

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 48 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Puran Singh & another	.....	Respondents
	with	

Civil Revision No. 52 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Banshidhar & another	.....	Respondents
	with	

Civil Revision No. 50 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Chandram Rajguru & another	.....	Respondents
	with	

Civil Revision No. 49 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Sanjiv Walia & another	.....	Respondents
	with	

Civil Revision No. 63 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Rithu & another	.....	Respondents
	with	

Civil Revision No. 51 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Balbir Singh & another	.....	Respondents
	with	

Civil Revision No. 62 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Pulam Singh & another	.....	Respondents
	with	

Civil Revision No. 55 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Jabar Singh & another	.....	Respondents
	with	

Civil Revision No. 53 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Vijay Pal & another	.....	Respondents
	with	

Civil Revision No. 61 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Smt. Indra Negi & another	.....	Respondents
	with	

Civil Revision No. 66 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Surya Prakash & another	.....	Respondents
	with	

Civil Revision No. 54 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Pitamber Singh & another	.....	Respondents
	with	

Civil Revision No. 68 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Anil Ranyal & another	.....	Respondents
	with	

Civil Revision No. 56 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Randhir Singh & another	.....	Respondents
	with	

Civil Revision No. 60 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Rajendra Prasad & another	.....	Respondents
	with	

Civil Revision No. 58 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Smt. Shanti Devi & another	.....	Respondents
	with	

Civil Revision No. 59 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	

Babita & another	.....	Respondents
	with	

Civil Revision No. 57 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Sangram Singh & another	.....	Respondents
	with	

Civil Revision No. 72 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Sunil Thapa & another	.....	Respondents
	with	

Civil Revision No. 73 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Shravan Singh @ Kumar & another	.....	Respondents
	with	

Civil Revision No. 67 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Prakash Chand & another	.....	Respondents
	with	

Civil Revision No. 69 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Dinesh Kumar & another	.....	Respondents
	with	

Civil Revision No. 71 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Inder Singh & another	.....	Respondents
	with	

Civil Revision No. 70 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Trilok Kumar & another	.....	Respondents
	with	

Civil Revision No. 65 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Brijesh Kumar & another	.....	Respondents
	with	

Civil Revision No. 64 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Smt. Kalavati & another	.....	Respondents
	with	

Civil Revision No. 83 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Hoshiyari Devi & another	.....	Respondents
	with	

Civil Revision No. 82 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Shyam Singh & another	.....	Respondents
	with	

Civil Revision No. 81 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Birendra Singh & another	.....	Respondents
	with	

Civil Revision No. 80 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Savitri Tomar & another	.....	Respondents
	with	

Civil Revision No. 78 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Fakkar & another	.....	Respondents
	with	

Civil Revision No. 86 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Abdul Gani & another	.....	Respondents
	with	

Civil Revision No. 85 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Mustafa & another	.....	Respondents
	with	

Civil Revision No. 84 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Ram Singh & another	.....	Respondents

with

Civil Revision No. 74 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Roshan Biwi & another	.....	Respondents

with

Civil Revision No. 77 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Pravesh Kumar & another	.....	Respondents

with

Civil Revision No. 76 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Ramesh Chand & another	.....	Respondents

with

Civil Revision No. 75 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Sandeep Pal & another	.....	Respondents

with

Civil Revision No. 79 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Subhash Chand & another	.....	Respondents

with

Civil Revision No. 87 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Chaman Singh & another	.....	Respondents

with

Civil Revision No. 91 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Ali Sher & another	.....	Respondents

with

Civil Revision No. 94 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Ravindra Thapa & another	.....	Respondents

with

Civil Revision No. 92 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Rafiq & another	.....	Respondents
	with	

Civil Revision No. 90 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Dil Mohammad & another	.....	Respondents
	and	

Civil Revision No. 93 of 2017

Power Grid Corporation of India	.....	Revisionist
	versus	
Masoom Ali & another	.....	Respondents

Mr. A.S. Rawat, Senior Advocate assisted by Dr. Kartikey Hari Gupta, Advocate for the revisionist(s).

Mr. Tarun Lakhera, Advocate for respondent no. 1.

Mr. Devesh Ghildiyal, Brief Holder for the State / respondent no. 2.

U.C. Dhyani, J.(Oral)

Since the above-noted civil revisions arise out of a common judgment and order and the facts of the civil revisions and law governing the field is identical, therefore, they are being decided together, by this common judgment, for the sake of brevity and convenience.

2) Civil Revision no. 48 of 2017 shall be the leading case.

3) By means of above noted civil revisions, the revisionist(s) seek following relief, among others:

- (i) to allow the revisions with costs by setting the judgment and order dated 07.04.2017, passed by learned Addl. District Judge, Vikasnagar, Dehradun in land acquisition cases filed by the private respondents.
- (ii) to dismiss the land acquisition cases filed by the private respondents in the court of learned Addl. District Judge, Vikasnagar, Dehradun.

4) An application under Order 7 Rule 11 CPC was moved on behalf of the revisionist(s). Learned court below (Addl. District Judge, Vikasnagar, Dehradun) disposed of the same and directed the Power Grid Corporation of India (revisionist herein) to file their written statements. By the impugned order, it was directed that since the issue of limitation is a mixed question of law and fact, therefore, it will be decided at the time of final hearing of the land acquisition references.

5) It is this decision of learned court below against which the revisionist(s) have filed the above noted civil revisions before this Court.

6) Section 18 of the Land Acquisition Act, 1894, reads as below:

18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

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

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, subsection (2), or within six months from the date of the Collector's award, whichever period shall first expire."

7) Section 12 of the Land Acquisition Act, 1894, is also important in the context of this case. The said Section reads as under:

“12. Award of Collector when to be final. - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

8) While the Collector in making an award under Section 11 acts as an agent of the Government, in making a reference to the Court under Section 18 he acts as a statutory authority exercising his own powers under the section. The Collector has to act subject to the conditions prescribed in Section 18. Accordingly, 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 the making of a valid reference by him. The Court being a tribunal of special jurisdiction, has the duty and power to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In so doing the court is certainly not acting as a court of appeal; it is only confirming if a valid and proper reference has been made.

9) The Hon'ble Apex Court in *Mohammed Hasnuddin vs State of Maharashtra*, (1979) 2 SCC 572 has, in its landmark judgment, held that every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that

these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynodeen Khan*, *LR (1855) 6 MIA 134 (PC)* wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise.

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

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

12) The short question that falls for determination is whether the court can go into a question that the application for reference was not made to the Collector within the time prescribed in section 18 sub-section (2) of the land acquisition act; and if so, can it refuse to entertain the reference if it finds it to be barred by time. There was at one time a great divergence of judicial opinion on the question. But almost all the High Courts have now veered round to the view that the Court has the power to go into the question of limitation. It not only has the power but also the duty to examine whether the application for reference was in accordance with law i.e whether it was made within time prescribed under the proviso to sub-section (2) of Section 18 of the Act or not. The view taken by them is that a Collector's jurisdiction is circumscribed by the conditions laid down in section 18 sub-section (1), that if he makes a reference even though the application for reference was not in accordance with the provisions of section 18, the court acquires no jurisdiction to hear the reference and that it can refuse to hear it if it was made on a time-barred application.

13) In *Ezra v. Secretary of State for India*, ILR 32 Cal 605 (PC), the Privy Council, while dealing with the functions of the Collector in making an award under Section 11 laid down that the functions of the Collector are not judicial but administrative and all that he does is to make an offer to the claimants with regard to the valuation of the property to be acquired. In that context, it did not think it necessary to repeat the reasoning of the judgment under appeal where the sections and the questions as a whole were very satisfactorily stated, and observed:

“The proceedings of the Collector resulting in the ‘award’ are administrative and not judicial. The award in which the enquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owner of the lands and if a judicial ascertainment is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court.”

These observations, however, related to proceedings under Part II of the Act and not under Part III.

14) Ameer Ali and Stephen, JJ., in delivering the judgment under appeal, explained the functions of the Collector under Section 11 in *Ezra v. Secretary of State for India* (*supra*) where they said:

“Throughout the proceedings the Collector acts as the agent of Government for the purposes of acquisition ... He is in no sense of the term, a judicial officer, nor is the proceeding before him a judicial proceeding ... he is not a Court ... The Government ... at whose instance the land is being taken up is not entitled to demand a reference . . . The reason of this is plain. The Collector acts as the agent of the Government . . . and they are accordingly bound by the award of their agent.

* * *

. . . . the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and . . . consequently, although the Government . . . is bound by his proceedings, the persons interested are not concluded

by his finding regarding the value of the land or the compensation to be awarded.

15) Hon'ble Apex Court has observed that the Allahabad High Court has read more into the decision of the Privy Council in Ezra's case (*supra*) than is there. Merely because the Collector while making an award under Section 11 or in serving a notice on the owner of the land under Section 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the court under Section 18, he acts in the capacity of an agent of the Government. While it is true that the Collector in making the award under Section 11 acts as an agent of the Government, he in making a reference to the court under Section 18 acts as a statutory authority. Section 18 sub-section (1) of the Act entrusts to the Collector the statutory duty of making a reference on the fulfillment of the conditions laid down therein. The Collector, therefore, acting under Section 18, is nothing but a statutory authority exercising his own powers under the section.

16) The facts regarding limitation of an application for reference are not required to be stated by the Collector in his reference, and indeed he is not bound to send the application along with the reference. All that the Court has to do on receipt of the reference or can do is to hear it after giving notice of the date. The word "thereupon" in Section 19 must be interpreted to mean 'as soon as the Collector makes a reference and states for the information of the Court various matters set out in Section 19.

17) A District Judge gets jurisdiction not from the Collector but from the receipt of a reference from him. It is the

receipt of the reference that confers jurisdiction upon him and not any finding of the Collector.

18) The Court has to perform a ministerial act of causing a notice to be given to the objector. There is no provision entitling it to examine the question whether the Collector's order was correct on the question of the application having been made within the prescribed time.

19) The jurisdiction of the Court under the Act is a special one and strictly limited by the terms of Sections 18 to 21. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. A Court undoubtedly has certain jurisdiction over the reference, but it does not include any appellate jurisdiction over the Collector in respect of the reference made by him without statutory sanction.

It is difficult to subscribe to these propositions, which are not warranted by law, the Hon'ble Apex Court observed.

20) In his celebrated judgment in *Queen v. Commissioners for Special Purposes of the Income Tax*, LR (1888) 21 QBD 313, Lord Esher, M.R, while dealing with statutory Tribunals, divided them into two categories, namely:

“(i) When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction,

(ii) The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none.”

21) The law as enunciated by Lord Esher has been accepted by Hon’ble Apex Court as laying down the true principle in *Chaube Jagdish Prasad v. Ganga Prasad* AIR 1959 SC 492.

22) The conditions laid down in Section 18 are ‘matters of substance and their observance is a condition precedent to the Collector's power of reference, as rightly observed by Chandavarkar, J., in re **Land Acquisition Act**. “We are inclined to the view that the fulfillment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. 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.”

23) From these considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in *State of U.P. vs Abdul Karim*, AIR 1963 All 556.

24) In *Bhagwan Das and others vs State of Uttar Pradesh and others*, (2010) 3 SCC 545, the following was observed by Hon'ble Supreme Court:

"18. Clause (b) of the proviso to Section 18 requires a person interested who has not accepted the award, to make an application to the Collector requiring him to refer the matter for determination of the court, within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever period first expires, if he or his representative was not present before the Collector at the time of making of the award.

28. The following position therefore emerges from the interpretation of the Proviso to Section 18 of the Act:

(i) If the award is made in the presence of the person interested (or his authorized representative), he has to make the Application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorized representative), he has to make the Application seeking reference within six weeks of the receipt of the notice from the Collector under Section 12(2). "

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the Application within six months of the date on which he actually or constructively came to know about the contents of the Award.

(iv) If a person interested receives a notice under Section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the Application on the ground that the date of receipt of notice under Section 12(2) of the Act was the date of knowledge of the contents of the Award.

29. A person who fails to make an Application for reference within the time prescribed is not without remedy. It is open to him to make an Application under Section 28-A of the Act, on the basis of an award of the Court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

30. When a person interested makes an application for reference seeking the benefit of six months' period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. HE is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the land acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under

Section 12(2) of the Act, or that he had knowledge of the contents of the award."

25) In *Officer on Special Duty vs Shah Manilal Chandulal etc*, 1996 (2) S.C. 280, it was held that the Collector / Land Acquisition Officer is not a court. He acts as a statutory authority under Section 18(1) of the Land Acquisition Act and, therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18.

26) Learned counsel for the private respondent(s) relied upon para 15 of the judgment rendered by Hon'ble Apex Court in *Premji Nathu vs State of Gujarat and another*, 2013 LAC 464 (SC), which reads as under:

"15. In the light of above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the appellant was barred by time is legally sustainable. A careful reading of the averments contained in paragraph 2 of the application filed by the appellant under Section 18(1) shows that the notice issued by the Collector under Section 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8.4.1985 for making a reference to the Court. This implies that copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the appellant along with the notice. Unfortunately, while deciding issue no. 3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Section 18(2)(b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the Reference Court, albeit without considering the fact that the notice issued by the Collector under Section 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the appellant to seek reference under Section 18(1)."

27) Paras 45 and 46 of the decision of Hon'ble Apex Court in *Steel Authority of India Limited vs Sutni Sangam and others*, (2009) 16 SCC 1, are also pertinent in the context of resolving the present controversy. The same read as under:

“45. When the statute provides for a law of limitation, compliance therewith is mandatory. For the purpose of applying the statute of limitation, the courts should, however, be liberal in their approach. Section 18(2)(b) of the Act provides for the maximum period of six months from the date of the Collector's award. It was, therefore, impermissible to direct references to be made after a long period particularly when the provisions of section 5 of the limitation act, 1963 cannot be said to have any application.

46. In *Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal* 1996 9 SCC 414 this Court held:

“8. The right to make application in writing is provided under Section 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In *Mohammed Hasnuddin v. State of Maharashtra*, (1979) 2 SCC 572, this Court was called upon to decide in a reference under Section 18 made by the Collector to the court beyond the period of limitation, whether the court can go behind the reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfillment of certain conditions, namely, (i) written application by interested person who has not accepted the award; (ii) nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In para 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the

one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference.

9. It would thus be clear that one of the conditions precedent to make a valid reference to the court is that the application under Section 18(1) shall be in writing and made within six weeks from the date of the award when the applicant was present either in person or through counsel, at the time of making of the award by the Collector under clause (a) of proviso to sub-section (2). The Collector, when he makes the reference, acts as a statutory authority.”

28) Learned counsel for the revisionist placed the following chart before the Court to indicate the date of knowledge to the private respondent(s):

Sl no.	Case No.	Name of Respondent	Date of Knowledge	Date of Objection
1	CLR No 48/17	Powergrid vs Puran Singh	07-04-2014	27/04/15
2	CLR No 49/17	Powergrid vs Sanjiv Walia	09-09-2013	08/05/15
3	CLR No 50/17	Powergrid vs ChandRam	24-08-2013	16/5/15
4	CLR No 51/17	Powergrid vs Balbir Singh	-----	16/5/15
5	CLR No 52/17	Powergrid vs Banshidhar	13-04-2014	13/01/15
6	CLR No 53/17	Powergrid vs Vijay Pal	13-04-2014	15/03/16
7	CLR No 54/17	Powergrid vs Pitambar Singh	15-10-2014	15/04/15
8	CLR No 55/17	Powergrid vs Jabar Singh	07-04-2014	27-04-15
9	CLR No 56/17	Powergrid vs Randhir Singh	01-10-2014	15-04-15
10	CLR No 57/17	Powergrid vs Sangram Singh	01-10-2014	15-03-16
11	CLR No 58/17	Powergrid vs Shanti Devi	09-12-2013	15-04-15
12	CLR No 59/17	Powergrid vs Babita	11-03-2015	17-04-15
13	CLR No 60/17	Powergrid vs Rajendra Prasad	13-10-2014	13-01-15
14	CLR No 61/17	Powergrid vs Indira Negi	27-08-2013	16-05-15
15	CLR No 62/17	Powergrid vs Poolam Singh	07-04-2014	27-04-15
16	CLR No 63/17	Powergrid vs Rithu	01-12-2013	15-04-15
17	CLR No 64/17	Powergrid vs Kalawati	01-10-2014	15-04-15
18	CLR No 65/17	Powergrid vs Brijesh	01-10-2014	15-04-15
19	CLR No 66/17	Powergrid vs Surya Prakash	29-08-2014	15-04-15
20	CLR No 67/17	Powergrid vs Prakash Chandra	03-08-2013	24-04-15
21	CLR No 68/17	Powergrid vs Anil Ranyal	23-03-2015	03-05-15
22	CLR No 69/17	Powergrid vs Dinesh Kumar	01-10-2014	15-04-15
23	CLR No 70/17	Powergrid vs Trilok Kumar	10-12-2014	15-04-15
24	CLR No 71/17	Powergrid vs Inder Singh	03-08-2013	09-10-14

25	CLR No 72/17	Powergrid vs Sunil Thapa	28-05-2015	12-08-15
26	CLR No 73/17	Powergrid vs Shravan Singh	07-04-2014	27-04-15
27	CLR No 74/17	Powergrid vs Roshini Biwi	14-10-2013	29-01-15
28	CLR No 75/17	Powergrid vs Sandeep Pal	11-03-2015	08-05-15
29	CLR No 76/17	Powergrid vs Ramesh Chandra	03-08-2013	01-05-15
30	CLR No 77/17	Powergrid vs Parvesh	01-10-2014	15-04-15
31	CLR No 78/17	Powergrid vs Fakkar	03-06-2014	22-04-15
32	CLR No 79/17	Powergrid vs Subhash Chand	03-08-2013	29-04-15
33	CLR No 80/17	Powergrid vs Savitri Tomar	27-08-2013	16-05-15
34	CLR No 81/17	Powergrid vs Birendra Singh	01-10-2014	15-04-15
35	CLR No 82/17	Powergrid vs Shyam Singh	15-10-2014	15-04-15
36	CLR No 83/17	Powergrid vs Hoshiyari Devi	01-10-2014	15-04-15
37	CLR No 84/17	Powergrid vs Ram Singh	01-10-2014	15-04-15
38	CLR No 85/17	Powergrid vs Mustafa	14-10-2013	22-04-15
39	CLR No 86/17	Powergrid vs Abdul Gani	14-10-2013	29-01-15
40	CLR No 87/17	Powergrid vs Chaman Singh	01-10-2014	15-04-15
41	CLR No 90/17	Powergrid vs Dil Mohammad	14-10-2013	29-01-15
42	CLR No 91/17	Powergrid vs Ali Sher	14-10-2013	29-01-15
43	CLR No 92/17	Powergrid vs Rafiq	03-06-2014	29-01-15
44	CLR No 93/17	Powergrid vs Masoom Ali	14-10-2013	29-01-15
45	CLR No 94/17	Powergrid vs Ravindra Thapa	28-05-2015	12-08-15

29) Learned counsel for the private respondent(s), on the other hand, submitted that the same was not placed before the learned Addl. District Judge and, therefore, no reliance can be placed upon the same.

30) Learned counsel for the private respondent(s) placed a decision rendered by this Court in *Chandra Deep Singhal vs Smt. Mamta Bisht*, reported in 2016 (1) U.D. 477, to argue that the court is competent to reject a plaint at any stage of proceeding, if it finds that the conditions under Order 7 Rule 11 CPC exists. Even, application by a party is not necessary in this context. The fact that the issues have been framed in the suit, cannot come in the way of consideration of application filed by the defendant under Order 7 Rule 11 CPC. Plaint can be rejected under Order 7 Rule 11 CPC even after the issues have been framed, or at any time thereafter or even after the completion of trial, but before judgment. However, the Rule does not permit the rejection of a plaint in part.

31) Learned Addl. District Judge, Vikasnagar, Dehradun, *vide* order dated 07.04.2017, has held that since the issue of limitation is a mixed question of law and fact, therefore, the same can conveniently be decided only after the evidence is adduced by the parties. Learned Addl. District Judge has, accordingly, disposed of applications moved under Order 7 Rule 11 CPC (paper no. 9B and 11B). Learned court below directed the revisionists herein to file their written statements and hence observed that an issue relating to limitation shall be framed which will be decided at the time of final disposal of the land acquisition references.

32) Learned Addl. District Judge probably lost sight of the vital fact that preliminary issue on the point of limitation has not been framed by it as yet and, therefore, there is no question of deciding the same at the time of final disposal of the land acquisition references, the same being mixed question of law and fact. In the decision of *Chandrama Singh @ Nathuni Singh vs Registrar, Civil Court and another*, AIR 2012 PATNA 175, a reference of which has been given by learned Addl. District Judge in para 35 of the order impugned, Hon'ble Patna High Court ruled that if an issue of limitation, being preliminary issue, is mixed question of facts and law, therefore, the same cannot be tried as preliminary issue. The decision rendered by Hon'ble Patna High Court is based on sound proposition of law, which has been misapplied by learned Addl. District Judge in the context of present case. Here no preliminary issue has been framed as yet. The question that the reference is barred by limitation is, undoubtedly, a preliminary issue. Law is clear on the point that if a preliminary issue can be decided on the point of law, then only it can be decided as preliminary issue. If it is a mixed question of law and fact, the trial court / Addl. District Judge can conveniently postpone the

hearing of the same to be decided at the time of final disposal of the land acquisition references.

33) In the estimation of this Court, learned Addl. District Judge has wrongly postponed the decision on the question of limitation to a future date, especially when, the same was raised by means of an application under Order 7 Rule 11 CPC.

34) Most vital will it be to reproduce Order 7 Rule 11(d) CPC here-in-below for convenience:

“11. Rejection of plaint— The plaint shall be rejected in the following cases:—

(a)

(b)

(c)

(d) where the suit appears from the statement in the plaint to be barred by any law.”

35) This Court while deciding the aforesaid civil revisions is not commenting upon the fact as to whether the references are barred by limitation or not, for, there is no occasion for this Court to decide the same, which matter has not been decided by learned Addl. District Judge. What this Court wants is that when an application under Order 7 Rule 11 CPC has been filed on behalf of the revisionists objecting that the land acquisition references are barred by limitation, learned Addl. District Judge ought to have decided the same and given a finding on the same, instead of simply postponing the matter to a future date, i.e., at the time of final decision of the land acquisition references. Had it been in the form of a preliminary issue, being a mixed question of law and fact, postponement might have been justified. But here, application under Order 7 Rule 11 CPC has to be decided, one way or other,

at this stage, according to law. Decision on the same could not have been postponed.

36) The plaint (read reference) can be rejected only if it appears from the statement in the plaint (read reference) to be barred by any law.

37) It has been held by Hon'ble *Delhi High Court* in *Manohar Lal Chatrath vs MCD, AIR 2000 Del 40 (DB)* that even if the expression 'from the statement in the plaint' is given a liberal meaning, documents filed with the plaint may be looked into but nothing more.

38) It has been held by Hon'ble *Rajasthan High Court* in *Sukhpal Singh vs State of Rajasthan, AIR 1998 Raj 103* that in a case where the validity of a particular document itself is under challenge, the same cannot be considered and decided in an application under Order 7 Rule 11 CPC. Order 7 Rule 11 CPC does not place any restriction or limitation on the exercise of power by the court but it does not either expressly or by necessary implication provide that the power should be exercised at or upto any particular stage. In the absence of any restriction placed by the statutory provision, it is open to the court to exercise that power at any stage.

39) Reference may also be had to the decisions of *ITC vs Rakesh Behari Srivastava AIR 1997 All 323*; *Satyanand Sahu vs Ratikanta Panda, AIR 1997 Ori 67*; *Bachchu vs Secretary of State (1903) ILR 25 All 187* and

Appa Rao vs Secretary of State (1931) ILR 54 Mad 416, 129 IC 456, AIR 1931 Mad 175 in this regard.

40) MULLA, in the Code of Civil Procedure (Abridged), Fourteenth Edition, Lexis Nexis, at page 862, writes thus:

“Clause (d) of Rule 11 of Order 7 applies to those cases only, where the statement made by the plaintiff in the plaint without any doubt or dispute shows that the suit is barred by any law in force. It is the plaint only which is to be seen for a decision under Order 7 Rule 11 (*ITC vs Rakesh Behari Srivastava AIR 1997 All 323; Satyanand Sahu vs Ratikanta Panda, AIR 1997 Ori 67*). Where the suit is brought against the Secretary of State without giving the notice required by Section 80, the plaint should be rejected under this clause (*Bachchu vs Secretary of State (1903) ILR 25 All 187 and Appa Rao vs Secretary of State (1931) ILR 54 Mad 416, 129 IC 456, AIR 1931 Mad 175*). Where in a suit against the government, the plaint does not allege that a notice has been served as required by Section 80 (*Union Territory of Tripura vs Indu Bhusan AIR 1963 Tripura 48; Phoolsundari vs Gurbans Singh AIR 1957 Raj 97; Tej Kiran Jain vs M Sanjiva Reddy AIR 1970 SC 1573*), or where the suit has been filed before the expiry of the period prescribed therein (*Gotillingam vs State of AP AIR 1961 AP 488*), the plaint is liable to be rejected under this provision. Where a suit instituted against a number of defendants is barred against some of them, but not against the orders, this rule has no application. The proper order to pass in such a case is to strike out the plaint against those defendants against whom it is barred and to proceed with the suit as against the rest (*State of Madras vs Maharajah of Pittapuram AIR 1952 Mad 510; Mst Phoolsundari vs Gurbans Singh AIR 1957 Raj 97; Mst Chandani vs Rajasthan State 1961 ILR Raj 1133, AIR 1962 Raj 36. See also Shankerrao vs Shambihari 1949 ILR Nag 560, AIR 1951 Nag 419*).”

41) The irresistible conclusion would, therefore, be that order impugned dated 07.04.2007, whereby hearing on the objection as regards limitation introduced through application under Order 7 Rule 11 CPC has been postponed

to the time of final decision of the land acquisition references, has to be set aside.

42) Order impugned is, therefore, set aside so far as it relates to the objections raised by the Power Grid Corporation of India. Learned Addl. District Judge, Vikasnagar, Dehradun is directed to decide the application under Order 7 Rule 11 CPC and, objections thereon, at an earliest possible, in accordance with law and, in any case, by 15.12.2017. The matter is remitted back to the trial court for decision on the application under Order 7 Rule 11 CPC and, objections thereon.

43) Liberty is, however, granted to both the parties to raise all the legal pleas before learned Addl. District Judge at the time of hearing of the pending applications.

44) With the observations as above, all the above noted civil revisions stand disposed of.

(U.C. Dhyani, J.)

Dt. October 31, 2017.

Negi

