

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CR No.74 of 2020
Decided on: 08.10.2026

Kaushalya Devi

...Petitioner

Versus

Collector Land Acquisition, (S.D.O.) (Civil) Kullu and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:

Mr. Sunil Mohan Goel, Senior Advocate with Mr. Paras Dhaulta, Advocate.

For the respondents:

Mr. R.P Singh, Deputy Advocate General, for respondents No.1 to 3-State.

Ms. Shreya Chauhan, Advocate, for respondent No.4.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner feeling aggrieved by the order dated 25.08.2020 passed by respondent No.2, whereby the reference petition filed by her under Section 18 of the Land Acquisition Act (for short 'the Act') for making reference to the Court of learned District Judge Kullu, Himachal Pradesh, has been rejected, since the same was not filed within the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

period of limitation as prescribed under the Act, has preferred the instant petition.

2. The land of the petitioner was acquired for the purpose of Parbati Hydro Electric Project in Sainj Valley, District Kullu (HP). Initially a Notification under Section 4 of the Act was issued on 05.12.2000 for acquisition of the land of the petitioner situated in Phati Raila, Phatti, Suchain and Phatti Dhaugi, Sub-Tehsil Sainj, District Kullu and after completion of the procedural formalities under Sections 6 & 7 of the Act, respondent No.1 had issued notice under Section 9 of the Act and the petitioner raised objections regarding the value of the land etc., but respondent No.1 without considering the same, passed the Award dated 04.01.2002, which was alleged to be passed behind the back of the petitioner and without giving any intimation to her. It has been alleged that no notice under Section 12(2) of the Act was served upon the petitioner and she came to know about the Award on 30.01.2002, when she received the amount of compensation under protest, pertaining to the land. The petitioner was not paid any compensation of house, which was also existing on the acquired land comprising in Khasra No.1984. The respondents had assured

the petitioner that she will be paid the compensation when the supplementary Award of acquired houses will be passed, however, when the Supplementary Award was passed on 01.10.2002, pertaining to the structures acquired under the main Award No.09 of 2002, the petitioner was surprised to know that her name does not figure in the list of persons, whose houses were acquired.

3. The petitioner thereafter represented the matter pertaining to acquisition of her house before the respondents, but she was not paid any compensation for her house, which was existing on the acquired land. When nothing was done by the respondents, the petitioner approached this Court by way of CWP No.3962 of 2009, titled, ***Kaushalya Devi vs. The State of Himachal Pradesh and others.*** The said petition remained pending before this Court for about 10 years and on 02.08.2019, the petitioner withdrew the same with liberty to have recourse to the appropriate legal course, which may be available to her as per law.

4. After the disposal of the writ petition preferred by the petitioner, she preferred a reference petition under Section 18 of the Act before respondent No.2, for making

reference to the learned District Judge, Kullu, for determination of the compensation. In the Reference Petition, it was averred by her that she is filing the Reference Petition within the period of limitation from the date of the judgment passed by this Court on 02.08.2019 and the reference petition was preferred before the Land Acquisition Collector on 09.09.2019. In the reference petition the petitioner had also averred that after acquiring the land, she has been rendered land less and house less and she was compelled to change/ shift her residence and thus prayed to make the reference before the learned District Judge, Kullu, District Kullu (HP).

5. Respondent No.2 rejected the reference on the ground that the same has not been preferred within the limitation period as prescribed under the Act and he does not have power to condone the delay and hence the reference cannot be made to the learned District Judge.

6. The petitioner feeling aggrieved by the said order dated 25.08.2020 (Annexure P-8) passed by respondent No.2 has approached this Court by way of instant revision petition *inter alia* on the ground that the Collector has failed to take into consideration that when the petitioner was

denied the compensation of the structure on the ground that the same was not existing at the spot at the time of measurement, she had immediately approached the Deputy Commissioner, Kullu, by making a representation, which was rejected by the Deputy Commissioner, Kullu vide order dated 19.03.2009 against which, the petitioner had approached this Court by way of a CWP No.3962 of 2009, which was decided on 02.08.2019, when a liberty was given to her to have recourse to the appropriate remedy in accordance with law and, therefore, the limitation cannot come in the way of the petitioner while she was bonafidely pursuing the litigation and as such the order passed by respondent No.2 is unsustainable in the eyes of law. The Collector has also not considered the State amendment, whereby it has been provided that the Collector may entertain application under Section 18 of the Act, even after the expiry of period of six weeks, but within period of six months, if he is satisfied that the petitioner was prevented by sufficient cause for making the application in time. However, the Collector has not considered that aspect of the matter. The order passed passed by the Collector is totally non speaking order and even the provisions of law under

which the same has been dismissed, have not been taken into consideration and as such prayed for quashing the said order.

7. Learned counsel representing respondents No.1 to 3 has also supported the order passed by the Collector and submitted that this Court cannot condone the delay and the order, which has been passed by the Collector is as per law.

8. Learned counsel representing respondent No.4 has supported the order and vehemently argued that since no illegality has been committed by the Collector while passing the impugned order, this Court while exercising the revisional jurisdiction cannot set aside the said order. She further vehemently argued that as per the judgment of the Hon'ble Supreme Court, the Collector cannot forward the reference, until or unless he is satisfied that the same has been filed within the period prescribed under Section 18 of the Act.

9. I have heard the learned counsel for the parties and also perused the record carefully.

10. Before advertng to the submissions made by learned counsel for the parties, it would be relevant to quote

the provisions of Section 18(2) of the Act, which reads as under:-

“(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.”*

11. From a perusal of the language under sub-section (2) of Section 18 of the Act, if the person makes an application before the Collector at the time when he made his Award, within six weeks, from the date of Collector's Award or in other cases within six weeks of the receipt of the notice from the Collector under sub-section (2) of Section 12 of the Act or within six months from the date of Collector's Award, whichever period shall first expire the Collector shall make reference to the Court. Admittedly, the petitioner did not file the reference within the period of limitation prescribed in the aforesaid provision from the date

of Award dated 01.10.2002, but this Court cannot even lose sight of the fact that the petitioner had earlier approached this Court by way of writ petition, which came to be decided on 02.08.2019, when the Court had permitted the petitioner to withdraw the writ petition for having recourse to the appropriate legal course, which may be available to her as per law. No doubt, while disposing of the writ petition, the Court had also taken note of the fact that in case limitation comes in the way of the petitioner, then the period which has been spent by her while bonafidely pursuing her case before this Court shall be excluded while computing limitation, but the fact of the matter is that the petitioner had approached this Court in the year 2009 and before coming to the Court, she had raked up the issue before the competent authority, who was the Deputy Commissioner, who had rejected her claim on 19.03.2009.

12. Learned counsel representing respondent No.4 has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Mohammed Hasnuddin vs. State of Maharashtra***, (1979) 2 SCC 572, ***Officer on Special Duty (Land Acquisition) and another vs. Shah Manilal Chandulal and others***, (1996) 9 SCC 414, ***State of***

Karnataka vs. Laxuman, (2005) 8 SCC 709, **M/s Steel Authority of India Limited vs. Sutni Sangam and others**, (2009) 16 SCC 1, **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh**, (2014) 9 SCC 78 and Civil Appeal No._____ of 2026 (@ Special Leave Petition (Civil) No.12435 of 2019), titled, **Madan Mohan (Dead) Through LRs. vs. Thakar Dass (Dead) Thr. LRs.**, and contended that the Collector was required to make reference to the District Judge in case certain conditions are fulfilled. In the present case, since the petitioner after passing the Award by the Collector on 01.10.2002, did not file an application within the prescribed period, the Collector has rightly passed the order, whereby he has not referred the matter for decision to the learned District Judge.

13. So far as the preposition of law as laid down by the Hon'ble Supreme Court in the aforementioned cases, is concerned, there is no dispute that the Collector can refer the matter for decision to the District Judge only in case the application for making reference is made within the stipulated period. However, in the present case, the Court while disposing of the writ petition on 02.08.2019 had

permitted the petitioner to withdraw the writ petition with liberty to have recourse to the appropriate legal course, which may be available to her as per law. After the disposal of the writ petition, which was withdrawn on 02.08.2019, the petitioner had approached the Collector by way of filing a reference petition under Section 18 of the Act on 09.09.2019 and, therefore, as per the provisions contained in sub-section (2) of Section 18 of the Act, it cannot be construed that the application preferred by the petitioner was beyond the period of limitation.

14. A similar preposition had come up for consideration before the Hon'ble Supreme Court in ***Manharlal Shivilal Panchal & others vs The Deputy Collector & Special Land Acquisition Officer & others***, 2022 (17) Scale 371 and the Court had considered the aforementioned judgments with respect to power of Collector, which have been cited by learned counsel representing respondent No.4, but came to the conclusion that since the appellant in that case had also challenged the proceedings before the High Court and the liberty was reserved in their favour to pursue such remedy as may be available to them for enhancement of compensation, the

application instituted under Section 18 (2) of the Act, could not have been dismissed as barred by limitation. The relevant paras of the judgment reads as under:-

“7. The reference under Section 18 of the Act, 1894 has been dismissed as barred by limitation having been filed beyond the period of six months, specified in Section 18(2) of the Act, 1894. The same has been confirmed by the High Court. However, it is required to be noted that the respective appellants - original landowners, as such, challenged the acquisition proceedings as well as the award under Section 12(2) of the Act, 1894, which ended in dismissal of the special leave petition by this Court vide order dated 11.4.2013. The reference applications were filed on 1.7.2013. At this stage, it is required to be noted that though in the writ petition being SCA No. 1428/2012, the award under Section 12(2) of the Act was challenged on the ground of inadequacy of the amount of compensation and though the Division Bench of the High Court dismissed the said writ petition, however thereafter reserved liberty in favour of the appellants - original landowners to pursue such remedy as may be available to them for enhancement of compensation or any other relief to which they may be legally entitled. In view of that liberty, the appellants - original landowners thereafter and after dismissal of the special leave petition by this Court filed reference. Therefore, in view of the liberty reserved by the High Court in favour of the appellants to pursue such remedy as may be available to them for enhancement of compensation, the reference application could not have been dismissed as barred by limitation under Section 18(2) of the Act, 1894. Within a period of six months from the date of dismissal of the special leave petition, the reference was filed. In the special leave petition, which was dismissed by this Court on 11.4.2013, the original landowners whose valuable lands had been acquired challenged the acquisition proceedings. At this stage, it is required to be noted that though in the writ petition before the High Court

(in the earlier round of litigation) they challenged the award under Section 12(2) of the Act and the High Court observed that it is too late to make any grievance, still the High Court while dismissing the writ petition reserved liberty in favour of the appellants to initiate appropriate proceedings for enhancement of the compensation.

8. As such, on a fair reading of the entire judgment and order passed by the High Court, the observations made that it is too late to make the grievance with respect to the inadequacy of the compensation, those observations are to be read while considering the prayer of the appellants challenging the acquisition proceedings. It appears that the acquisition was also challenged on the ground that the amount awarded is inadequate. To that, the observations were made by the High Court that it is too late to raise such a dispute. Therefore, the High Court ought to have interfered with the decision of the reference Court dismissing the reference on the ground of limitation and ought to have remitted the matter to the reference Court to decide the reference on merits.

9. Now so far as the reliance placed upon the decisions of this Court in the cases of Shah Manilal Chandulal & Others (supra) and Mahadeo Bajirao Patil (supra) are concerned, there cannot be any dispute on the proposition of law laid down by this Court that the limitation for making reference under Section 18 of the Act, 1894 cannot be extended and that Section 5 of the Limitation Act shall not be applicable. However, in the present case, it is not the case of condoning the delay in exercise of powers under Section 5 of the Limitation Act. As observed hereinabove, in the present case, the appellants challenged the acquisition proceedings which ended on the dismissal of the special leave petition by this Court vide order dated 11.4.2013 and thereafter pursuant to the liberty reserved by the High Court, reserved while dismissing Writ Petition No. 1428/2012, within a period of six months from the date of dismissal of the special leave petition, i.e., on 1.7.2013, the original landowners filed reference

application under Section 18 of the Act, 1894. In the aforesaid two decisions before this Court, there were no such facts. Therefore, on facts, the aforesaid two decisions shall not be applicable to the facts of the case on hand.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court as well as the order passed by the reference court dismissing the writ petition/reference under Section 18 of the Act, 1894 as barred by limitation are hereby quashed and set aside. The matter is remitted to the reference court to decide the reference on merits. We direct the reference court to finally decide and dispose of the reference within a period of nine months from the date of receipt of the present order.”

15. In the present case too, the petitioner had come to this Court immediately after rejection of her claim on 19.03.2009, when the Deputy Commissioner, Kullu, H.P., had not acceded to her request and the matter remained pending before this Court for about 10 years and after withdrawal of the writ petition on 02.08.2019, she had approached the Collector by way of filing an application under Section 18 of the Act on 09.09.2019 and once this Court had given liberty to her to have recourse to the appropriate legal course, which may be available to her as per law, the Collector has failed to exercise the jurisdiction vested in him judiciously. The Collector was to give respect

to the observations made by this Court when it had given liberty to the petitioner to avail the appropriate legal course and had the petitioner not filed the petition within the period as prescribed under Section 18 of the Act, the Collector would have been right in declining to refer the matter to the learned District Judge.

16. The purpose of enacting the Land Acquisition Act and the provisions thereunder is to provide adequate compensation to the persons, whose land and houses are acquired and in the present case, the petitioner, who has been granted the compensation of the land, but not paid the compensation of the house, the claim raised by her within the period of limitation after disposal of the writ petition could not have been negated by taking hypertechnical view as has been done by the Collector by passing the order on 25.08.2020.

17. Learned counsel representing respondent No.4 has vehemently argued that as per the Constitution Bench judgment in ***Hindustan Petroleum's*** case (supra), this Court has a very limited power to interfere with the order passed by the Collector and this Court cannot equate itself with a Court of first appeal and the Court is required to be

satisfied that the decision is according to law or it suffers from procedural illegality or irregularity. There is no quarrel with respect to the said submission made by the learned counsel for respondent No.4. However, in the present case, the Collector while passing the impugned order by not referring the dispute to the learned District Judge, Kullu, has committed illegality as well as material irregularity, when it has come to the conclusion that the application/reference petition has not been filed within the period of limitation and as such he is not having any power to refer the matter. He has wrongly taken the period of limitation from the date of passing the Award, whereas, keeping in view the fact that the petitioner was litigating in the Court and her matter remained pending before this Court for about 10 years and the Court had given liberty to her to have recourse to the appropriate legal course, which may be available to her under law, the limitation had to start from the said date of deciding the writ petition, as has been held by the Hon'ble Apex Court in the aforesaid mentioned judgment rendered in ***Manharlal Shivrul Panchal's*** case (supra).

18. The Collector, while passing the award has caused injustice to the petitioner, who has not been paid

any amount of compensation for the house, though assessed by the Executive Engineer, Kullu, Division No.1, HPPWD, Kullu (Annexure P-2), which document has been issued by the senior officer of the State Government.

19. Consequently, the impugned order dated 25.08.2020, passed by respondent No.2 is quashed and set aside and matter is remanded back to the Land Acquisition Collector, Kullu, District Kullu, HP (respondent No.2), for making reference to the learned District Judge, Kullu, District Kullu, HP. The needful shall be done by respondent No.2 within a period of three months. No order as to costs. Pending miscellaneous application(s), if any, shall also stand disposed of.

08th October, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**