REVISIONAL CIVIL.

Before Mr. Justice Mukerji.

1931 July, 22.

KASHI PRASAD (APPLICANT) *v.* NOTIFIED AREA OF MAHOBA (OPPOSITE PARTY).*

Land Acquisition Act (I of 1894), sections 18, 53—Reference by Collector to District Judge—Revision—Civil Procedure Code, section 115—Collector making reference is not a court subordinate to High Court—Limitation Act (IX of 1908), sections 12(2) and 29(2)(a)—Limitation for applying to Collector for a reference—Time requisite for obtaining copies not executed—Review—Collector making or refusing a reference cannot review his order.

A Collector acting under section 18 of the Land Acquisition Act is not a court subordinate to the High Court within the meaning of section 115 of the Civil Procedure Code, and the High Court has no jurisdiction to revise the order of the Collector if he improperly fails to make a reference, or, having made a reference, withdraws it before it has reached the District Judge.

The only applications to which section 12(2) of the Limitation Act refers being applications for leave to appeal and applications for review of judgment, section 29(2)(*a*) cannot extend the operation of section 12(2) to an application under section 18 of the Land Acquisition Act, and therefore the time requisite for obtaining copies cannot be excluded in computing the period of limitation for an application under section 18 of the Land Acquisition Act.

A Collector acting under section 18 of the Land Acquisition Act and making a reference has no power to review his own order. Section 53 of the Act, which provides for the application of the Civil Procedure Code, does not apply to proceedings before the Collector but only to proceedings before "the court", *i.e.*, the District Judge.

Dr. *M. L. Agarwala*, for the applicant.

Mr. *S. B. L. Gaur*, for the opposite party.

MUKERJI, J. :—This petition in revision is on behalf of Kashi Prasad, and is directed against the Notified Area of Mahoba, in the following circumstances :—

*Civil Revision No. 187 of 1931.

A certain piece of land was acquired by the Government for the benefit of the Notified Area of Mahoba, and compensation was awarded to the applicant, Kashi Prasad, by an order, dated the 11th of October, 1930. Kashi Prasad did not accept the award, and applied on the 10th of December, 1930, that a reference should be made to the District Judge in the matter. The Collector made an order of reference to the District Judge on the 23rd of December, 1930. Thereupon, the President of the Notified Area made an application to the Collector pointing out that the application of Kashi Prasad on which the Collector had acted was beyond time, and thereupon the Collector, professing to review his own judgment, by an order, dated the 23rd of February, 1931, cancelled his order of the 23rd of December, 1930, and in effect refused to make a reference to the District Judge.

Kashi Prasad appears before this Court, and his contention is that the Land Acquisition Officer should not have cancelled his own order, because he had no power of review, and that he was wrong in holding that the application of the applicant was barred by time.

Three points arise for determination in this application. The first point is one of jurisdiction of this Court; the second question is whether the application of the 10th of December, 1930, was within time, and the third is whether the Collector could review his own judgment.

On the first point, the question is whether the Collector is subordinate to this Court. It was argued that when an application is made to the Collector under section 18 of the Land Acquisition Act, asking him to make a reference to the civil court, the Collector in passing orders acts judicially and not merely as a ministerial officer. I need not decide the question whether in acting under section 18 the Collector acts judicially or ministerially. But supposing that he acts

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judicially, how does he become a court subordinate to the High Court within the meaning of section 115 of the Civil Procedure Code? There are some decisions in which it was held that the Collector must be treated as subordinate to the High Court when he is acting under section 18, for the reason that if the High Court was denied the power of correcting the Collector there would be no remedy left in the matter. One of these cases is *Administrator-General of Bengal* v. *Land Acquisition Collector* (1). A contrary view has, however, been taken in the Full Bench case of *Abdul Sattar* v. *Special Deputy Collector, Vizagapatam Harbour* (2) and in a Division Bench case of Bombay in *Balkrishna Daji Gupte* v. *Collector, Bombay Suburban* (3). In the Madras case it was pointed out that if the Collector improperly refused to make a reference, the party suffering was without remedy, and it was suggested that the legislature might very well amend the Act and provide some remedy. But the fact that there was no remedy did not induce the Full Bench to come to the conclusion that the High Court must have jurisdiction to correct the Collector.

I entirely agree with the Madras and Bombay cases and hold that this Court has no jurisdiction to correct the Collector, if he improperly fails to make a reference, or, having made a reference, withdraws the reference before the reference has reached the District Judge.

The second point is whether the application of the applicant before the Collector was within time. Section 18 gives six weeks' time to the applicant, who has notice from the Collector under section 12, for filing an application for reference. It is conceded that this rule applies to this particular case, and the application made on the 10th of December, 1930, was made more than forty-two days from the 11th of October,

(1) (1907) 12 C.W.N., 241. (2) (1923) I.L.R., 47 Mad., 357.
(3) (1923) I.L.R. 47 Bom., 699.

1930. In calculating the period fixed for making an application under section 18 of the Land Acquisition Act, the Collector has added the time occupied in granting a copy of the Collector's award to the applicant. Even allowing for this time, the Collector found that the application of the 10th of December, 1930, was beyond time. Dr. *Agarwala*, on behalf of Kashi Prasad, urged that the applicant had made a previous application for a copy on the 11th of November, 1930, and his application was rejected because of some defect. He asks that the time during which his application remained pending, and the time up till he got information of the fact that the application had been rejected, should be excluded. It is a very doubtful proposition, but before it can be entertained the question is, is the applicant at all entitled to an exclusion of time?

On this Dr. *Agarwala* relies on section 29(2) of the Limitation Act, and says that by portion (*a*) of clause (2) of section 29, section 12 of the Limitation Act becomes applicable to an application under the Land Acquisition Act, and therefore the applicant is entitled to deduction of the time occupied in obtaining a copy. But section 12 of the Limitation Act refers to an application for leave to appeal and an application for review of judgment, and to no other application. We can read an application for reference under section 18 of the Land Acquisition Act as coming within the purview of section 12 of the Limitation Act only by materially modifying the language of section 12. I am of opinion that section 29 of the Limitation Act does not apply to an application under section 18 of the Land Acquisition Act, and therefore the time of six weeks could not be extended. On this point, again, there is some conflict of opinion; but the later opinion entertained by the Lahore High Court in *Nafis-ud-din* v. *Secretary of State* (1) is a better opinion than a decision of the Burma High Court quoted in that case.

(1) (1927) I.L.R., 9 Lah., 244.

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I agree with the decision of the Lahore High Court and hold that the time could not be extended.

The third point is whether the Collector could review his own order. The Collector, in doing so, professed to act under section 53 of the Land Acquisition Act. But that section applies to "the court". "The court" is defined in the Land Acquisition Act as the principal court of civil jurisdiction, namely, the court of the District Judge. The Civil Procedure Code, therefore, did not in terms apply to the proceedings before the Collector. The Collector, therefore, it seems, had no power to review his own order.

The Collector's ultimate order that the applicant's application was beyond time was correct. This would be a sound ground for my not interfering with the order under revision. Besides, I have held that this Court has no jurisdiction to interfere. For both the reasons the petition fails, and it is hereby dismissed with costs.

PRIVY COUNCIL.

J.C.* 1932 *February*, 29.

PRAG NARAIN (APPLICANT) *v.* COLLECTOR OF AGRA (OPPOSITE PARTY).*

[On appeal from the High Court at Allahabad.]

Land Acquisition Act (I of 1894), section 18—Owner and permanent tenants—Agreement by tenants as to compensation—Collector making two awards—Owner objecting to amount awarded but not to apportionment—Increase in amount awarded—Rights of owner.

Where in proceedings under the Land Acquisition Act, 1894, the owner of the land has objected under section 18 to the amount awarded but has not objected to the apportionment between himself and permanent tenants, who had accepted the compensation offered to them, the owner is not entitled to an increased amount resulting from his objection less the compensation accepted by the tenants, but only to such proportion of the increased amount as accords with the apportionment awarded. The Government, and not the owner, is entitled to the benefit arising from the tenants having accepted compensation upon a lower value.

Present: Lord RUSSELL OF KILLOWEN, Lord SALVESEN, and Sir DINSHAH MULLA.