FULL BENCH

Before Bal Raj Tuli, S. S. Sandhawalia and C. G. Suri, JJ.

M/S. SWATANTRA LAND & FINANCE PRIVATE LTD., NEW DELHI,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Civil Revision No. 202 of 1969.

February 27, 1974.

Land Acquisition Act (I of 1894)—Sections 18 and 31—Reference made by Collector to the District Judge under section 18—District Judge—Whether can dismiss such reference as barred by time without going into the merits thereof—Sub-sections 2(A), 2(B) and (3) added to section 18 by Land Acquisition (Punjab Amendment) Acts (XVII of 1962 and II of 1954)—Effect of.

Held, that making of an application for reference within time under section 18 of the Land Acquisition Act, 1894, is a *sine qua non* for the adjudication of that application by the competent Court. The applicant can require the Collector to make a reference of his application but there is no procedure provided according to which the Collector has to decide such an application. If he judicially decides the matter in the light of the provisions of section 18 read with section 31 of the Act, after due notice to all the parties concerned, his decision, if not challenged in revision under section 18(3) by the aggrieved party, will become final and the District Judge, under the Act, shall be precluded from going into the matter again on the principle of *res judicata* or estoppel. But if no such adjudication is made by the Collector, the matter cannot be said to have been decided by him finally, and it will be open to the respondent to urge before the District Judge that the applicant has no right to have his application heard and modification in the award made because he did not file his application within time or that he had accepted the award and is, therefore, not an aggrieved person or that he is not a person interested or that the matter urged by him in the application are such as are not covered by what are stated in section 18(1) of the Act. When section 18(1) prescribes for the adjudication of four matters stated therein and none others, it only bars the applicant from agitating any other point in his application. It does not bar the respondent from raising any objection to defeat the application on any ground open to him. Where the Collector makes reference on the application of a claimant to the District Judge without determining the question whether the application is within time and without giving any notice to the State before making the reference, the State cannot file a revision against the order of reference. It is, therefore, within the jurisdiction of

the District Judge hearing the reference to hold that it cannot be proceeded with on the ground that it has been made to the Collector beyond time prescribed under sub-section (2) of section 18 of the Act. The purpose of the Legislature in prescribing the period of limitation in sub-section (2) of section 18 was to inform the Collector that he should not refer an application to the District Judge if it is made beyond the time prescribed. Any provision of law, which authorises a competent authority to receive an application and to take action thereon if it is not made within time, gives an inherent power to that authority to reject the same and not to act thereupon if it is made beyond time. The Collector has not been given any authority to condone the delay and, therefore, any reference made on a time-barred application will be illegal and not in accordance with the provisions of the Act. In any case the question of condoning delay does not arise where the Collector never applies his judicial mind to the matter while forwarding the application to the District Judge for decision. In such a case the respondent to the application, who is not given notice by the Collector prior to making the reference, cannot be deprived of his right to object to the maintainability of the application, the adjudication of which may turn out to be to his prejudice. Hence the District Judge can dismiss such a reference as barred by time.

(Paras 11, 17 and 18)

Case referred by Hon'ble Mr. Justice H. R. Sodhi to a Larger Bench on 30th September, 1969 for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice H. R. Sodhi again referred the case to a Full Bench on 11th August, 1971 for decision of the case. The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice C. G. Suri finally decided the case on 27th February, 1974.

Petition under Section 115 of the Civil Procedure Code for revision of the order of Shri Nathu Ram Aggarwal, Additional District Judge, Gurgaon, dated the 27th December, 1968 deciding issue No. 3 in favour of the respondent and against the petitioner as the reference is time-barred, no useful purpose will be served by deciding issues Nos. 1 and 2. The reference being time-barred, is dismissed and leaving the parties to bear their own costs.

Rup Chand, Advocate with Y. K. Sharma, Advocate, *for the petitioner.*

D. S. Lamba, Deputy Advocate-General Haryana), *for the respondent.*

JUDGMENT

B. R. TULI, J.—(1) This petition has been referred to a Full Bench for decision in pursuance of the order made by a Division

Bench of this Court doubting the correctness of the decision of an earlier Division Bench in *Hari Krishan Khosla* v. *The State of Pepsu* (1).

(2) The facts of the case are that the erstwhile State of Punjab issued notifications for the acquisition of some land under sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter called the Act) situate in village Itmadpur, tahsil Ballabgarh, district Gurgaon, for a public purpose, namely, construction of Gurgaon Canal Feeder along Agra Canal from RD-30,000 to RD-79,200. The Land Acquisition Collector announced his award on March 18, 1966, at Ballabgarh, to the persons present and notices under section 12(2) of the Act were issued to the other owners who were not present. The petitioner-company claimed that it had purchased some parcels of the acquired land through registered sale-deeds dated March 20, June 28, November 11, 1963, and March 26, 1966 from the landowners. The Managing Director of the Company was informed that Zamindars of the village were going to Ballabgarh to receive compensation from the Sub-Divisional Officer (Civil), Palwal, in respect of the land acquired by the Government for the Gurgaon Canal Feeder. He went to Ballabgarh and came to know that the entire land, which the Company had purchased by various sale-deeds, still stood in the names of landowners and mutation in the name of the company had not been effected, with the result that the compensation in respect of that land was going to be paid to the recorded owners. He brought this fact of company's ownership of the land to the notice of the Sub-Divisional Officer (Civil). The petitioner-company was, however, paid compensation in respect of the land, which had been mutated in its name, on August 30, 1967, which the Managing Director of the company received under protest. The compensation in respect of the land, which the petitioner-company alleged to have purchased and in respect of which mutations had not been effected, was deposited by the Sub-Divisional Officer (Civil) in the Treasury and was not paid to any one. The company thereupon filed an application before the Sub-Divisional Officer (Civil) on October 5, 1967, for making a reference to the District Judge under section 18 of the Act. It is not necessary to detail all the objections raised by the petitioner-company in its application. Suffice it to say that the claim was made for the enhancement of the compensation already

(1) I.L.R. (1958)1 Pb. 854.

paid and for the payment of the compensation at enhanced rate in respect of the land, which the company had purchased but mutation in respect of which had not been effected. The Sub-Divisional Officer, acting as Collector, referred the application to the District Judge for decision under section 19 of the Act. The District Judge entrusted that petition to the Additional District Judge, who issued notice to the State of Haryana under section 20 of the Act. The State of Haryana raised various objections, one of them being that the reference was barred by time. On the pleadings of the parties, the learned Additional District Judge framed the following issues:—

(1) What was the market value of the acquired land at the time of the publication of the notification under section 4 of the Land Acquisition Act ?

(2) What improvements were effected by the claimant on the disputed land, and if so, its effect?

(3) Whether the reference is barred by time ?

(4) Relief.

(3) The learned Additional District Judge decided issue No. 3 in favour of the respondent State and against the petitioner and, without recording any decision on the other issues, dismissed the petition as barred by time on December 27, 1968. The petitioner-company has filed this revision petition against that order and the point for decison before this Bench is whether the Additional District Judge was right in dismissing the petition as barred by time?

(4) The short argument urged on behalf of the petitioner is that the Act does not give any power to the District Judge to reject a reference once it has been made to him by the Collector on the ground that the application, as made to the Collector, was barred by time. The jurisdiction of the District Judge extends only to deciding the objections regarding the measurement of the land, the amount of compensation, the persons to whom it is payable and the apportionment of the compensation amongst the persons interested as mentioned in section 18(1) of the Act, and no other objection can be raised or decided. Reliance for this proposition is mainly placed on the Division Bench judgment of this Court in *Hari Krishan Khosla's case* (1) (supra) wherein it was held that the view expressed by the

Allahabad High Court in *Secretary of State* v. *Bhagwan Prasad and another* (2) was correct and must be followed. The learned Judges also drew an anology from the provisions of section 66 of the Indian Income-tax Act, 1922, and observed:—

> "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. Kuthiala* v. *C.I.T.* (3). Similarly, the Court, under the Land Acquisition Act, derives its jurisdiction from the reference whch 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."

(5) This decision is based on the assumption that from the express provisions of section 19 of the Act, it is clear that the Collector has to state for the information of the Court, only such matters as are set out in clauses (a) to (d) thereof and that 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. Only such matters as are mentioned in section 18(1) of the Act can be referred by the Collector to the District Court and none other. The question, whether the application for reference was filed within the period of limitation prescribed in the proviso to section 18(2) of the Act, is not a matter mentioned in section 18(1) or section 19 and, therefore, cannot be referred to or decided by the District Judge. It is a

(2) I.L.R. (1929)52 All. 96—A.I.R. 1929 All. 769.
(3) A.I.R. 1957 Pb. 284.

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. It has further been observed that there is no provison in the Act which gives 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 in the exercise of his jurisdiction. The making of a reference is an act within the exclusive jurisdiction and authority of the Collector, who may make a mistake in the use of his discretion but he is entitled to decide rightly or wrongly. The functions which the Collector performs under the Act are administrative and not judicial. The Court consequently cannot go behind the reference to ascertain whether the application, in pursuance of which it is 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 the matters which he is required to state at all. As soon as a 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 to be issued to the persons mentioned therein. There is no other provision in the Act which entitles the Court to re-examine the question whether the Collector's order is correct on the question of an application having been made within the period prescribed. The Court's jurisdiction is confined to the consideration of any of the four objections to an award, mentioned in section 18(1) of the Act, which may have been raised in the written application for reference and to pronounce thereon. With very great respect to the learned Judges, I am unable to agree to any of the assumptions made in that judgment.

(6) The three sections of the Act to which reference has been made in *Hari Krishan Khosla's case* (supra) read as under :—

> "18(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 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 under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

(2-A) Without prejudice to the provisions of sub-section (1), the State Government may, where the acquisition of land is not for the purposes of the Union and it considers the amount of compensation allowed by the award under section 11 to be excessive, require the Collector by written application that the matter be referred by him to the Court for determination of the amount of compensation.

Explanation.—In any case of land under Part VII, the requisition under this sub-section may be made by the State Government at the request of the Company on its undertaking to pay all the cost consequent upon such requisition.

(2-B) The requisition shall state the grounds on which objection to the award is taken and shall be made within six months of the date of award.

(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 (V of 1908).

(19) (1) 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;

(b) the names of the persons whom he has reason to think 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 compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notice served upon, and of the statements in writing made or delivered by the parties interested respectively.

(20) The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely—

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector."

(7) *Hari Krishan Khosla's case* (*supra*) was under the Patiala and East Punjab States Union Land Acquisition Act, 2006 BK., which did not contain the provisions since made in sub-sections (2A), (2B) and (3) of section 18 of the Act by the Punjab Legislature. Sub-sections (2-A) and (2-B) were inserted in the Act by the Land Acquisition (Punjab Amendment) Act No. 17 of 1962 while sub-section (3) was added by the Land Acquisition (Punjab Amendment) Act No. II of 1954. Sub-section (3) of section 18 of the Act now makes it clear that the Collector, while passing any order on an application for reference, whether making a reference to the District Judge or refusing to make such a reference, acts as a Court subordinate to the High Court and against his order a revision has been provided to the High Court under section 115 of the Code of Civil Procedure. The function of the Collector is, therefore, now, without doubt, judicial. The necessary feature of the judicial power is that notice shall be issued to all the parties concerned before making the decision. There is, however, no such provision made in section 18 of

the Act and in practice also the Collector never gives notice to the State or the acquiring authority of the application received from a claimant. The Collector *ex parte* makes the decision either to refer or not to refer to the District Judge. It cannot, therefore, be said that the decision of the Collector as to the maintainability of the application is final and conclusive as far as the Court of the District Judge, to whom the reference is made, is concerned. It is true that a revision can now be filed against the decision of the Collector made on the reference application, but such a revision can be filed by the aggrieved party only if the decision is made in his or its presence or intimation thereof is given to him or it and provided the notice of the hearing of the application was also given. In the absence of sub-section (3), the District Judge (which will mean any Court empowered under the Act to decide the reference) will have the power to decide all the objections raised by the respondent to the application filed by the claimant in order to defeat his right to adjudication of any of the matters stated in section 18(1) of the Act or in the application. The mention of four specific matters in section 18(1) of the Act does not debar the respondent from raising any objection to the validity of the application in order to defeat the claim made by the claimant. The plea that the application for reference was not made within time to the Collector will be open to the respondent to raise in order to defeat the application of the claimant. The provision for revision in sub-section (3) of section 18 of the Act, as now made, also does not bar the District Judge from determining the objections raised by the respondent as to the maintainability of the reference application after the order of reference has been made without hearing the respodnent. The respondent cannot be held bound by a decision which has been made at his back and without reference to him as it will run counter to the fundamental principle of natural justice *audi alteram partem* and he will have every right to object to the hearing of a time-barred application or an application which is not mantainable on any other legal ground.

(8) On the language of section 18, the following conditions must exist before a reference application can be held to be valid :—

(1) A written application to the Collector,

(2) by a person who is

(a) interested, and

(b) who has not accepted the award.

(3) The application must state the grounds of the objections and these grounds can relate only to—

(a) measurement of the land,

(b) amount of compensation,

(c) the person to whom it is payable, and

(d) apportionment of the compensation among the persons interested.

(4) The application must be made within the period of time prescribed therefor under the proviso to sub-section (2) of the section.

If any one of these conditions is lacking, the reference application will have to be held to be not maintainable. The phrase "person interested" is defined in section 3(b) of the Act as under :—

"The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

(9) An interested person shall be deemed not to have accepted the award if he has received the payment of compensation under protest as to the sufficiency of the amount as provided in the first proviso to section 31(2) of the Act and under the second proviso thereof, any person, who has received the amount otherwise than under protest, is not entitled to make any application under section 18 of the Act. It was held by a learnd Single Judge of the Madras High Court in *Mrs. S. Thomas* v. *The Collector of Madras* (4):—

"The acceptance of an award under section 18 and the consent referred to in section 31(2) connote the same idea and is an inference drawn from the same facts. When section 31 speaks of a receipt without protest as debarring the order for making further claims, the same criterion must apply to the construction of section 18, and when admittedly the owner received the compensation awarded without protest, it must be taken that he accepted the award."

(4) A.I.R. 1958 Mad. 186.

(10) It is thus apparent that if the claimant is not a person interested nor a person who has accepted the award without protest, he is not entitled to make an application for reference under section 18 and if he makes such an application and the Collector forwards it to the Court, the Court shall be duty-bound to decide the objection of the respondent as to those two matters and if it comes to the conclusion that the pleas raised by the respondent are made out, he will have no option but to throw out the application as not maintainable.

(11) Similarly, the making of an application for reference within the prescribed time *is a sine qua non* for the adjudication of that application by the competent Court. The applicant can require the Collector to make a reference of his application but there is no procedure provided according to which the Collector has to decide such an application. If he judicially decides the matter in the light of the provisions of section 18 read with section 31 of the Act, after due notice to all the parties concerned, it may be said that his decision, if not challenged in revision under section 18(3) by the aggrieved party, will become final and the District Judge, under the Act, shall be precluded from going into the matter again on the principle of *res judicata* or estoppel. But if no such adjudication is made by the Collector, the matter cannot be said to have been decided by him finally, and it will be open to the respondent to urge before the District Judge that the applicant has no right to have his application heard and modification in the award made because he did not file his application within time or that he had accepted the award and is, therefore, not an aggrieved person or that he is not a person interested or that the matters urged by him in the application are such as are not covered by what are stated in section 18(1) of the Act. When section 18(1) prescribes for the adjudication of four matters stated therein and none others, it only bars the applicant from agitating any other point in his application; it does not bar the respondent from raising any objection to defeat the application on any ground open to him. In the instant case, the Collector had made the reference of the application of the petitioner to the District Judge without determining the question of limitation and without giving any notice to the State of Haryana before making the reference. The State of Haryana could not, therefore, file a revision against that order under section 18(3) of the Act. It was, therefore, within the jurisdiction of the Additional District Judge,

hearing the reference, to hold that it could not be proceeded with on the ground that it had been made to the Collector beyond the time prescribed under sub-section (2) of section 18 of the Act.

(12) I now proceed to examine the decisions of the various High Courts on the point. A Division Bench of the Allahabad High Court in *Sukhbir Singh and others* v. *Secretary of State for India* (5), held that where the application did not comply with the provisions of section 18 of the Act, the District Judge did not get any jurisdiction to decide that reference. In that case, the application did not contain any request that the matter of the award should be referred for the determination of the District Judge. All that was requested was to postpone the matter regarding the compensation till the final decision as to the propriety or legality of the Government action in acquiring the land had been settled by a competent Court. A mention was made in the application that the amount of compensation awarded by the Collector was low and was not acceptable. Relying on *In re Land Acquisition Act, In the Matter of Government and Nanu Kothare and others* (6), it was held that the Collector in making a reference is only an agent of the Government and is not entitled to waive the requirements of the law on behalf of the Government. The act of the Collector in acting on an application will not preclude the District Judge from holding that it was not in compliance with law. This decison is, therefore, against the petitioner.

(13) In *Secretary of State* v. *Bhagwan Prasad and another* (2) (*supra*), a Division Bench (Mukerji and Niamatullah, JJ.,) observed as under:—

> "After the notification as to acquisition has issued, it is for him (the Collector) to assess the value and offer it to the owner of the land. If the owner does not accept the offer and requires the Collector to make a reference to the 'Court' for a judicial determination of the value of the land, the Collector has to see if, in the circumstances of the case, it is his duty, as laid down in section 18 of the Act, to make a reference. If the application is beyond time, the Collector need not make a reference. For the purpose of determination as to whether the application is within time, the Collector has to consider the facts and to come to a decison.

(5) A.I.R. 1926 All. 766.
(6) I.L.R. (1906)30 Bom. 275.

If he decides that the application is within time and otherwise in order, he will make a reference. It is entirely for him and him alone to decide whether he will make a reference. When he makes the reference, he makes it on behalf of the Government. Having made the reference, in my opinion, it is not open to the Collector or for the matter of that, the Secretary of State, to say that the reference was wrongly made, although the ground for saying so may be that the application by the owner was belated. The 'Court' does not sit on appeal over the Collector and the Land Acquisition Act does not give any authority to the 'Court' either in express terms or by implication, to go behind the reference and to see whether the Collector acted rightly or wrongly. I am aware of the fact that sometimes the plea of limitation, as in this case, is taken on behalf of the Collector or the Secretary of State, but, in my opinion, such a plea should not be allowed to be taken."

(14) With very great respect to the learned Judges, the reasoning is fallacious. It presupposes that before making a reference the Collector applies his mind judicially and, after taking into consideration all the facts, decides that the application is within time and otherwise in order. This duty has not been cast on the Collector by section 18 or any other section of the Act. The Collector may determine this point or may not before making a reference. The Court cannot, therefore, be deprived of the jurisdiction to determine the objection of the respondent that the reference application was not competent as it had been filed beyond time. The second reason that the Collector makes a reference on behalf of the Governmnt is also not supported by any provision in the Act. Section 18 does not say so. The Collector acts as a statutory authority designated under the Act to receive the application and to forward it to the Court for decision by supplying information on matters stated in section 19 of the Act. The matter has now been made clear, as far as the States of Punjab and Haryana are concerned, by insertion of sub-sections (2-A) and (2-B) in section 18 of the Act, under which the State Government can also require the Collector to make a reference to the Court for determination of the proper amount of compensation in case it considers the amount awarded by the Collector under section 11 of

the Act to be excessive. Such an application has to be made within 6 months of the award.

(15) While acting under some other provisions of the Act, the Collector acts as a statutory authority designated under the Act exercising quasi-judicial powers. Such sections are 5-A, under which he determines the objections raised by any person interested to the acquisition of the land, and sections 9 to 15, under which he determines the compensation payable to the landowners and other persons interested after following the procedure prescribed therein. While publishing notifications under sections 4 and 6 and taking possession under sections 16 and 17 and making payment under section 31, the Collector can be said to be acting as an agent of the Government. The same is not true when he acts under sections 5-A, 9 to 15 and 18 of the Act. Under these sections he acts as a statutory authority designated under the Act, who has to determine the various matters judicially after inviting claims from the persons interested and taking evidence. It has now been made clear by insertion of sub-section (3) in section 18, as far as Punjab and Haryana are concerned, that the Collector acts as a Court while deciding applications under section 18 of the Act. It cannot, therefore, be said that the Collector makes the reference on behalf of the Government and acts as its agent. I, therefore, with profound respect, disagree with the observations contained in that judgment.

(16) This judgment was followed by another Division Bench of that Court (Mukerji and Bennet, JJ.) in *Secretary of State* v. *Bhagwan Prasad* (7). Since no new reasons have been given, it does not call for any comments. The Full Bench judgment of the Allahabad High Court in *Panna Lal and others* v. *The Collector, Etah* (8) is not helpful on the point. In that case, the Collector had rejected the application and refused to make the desired reference on the ground that the application was barred by time. A petition under Article 226 of the Constitution was filed in the High Court praying that the orders of the Collector be quashed by a writ of *certiorari* on the ground that he had no jurisdiction to refuse to make a reference to the District Judge when he was required to do so by section 18 of the

(7) A.I.R. 1932 All. 597.

(8) A.I.R. 1959 All. 576.

Act. That petition was dismissed and it was held (as per the head-note) as under:—

> "The powers of the Collector to make the reference are not unlimited. Compliance with the conditions mentioned in section 18, which are conditions precedent to the exercise of the power of reference, is necessary before that power can be invoked. Before exercising the jurisdiction conferred upon him by the section, the Collector is bound to see whether the required conditions have been complied with, and if they have not been complied with, he cannot exercise the jurisdiction. The making of the application within the prescribed time being one of the conditions laid down in the section itself, if the application is not made within time, the Collector can reject the application as incompetent and refuse to make the reference."

The matter whether the District Judge could reject the reference on the ground that the application for reference was made beyond time was not before the Court and was not decided. The latest Full Bench judgment of the Allahabad High Court brought to our notice is *State of Uttar Pradesh through the Collector, Naini Tal* v. *Sri Abdul Karim* (9), in which the following conclusions were arrived at:—

(1) Section 18 is not sensibly drafted. It contains no provision whatsoever requiring the Collector to make a reference. Not only is there no provision laying down in what circumstances he must or may or must not or may not make a reference, but also there is no provision containing any reference to his making a reference. When there is no provision laying down that a Collector can make a reference only when certain circumstances exist or cannot make a reference when certain circumstances exist, it cannot be said that his making a reference is illegal on account of the existence or absence of certain circumstances.

(2) Whether an application is made within the prescribed time is one question and whether a reference can legally be made on an application made after the expiry of the prescribed time is another question and no provision connects the

(9) A.I.R. 1963 All. 556.

latter with the former. One cannot hold a reference illegal simply on the ground that the application on which it was made was presented after the expiry of the prescribed time. Legality is a matter of law and there is no express provision of law in the Act forbidding a reference on a time-barred application.

(3) There is no provision conferring jurisdiction upon a District Judge hearing a reference to determine the question whether it was legally made to him or not or to refuse to determine it on the ground that it was made on a time-barred application. It is also clear from sections 23 to 26 that all that a District Judge has to do is to determine the amount of compensation to be awarded for the land acquired and to incorporate it in an award. He is bound to make an award, he has no option to refuse to make one. To say that he can refuse to determine the amount of compensation and to make an award on the ground that the reference was made to him on a time-barred application would be to go counter to the language used by the Legislature in sections 23 to 26.

(4) The Collector does not inherently lack jurisdiction when he makes a reference even though the application for reference might have been barred by time and the reference is not a nullity and cannot be treated as such by the District Judge. The District Judge can ignore the reference only if it were a nullity, otherwise he is bound to proceed to hear it.

(17) On these grounds it was held that in a reference under section 18, the District Judge cannot go into a question that the application for reference was not made to the Collector within the time prescribed by section 18(2) of the Act. Again I speak with respect that the reasons stated above are not correct. The purpose of the Legislature in prescribing the period of limitation in sub-section (2) of section 18 was to inform the Collector that he should not refer an application to the District Judge if it is made beyond the time prescribed. It is a well-known principle of law that any provision of law, which authorises a competent authority to receive an application and to take action thereon if it is made within time, gives an inherent power to that authority to reject the same and not to act thereupon if it is made beyond time. The Collector has not been given any authority to

condone the delay and, therefore, any reference made on a time-barred application will be illegal and not in accordance with the provisions of the Act. After the insertion of sub-section (3) in section 18, it may be open to argument that the Collector, having been constituted a civil Court for deciding the applications under section 18 and having been made subordinate to the Court, has also been invested with the power of condoning the delay under section 5 of the Limitation Act, in view of the provision in section 29 of the Limitation Act. Mahajan, J., in *Hazara Singh and others* v. *The State of Punjab* (10), took it for granted that the Collector had the power to extend the time as is clear from his following observations:—

> "The Collector has the undoubted power of extending the period of limitation for sufficient cause and if he chooses to make a reference when the application under section 18 is outside limitation, he must be deemed to have condoned the delay. It is in that situation that it is not open to the Court, to which reference is made, to sit on the judgment of the Collector because there the function of the Court is to answer the reference."

(18) These observations presuppose that the Collector has applied his judicial mind in arriving at a decision whether an application was within time or not and whether any case for condoning the delay had been made out, but no such question arises in the instant case as the Collector never applied his judicial mind to the matter while forwarding the application to the Court for decision. In any case, the respondent to an application, who is not given notice by the Collector prior to making the reference, cannot be deprived of his right to object to the maintainability of the application, the adjudication of which may turn out to be to his prejudice. The various objections to the validity or maintainability of an application may be—

(1) that the applicant had accepted the award and, therefore, he had no right to make the application and ask for enhancement of the compensation as provided in second proviso to section 31(2) of the Act, or

(2) the application made by him to the Collector for reference was beyond time; or

(10) 1972 P.L.R. 374.

(3.) that the applicant is not an interested person; or

(4.) that the application has been made not after the making of the award but prior thereto, or

(5.) that some matters other than the four specified in section 18 (1) of the Act have been included in the application for adjudication.

(19) It will be the duty of the District Judge to adjudicate on all such objections raised by the respondent, who is interested in defeating the application on any ground open to him under the law. It is, therefore, necessary, before adjudicating on the matters mentioned in the application to hold that the proceedings were initiated in accordance with law which means that all the conditions precedent mentioned in section 18 of the Act had been complied with. The making of the application within time is one of such conditions precedent. If that condition is not complied with, the District Judge will have no jurisdiction to proceed with that application.

(20) The view expressed by the Allahabad High Court was followed by the Himachal Pradesh High Court in *Land Acquisition Collector, Mahasu* v. *Janki Dass and others* (11) in preference to the view of the Bombay High Court in *In the matter of Government and Nanu Kothare and others* (supra).

(21) A learned Single Judge of the Madras High Court in *Sri Venkateswaraswami Varu, Bezwada by Trustees Rampilla Appalaswami and another* v. *Sub-Collector, Bezwada and another* (12), followed the decisions of the Allahabad High Court in *Secretary of State* v. *Bhagwan Prasad and another* (supra) and *Secretary of State* v. *Bhagwan Prasad* (supra) and held:—

> "It is the duty of the Collector before he makes the reference to decide on the materials before him whether he should make the reference or not, and if he decides to make and does make a reference it is not open to the Land Acquisition Court to go behind it . It is not open to the High Court or any other authority to interfere when the Land Acquisition Officer decides to make and does make a reference."

(11) A.I.R. 1967 H.P. 26.
(12) A.I.R. 1943 Mad. 327.

At another place it is observed:—

> "In the case of a reference under section 18, it is not the application of the party which gives jurisdiction to the civil Court, but it is the reference made by the Land Acquisition Officer. An appliction may be given and the reference may not be made. Consequently, if the application was not validly made, then it will only indicate that the reference was made without adequate grounds. But that will not make it any the less a reference which would give the Court jurisdiction to enquire into the question referred to."

(22) This judgment was overruled by a Division Bench of that Court in *Kana Nayanna Narayanappa Naidu* v. *Revenue Divisional Officer, Sivakasi* (13), wherein the following conclusions were arrived at:—

(1) The necessary *sine qua non* of the reference by Collector under section 18 is the basic fact that the application for such a reference must be made in accordance with the provisions of that section and within the period specified in the proviso to that section. If those provisions are not complied with, there cannot be any valid application at all and necessarily if such an application does not exist, a positive reference is incapable of existence.

(2) No Court can be compelled to adjudicate upon matters which do not come before it in strict conformity with the requirements of law. It is within the inherent power of the Court to find out whether the matter that comes before it, is in the proper form and in accordance with the requirements of the particular statute. A passive attitude which the Court is compelled to adopt in case it is asked to adjudicate upon invalid references cannot be founded on law or reason.

(3) It is, thus, within the competency of the Court, to which a reference is made by the Collector under section 18, to reject the reference made to it by the Collector beyond the period of limitation laid down in proviso (a) to sub-section (2) of section 18 of the Land Acquisition Act.

(13) A.I.R. 1955 Mad. 23.

(4) In making a reference to the Court, the Collector does not act merely as an agent of the Government. He is just like any other statutory authority functioning within the powers conferred on him by the legislative enactment. Within the frame-work of that Act he has to act judicially and if he does not do so, the outcome of such an act cannot be said to be legal.

(23) An earlier decision of a Division Bench of that Court in *A. K. Subramania Chittiar* v. *Collector of Coimbatore* (14) held:—

(1) In a reference made by a Collector under section 18, Land Acquisition Act, the Court has got power to go into the question of limitation, all the more so where the Collector has himself included the question of limitation as part of the reference in his letter accompanying the reference and has not decided the question himself.

(2) The Land Acquisition Officer acts as a judicial officer and not merely as an agent of the Government.

The view of the Madras High Court is, therefore, against the petitioner and in favour of the respondent.

(24) A Division Bench of the Punjab Chief Court in *Ghulam Myhyuddin and another* v. *Secretary of State* (15) held:—

"It is not open to a Collector to waive the objection of limitation, and it is always open to the Court to hold that an application to a Collector for reference could not form the basis of reference under sections 18 and 19 inasmuch as it was barred by time."

(25) The same view has been reiterated by a Full Bench of the Lahore High Court (Pakistan) in *Abdul Sattar and another* v. *Mt. Hamida Bibi* (16), and it has been held that the Court functioning under the Land Acquisition Act being a tribunal of special jurisdiction, it is its duty to see that the reference under that Act is made to it by an authorty competent to make the reference and that the reference relates to a matter which can be referred to it under that Act. The

(14) A.I.R. 1946 Mad. 184.
(15) A.I.R. 1914 Lah. 394.
(16) A.I.R. 1950 Lah. 220.

learned Judges approved of the observations in *Mahadeo Krishna Parkar* v. *Mamlatdar of Alibaq* (17) that since the Collector had power to make a reference on certain specified conditions, the Court was bound to satisfy itself that the reference made to it by the Collector complied with those conditions so as to give the Court jurisdiction to hear the reference, because if the reference did not comply with the Act, the Court could not entertain it.

(26) As regards the Bombay High Court, the matter was first considered by Chandavarkar, J., in *In the matter of Government and Nanu Kothare and others* (supra) and after analysing the conditions in section 18 of the Act, it was held as under:—

> "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."

A little later at page 289 of the report, it has been observed:—

> "The Collector's authority to make the reference as an agent of Government is restricted by the statutory conditions prescribed in section 18. The claimants cannot plead ignorance of those conditions and the restricted nature of the Collector's authority. He cannot bind Government by stepping outside the limits of the power given by section 18. If he does step outside them, his action is illegal, and no waiver on his part can atone for the failure of the claimants to fulfil the statutory conditions which the law required them to fulfil before their right to require the Collector to make a reference could come into existence."

(27) With great respect to the learned Judge, for the reasons already stated, I do not agree that while making reference under section 18, the Collector acts as an agent of the Government. But if he does so, the reasons stated by the learned Judge are unexceptionable.

(17) A.I.R. 1944 Bom. 200.

(28) In *Mahadeo Krishna Parkar* v. *Mamlatder of Alibag* (supra), a Division Bench of the Bombay High Court held:—

> "The first condition is that there shall be a written application by a person interested who has not accepted the 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. It seems to me that the Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions, so as to give the Court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the decision of the Collector; it is a question of the Court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the Court cannot entertain it. I have myself some difficulty in seeing on what principle the Court is to be debarred from satisfying itself that the reference, which it is called upon to hear, is a valid reference."

(29) Another Division Bench of the Bombay High Court (Chagla, C.J., and Tandolkar, J.,) considered this matter in *G. J. Desai* v. *Abdul Mazid Kadri and others* (18) and it was held:—

> "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 period 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. On an

(18) A.I.R. 1951 Bom. 156.

application under section 45 (Specific Relief Act, 1877), what the Court will have to consider is whether the Collector failed to discharge his statutory duty, and one of his statutory duties is to make a reference if the application is within time. Therefore, in order to decide the petition under section 45, the Court would have to consider the question of limitation and take a contrary view to the view taken by the Collector if the Collector was wrong in his decision. Equally so, if a reference was made by the Collector which was not a proper reference under section 18, it would be for the Court to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends upon a proper reference being made under section 18, and if the reference is not proper, there is no jurisdiction in the Court to hear it."

(30) A Full Bench of the Mysore High Court considered the provisions of section 14 of the Hyderabad Land Acquisition Act corresponding to section 18 of the Act in *Gangavva* v. *Udachappa* (19) and held:—

"The conditions mentioned in section 14 of the Hyderabad Act are conditions limiting and controlling the jurisdiction of the Land Acquisition Officer. One of the important conditions is that the application for making the reference should be filed within the period stipulated in the section. The Land Acquisition Officer cannot ignore those conditions limiting and controlling his jurisdiction in the matter and his decision on those points is not final. If the conditions set out in the Act are not complied with, the reference made by him would be an incompetent reference and the Land Acquisition Court, which is a statutory authority, has jurisdiction to go behind the reference and examine its correctness or validity."

(31) A Full Bench of the Kerala High Court has also taken a similar view in *Kochukunj Padmanabhan* v. *State of Kerala* (20) wherein it was held:—

1. Whenever jurisdiction is given to a Court by an Act, and such jurisdiction is only given upon certain specified terms

(19) A.I.R. 1964 Mysore 107.
(20) A.I.R. 1963 Ker. 3.

contained in the Act itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise.

2. In deciding the question of jurisdiction in a case of a reference under section 18 by the Collector to the District Court, the District Judge is certainly not acting as a Court of appeal or revision, it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to hear and 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.

3. The District Court has, therefore, jurisdiction to decide whether the reference was made beyond two months prescribed by section 18(2), proviso (b) of the Travancore Land Acquisition Act (six weeks under Indian Act) and, if it finds that it was so made, dismiss the reference.

(32) A learned Single Judge of that Court (C.A. Vaidialingam, J.,) also took a similar view in *Indicheria Sosa, Pulippara* v. *State* (21) and held that the fact that the Collector forwarded the time-barred applications to the Civil Court did not take away the jurisdiction of the Court to consider the contention of the State that the reference applications were barred by limitation. Another Full Bench of that Court in *Anthony D'Silya and others* v. *Kerala State represented by Chief Secretary to Government, Trivandrum* (22) reiterated the view of the Full Bench in *Kochukunju Padmanabhan* v. *State of Kerala* (20), (supra) and held that it did not require reconsideration. It was observed in paragraph 4 of the report as under:—

"The Court gets jurisdiction only on a reference being made to it, and that reference, needless to say, must be a proper reference made in accordance with the provisions of the Act. A reference can be made under section 20 of the Act only on application made for the purpose and the section expressly provides that every such application shall be made within the time specified therein. If an application is made out of time, the Collector has no jurisdiction

(21) A.I.R. 1966 Ker. 278.
(22) A.I.R. 1971 Ker. 51.

to make a reference and if he does make a reference, it is, strictly speaking, no reference, and the Court has no jurisdiction to entertain it."

(33) A similar question arose before a Division Bench of the Rajasthan High Court in *State of Rajasthan* v. *L. D. Silya and others* (23). In that case the Land Acquisition Officer made a report to the Chief Engineer to the Government of Jaipur State stating that the value of the constructions on the lead to be acquired was Rs. 7,773-12-0 and also that the owners were not entitled to receive any compensation as the said property had been given to them for residential purposes only by the Government. The owners made certain applications to the Land Acquisition Officer asking him to refer the case to *Durbar* which was done. At that stage of the proceedings Jaipur Land Acquisition Act, 1943, came into force on July 31, 1943, and an application was made by the owners on August 18, 1943, to the Land Acquisition Officer for making a reference to the District Judge under that Act. The Land Acquisition Officer held that the award had been made by his predecessor on February 12, 1943, and the application made by the owners was barred by the period of limitation. The owners then moved the Government in the matter and obtained an order in their favour directing the Land Acquisition Officer to make a reference as desired by the owners. The Land Acquisition Officer thereupon sent the entire record of the case to the District Judge, Jaipur, for disposal according to law. When the case came up before the District Judge, the Government raised a point that there was no legal award and that there was no valid reference which might confer jurisdiction on the Court of the District Judge to decide the question of compensation. The learned District Judge rejected that petition holding that though no details had been given in the order of reference as required by section 19 of the Act, the reference had in fact been made under the law and he had jurisdiction to determine all those points which were agitated before him. In appeal against the award made by the learned District Judge, it was held by the High Court that the point could be gone into by the District Judge as to whether there was a valid award or not. The High Court found that there no award at all and, therefore, no reference could be made under the Act.

(23) A.I.R. 1957 Raj. 44.

The various judgments of Allahabad, Bombay, Calcutta and Lahore High Courts, which have been noticed in this judgment, were discussed and Allahabad view was dissented from. The conflict of judicial opinion was again noticed by Jagat Narayan, J., in *Lakshmi Narayan* v. *The State of Rajasthan* (24), and it was observed in paragraph 8 of the report:—

> "——so far as the Rajasthan Land Acquisition Act is concerned, there is slight difference between its provisions and those of the Indian Land Acquisition Act. Under the Rajasthan Act a Government Department on whose behalf acquisition is being made can also apply for reference under section 18(1) and under section 18(3) a revision lies to the High Court under section 115, Civil Procedure Code, against any order made by the Collector on an application for reference. That shows that the Collector making an award under section 12 is not regarded as an agent of the State as has been held to be the case under the Indian Land Acquisition Act, but it regarded as a judicial authority. Further, in my opinion, even if the Collector is regarded as an agent of the State, he is a public agent and the scope of his authority is defined by the provisions of the Land Acquisition Act and an act of the Collector cannot be regarded to be on behalf of the State if he exceeds the authority given to him. The Collector can only make a reference if the application for making it is filed within the limitation prescribed under section 18(2). It is true that there is no express provision prohibiting him from making a reference on an application made beyond the period of limitation, but the Act confers on him authority to make a reference only if the application is made within the time so prescribed. I am accordingly of the opinion that so far as the Rajasthan Land Acquisition Act is concerned, the Bombay view is preferable and it must be held that the District Judge has jurisdiction to go into the question as to whether the reference made by the Collector is valid or not."

(24) A.I.R. 1966 Raj. 118.

(34) I am in respectful agreement with these observations which directly and aptly apply to the present case, as the provisions of section 18 of the Act have been modified by the Punjab and Rajasthan Legislatures in identical terms by inserting sub-sections (2A), (2B), and (3) therein and section 18 as amended was under consideration before the learned Judge. This is the only case which is on all fours with the facts of the instant case and is directly in point.

(35) A Division Bench of the Patna High Court considered this matter in *Ramdeyal Singh* v. *State of Bihar* (25), and after considering the conflict of judicial opinion held in paragraph 17 of the report:—

> "On a consideration of the entire matter, such as the relevant provisions of the Act, and the decisions of the different High Courts, it will be clear that the majority of the High Courts are in favour of this view that a Land Acquisition Judge in a reference under section 18 of the Act can go into the question whether the application for reference was made within the time prescribed under sub-section (2) of section 18 of the Act. In an agreement with the majority view of the High Courts and with respect in disagreement with the Allahabad and Punjab High Courts, I am also of opinion that the necessary *sine qua non* of the reference by the Collector under section 18 of the Act is that it must be made in accordance with the provisions of that section, such as within the period prescribed by the two provisos of sub-section (2) of the section, and as a necessary corollary it follows that if the Land Acquisition Judge finds on the materials placed before him that the application is barred by limitation in the sense that it was not presented within the period prescribed under the two provisos of sub-section (2) of section 18 of the Act, then he can refuse to entertain the reference and can also reject the reference on this ground."

The judgment was written by S. Wasiuddin, J., with whom Untwalia, J. agreed.

(25) A.I.R. 1969 Patna 131.

(36) A Division Bench of the Calcutta High Court (Guha and R. C. Mitter, JJ.,) in *Ananta Ram Banerjee* v. *Secretary of State* (26) expressed the following opinion on this point:—

> "The Special Judge derives his jurisdiction from the reference made under section 18 by the Collector. If the reference made by the Collector is *ultra vires*, the Special Judge would have no jurisdiction to proceed further and must stop the reference *in limine*. If the question of power of the Collector to make the particular reference be raised before the Special Judge, he must decide it. It is on this principle that the Special Judge must decide the question, if raised, as to whether the Collector made the reference beyond time and if he finds it to be so, reject the reference without proceeding further."

(37) A Division Bench of the Jammu and Kashmir High Court in *Swami Sukhanand* v. *Samaj Sudhar Samiti and another* (27) accepted the view of the majority of the High Courts and dissented from the view of the Allahabad High Court and of this Court in *Hari Krishan Khosla's case* (1) (supra) with the following observation in paragraph 16 of the report:—

> "There is thus an abundance of authority for holding that a land acquisition court is entitled to go behind a reference made to it by a Collector and determine whether the reference fell within the scope and ambit of the jurisdiction conferred upon him by the statutory provision under which the reference was purported to be made. If the Court comes to the conclusion that the reference is *ultra vires*, the court will have no jurisdiction to proceed further with the reference and is bound to reject it *in limine*."

(38) A learned Single Judge of Andhra Pradesh High Court in *Special Deputy Collector, Land Acquisition, Anantapur* v. K. *Kodandaramacharlu* (28) accepted the view of the Bombay High Court in *Mahadeo Krishna* v. *Mamlatdar of Alibag* (supra) and of the Madras High Court in *Subramania Chettiar* v. *Collector of Coimbatore* (supra) and *Narayanappa* v. *Revenue Divisional Officer* (supra) and

(26) A.I.R. 1937 Cal. 680.
(27) A.I.R. 1962 J. & K. 59.
(28) A.I.R. 1965 A.P. 25.

held that the District Judge could go into the matter whether the reference made by the Collector was in accordance with section 18 or not.

(39) A Division Bench of the Madhya Pradesh High Court in *Sheikh Mohommad and another* v. *Director of Agriculture, Madhya Pradesh* (29) held:—

> "Condition precedent for exercise of jurisdiction by Civil Court is a valid reference under section 18 of the Act."

Reliance was placed on the following observations in the judgment of the Privy Council in *Pestonjee* v. *Meer Mynoodeen Khan* (30).

> "Wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise."

(40) A learned Single Judge of the Delhi High Court (V. S. Deshpande, J.) in *Tara Chand* v. *The Land Acquisition Collector, (Delhi Shahdara)*, Delhi (31) held that the statutory right to claim enhanced compensation under section 18 would be barred when an application for the same is not made within the time prescribed or when the applicant has received the compensation under the award otherwise than under protest and he would not be entitled to ask for a reference under section 18 of the Act. The point under consideration before us was not for consideration before the learned Single Judge.

(41) The matter came up twice before the Supreme Court in *State of Punjab* v. *Mst. Qaisar Jehan Begum and another* (32) and *The State of U.P., through the Collector, Nainital* v. *Shri Abdul Karim* (33), in which the conflict of judicial opinion in the High

(29) 1966 M.P.L.J. 433.
(30) (1855) 6 M.I.A. 135.
(31) A.I.R. 1971 Delhi 116.
(32) A.I.R. 1963 S.C. 1604.
(33) (1969) II S.C.W.R. 579.

Courts was noticed but not resolved. The latter case was an appeal against the judgment of the Full Bench of the Allahabad High Court in *State of Uttar Pradesh through the Collector, Nainital* v. Sri *Abdul Karim* (supra).

(42) It is thus evident that the majority of the High Courts are of the opinion that it is open to the District Judge to go behind the reference and to determine whether the reference made to him was valid or not, that is, the conditions precedent prescribed in section 18 of the Act had been complied with, one of which is that the application to the Collector for reference to the District Judge should have been made within the prescribed time. If it has been made beyond time and the Collector does not reject it, the District Judge will be bound to adjudicate on the matter in case an objection is raised by the respondent and to reject the reference if it is found that the application to the Collector was made beyond the time prescribed in the proviso to sub-section (2) of section 18 of the Act. I find myself in respectful agreement with the above view expressed by the majority of the High Courts and hold that the Division Bench judgment of this Court in *Hari Krishan Khosla's case* (1) (supra) does not lay down the law correctly and overrule the same. I am further of the opinion that while adjudicating on the objection of the respondent, the District Judge does not go behind the reference but determines the objection of the respondent as to its validity and maintainability so as to defeat the claim of the applicant to any enhancement in the amount of compensation or modification of the award in any other way.

(43) Lastly, it is submitted by the learned counsel for the petitioner that the State of Haryana had the right to file a revision petition against the order of the Collector under section 18(3) of the Act, which was admittedly in force on the date the application for reference was made and the specific remedy having been provided, the Additional District Judge could not go into the matter and reject the application on the ground of limitation. In the earlier part of the judgment, I have already dealt with this matter, that is, the reference was made by the Collector to the District Judge without issuing notice to the State or hearing it as to whether the application was within time or not. The Collector did not decide that application as a Court should do and, therefore, the State of Haryana was not bound to follow the remedy of revision as provided in sub-section (3) of section 18 of the Act. The provision of that remedy does not

bar the jurisdiction of the District Judge to determine the objection when raised by the respondent.

(44) I am also of the opinion that the learned Judges of the Division Bench in *Hari Krishan Khosla's case* (supra) were not right in relying on the analogy of a reference by the Income-tax Appellate Tribunal under the Income-tax Act to the High Court and I say so with respect, for the reason, that in the Income-tax Act elaborate procedure is prescribed for making such references. The applicant has to file the application within time with a security deposit and notice is issued to the opposite side. It is only after hearing both sides that the statement of the case and the questions of law arising from the order of the Appellate Tribunal are referred to the High Court for decision. Still it is open to the High Court to entertain an objection to the statement of the case and also to see whether the question of law referred to it for decision arose out of the order of the Income-tax Appellate Tribunal. It was held by a Division Bench of the Madras High Court in *The Commissioner of Income-tax, Madras* v. *R. Rm. H. Sm. Sevugan* alias *Manickavasaqam Chettiar* (34).

> "If the tribunal improperly or incorrectly makes a reference in violation of the provisions of the statute, this Court is capable of entertaining an objection to the statement of the case, and, if it comes to the conclusion that it should never have been stated, this Court is not compelled to express an opinion upon the question referred."

The analogy of the reference under the Income-tax Act is, therefore, not apt or relevant.

(45) For the reasons given above, I find no merit in this revision petition which is dismissed but the parties are left to bear their own costs.

S. S. SANDHAWALIA, J.—I agree.

C. G. SURI, J.—I agree.

K.S.K.

(34) A.I.R. 1948 Mad. 418.