

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal (M) No.81 of 2009**

Badridhar Diwan, son of Shri Ishwar Dhar Diwan, aged about 78 years,  
R/o Village Deori, Tahsil Masturi, District Bilaspur, Chhattisgarh

**---- Appellant****versus**

1. State of Chhattisgarh through Collector, Bilaspur, District Bilaspur, Chhattisgarh
2. National Thermal Power Corporation, Seepat, through General Manager, N.T.P.C., Seepat, District Bilaspur, Chhattisgarh

**---- Respondents**


---

|                           |                                                                             |
|---------------------------|-----------------------------------------------------------------------------|
| For Appellant             | : Shri Awadh Tripathi, Advocate                                             |
| For Respondent No.1/State | : Shri B. Gopa Kumar, Deputy Advocate General                               |
| For Respondent No.2/NTPC  | : Dr. N.K. Shukla, Senior Advocate with<br>Shri Rajendra Tripathi, Advocate |

---

**Hon'ble Shri Navin Sinha, Chief Justice**  
**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board****Per Navin Sinha, Chief Justice****17/11/2015**

1. The present appeal arises from judgment and order dated 18.7.2008 passed by the First Additional District Judge, Bilaspur in Civil Suit No.44-A/2007 pursuant to a reference made under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') by the Collector consequent to the land acquisition proceedings relating to the lands of the Appellant.

2. It is not a disputed fact that the award under Section 12 of the Act was published on 30.4.2003 and confirmed by the Collector on 25.6.2003. An application for reference under Section 18 of the Act was made by the Appellant before the Collector on 23.7.2004.

3. Learned Counsel for the Appellant sought to persuade us with regard to the erroneous consideration of the prayer for enhancement of

compensation and also that immediately after publication of the award, the Appellant had filed an application before the Collector within the period of limitation prescribed in Section 18. It was therefore urged that the impugned order is erroneous when it holds that the reference was time barred. The Court may therefore go into the merits of the order under appeal and determine the appropriate compensation payable in accordance with law.

4. Learned Senior Counsel for Respondent No.2, for whom the lands had been acquired, submitted that there is nothing on record to suggest that any application purported to be under Section 18 of the Act was filed by the Appellant within the time period mentioned in Section 18. Had it been so, there would have been a reference to it in the impugned order. On the contrary, the impugned order is emphatic that the application under Section 18 of the Act was filed on 23.7.2004 much after the period of limitation. Our attention was also invited to the pleadings in the memo of appeal to submit that either in the body of the appeal or in the grounds urged in support of the appeal there is no pleading as a matter of fact that the application under Section 18 was filed within the period of limitation or on any date before 23.7.2004. If the application under Section 18 was itself barred by limitation and there was no provision for condonation of the same, the order under appeal *inter alia* rejecting the reference calls for no interference.

5. We have considered the submissions on behalf of the parties.

6. Since this appeal can be disposed on a very short question of law with regard to which the facts are not in dispute at all, we do not consider it necessary to set out in detail the entire facts of the case except to the extent necessary.

7. Suffice it to observe that the lands of the Appellant in Mouza Deori having a total area of 1.95 acres was acquired. Aggrieved by a total

compensation awarded of Rs.4,94,899/-, the Appellant preferred an application under Section 18 of the Act.

8. Section 18 of the Act reads as follows:

**“18. Reference to Court.—**(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 the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

- (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.”

9. There is no provision for condoning the delay in filing an application before the Collector seeking a reference under Section 18 of the Act. If the application seeking reference was barred by time limitation prescribed under Section 18, the Collector had no jurisdiction under Section 19 of the Act to make a reference to the Court. The assumption of jurisdiction by the Court under Section 20 of the Act was again subject to the fulfillment of the limitation prescribed in Section 18(2).

10. In AIR 1979 SC 404 (Mohammed Hasnuddin v. The State of Maharashtra) also referred to in the impugned order, it has been observed that before there could be a valid reference under Section 18 it was a statutory compulsion that there should be a written application to the Collector, the nature of objections are required to be in accordance with that provided in the statute and the third was the time limitation within which the

application was to be made. Elucidating the principles with regard to Section 18 of the Act it was observed that compliance with the limitation prescribed in Section 18(2) was *sine qua non* for a valid reference by the Collector. The Court acting on such a reference being a Tribunal of special jurisdiction was required to satisfy itself that the application had been made to the Collector within time prescribed, observing as follows:

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

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

11. It is undisputed fact in the present case that the award was made on 30.4.2003 and affirmed by the Collector on 25.6.2003. The Appellant then filed an application for receiving the compensation as determined under protest on 23.7.2004 and simultaneously made an application seeking a reference under Section 18 of the Act. Whether it be the period of six weeks reckoned from the date of the award or six months from the date of receipt

of notice under Section 12(2), whichever is earlier, the application seeking reference was filed by the Appellant much beyond the period of limitation on 23.7.2004. The submission that the Appellant had in fact filed an application for enhancement of compensation promptly within the time limit prescribed under the law before the Collector remains unsubstantiated. There is no discussion with regard to the same in the order under appeal. There is no pleading in the memo of appeal that the contentions of the Appellant have not been properly considered or that any documents have been over-looked. We further find that even no issue was framed with regard to limitation. Whether limitation is pleaded as a defence or not, if there is a statutory prescription, it is the solemn duty of the Court to apply the correct law which includes the prescription of limitation, if provided for, whether raised by the parties or not because on it depends assumption of jurisdiction by the Court.

**12.** The application filed by the Appellant seeking a reference under Section 18 of the Act itself being barred by limitation, we see no reason to interfere with the order under appeal.

**13.** The appeal is dismissed.

Sd/-

**(Navin Sinha)**  
**CHIEF JUSTICE**

Sd/-

**(P. Sam Koshy)**  
**JUDGE**