

**2019 M L D 39**

**[Lahore (Bahawalpur Bench)]**

**Before Shujaat Ali Khan and Jawad Hassan, JJ**

**ABDUL MALIK and others---Appellants**

**Versus**

**PROVINCE OF THE PUNJAB and others---Respondents**

I.C.A. No.75 of 2017/BWP, decided on 3rd September, 2018.

**Land Acquisition Act (I of 1894)---**

---S.18---Limitation Act (IX of 1908), S. 5---Reference to court---Limitation---Condonation of delay---Scope---Appellants filed intra-court appeal against order passed by Single Judge of High Court, whereby order of Land Acquisition Collector was upheld by which reference filed by appellants under S.18 of Land Acquisition Act, 1894 was not referred to the Referee Court--Contentions of appellants were that Single Judge of High Court did not consider that appellants along with the Reference, had also filed an application under S.5 of Limitation Act, 1908 for condonation of delay in filing the Reference and that without deciding the application for condonation of delay, no order could be passed on their Reference---Validity---Appellants had submitted Reference beyond the prescribed period of limitation---When Collector came to the conclusion that the Reference filed by any party was barred by law, he could straight-away refuse to forward the same to Referee Court and could not condone the delay of his own or on the application of the aggrieved party---Intra-court appeal was dismissed, in circumstances.

Port Qasim Authority through Secretary v. Executive District Officer (Revenue) Karachi and others 2017 YLR Note 14 fol.

Muhammad Farooq Warind for Appellants.

Syed Munawar Hussain Bukhari for Respondents.

#### **ORDER**

Brief facts of the case are that the appellants filed W.P. No.9646/2016, challenging vires of order, dated 03.11.2016, passed by the Land Acquisition Collector (Punjab), whereby the reference filed by the appellants under section 18 of the Land Acquisition Act, 1894 was not referred to the Referee Court. The said Writ Petition came up for hearing on 18.04.2017 before the learned Single Judge of this Court when the same was dismissed; hence this Intra Court Appeal.

2 Learned counsel for the appellants contends that while passing the impugned order the learned Single Judge did not consider that along with the reference the appellants also filed an application under section 5 of the Limitation Act, 1908 for condonation of delay in filing the reference. Adds that as fundamental rights were involved in the matter the appellants could not be knocked on the basis of technicalities. Further adds that the learned Single Judge also did not consider that without deciding fate of the application filed by the appellants for condonation of delay, no order could be passed on their reference.

3. After hearing learned counsel for the appellants and going through the documents appended with this appeal we have noted that the appellants filed a Reference under section 18 of the Land Acquisition Act, 1894. The said provision for facility of reference is reproduced herein 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.
- (3) Notwithstanding anything to the contrary contained in section 21, the Provincial Government may, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of the award; provided that the Court shall not entertain the reference unless in its opinion there is a prima facie case for inquiry into and determination of the objection against the award".

In the matter in hand the appellants submitted Reference beyond the prescribed period of limitation, thus, no illegality has been committed by the learned Single Judge while deciding the matter.

4. Insofar as contention of learned counsel for the appellants that without deciding the fate of the application filed by them for condonation of delay in filing the Reference, no order could be passed by the Land Acquisition Collector, is concerned, suffice it to note that when the Collector comes to the conclusion that the Reference filed by any party is barred by law, he can straight-away refuse to forward the same to the Referee Court and cannot condone the delay of his own or on the application of the aggrieved party. The said preposition came under discussion before a learned Division Bench of Sindh High Court, Karachi in the case reported as Port Qasim Authority through Secretary v. Executive District Officer (Revenue) Karachi and others (2017 YLR Note 14) wherein it has inter-alia been held as under:--

"11. It may be observed that the Collector has the jurisdiction to decide the question whether an application made under section 18 of the Act was time barred or not. However, there is no provision in the Act empowering the Collector to condone the delay in the presentation of such application either suo motu or on application of the party under section 5 of the Limitation Act, 1908, as the Limitation Act, 1908 has not been made applicable to the Land Acquisition Act, which is a special Law and prescribes its own period of limitation for a Reference Application. Section 29 of the Limitation Act, 1908 provides that:-

- (1) -----
- (2) Where any special or local law prescribes for any suit, appeal or application period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:
  - (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
  - (b) the remaining provisions of this Act shall not apply.
- (3) -----
- (4) -----

It is, thus clear from subsection (2) of section 29, Limitation Act that section 5 does not apply to the Land Acquisition Act, which is a special Law, therefore, the Collector has no choice, when an application is presented to him after six months of the making award, but to dismiss the same. So far the contention of learned counsel for the official respondents are concerned that the provision of section 18 of the Act with regard to the period provided for making an application is directory and not mandatory, it is an accepted principle of law that if a Statute requires something to be done and also prescribes the mode for doing it, the requirement of law can be fulfilled only by doing

the act in the manner prescribed. In this regard, it has been observed by a Division Bench of Lahore High Court in the case of Col. Bashir Hussain and 10 others v. Land Acquisition Collector, Lahore Improvement Trust, Lahore and 2 others (PLD 1970 Lahore 321) that:--

"13. There is a string of rulings dilating upon the question whether a provision with regard to the performance of a particular act within a certain limit of time is obligatory or directory. A study of these decisions, however, leads one to the irresistible conclusion that Courts have, as far as possible, refrained from laying down any general principle with regard to the directory or obligatory nature of period of time so fixed. It was observed by Lord Campbell in *Liverpool Borough Bank v. Turner* (1):

"No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of 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."

One has, therefore, to determine each case on its own facts and for that purpose has to look into the subject-matter of the statute with a view to determine the importance of the provisions of law that has been disregarded and finding out the relation of that provision to the general object intended to be secured by the Act. If the object can be secured even without compliance with such provision, it could be falsely dubbed as directory. If that be not so, the provision would be imperative or obligatory and non-compliance with it would result in nullification or vitiation of the act which affects the rights of a citizen."

We, therefore, hold that the limitation provided under section 18 of the Act for filing an application before the Collector for referring the matter to the Referee Court is not directory but mandatory in nature."

5. Even otherwise, the reasons advanced by the learned Single Judge are not open to interference in these proceedings especially when learned counsel for the appellants failed to point out any material illegality in the impugned order.

6. For what has been noted above, we see no force in this appeal which is accordingly dismissed.

SA/A-60/L Appeal dismissed.