "thereupon" pre-supposes a power or jurisdiction in the Court to see that all the requirements of section 18 have been complied with by the Collector. This contention, however, is not correct. The word "thereupon" refers to section 19 which immediately precedes it. In other words, as soon as the Collector makes the reference and states for the information of the Court the various matters set out in section 19, the Court has to perform a ministerial Act, namely, of causing a notice of the nature mentioned in section 20. There is no other provision in the statute which entitles the Court to re-examine the question whether the Collector's order was correct on the question of an application having been made within the period prescribed.

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The Court's jurisdiction is confined to considering and pronouncing upon any one of the four different objections to an award under the Act which may have been raised in the writen application for the reference. Their Lordships of the Privy Council in *Pramathanath Mahb* v. *Secretary of State* (1), after referring to section 18 of the Act, observed—

> "The section clearly specifies four different gorunds of objections, viz. (1) to the measurement of the land; (2) to the amount of compensation; (3) to the persons to whom it is payable, and (4) to the apportionment. The distinctions between objection to area and to amount of compensation are also *borne* out by other sections of the Act; see sections 9,11,19(d), and 20(c). The appellant's objection was manifestly only to the amount of compensation and was correctly so described by the Collector in making the references. "By section 20, the function of the Court upon a reference being made is "to determine the objection" and only persons "interested in the objection "are to be summoned before it, and, by section 21, the scope of the inquiry is to be "restricted to a consideration" of the interests of the persons affected by the objection."

Their Lordships have no doubt that the jurisdiction of the Courts under this Act, is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of

(1) I.L.R. 57 Cal. 1148

that objection. Once, therefore, it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

In *Province of Bengal* v. *P. L. Nun* (1), Mittar and Khundkar, JJ., observed that the jurisdiction acquired by the Court under section 18 extended over the matter referred to it by the Collector under section 18 and to no other matters. If, as has been observed in *Pt. Amar Nath* v. *Governor-General in Council* (2), and *Secretary of State* v. *Bhagwan Prasad and another* (3), the Collector has the sole jurisdiction to decide whether the application presented to him under section 18 was within the prescribed period of limitation or not, then he alone has been given the jurisdiction to even decide wrongly and his decision being final and not subject to review by a Court of superior jurisdiction, it does not seem possible on priciple to justify the view that the Court, when the reference is made to it can examine whether the Collector was wrong or right in deciding the question of limitation. Once the opposite law is accounted it would lead to the result that if the Collector decides that a particular application is within time it is open to the Court to re-examine the matter and hold that it is beyond time. This would be wholly contrary to the provisions of the statute and the scope of the functions of the Collector under section 18. As observed by Lord Esher, M. R. in *The Queen* v. *The Commissioners for special purposes of the Income-tax* (4), the legislature may entrust the tribunal or body with a

(1) A.I.R. 1945 Cal. 312
(2) A.I.R. 1940 Lah. 299
(3) I.L.R. 52 All. 96
(4) (1888) 21 QBD 31.

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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 legislature 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. It would be an erroneous application of the formula to say that the tribunal cannot give them jurisdiction by wrongfully deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

A great deal of stress has been laid on the reasoning adopted by Chief Justice Beaumont in the Bombay case to the effect that the period prescribed by the proviso to subsection (2) of section 18 of the Land Acquisition Act was a condition for the exercise of jurisdiction and it was open to the Court to see if the Collector had in exercising jurisdiction satisfied all the conditions laid for the exercise of his jurisdiction. Mr. Lachhman Dass Kaushal invited attention to the functions of proviso as stated at page 604 of Crawford's Statutory Construction—

> "The general purpose of the proviso, as is well known, is to except the clause covered by it from the general provisions of the statute, or from some provisions of it, or to qualify the operation of the statute in some particular."

It is submitted that the proviso in section 18 was meant to lay down as a condition precedent that the application must be made within a prescribed time Reliance was also placed on Craies's Statutory Law (page 201) where it has been laid down that the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment or *to qualify something enacted therein*, which but for the proviso would be within it. It is however, not clear how such general rules of interpretation would help in determining the question which is being discussed. In fact, the proviso occurs in subsection (2) of section 18 and merely lays down that the application, which has to state on which ground objection to the award is taken, has to be presented within the period prescribed; but the real matters, on which the reference can be required, are stated in subsection (1). The provision made with regard to the period within which the application is to be presented is purely procedural, and it is difficult to see how it can be regarded as a condition precedent in the same manner as the conditions on which a creditor may make a petition under section 9 of the Provincial Insolvency Act, 1920. The express language of section 9 is that a creditor shall not be entitled to present an insolvency petition against a debtor unless—

> "(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
>
> (b) the debt is a liquidated sum payable either immediately or at some certain future time, and

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(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition."

This is very different from the language of section 18 of the Land Acquisition Act. Similarly, the condition precedent for the exercise of jurisdiction by a Civil Court, when a suit is instituted against the Government, is the requirement of a notice under section 80 of the Code of Civil Procedure. The aforesaid section provides that no suit shall be instituted against the Government or against a public officer * * * * until the expiration of two months after notice * * * * No such language or expression is employed in section 18 which may make the period of limitation a condition for the exercise of jurisdiction by the Collector. Mr. Kaushal has also pressed into service the observations of the Privy Council in *Joy Chand Lal Babu* v. *Kamalakshan Chodhry and others* (1), according to which the question of limitation would be a question of jurisdiction for the purposes of section 115 of the Code of Civil Procedure. The question, which was being examined by their Lordships, was quite different and that decision can be of no assistance in deciding the points raised in the present case.

After a careful examination of the provisions of the statute and the various authorities mentioned before, I am of the opinion that the view expressed by the Allahabad High Court in I.L.R. 52 All. 96 was correct and it must be followed. If any analogy from another Act can be drawn in considering this question, it would be useful to refer to the provisions of section 66 of the Indian Income-tax Act, and to see the scope of the jurisdiction of the High Court when a reference is

(1) A.I.R. 1949 P.C. 239

made by the appellate tribunal. It is well settled that the jurisdiction of the High Court on the reference is limited to the questions that are referred by the appellate tribunal and the High Court cannot decide such questions that have not been referred,—*vide B. M. Katholia* v. *C. I. T.* (1), Similarly, the Court under the Land Acquisition Act, derives its jurisdiction from the reference which is made by the Collector under section 18 and there is no provision in the statute which enables the Court to go behind the reference and determine questions which have not been referred to it. The present case can be decided in the light of the aforesaid principle also inasmuch as the Collector has not referred the question of limitation to the Court and, thus, the Court had absolutely no jurisdiction to decide the question of limitation. It must, therefore, be held that the view of the learned District Judge that it was open to him to decide the question of limitation, after the reference had been made by the Collector, was untenable and unsound.

On the second question, there does not seem to be much difficulty. The petitioner claims deduction of the time spent in obtaining certified copies of the award under section 12. The first question that has to be determined in this connection is whether section 29 of the Limitation Act, would be applicable in the present case. Section 29(2) is in the following terms:—

> "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of section 3 shall apply, if such periods were prescribed therefore in that schedule, and

(1) 1957 Pb. 284.

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for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4 section 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

It is claimed that section 12 would be applicable inasmuch as it is not expressly excluded by the special or the local law, namely the Act. In *Nafis-ud-Din and others* v. *Secy of State and another* (1), it was held that section 12 of the Limitation Act did not apply in computing the period of limitation prescribed for an application under subsection (1) of section 18 of the Land Acquisition Act, and, therefore, the time requisite for obtaining a copy of the award could not be deducted. This decision, however, is not very helpful as it does not discuss the matter at any great length. In *Kashi Prasad* v. *Notified Area of Mahoba* (2), it was decided that section 29 of the Indian Limitation Act did not apply to an application under section 18 of the Land Acquisition Act and the Lahore case was followed. Assuming without deciding that section 12 applies, which was in fact applied in *H. N. Burjorjec* v. *Special Collector of Rangoon* (3), the benefit of section 12 cannot be given in the present case. The only subsection of section 12, under which the present case can fall, is (4) which is in the following term:—

"In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded."

(1) I.L.R. 9 Lah. 244
(2) I.L.R. 54 All. 282
(3) A.I.R. 1926 Rang. 135

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It cannot be regarded that an application to make a reference under section 18 of the Land Acquisition Act is equivalent to an application to set aside an award. The Collector is only to make the reference in which the award may be confirmed or a different award may be given by enhancing the amount of compensation. No case has been brought to our notice which has authoritatively considered this question and has held that section 12(4) would cover the case of an application made under section 18 of the Land Acquisition Act. It must, therefore, be held that the decision of the District Judge on the second point was correct.

In view of the decision given on the first point, the order of the District Judge must be set aside and the case remanded to him with a direction to proceed in accordance with law. The parties have been directed to appear before the District Judge on 23rd December, 1957. There will be no order as to costs in this Court.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Bishan Narain and Grover JJ.

RULDU RAM AND OTHERS,—*Petitioners*

versus

THE DIVISIONAL SUPERINTENDENT NORTHERN RAILWAY FEROZEPORE CANTT,—*Respondent.*

Civil Revision No. 339 of 1955.

1957

Nov. 22nd

Payment of Wages Act (IV of 1936)—Sections 7 and 15—Employed person being paid wages at a certain rate—Employer starting paying wages at a lower scale without any fresh contract—Whether reduction or deduction in wages—Authority under the Act Whether competent to decide the matter.