

Hanamappa and ors. Vs. the Special Land Acquisition Officer

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Overruled by : [State of Karnataka v. Laxuman](#)

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Court : Karnataka

Decided On : Oct-16-1998

Reported in : ILR1998KAR4071

Judge : G.C. Bharuka, ;P. Vishwanatha Shetty and ;V. Gopala Gowda, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 18

Appeal No. : C.R.P. 3403/1995

Appellant : Hanamappa and ors.

Respondent : The Special Land Acquisition Officer

Advocate for Pet/Ap. : M.N. Gadag, Adv.

Disposition : Petition dismissed

Judgement :

P. Vishwanatha Shetty and V. Gopala Gowda, JJ.

1. The question, which we are required to answer in this Civil revision petition, is as to whether the reference made by the Land Acquisition Officer/Deputy Commissioner to the Civil Court beyond three years and ninety days from the date of the reference application made, is barred; and whether the Civil Court has no

jurisdiction to entertain such a reference and consider the claim of the claimant for adjudication for payment of higher compensation.

2. A few undisputed facts that are relevant for disposal of this revision petition, may be set out as under:

(a) The petitioner, in this revision petition, is the owner of lands bearing R.S.No.8/3A and 48/2B of Bijapur village, Muddebihal Taluk, Bijapur District. The said lands were acquired by the State for public purpose as provided under the provisions of the Land Acquisition Act (hereinafter referred to as "the Act") and an Award came to be passed in LAQ/CR-6/78-79 on 28th of March 1980. The petitioner not being satisfied with the quantum of compensation awarded by the Special Land Acquisition Officer, the respondent, made an application on 25th of June 1980 for determination of the quantum of compensation by the Civil Court. The Land Acquisition Officer made a reference as provided under Sub-section (2) of Section 18 of the Act on 16th of October 1984 to the Civil Court, that is, 4 years, 3 months and 21 days after the date of the reference application made by the petitioner. The learned First Additional Civil Judge, Muddebihal, by his order dated 10th of August 1993, rejected the reference made by the Land Acquisition Officer on the ground that the reference made by the Land Acquisition Officer was beyond three years and ninety days from the date of the application filed seeking reference and, therefore, the reference made was illegal and without jurisdiction and as such, the Court has no jurisdiction to act upon the said reference.

(b) Aggrieved by the said order, the petitioner has presented this revision petition. It is relevant to point out that the learned Civil Judge obviously rejected the reference made following the Division Bench decision of this Court in the case of SPECIAL LAND ACQUISITION OFFICER v. GUAPPA CHANNABASAPPA PARAMAJ, wherein this Court has taken the view that a reference made by the Land Acquisition Officer beyond three years and ninety days from the date of the reference application, was illegal and beyond the power of the Land Acquisition Officer. The learned single Judge of this Court (Krishna Moorthy, J), before whom this revision petition came up for consideration, expressed his doubt with regard to the correctness of the law laid down by the Division Bench of this Court in the case

of Special Land Acquisition Officer (supra) and felt that the said decision requires to be re-considered by this Court and in that view of the matter, by his order dated 27th of March 1996, referred this revision petition to the Division Bench under Section 9 of the Karnataka High Court Act, 1961. Thereafter, the Division Bench of this Court (Krishna Murthy and Ashwathanarayana Rao, JJ.), while admitting the revision petition, felt that the aforesaid decision of this Court in the case of Special Land Acquisition Officer (supra) requires to be re-considered by a larger Bench and, therefore, directed this revision petition to be referred to a Full Bench for deciding the question, referred to above. This is how this revision petition is placed before us for our consideration.

3. Sri Gadag, Learned Counsel appearing for the petitioner, submitted that the decision of the Division Bench of this Court in the case of Special Land Acquisition Officer (supra) does not lay down the correct law and the said decision requires to be reconsidered as pointed out by the orders of reference made by the learned Single Judge and the Division Bench of this Court, referred to above. He pointed out that Sub-section (1) of Section 18 of the Act only mandates any person interested in the land, which has been acquired, who has not accepted the Award, to make a written application to the Deputy Commissioner/Land Acquisition Officer requiring him to refer the matter for determination to the Civil Court. He further submitted that there is no limitation provided either under Sub-section (1) or Sub-section (2) of Section 18 of the Central Act prescribing any limitation for making a reference by the Land Acquisition Officer to the Court; and the only requirement of law is that the person interested in the land (hereinafter referred to as "the claimant") must make an application within ninety days from the date of service of notice from the Deputy Commissioner under Sub-section (2) of Section 12 of the Act; and Since it is not in dispute in the present case that the petitioner had made an application within ninety days as provided under Sub-section (2) of Section 18 of the Act seeking reference of his application to the Civil Court, it is not permissible for the Civil Court to reject the reference made, on the ground that the reference was made beyond three years and ninety days from the date of the reference application. The learned Counsel pointed out that the object of Sub-section (3)(a) of Section 18 of the Act, as amended by Karnataka Act No. 68 of 1984, wherein it is provided that the Deputy Commissioner should make a

reference to the Court within ninety days from the date of receipt of the application, is to compel him to discharge his statutory duty of making reference of the reference application with utmost expedition. He further pointed out that Sub-section (3)(b) of Section 18 of the Act is only an enabling provision wherein a right is given to the claimant to move the Court seeking reference in the event of Deputy Commissioner/Land Acquisition Officer fails to make a reference within a period of ninety days from the date of receipt of the application. Therefore, the learned Counsel would point out that the view taken by this Court in the case of Special Land Acquisition Officer (supra) that the Deputy Commissioner/Land Acquisition Officer cannot make a reference beyond three years and ninety days, does not lay down the correct law and, therefore, the same requires to be reconsidered. In support of his plea, he strongly relied upon the decision of this Court in the case of BALAPPA v. SPECIAL LAND ACQUISITION OFFICER, ILR 1989 Kar 1931, wherein a learned single Judge of this Court (Shivashankar Bhat, J) has taken the view that barring of the right to move the Court after period of limitation under Section 18(3)(a) and (b) of the Act cannot result in taking away the competency of the Deputy Commissioner to discharge his statutory function of making the reference so long as the initial application made under Sub-section (1) of Section 18 of the Act is pending undisposed of. The learned Counsel also has referred to the unreported decision of this Court in the case of GURUSANGAPPA AND ORS. v. SPECIAL LAND ACQUISITION OFFICER, C.R.P. Nos. 305/86 wherein the then Chief Justice of this Court (P.C. Jain, J) has taken the view similar to the one taken by this Court in the case of Balappa (supra). The Learned Counsel relying upon the decision of this Court in the case of SPECIAL LAND ACQUISITION OFFICER v. TUKKAREDDY, submitted that though there is no provision provided in Section 18 of the Act making it obligatory on the part of the Deputy Commissioner to inform the claimant about the fate of his application, having regard to the nature of the duties conferred on the Deputy Commissioner, it is necessary that such an obligation must be read into the Section and in the absence of any intimation given to the claimant rejecting the application, the period of pendency of the application before the Deputy Commissioner must be excluded while computing the period of limitation as provided under Section 15(2) of the Act.

4. Sri Chengappa, Learned Government Advocate, while seriously countering the submission of the Learned Counsel appearing for the petitioner, strongly relied upon the Division Bench decision of this Court in the case of Special Land Acquisition Officer (supra) and submitted that the said decision lays down the correct law and does not call for re-consideration of the view expressed in the said decision. He pointed out that since it is now held by this Court in the case of ASSISTANT COMMISSIONER v. BHIMA SHIDDAPPA NAIK, that Section 5 of the Limitation Act is applicable even in respect of the applications filed under Section 18(3)(b) of the Act beyond three years and ninety days, no prejudice or injustice will be caused to the claimant if the view taken by this Court in the case of Special Land Acquisition Officer (supra) is held to be correct; and on the other hand, if the submission made by the learned Counsel for the petitioner is accepted, it will give scope for getting the applications filed beyond ninety days as required under Sub-section (1) of Section 18 of the Act and get the matter referred to the Civil Court for determination of compensation in collusion with the officials in the office of the Land Acquisition Officer/Deputy Commissioner. Therefore, he would vehemently submit that if the construction as suggested by the learned Counsel for the petitioner is accepted, it would go against the public interest.

5. Before we proceed to examine the rival contentions advanced by the learned Counsel appearing for the parties, we feel it is useful to refer to Section 18 of the Act, as amended by Karnataka Act No. 68 of 1984, and authorities cited at the Bar.

(a) Section 18 of the Act reads as hereunder:

"18. REFERENCE TO COURT :

(1) Any person interested who has not accepted the award or amendment thereof, may by written application to the D.C. require that the matter be referred by the D.C. for the determination of the Court, whether his objection be to be 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 within ninety days from the date of service of the notice from the Deputy Commissioner under Sub-section (2) of Section 12.

(3)(a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under Sub-section (1) make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference the Court within a period of ninety days from the date of receipt of the application the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix."

(b) In the case of Special Land Acquisition Officer (supra), the Division Bench of this Court (Rama Jois and Jagannatha Shetty, JJ.), as pointed out by us earlier, after referring to the decisions of this Court in the case of Balappa (supra), has taken the view that once the right of the person interested to get a reference is time barred, it is not permissible to the Deputy Commissioner to make a reference after the period prescribed. In other words, according to the view expressed by this Court in the said decision, it is not permissible for the Deputy Commissioner to make a reference beyond three years and ninety days from the date of the application made under Section 18(1) of the Act. In the said decision, the Division Bench followed the view expressed by Swami, J., in the case of THE GWALIOR RAYON SILK (WVG.) CO. LTD. v. SMT. LAKSHMAVVA AND ANR, . wherein the learned Judge has taken the

view while considering the question whether it is permissible for the Deputy Commissioner to make a reference after ninety days from the date of the application, but within a period of three years and ninety days from the date of the application, while disapproving the view expressed by Kulkarni, J., in the case of UPPARA BASAPPA v. SPECIAL LAND ACQUISITION OFFICER, ILR 1986 Kar 2012 wherein the learned Judge held that it is not permissible for the Deputy

Commissioner to make a reference after ninety days. The Division Bench also proceeded on the basis that the similar view was taken by another Division Bench of this Court in the case of ASSISTANT COMMISSIONER v. LAKSHMI BAI, . It is useful to refer to the observations made by this Court in the case of Special Land Acquisition Officer (supra) at Paragraphs 13 and 15 of the judgment, which read as under:

"13. After giving our careful consideration to all the decisions, we are inclined to agree with the view expressed by the Division of this Court in the case of Lakshmi Bai and hold that the power to make Reference under Section 18(3) exists till the right of the party to make an application before the Court seeking a direction to the Deputy Commissioner to make reference exists and from this it follows, no power to make Reference exists thereafter and if made it is invalid.

15. After careful consideration of the rival contentions, we respectfully disagree with the view taken by the learned Judge in the case of Balappa. We are of the view that the reasonable construction of the provision is, as it has been construed in Gwalior Rayon and Lakshmi Bai, it is well recognized rule of construction that in order to ascertain the true meaning of a provision the intention of the Legislature, as ascertainable from the language of the provision is the safe guide. From the amendment of Section 18, it is clear that in addition to the time limit of 90 days fixed in Section 18, the Legislature intended to create a duty in the Deputy Commissioner to make a Reference within 90 days and further if within the said period the Deputy Commissioner/Land Acquisition Officer failed to make a Reference, to confer a right on the party to make an application before the Court seeking a direction to the Deputy Commissioner to make the Reference. If that right is not exercised by the party within time, then the right ceases. Once the right of the party to get a Reference is time barred, it would be incongruous to hold that the Deputy Commissioner can still make a Reference, at any time even after decades. In our view, it is reasonable to construe the provision to mean that the date on which the right of the party to get a Reference comes to an end would also be the date on which the power of the Deputy Commissioner to make Reference comes to an end. We are not persuaded to agree with the construction suggested for the respondent that the power of the Officer continues even after the right of

the party, comes to an end and continues for ever. It means even after an application made before the Court after three years is rejected as the Court is powerless to entertain a time barred application, the Deputy Commissioner would have the power to make a Reference, nullifying the order of the Court rejecting the application as time barred. Such a construction would lead to a situation in which in one case the Deputy Commissioner could make a Reference if he so desires and in another he could refuse to do so, if he so desires, in which event the party would be helpless. In other words, the Deputy Commissioner could not act according to his whims and fancies. It is difficult to agree that the Legislature intended to bring about such a result. Further, such a construction which brings about anomalous and incongruous results and gives ample scope for nepotism, favoritism and corruption, should not be given. We have come across several References made after two decades, particularly after several additional benefits were conferred by Amending Act 68 of 1984 amending the Land Acquisition Act. In our opinion, the correct view to make is, just as the party loses the right to the Reference if no application is made within 90 days in terms of Section 18(2), the party, who had made an application within SO days loses the right to secure a Reference if he fails to make an application within three years after the expiry of 90 days from the date of the Reference application and consequently the power of the Deputy Commissioner/Land Acquisition Officer to make Reference comes to an end. We are, therefore, of the view that the date of cessation of the right of the party to apply to the Court seeking a direction to the Deputy Commissioner to make the Reference also constitutes the date of cessation of power of the Deputy Commissioner. To put it in a nutshell the latter comes to an end on the date on which the former ends and the award of the Land Acquisition Officer becomes final. Therefore, neither the party can seek a Reference nor the Deputy Commissioner can make the Reference after the expiry of 3 years and 90 days from the date of the Reference application."

(c) In the case of Gwalior Rayons Silk Manufacturing (Wvg.) Co., Ltd., at Paragraph 5.1 of the judgment, the learned single Judge of this Court (Swami, J.), has observed as under:

"The contention of the learned Counsel for the petitioner is that it is the power that is enjoyed by the Deputy Commissioner under Section 18(3) of the Act, and if that power is not exercised within the period allowed by the statute, the same, cannot at all be exercised thereafter. This contention cannot be accepted. It is not the power that is enjoyed by the Deputy Commissioner but it is a statutory obligation. In the case of power, the authority is required to decide certain things but here in this case, the authority has no option or discretion whatsoever but to make a reference if an application under Sub-section

(1) of Section 18 of the Act, is filed within the period allowed by Section 18 of the Act, by any person interested in the property acquired and to whom the compensation in full or in part is payable and who has not accepted the award. Thus, the Deputy Commissioner is under a statutory obligation to make a reference to a Civil Court. The act merely directs that this statutory obligation should be performed within a period of 90 days. The statutory obligation does not come to an end as long as the right to seek the performance of that statutory obligation exists in a person interested and as such, he is entitled to seek a reference under Section 18 of the Act. Thus, as long as the right to seek a reference to a Civil Court exists in a person interested in the land acquired, the statutory obligation of the Deputy Commissioner to make a reference continues. According to Article 137 of the Limitation Act, the party is entitled to make an application to a Civil Court within a period of 3 years after the expiry of 90 days from the date of filing an application under Section 18(1) of the Act, for a direction to the Deputy Commissioner to make a reference. In such an event, the Civil Court is required to give a direction to the Deputy Commissioner to make a reference if it is proved that a valid application for making a reference under Section 18 of the Act is filed before the Deputy Commissioner within the period allowed by Sub-section

(2) of Section 18 of the Act. Thus, the right to seek a direction from the Court to the Deputy Commissioner to make a reference, in a person interested, who has made an . application under Section 18(1) of the Act within the period allowed by Sub-section

(2) thereof, before the Deputy Commissioner for making a reference, continues to exist till the expiry of three years from the date of the filing of the application before the Deputy Commissioner for making a reference. Consequently, the corresponding statutory obligation of the Deputy Commissioner to make a reference to a Civil Court under Section 18 of the Act, must be held to continue as long as the right to seek a reference continues to exist in a person interests. Therefore, the contention of the petitioner that it is a power and not an obligation, cannot be accepted. That it is a statutory obligation, is also clear from the report of the Joint Select committee. Sub-section

(3) of Section 18 of the Act came to be introduced pursuant to the Report of the Joint Select Committee. It is stated in sub-para 2 of Para 4 of the report as follows:

"In some cases, the Deputy Commissioners do not make a reference even when an application has been made. We, therefore, consider it necessary to make it obligatory on the Deputy Commissioner to make a reference within ninety days from the date of receipt of an application under Sub-section (1) of Section 18. We are also of the opinion that provision should be made empowering the Court to require the Deputy Commissioner to make a reference. We have accordingly inserted a new Sub-section (3) in Section 18."

Of course, one of the rules of interpretation is that if a particular provision of a statute is clear and is unambiguous, the report of the Committee of Legislature recommending the introduction of such provision, in other words, the consideration stemming from legislative history need not be taken into consideration while interpreting such a provision as to override the plain words of such a provision. In the instant case, even without reference to the aforesaid report of the Joint Select Committee, I have come to the conclusion that Section 18 of the Act imposes an obligation on the Deputy Commissioner to make a reference to a Civil Court, if there is a valid application made for that purpose. Thus, from the aforesaid report of the Joint Select Committee also, it is clear that the legislature while introducing Sub-section (3) thereof, has intended to make it obligatory on the Deputy Commissioner to make a reference."

(c) In the case of Balappa (supra) relied upon by the Learned Counsel for the petitioner, the learned single Judge of this Court as stated earlier, has taken the view that barring of the right to move the Court after the period of limitation under Section 18(3) of the Act cannot result in taking away the competency of the Deputy Commissioner/Land Acquisition Officer to make a reference after a period of three years and ninety days prescribed for the claimant to make a reference under Section 18(3) of the Act. In Paragraphs 8, 10 and 15 of the judgment, the learned single Judge of this Court has observed as follows:

"8. But can it be said that, a reference made after the period prescribed to move the Civil Court under Section 18(3), is an invalid reference? Such a reference will be invalid, as without jurisdiction, only if it can be said that, the earlier application made under Section 18(1) ceases to be functional, on the expiry of 3 years 90 days. In other words, it will be necessary to hold that the failure to make a reference on an application under Section 18(1), within the period prescribed to make the application under Section 18(3), results in a "deemed rejection" of the earlier application. But a deeming provision is a fiction to be statutorily created. Nowhere the Act says that the application filed under Section 18(1) shall be deemed to have been rejected on the expiry of any particular period.

10. It is said that bar of limitation affects the remedy, but does not extinguish the right. The exception to this rule is found in Section 27 of the Limitation Act. Said provision has no relevancy to the right to seek a reference in respect of the amount of compensation under Section 18 of the Act. Therefore, it is not possible to hold that a 'person interested' in the award loses his right altogether to any claim which he may have made under Section 18(1)(a). Effect of the failure on his part to move the Court under Section 18(3) is to deprive him of the remedy to enforce the making of a reference. But, it does not result in nullifying the reference itself that may be made by the Deputy Commissioner as per the original application, which was under deep slumber with him all these years.

15. Nowhere, in Gwalior Rayon's case, K.A. Swami, J., has observed that a reference made after 3 years 90 days, from the date of an application filed under Section 18(1) would be invalid. The ratio of these two decisions is that, on expiry

of 90 days from the date of the application under Section 18(1), the person interested' gets a right to move the Civil Court under Section 18(3), and the said application to move the Court should be filed within 3 years of the date of the expiry of the first 90 days."

(e) In the case of Gurusangappa (supra), the then Chief Justice of this Court (P.C. Jain, J.) has observed thus:

".....For no fault of the petitioners, reference was kept pending by the Land Acquisition Officer for a period of about five years. For -this unexplained lapse on the part of the Land Acquisition Officer, the petitioners cannot be penalised. It is correct that under Section 18 if reference is not made within 90 days the claimants may move the Land Acquisition Officer. But, the failure on the part of the claimants to move the Land Acquisition Officer would not disentitle them to enhanced compensation if they are so found entitled to on a reference which is made after inordinate delay by the Land Acquisition Officer. In these circumstances of the case, the learned Civil Judges has acted with material irregularity in dismissing the reference on the ground that the Land Acquisition Officer has made the reference after a lapse of nearly five years."

6. Having carefully gone through the provisions contained in Section 18 of the Act, the decision of the Division Bench of this Court in the case of Special Land Acquisition Officer (supra), and also the decisions of the Learned Single Judges in the cases of Gwalior Rayons (supra), Balappa (supra) and Gurusangappa (supra), We are inclined to agree with the view taken by the learned single Judge of this Court in the case of Balappa (supra) and find ourselves unable to accept the view taken by the Division Bench of this court in the case of Special Land Acquisition Officer (supra) for the reasons which we state hereunder.

7. It is necessary to point out that in the case of Special Land Acquisition Officer (supra), the Division Bench of this Court proceeded on the basis that another Division Bench of this Court, in the case of Laxmi Bai (supra), has taken the view that it is not permissible for the Deputy Commissioner to make a reference beyond three years and ninety days, that is, the time prescribed for the claimant to seek reference as provided under Section 18(3)(b) of the Act. In our view, with great

respect to the learned Judges of this Court, who decided that case, we do not find such a view taken by the Division Bench of this Court in Laxmi Bai's case (supra). In the said decision, while considering the contention advanced by the learned Counsel that the right of the person interested to compel to reference should not be held to come to an end even after the expiry of 3 years and 90 days and that a reference made by the Land Acquisition Officer even thereafter would be a valid one the Division Bench has stated that it is unnecessary to go into and answer that question. However, it is no doubt true that at the end of that paragraph, the Division Bench has observed that as long as Gwalior Rayon's case (supra) continues to hold the field, the proposition made by the learned Counsel will not be of any assistance. From that, it is not possible to take the view that in the case of Laxmi Bai (supra), the Division Bench of this Court has taken the view that it is not permissible for the Deputy Commissioner to make a reference of the application made within the time prescribed, after the expiry of the time prescribed for seeking reference under Section 18(3)(b) of the Act i.e., after three years and ninety days. Further, the Court also observed that the power conferred on the Deputy Commissioner under Section 18(3)(a) of the Act is directory in nature. It is useful to refer to the observations made by the Division Bench speaking through Venkatachaliah, J. (as he then was), which read as hereunder:

"There is a fundamental distinction between the nature and quality of the prescription of time in the second proviso to Section 18(2) on the one hand and in Section 18(3)(a) on the other. The first is a case of limitation for the enforcement of a right and seeking a remedy; the other is a case of prescription of time for the performance of a statutory duty. In the very nature of things, these two prescriptions cannot be put on the same footing, for purposes of construction. A provision prescribing limitation is a disabling one. An accessory right - a right to a remedy - gets barred. In *M.P. Industries v. State of Maharashtra*, Supreme Court observed:

"It is common knowledge that the law generally prescribes limitation for initiating proceedings and not a period within which a pending proceeding should be disposed of.".

But the prescription of a time-limit in Section 18(3)(a) relates to the performance of a statutory duty. As we have seen, Section 18(3)(a) imposes a duty on the Land Acquisition Officer to make a reference when there is a valid application under Section 18(1) in that behalf. The statute then says that duty shall be discharged by performance within a specified time, Does it lie in the power of the L.A.O. to defeat the provisions which impose the duty by disregarding its performance within the time prescribed? The answer must need rest on whether the prescription of time - where it is one bearing on the performance of a public duty - is mandatory or merely directory. On this Maxwell says:

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

The following observation of Sri Arthur Channeli in *Montreal Street Railway Co. v. Normandin* is also worth recalling:

".....When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them though punishable, not affecting the validity of acts done."

In the present case, the prescription of time in Section 18(3)(a) is for the benefit and furtherance of the right of the person-interested and was clearly not intended as a time-limit beyond which the statutory duty itself Would get extinguished. We think we should not opt for an interpretation which has this consequence, as serious general inconvenience would result from such an interpretation. It would not also promote the objects of the legislature in building-in this provision in the statute.

11. We are, therefore, with great respect to the learned single Judge, unable to bring, ourselves to agree with the view taken in the matter of Uppara Basappa's case. Statutory obligation to make a reference would continue and remain subsisting till the corresponding right on the part of the person interested to seek and compel a reference subsists. Swami. J., in Gwalior Rayon's case has held that this obligation continues till the expiry of the period of three years which is held to be the period of limitation for making an application under Section 18(3)(b). It appears to us that the view taken by Swami. J., should be preferred to the one taken in Uppara Basappa's case. If we prefer the view in Uppara Basappa's case undeserved injustice and hardship would be occasioned to the parties. We should, we think, avoid such a construction of the provisions. Indeed Supreme Court said: is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice or absurd inconvenience or anomaly....."

Kothavale urged that the right of the person interested to compel a reference should not be held to come to an end even after the expiry of 3 years and 90 days and that a reference made by the L.A.O. even thereafter would be a valid one. It is unnecessary to go into and answer that question here. The reference in the present case is within the period of 3 years from the expiry of 90 days. We hold the reference to be valid. As long as the Gwalior Rayon's case continues to hold the field, Sri Kothavale's proposition will not be of assistance."

As a matter of fact, the question whether the Deputy Commissioner could make a reference after three years and ninety days did not arise for consideration as the reference made in the said case was beyond ninety days and within a period of three years and ninety days. Therefore, the only question that came up for consideration in the case of Laxmi Bai (supra) was whether the view expressed by Kulkarni, J., in the case of Uppara Basappa (supra), that the reference made beyond ninety days from the date of application was not a valid reference, was the correct view to be taken or the view taken by Swami, J., in the case of Gwalior Rayon (supra), that the reference made beyond ninety days from the date of the application, but within three years and ninety days, is the correct law. Therefore, we are of the view that the Division Bench, in the case of Special Land Acquisition

Officer (supra), has not properly understood the view expressed by this Court in the case of Laxmi Bai (supra) In fact, in the case of Balappa (supra), Shivashankar Bhat, J., after considering the view expressed by the Division Bench of this Court in the cases of Laxmi Bat (supra) and Gwalior Rayon (supra), has taken the view that the period of limitation prescribed to seek reference under Section 18(3)(b) of the Act cannot be read into the power conferred on the Deputy Commissioner to make a reference and on that basis, it cannot be held that the Deputy Commissioner has no power to make a reference after ninety days from the date of the receipt of the application made under Sub-section (1) of Section 18 of the Act. It is relevant to point out that Sub-section (1) of Section 18 of the Central Act provides that any person interested in the land, who has not accepted the award, may, by written application to the Deputy Commissioner, require that the matter may be referred by the Deputy Commissioner for determination of the compensation to the Civil Court etc. Sub-section (2) of Section 18 of the Central Act requires that such an application should be made within 90 days from the date of service of a notice from the Deputy Commissioner under Sub-section (2) of Section 12 of the Act. Therefore, the only requirement of the Central Act, as provided under Section 18(1) and (2) of the Act, is that a person, who is not satisfied with the quantum of compensation awarded, should make an application within ninety days from the date of notice from the Deputy Commissioner under Sub-section (2) of Section 12 of the Act. There is no period of limitation prescribed under the Central Act limiting the power of the Deputy Commissioner to make the reference to the Civil Court on the application filed by the claimant within a specified time. In the absence of any provisions contained in Section 18 of the Act, as amended by the Karnataka Act No. 68 of 1984, limiting the power of the Deputy Commissioner to make a reference after a particular period, there cannot be any scope for constructing an argument that the Deputy Commissioner is required to make a reference on the application filed by the claimant seeking reference to the Civil Court for determination of compensation within a specified time. Therefore, the only question that would emerge for consideration is, what is the effect of the provisions contained in Sub-section (3)(a) of Section 18 of the Act when it makes it imperative on the Deputy Commissioner to make a reference within ninety days from the date of receipt of an application made under Section 18(1) of the Act read

with Sub-section (3)(b) of Section 18 of the Act, which confers a right on the claimant to seek reference of an application made by him under Section 18(1) of the Act, if the Deputy Commissioner fails to refer the said application to the Civil Court as required of him in the discharge of his statutory duty as provided under Section 18(3)(a) of the Act.

8. In the case of Special Deputy Commissioner, the Division Bench of this Court took the view that once a right of the person interested to get a reference made is barred by time, it would be incongruous to hold that the Deputy Commissioner can still make a reference at any time after the period prescribed to get the reference made by an application; and in that view of the matter, the Division Bench of this Court took the view that it is reasonable to construe the provision contained in Section 18(3)(a) of the Act to mean the date on which right of the party to get a reference comes to an end, would also be the date on which the power of the Deputy Commissioner to make the reference comes to an end. With great respect to the learned Judges, who took the said view, we find it difficult to persuade ourselves to subscribe to the said view.

9. The provisions contained in Sub-sections (1), (2) and 3(a) and (b) of Section 18 of the Act or intended to serve a specific and definite purpose as it is clear from the provisions contained in the said Section. It is well settled that when the language contained in a Section is clear and unambiguous, it is not permissible for the Courts, in the guise of interpretation of the statutes, to read into the provision, its philosophy or the evil the Court intends to remove by giving an interpretation which the Courts feel just and fair. It is only in cases where the language is not clear and a harmonious construction of several sub-section in a Section or an Act has to be made, the Court can look into the intendment or object of the Section or the enactment and construe the provision in a fair and reasonable manner which would subserve the object of the Section and the enactment. In this connection, we may refer to the observations of Maxwell on Interpretation of Statues, which reads as follows:

"When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to

interpret what has no need of interpretation. Absolute sententia expositore non indiget. Such language best declares, without more, the intention of the lawgiver, and is decisive of it. The rule of construction is "to intend the legislature to have meant what they have actually expressed." It matters not, in such a case, what the consequences may be.

Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced, even though it be absurd or mischievous. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as than from any notions which may be entertained by the Court as to what is just or expedient. The words cannot be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect. When once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words."

As stated earlier, that is not the situation in the present case when we read Section 18 of the Act. Sub-sections (1) and (2) of Section 18 of the Act if read together, as observed by us earlier, only mandates the person interested in the land, who has not accepted the award, to make an application within ninety days from the date of service of the notice as provided under Sub-section (2) of Section 12 of the Act. The reading of Section 18(3)(a) of the Act makes it clear that an obligation is imposed on the Deputy Commissioner to make the reference within ninety days from the date of receipt of the application. The upper limit prescribed under Section 18(3)(a) of the Act for the Deputy Commissioner to make the reference is intended to activate the discharge of the duties by the Deputy Commissioner and to compel him to make the reference with utmost expedition and at an early point of time, as the person, who has been deprived of his properties, must secure the compensation at any early date, so that he can settle himself with the compensation he receives. It is well settled that the time limit

prescribed for performance of a public duty is rarely mandatory. It is also well settled that though, in the statute, the word "shall" is used, and having regard to the nature of the duty required to be performed by the concerned Authority, it can be read as "may" and only directory in nature. In this context, it is useful to refer to the observations made by Maxwell on Interpretation of Statutes, 12th Edition, at Page 304, which reads as under:

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

It is also worthwhile to recall the observation made by SRI ARTHUR CHANNEL IN MONTREAL STREET RAILWAY CO. v. NORMANDIN, AIR 1917 PC 142 at page 144:

"...When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them though punishable, not affecting the validity of acts done."

The prescription of time in Section 18(3)(a), as observed by us earlier, is intended for the benefit and furtherance of the right of the person interested and was clearly not intended as a time limit, beyond which statutory duty itself would get extinguished. In fact, in the case of Laxmi Bai (supra), the Division Bench of this Court has taken the view while disapproving the view expressed by Kulkarni, J., in Uppar Basappa's case (supra), and accepting the view expressed by Swami, J., in the case of Gwalior Rayon (supra) that even after the expiry of ninety days prescribed to make the reference by the Deputy Commissioner under Section 18(3)(a) of the Act, the Deputy Commissioner does not lose his right or authority to make the reference under Section 18(3)(a) of the Act immediately after the expiry

of ninety days prescribed and he will have the power to make the reference for a period of three years and ninety days. Therefore, the Division Bench of this Court, in the case of Laxmi Bai (supra), also has taken the view that what is contained in Section 18(3)(a) of the Act making it obligatory on the part of the Deputy Commissioner to make a reference within ninety days from the date of the application, is not mandatory and it is only directory in nature and merely because the Deputy Commissioner does not make a reference within ninety days from the date of the application, the Deputy Commissioner would not lose his right or authority to make the reference. Under these circumstances, as stated by us earlier, it is not possible to take the view in the guise of interpretation of Section 18(1), (2) and (3)(a) and (b) of the Act that merely because it is not permissible for the person interested/claimant to get the reference made to the Civil Court under Section 18(3)(b) of the Act beyond three years and ninety days from the date of the application, it should also be held on the same logic that it is not permissible for the Deputy Commissioner to make a reference after three years and ninety days from the date of the application as held by this Court in the case of Special Land Acquisition Officer (supra). The power conferred on the Deputy Commissioner to make a reference is quite different and independent of the right conferred on the person interested/claimant to get the reference made. Section 18(3)(b) of the Act confers a right to get the reference made to the Civil Court, if a statutory Authority fails to discharge his duty and make a reference within ninety days as provided under Section 18(3)(a) of the Act. The right given to the claimant to get the reference made cannot be understood and interpreted to nullify the power of the Deputy Commissioner to make the reference once the provision contained in Section 18(3)(a) is read as directory. The fact that there are spurious applications made and the claimants in collusion with the Revenue Officials, get the applications ante dated and get the reference made even after a decade from the time prescribed for making the application under Section 18(1) of the Act, cannot be a ground to deny a right provided to a person interested or a claimant to get the reference made by the Deputy Commissioner adjudicated upon the Civil Court. What is guaranteed to a claimant is to either get the reference made to the Civil Court within a period of three years and ninety days if the Deputy Commissioner fails to make the reference within ninety days from the date of the

application, or leave the matter for the sweet will of the Deputy Commissioner to make a reference. It is relevant to point out that there is no provision made in the Act which states that if the Deputy Commissioner fails to make a reference within ninety days from the date of the application, as provided under Section 18(3)(a) of the Act, the said application is deemed to have been rejected. This court also cannot ignore the fact situation that all the land owners, whose lands are acquired, are not educated persons or well-versed with the Court proceedings; most of them are illiterate villagers. Experience also tells that it is not uncommon that when the claimants approach the Office of the Deputy Commissioner to find out the fate of their applications made seeking reference, they are told that steps would be taken to refer the applications to the Civil Court and they could wait till the notices are issued from the Court. This being the background of the persons, who are deprived of their land, it will be totally unjust to deprive their right to get their claim adjudicated upon by the Civil Court if the Deputy Commissioner makes a reference on his own volition even after considerable delay on the ground that the reference is made beyond three years and ninety days, which is the time permitted to a claimant to get the reference made to the Civil Court. In this connection, it is also relevant to refer to the Division Bench decision of this Court in the case of Assistant Commissioner v. Bhima Shiddappa Naik where this Court has also taken the view that even in respect of the applications to be made under Section 18(3)(b) of the Act, the provisions of Section 5 of the Limitation Act would apply and in that situation, it is permissible for a claimant to seek for condonation of delay caused in making the application under Section 18(3)(b) of the Act seeking a reference. We are in respectful agreement with the view expressed by the Division Bench of this Court seeking through Hakeem, J. (as he then was). If that is so, and the claimant can make an application for condoning the delay caused in making the application under Section 18(3)(b) of the Act, on the same logic, it must be held that the right given to the Deputy Commissioner to make a reference is not subject to any limitation for making the reference. It is also necessary to point out that two learned single Judges of this Court have taken the view that it is open to the Deputy Commissioner to make a reference at any time and even beyond three years and ninety days, which is the limitation prescribed to a claimant to get his application referred to the Civil Court. In this situation, if the claimants are advised

by their advisors that instead of making an application under Section 18(3)(b) of the Act seeking a reference, which would cost them considerable money and time, they could as well await till the Deputy Commissioner makes a reference and in that event their claim is required to be considered by the Court, it would be unjust and result in serious injustice to the persons, who have lost their land on account of the compulsory acquisition made by the State for public purpose to be told that their right to get the just compensation determined by the Court is lost on the ground that the Deputy Commissioner has failed to discharge his statutory duty and the limitation prescribed to get the reference made under Section 18(3)(b) of the Act must be read into the provisions of Section 18(3)(a) of the Act. As stated earlier, the provisions of Section 18(3)(a) and (b) provide for two different purposes. Section 18(3)(a) provides for a statutory obligation on the part of the Deputy Commissioner to make a reference, whereas Section 18(3)(b) provides for a right to the claimant to get a reference made, in fact, the Supreme Court, in the case of KOTHAMASU KANAKARATHANAMMA v. STATE OF ANDHRA PRADESH, while considering the obligation of the Deputy Commissioner to refer the application to the Civil Court, has observed thus:

"(2)Indeed, whenever applications are made under Section 18 of the Land Acquisition Act, it is the duty of the Land Acquisition Officer to make a reference unless there is a valid ground for rejecting the applications such as for instance that the applications were barred by time. Where an officer of the State is remiss in the performance of his duties in fairness the State ought not to take advantage of this fact....."

Similar view is also expressed by the Supreme Court in the case of GRANT v. STATE OF BIHAR, wherein it was observed thus:

"(13).....Again under Section 18 the Collector is bound to make a reference on a petition filed by a person interested....."

Therefore, the default on the part of the Deputy Commissioner to discharge his statutory duty, in our view, cannot be pitted against the petitioner and when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Further, even if there are two

views possible in the matter and a statutory interpretation has to be constructed by the Court, it is well settled that an interpretation, which is in furtherance of justice, fair play and equity must be given. In the instant case, if we have to take the view that the Deputy Commissioner has no authority in law to make a reference after three years and ninety days, reading into Section 18(3)(a) of the Act the limitation prescribed to Section 18(3)(b) of the Act, the claimant will be deprived of the right guaranteed to him under the Act to get his claim for payment of just compensation adjudicated upon by the Court. In this context, it is also needless to point out that the Land Acquisition Officers are Executive Officers of the State; and on many occasions, they are likely to decide the quantum of compensation without keeping in mind the law governing the payment of compensation and may award lesser amount of compensation either in their anxiety to save the money to the State or to avoid accusation of having granted higher compensation to the claimants by the superiors. Under these circumstances, if we take the view that the power of the Deputy Commissioner is not circumscribed by any limitation to make a reference except to satisfy himself that the provisions of Section 18(1) and (2) of the Act are satisfied, no injustice or prejudice is caused either to the State or to the claimant. As stated earlier, it would be in furtherance of justice. In this connection, it is useful to refer to the decision of the Supreme Court in the cases of owners and Parties Interested in *M.V. VALI PERO v. FERNANDEO LOPEZ AND ORS.*, AIR 1989 SC 2208 and *COLLECTOR, LAND ACQUISITION, ANANTNAG v. MST. KATIJI*, .

(a) In the case of *Fernando Lopez* (supra), the Supreme Court, while taking the view that the Rules of Procedure are not by themselves an end but they are means to achieve the ends of justice and they should not be treated as hurdles to obstruct the pathway to justice, has observed as follows:

"Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where

the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the, handmade of justice, contrary to the, role attributed, to it in our legal system."

(b) Further, in the case of Collector, Land Acquisition, Anantnag v. Katiji (supra), the Supreme Court, while laying down what should be the approach of the Court when the Court considers the request of a party to condone the delay, at paragraph-6 of the said judgment; has observed thus:

"(i) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay The doctrine must be applied in a rational common sense pragmatic manner.

(4) when substantial justice and technical considerations are pitted against each other, cause of substantial justice justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing

injustice and is expected to do so."

(Emphasis supplied)

10. The principles laid down by the Supreme Court in the aforesaid two decisions fully support the view we have taken above. If spurious applications are placed on record by the claimants in collusion with the Revenue Officials, certainly it is open to the Deputy Commissioner, who is a high ranking officer of the State, to go into the same and reject those applications. Even if he faults in his decision and makes a reference of an application, which is barred by limitation, certainly the very objection with regard to 'the maintainability of the application can be raised before the Civil Court, and in that situation, it is well settled that it is open to the Civil Court to go into the maintainability of the application and if the application is barred by limitation or a spurious one, to reject the reference made. In the case of Balappa, the learned Single Judge of this Court has elaborately discussed and given reasons for his conclusion to take the view that there is no period of limitation prescribed for the Deputy Commissioner to make a reference in respect of the application filed under Section 18(1)(a) of the Act. We are in agreement with the view expressed by the said learned Single Judge. Therefore, we find it unnecessary to dwell any further on the subject.

11. One another aspect we may have to refer to is the effect of the judgment of the Supreme Court in the case of ADDITIONAL LAND ACQUISITION OFFICER v. THAKOREDAS, wherein the

Supreme Court has taken the view that the application filed seeking reference under Section 18(3)(b) of the Act after the period of limitation prescribed i.e., three years and ninety days, is barred by limitation. In the said decision, the Supreme Court did not go into the question as to whether the Deputy Commissioner could make a reference after the period of limitation prescribed for the right of a claimant to get the reference made i.e., beyond three years and ninety days. The only question considered in the said case was, whether the view taken by this Court holding that the provisions of Article 137 of the Limitation Act would apply in respect of applications made under Section 18(3)(b) of the Act; and if an application is made after three years and ninety days, whether the Civil Court can

entertain such an application. It will be useful to extract Paragraph-3 of the said judgment, which reads thus:

"Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award under Section 12(2) of the Act. Within 90 days from the date of the service of the notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the Civil Court under Section 18. Under the amended Sub-section 3(a) of the Act, the Deputy Commissioner shall, within 90 days from September 1, 1970, make reference under Section 18 to the Civil Court which he failed to do. Consequently by operation of Sub-section 3(b) with the expiry of the aforesaid 90 days, the cause of action had accrued to the respondents to make an application to the Civil Court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in Sub-section 3(b) to make that application but it should be done within the limitation prescribed by the Schedule to the Limitation Act. Since no Article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by Clause (b) of Sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e., the date on which cause of action had accrued to the respondent-claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in Municipal Corporation of Athani , which was stood overruled, the order of the High

Court is unsustainable. The appeals are accordingly allowed and the application made to the Court by the respondent stands rejected."

12. In our considered view, the observations made by the Supreme Court in the above case, will not in any manner suggest a view contrary to the one we have taken above.

13. Before parting with this order, it is necessary to refer to one another contention of the learned Counsel for the petitioners made relying on the decision of this

Court in the case of Special Land Acquisition Officer v. Tukkarreddy (supra). In the view we have taken above, it is clear that the view taken by the learned Judge of this Court in the said decision that an obligation has to be read into Section 18(3)(a) of the Act casting an obligation on the Authorities to intimate to the applicant the fate of his application and if the Authority does not at all inform the applicant the fate of his application the entire period that has elapsed as a result of the default of the Authority will, on an analogy of the provisions of Section 15(2) of the Act, have to be excluded while computing the period of limitation, does not lay down correct law.

14. In the light of the discussion we have made above, we are of the view that the decision of this Court in the case of Special Land Acquisition Officer v. Gurappa Channabasappa Paramaj does not lay down the correct law and the decisions of this Court in the case of Balappa v. Special Land Acquisition Officer and Gurusangappa v. The Special Land Acquisition Officer (C.R.P.No. 305 of 1988 decided on 11th of March 1988) lay down the correct law.

15. Accordingly, we answer the reference. Consequently, the order dated 10th August 1993 made by the learned First Additional Civil Judge at Muddebihal in L.A.C.No. 25/85 is liable to be set aside and accordingly, it is set aside. The learned Civil Judge is directed to consider the reference made by the Land Acquisition Officer on merits.

16. Since the claim application has been pending ever since the year 1985, the learned Civil Judge is directed to dispose of the proceedings expeditiously

17. However, having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

DISSENTING

G.C. Bharuka, J.

1. I regret I find myself unable to agree with the view taken by my learned brother Vishwanath Shetty, J. as expressed by him in the draft judgment which I have

carefully gone through. The question to be considered by this Full Bench is as to whether the reference made by the Deputy Commissioner after the expiry of 90 days from the date of receipt of the application for reference under Section 18(1) of the [Land Acquisition Act, 1894](#) as amended by the Land Acquisition (Mysore Extension and Amendment) Act, 1961 (in short, "the Act") was competent and entertainable by the Court.

2. The lands bearing Nos. RS.8/3A and 48/2B of Bijur village, Muddebihal Taluk, Bijapur District, which were owned by the petitioner, had been acquired by the State Government under the provisions of the Act. An award in respect of the said acquisition was passed on 28.3.1980 in LAR/CR-6/78/79 but the petitioner being not satisfied with the amount of compensation awarded therein, filed an application to the Deputy Commissioner on 25.6.80 in terms of Section 18(1) of the Act requiring the matter to be referred for determination to the Court. But strangely the Land Acquisition Officer made the reference to the Court only on 16.10.84 ie., after 4. years, 3 months and 21 days from the date of receipt of the application for reference filed under Sub-section (1) of Section 18 of the Act. The learned 1st Additional Civil Judge, Muddebihal, by his order dated 10.8.1983 rejected the reference made by the Land Acquisition Officer on the ground that the reference so made beyond 3 years 90 days from the date of the present filing of the application for reference cannot be entertained. This order was obviously passed keeping in view the law laid down by the Division Bench of this Court in the case of SPECIAL LAND ACQUISITION OFFICER v. G.C. PARAMAJ (supra) The present civil revision petition is directed against the said order passed by the Court giving rise to the question of law framed above.

3. Section 18 of the Act has been amended by a State Amendment, namely, the Land Acquisition (Mysore Extension and Amendment) Act, 1961, which came into force on 24.8.1961. The said section on incorporation of the State Amendment reads as under:-

"Section 18 - Reference to Court - (1) Any person interest who has not accepted the award [or amendment thereof] may, by written application to. the Deputy Commissioner, require that the matter be referred by the Deputy Commissioner 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 [or the amendment] is taken:

[Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under Sub-section (2) of Section 18.]

[(3)(a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under Sub-section (1), make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix."]

4. Keeping in view the limitation set out in the proviso to Sub-section (2) of Section 18, it is clear made within 90 days from the date of service of notice from the Deputy Commissioner under Sub-section (2) of Section 12 of the Act.

5. While considering the imperativeness of the limitations prescribed under the proviso to Sub-section (2) of Section 18, the Supreme Court in the case of MOHAMMED HASNUDDIN v. STATE OF MAHARASHTRA, has held that:-

".... It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, Sub-section (2) is a sine qua non for a valid reference by the Collector."

6. Therefore, if a person interested wants a reference to be made to the Civil Court regarding an award, then he has to file an application to that effect within the period of limitation prescribed under the proviso to Sub-section (2) to Section 18 or else the reference will be incompetent. Further if such an application for reference

is filed within time by the person interest, then Clause (a) of Sub-section (3) of Section 18 comes into operation making it incumbent on the Deputy Commissioner to make the reference within 90 days from the date of receipt of the application for the said purpose.

7. In the above context, for getting an apt answer to the question involved, it has first to be ascertained as to whether despite the said legislative mandate casting a statutory duty on the Deputy Commissioner, if he fails to make the reference within the said prescribed period of 90 days, then does the applicant become remediless or the law has taken care to safeguard his interest. Clause (b) of Sub-section (3) of Section 18 takes due care of the above situation. It provides that if the Deputy Commissioner fails to make the reference within the time prescribed i.e., 90 days, then the applicant can apply to the Court to direct the Deputy Commissioner to make the reference within the time fixed by the Court. Therefore, the failure on the part of the Deputy Commissioner to discharge his statutory duty can be effectively remedied with a judicial mandate which can be made pursuant to an application filed by the person interested in accordance with Section 18(3)(b) of the Act.

8. On the issue as to within what period the applicant can file an application before the Court under Section 18(3)(b) of the Act for compelling the Deputy Commissioner to make the reference, the Supreme Court in the case of **THE ADDITIONAL SPECIAL LAND ACQUISITION OFFICER, BANGALORE v. THAKOREDAS, MAJOR AND ORS.**, has held that:-

"There is no period of limitation prescribed in the Sub-section 3(b) to make that application but it should be done within the limitation prescribed by the Schedule to the Limitation Act. Since no Article Expressly prescribes the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by Clause (b) of Sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3) i.e., the date on which cause of action had accrued to the respondent-16. claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation."

9. In the present case, admittedly, the applicant had also not filed any application before the Court under Section 18(3)(b) of the Act for directing the Deputy Commissioner to make the reference and thus has lost the right to avail the said remedy as held by the Supreme Court in the case Special Land Acquisition Officer (supra). But, still the impugned reference was made by the Deputy Commissioner after more than 4 years from the date of receipt of the application under Section 18(1) of the Act that is, much beyond 90 days as mandated by the Legislature under Section 18(3)(a) thereof.

10. In the above premise, the aspect which first needs to be considered is as to whether despite fixation of statutory time limit of 90 days for making reference to Court, can the Deputy Commissioner make a reference at his sweet will at any time he chooses which may range from couple of years to decades or whether any time limit is inferable for discharge of the said statutory duty by employing the established rules of interpretation.

11. On the above aspects, three views have been canvassed at the Bar with supporting judicial pronouncements of this Court. These are:-

(a) Provisions contained in Section 18(3)(a) are mandatory in nature and therefore, reference made by the Deputy Commissioner after the prescribed period of 90 days, unless so directed by the Court, is incompetent.

(b) The statutory obligation of the Deputy Commissioner to make a reference to a Civil Court under Section 18 of the Act continues so long as the right to compel the Deputy Commissioner under Section 18(3)(b) exists in the applicant ie., for a period of 3 years and 90 days from the making an application under Section 18(1) of the Act.

(c) Since Section 18(3)(a) casts a public duty on the Deputy Commissioner to make a reference, therefore, the provision has to be held as directory and no period of limitation can be inferred for performance of that duty.

12. Clause (a) of Section 18(3) mandates that the Deputy Commissioner shall within 90 days from the date of receipt of an application under Sub-section (1)

make a reference to the Court. In the case of SAINIK MOTOR'S, it has been held that the word "shall" is ordinarily mandate but it is sometimes not so interpreted if the context or the intention so demands. Similarly, in the case of STATE OF U.P. v. BABURAM, it has been pointed out that when the statute uses the word "shall", prima facie, it is mandatory, but the Court can ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute. It has further been held that (at p. 765):-

"For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequence which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

13. Keeping in view the law laid down by the Supreme Court as above, in order to ascertain as to whether despite the use of the word "shall" in Section 18(3)(a), can this provision be held as directory or it needs to be construed as mandatory. For coming to conclusion on this score, it is necessary to first examine the legislative scheme, purpose and object underlying the State Amendment.

14. In the above context, it is interesting to note that, but for Sub-section (3) as inserted by the Mysore Amendment, no time is prescribed for making of a reference by the Deputy Commissioner nor any power is conferred on the Civil Court to direct the Deputy Commissioner to make any such reference. Absence of such a provision has its own demerits. The Joint Select Committee constituted for consideration of the State Amendment in its report dated 25.3.1961 has set out the following purpose necessitating insertion of the impugned Sub-section (3), namely,

-

"In some case, the Deputy Commissioners do not make a reference even when an application has been made. We therefore, consider it necessary to make it

obligatory on the Deputy Commissioner to make a reference within ninety days from the date of receipt of an application under Sub-section (1) of Section 18. We are also of the opinion that provision should be made empowering the Court to require the Deputy Commissioner to make a reference. We have accordingly inserted a new Sub-section (3) in Section 18."

15. Looking at the above object underlying the State Amendment, it seems to me that the Legislature, by inserting Sub-section (3) in Section 18 of the Act, has endeavoured to provide an integrated procedural code to impel the Deputy Commissioner to make the reference with all expedition if not on his accord, then at least pursuant to a judicial mandate. As noticed above, in the legislative scheme devised for making a reference under Section 18 of the Act, time limit has been prescribed for taking each of the successive steps, namely, (i) for filing an application for reference, (ii) for making of reference, and, (iii) for filing of application to Court for compelling the Deputy Commissioner to make a reference. Time limit prescribed for steps (i) and (iii) has already been held by the Supreme Court as mandatory in the case of *Mohammad Hussain (supra)* and *Additional Special Land Acquisition Officer v. Thakoredas (supra)*.

16. Now, to ascertain as to whether the step (ii) as well in the above procedural scheme is circumscribed by a mandatory limitation, it is necessary to identity the nature of function assigned to the Deputy Commissioner under Section 18 of the Act. In the case of *KOTHAMASU KANAKARATHAMMA v. STATE OF ANDHRA PRADESH*, it has

been held that:-

"Indeed, whenever applications are made under Section 18 of the Land Acquisition Act, it is the duty of the Land Acquisition Officer to make a reference unless there is a valid ground for rejecting the applications such as for instance that the applications were barred by limitation."

17. The question whether a certain provisions in a statute imposing a duty on a public body or authority was mandatory or only directory, arose before their Lordships of the Judicial Committee of the Privy Council in the case of

MONTREAL STREET RAILWAY CO v. NORMANDIN, 1917 AC

170. The Board made the following observations in the course of their judgment:-

".....The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

18. The principle laid down in the above case was adopted by the Federal Court in the case of BISHWANATHA KHEMKA v. THE KING EMPEROR, AIR 1945 FC 67 and the Supreme Court in the case of STATE OF UP v. MANBIDHAN LAL, .

19. A close reading of the above passage in Montreal Street Railway Company's case (supra) shows that the Privy Council found it necessary to treat the provisions of statute relating to performance of public duty as directory because (i) it would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and (ii) holding otherwise, would not promote the main object of the legislature. Now, let us examine whether under the legislative scheme in hand, the said two grounds are available for holding the provisions to be directory.

20. So far as the 1st reason is concerned, it can unhesitantly be held that a person, for whose benefit the reference is directed to be made by the Deputy Commissioner, has not been left helpless by the legislature. If such a person finds that the Deputy Commissioner has failed to discharge his statutory public duty of making a reference within the prescribed period of 90 days from making of an application for that purpose then, he has been given a right to approach the Civil

Court for compelling the Deputy Commissioner to make a reference. Therefore, it cannot be said that the applicant has no control over the inaction on the part of the Deputy Commissioner in discharging his public duties resulting in inconvenience or injustice. If a reference is not made by the Deputy Commissioner within the prescribed time and despite the said fact the applicant does not approach with his grievance before the Civil Court within the statutory period of limitation of 3 years and 90 days then the inconvenience or injustice which may be suffered by him will not be for the fault of the Deputy Commissioner but it will be squarely attributable to the inaction of the applicant himself.

21. Similarly, so far as the second reason assigned by the Privy Council is concerned, the legislature being aware about the failure of the Deputy Commissioners in due performance of their public duties has tried to evolve effective machinery to remedy such inaction. In the process, in Clause (a) of Section 18(3), it has envisaged to make it obligatory on the part of the Deputy Commissioner to make reference within 90 days and it was for this reason alone that the word "shall" has been employed in the said clause. But, in case of his failure to do so, at the instance of the applicant, the civil Court has been empowered to force the Deputy Commissioner to make a reference. Therefore, keeping in view the object for which the amendment has been made by the legislature, the provisions have to be held as mandatory, otherwise it will frustrate the very object with which sub-section (3) in Section 18 has been incorporated.

22. Now, the next question to be considered is as to whether the period within which the Deputy Commissioner can make a reference should be held as 90 days as prescribed under Clause (a) of Section 18(3) or it should be taken as 3 years 90 days, the period of limitation within which the applicant can approach the civil Court for directing the Deputy Commissioner to make the reference.

23. Before delving on the above question, I find it appropriate to deal with various judicial pronouncements of this Court on the issue involved.

24. In the case of GWALIOR RAYON SILK CO. LTD. v.

LAKSHMAVVA K.A. Swamy, J., held the view that the corresponding statutory obligation of the Deputy Commissioner to make a reference to a Civil Court under Section 18 of the Act must be held to continue as long as the right to seek a reference continue to exist in a person interested.

25. Kulkarni, J., in a later cast of UPPARA BASAPPA SPECIAL-LAND ACQUISITION OFFICER, without referring to the earlier judgment in Gwalior Rayon's case took the view that the Land Acquisition Officer cannot make a reference after the expiry of 90 days from the date filing of the application under Section 18(2)(a) of the Act.

26. In order to resolve the above divergency of judicial opinion, the case of ASSISTANT COMMISSIONER v. LAKSHMI BAI was referred to Division Bench. On consideration of all the aspects, Venkatachalaiah, J (as he then was), speaking for the 'Bench, held that:-

"We are, therefore, with great respect to the learned Single Judge, unable to agree with the view taken of the matter in Uppara Basapa's case. Statutory obligation to make a reference would continue and remain subsisting till the corresponding right on the part of the person interested to seek and compel a reference subsists. Swami, J, in Gwalior Rayon's case has held that this obligation continues till the expiry of the period of three years which is held to be the period of limitation for making an application under Section 18(3)(b). It appears to us that the view taken by Swami, J should be preferred, to the one taken in Uppara Basappa's case."

(emphasis supplied)

27. The Division Bench in Lakshmi Bai's case (supra) further held that:-

"Sri Kothavale argued that the right of the person interested to compel a reference should not be held to come to an end even after the expiry of 3 years and 90 days and that a reference made by the L.A.O. even thereafter would be a valid one. It is unnecessary to go into and answer that question here. The reference in the present case is within the period of 3 years from the expiry of 90 days. We hold the reference to be valid. As long as the Gwalior Rayon's case continues to hold

the field. Sri Kothavale's proposition will not be of assistance."

(emphasis supplied)

28. A little careful reading of the above quoted passages from Lakshmi Bai's case (supra) clearly shows that the Division Bench, on its own analysis, had concluded that "statutory obligation to make a reference would continue and remain subsisting till the corresponding right on the part of the person interested to seek and compel a reference subsists". It further repelled the contention raised by Sri Kothavale, counsel for the person interested, that a reference made by the Land Acquisition Officer after the expiry of three years and 90 days will not be valid on two grounds, namely, (i) on the facts of the case the said question was academic since the reference was made within 3 years and 90 days, and, (ii) as long as Gwalior Rayon's case continues to hold, the field, Sri Kothavale's proposition will not be of any assistance.

29. Curiously, despite the setting of the law by the Division Bench on the issue, in a subsequent case of BALAPPA v. S.L.A.O. another Single Judge of this Court again held that a reference made by the Deputy Commissioner after a lapse of more than seven years from the date of making of an application for the said purpose to be valid by relying on an unreported Single Judge judgment in CRP no 721-728 of 1989, DD/- 14.02.1989 (Gurusangappa v. Spl.L.A.O.). In the latter case, with reference to Division Bench judgment in Lakshmi Bai's case (supra), it was observed that "it may straightaway be pointed out that in that judgment the point in controversy has been left undecided". This inference was obviously drawn by referring only to the first reason assigned by the Division Bench in order to repel the contention raised on behalf of the person interested, as discussed above.

30. Under the aforesaid circumstances, the issue was again taken to the Division Bench in the case SPECIAL L.A.O. v. G.C. PARAMAJ. The Division Bench constituted of Rama Jois and Jagannatha Shetty, JJ. overruled the judgment of the learned Single Judge in the case Balappa v. Spl.L.A.O. (supra) and once again on review of earlier judgments, relevant statutory provisions, the object underlying the State Amendment as also the notorious practices of antedating the reference applications in the offices of Land Acquisition Officers, held that:-

"A Reference made by a Land Acquisition Officer under Section 18 of the Land Acquisition Act, as amended by Karnataka Land Acquisition (Amendment) Act, 1961, after the right of the claimant to make an application before the Civil Judge praying for a direction to call for Reference under Section 18 of the Act had come to an end, is invalid."

31. Subsequently, Krishnamoorthy, J., while hearing the present Revision Petition, felt that the Division Bench judgment in Spl. L.A.O., v. G.C. Paramaj (supra) requires reconsideration and referred it to the Division Bench by his order dated 27.3.1996. Subsequently, he, while sitting in Division Bench with Aswathnarayana, J., after admitting the Revision Petition, referred the matter to Full Bench and this is how it is before us for consideration.

32. In the foregoing para 21, I have already taken the view that Sub-section (3) of Section 18 of the Act is mandatory meaning thereby that any act done by the Deputy Commissioner, except in accordance with said provisions, will be invalid (see Bhikraj v. Union AIR 1962 SC 113, pr.17). Now this leads to the main issue as to whether the reference can be made by the Deputy Commissioner within 90 days as provided under Clause (a) of Section 18(3) of the Act or it can be made within an aggregate of the periods of limitations provided for Clauses (a) and (b) thereof, that is, three years and 90 days or it can be made by him at any time at his discretion even much beyond the said periods.

33. Now, as noticed above, it has been finally settled by the Supreme Court in the case of Additional Special L.A.O. v. Thakoredas (supra) that an application filed under Section 18(3)(b) of the Act beyond a period of 3 years and 90 days from the date of filing the reference application under Section 18(2) of the Act will be barred by limitation and as such not entertainable. Moreover, as held by the Five-Judges Bench of the Supreme Court in the case of STATE OF M.P. v. BHAILAL, even a mandamus cannot be sought for from the High

Court under Article 226 of the Constitution by filing a Writ Petition after the expiry of the said period of limitation on the ground of uncondonable laches. The same view has been taken in the case of TRILOKCHAND MOTICHAND v. H.B. MUNSI,

34. In view of the above pronouncement of law by the Apex Court restricting the right of the applicant to move the Courts for compelling the Deputy Commissioner to perform his statutory duty of making a reference till upto the aforesaid period of 3 years and 90 days, if it is held that the Deputy Commissioner can still make a reference even after the said period, then, it will amount to conceding an unbridled discretion in favour of the Deputy Commissioner which he may exercise at his own whim and fancy in some cases on unwarranted/unlawful considerations. For instance, in one case, he may agree to refer after five years, in another after seven years and in a third case, though similarly situated, he may decide not to make a reference at all. But, because of the law of limitation, the applicant will have no remedy before Courts to complain about these anarchical acts of the Deputy Commissioner. As noticed by the Division Bench in Paramaj's case (supra), "such a construction which brings about anomalous and incongruous results and gives ample scope of nepotism, favouritism and corruption should not be given". The Legislature cannot be expected to confer such a power on the Deputy Commissioner because conferment of such a naked power will be ex-facie violative of Article 14 of the Constitution of India and the provision will be thus void under Article 13(2) thereof.

35. The Supreme Court in the case of KEDAR NATH v. STATE OF BIHAR, has held that:-

"It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."

36. For the aforesaid, Section 18(3) has to be construed in a manner which makes it constitutionally valid which can be done only by holding that the Deputy Commissioner cannot make a reference at any time as he chooses. His power has to be circumscribed with the period of limitation which should be the period within which the claimant can exercise his right in a Court of law for compelling the Deputy Commissioner to make a reference. It is for the reason that the claimant can file the application in the Court under Section 18(3)(b) at any time till the last day of the prescribed period of 3 years and 90 days and if the Deputy

Commissioner is permitted to make a reference at any time within the said period, then the applicant will be relieved of filing application for the said purpose. Such a construction will be in consonance with the object of the State" Amendment and will be consistent with the constitutional requirement as well.

37. Before parting, I may notice here that as held by a Division Bench of this Court in the case of Assistant Commissioner v. Bhima Shiddappa Naik (supra) and also for the reason that now the Supreme Court in the case of Additional Special L.A.O v. Thakoredas (supra) has held that Limitation Act will apply to an application filed under Section 18(3)(b), in case of delay, it will be always open for the applicant to seek for condonation thereof in terms of Section 5 of the Limitation Act in presenting an application under the said Section 18(3)(b) of the Act.

38. It may further be noticed here that in the case of Special L.A.O. v. Tukkarreddy, Saidanha, J., has held that in view of Section 15(2) of the Limitation Act, the period during which the reference application remains pending with the Deputy Commissioner, the same has to be excluded for computing the limitation for filling application under Section 18(3)(b) of the Act. The judgment is obviously per incuriam. It is for the reason that it has failed to take notice of the judgment of the Supreme Court in the case of Thakoredas(supra) which has conclusively held that application under Section 18(3)(b) for compelling the making of reference by the Deputy Commissioner can be filed only within 3 years from the date of expiry of 90 days prescribed under Section 18(3)(a). Therefore, question of excluding the period during which reference application remains pending with the Deputy Commissioner cannot at all arise. The learned Judge seems to have proceeded on the basis that in the case of failure on part of the Deputy Commissioner to make a reference within the time prescribed under Section 18(3)(a), the applicant can file a reference application straightaway in the Civil Court under Section 18(3)(b), which is obviously a wrong reading of Section 18(3) of the Act. The said provision merely confers a right on the applicant to file an application in the Court for compelling the Deputy Commissioner to make the reference.

39. For the above reasons, I am in respectful agreement with the views taken by the two Division Benches of this Court in the cases of Assistant Commissioner v.

Lakshmi Bai (supra) and Spl. L.A.O. v. G.C. Paramaj (supra) and hold that a reference made by the Deputy Commissioner in terms of Section 18(3)(a) on his own accord will be valid and entertainable only if it is made within 3 years and 90 days of the making of application for the said purpose in terms of Section 18(1) of the Act.

40. In the present case since the reference was made by the Deputy Commissioner after more than 4 years from the making of application under Section 18(1), therefore, the Civil Judge was right in rejecting the same. Revision Petition is thus dismissed. No order as to costs.

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