

FULL BENCH

Before S. S. Sandhwalia C.J., P. C. Jain and S. S. Kang, JJ;

STATE OF HARYANA.—Appellant.

versus

MAN SINGH and another,—Respondents.

Letters Patent Appeal No. 200 of 1977.

March 29, 1979.

Land Acquisition Act (1 of 1894)—Section 18—Court to which a reference is made under section 18—Whether can go behind it and investigate whether the same was properly made.

Held, that 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 of the Land Acquisition Act, 1894, 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.
(Para 4).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 2nd May, 1977 delivered by Hon'ble Mr. Justice O. Chinnappa Reddy in Regular First Appeal No. 451 of 1968 affirming that of Shri V. P. Aggarwal, Additional District Judge, Gurgaon dated the 5th August, 1968, fixing the market value of the Chahi, Chaknot, Magda, Narmot lands at Rs. 1,200 per acre and of the Banjar and Gair Mumkin land at Rs. 900 per acre and ordering that the applicants shall be entitled to the compulsory acquisition charges at the rate of 15 per cent on the enhanced amount and they shall also be entitled to 40 per cent interest on the enhanced amount from the date of taking over the possession to the date of making the payment.

A. S. Nehra, Additional A. G. Haryana with Hanwant Singh Hooda, Advocate, for the appellant.

Nemo, for the Respondent.

State of Haryana v. Man Singh and another (S. S. Sandhawalia, J.)

JUDGMENT

S. S. Sandhawalia, C.J.

(1) A supposed conflict of precedent had necessitated the admission of this Letters Patent appeal for hearing before the Full Bench. However, it is now the unrebutted stand of the appellant—State of Haryana that the matter stands concluded in their favour both by a Full Bench judgment of this Court as also its approval by the final Court.

2. In view of the above the briefest reference to the facts suffices. The respondent-landowners aggrieved by the compensation awarded to them by the Collector in acquisition proceedings preferred applications under section 18 of the Land Acquisition Act seeking a reference to the Court for enhancement of the compensation. After notice to the Government, the references were duly made to the Court. However, before the Additional District Judge, a preliminary objection was strenuously raised on behalf of the appellant-State that these references were incompetent as the conditions prescribed by section 18 of the Land Acquisition Act were not fulfilled. The specific ground taken was that the references were sought after the prescribed period of limitation and that the claimants having accepted the compensation without protest were disentitled to seek a reference to the Court. The preliminary objection was overruled by the learned Additional District Judge and compensation was enhanced by him.

3. The State of Haryana then preferred regular first appeals against the said judgment. Therein the only question raised was that the references were incompetent for specific reasons which had been urged before the learned Additional District Judge. The learned Single Judge noticed that the solitary issue that arose for decision was whether it was open to a Court to which a reference is made under section 18 of the Land Acquisition Act to go behind it and investigate whether the same was properly made. Both on principle and following a number of authorities including the Division Bench judgment of this Court in **Hari Kishan Khosla v State of Pepsu**, (1) (by which he held himself to be bound) the learned Single Judge held that the Court had no power to go behind the

(1) A.I.R. 1958 Punjab 490.

reference made to it by the Collector under section 18 and dismissed all the appeals.

4. Despite service, no appearance has been put in on behalf of the respondents. Mr. Nehra, learned Additional Advocate General appearing on behalf of the appellant rightly contends that the counsel for the parties before the learned Single Judge were sorely remiss in not bringing to his notice the Full Bench judgment of this Court reported in *M/s. Swantantra Land & Finance Private Ltd. v. The State of Haryana*, (2), wherein *Hari Kishan Khosla's case* (supra) was expressly overruled. This apart, it is further pointed out that the controversy has now been set at rest by the recent judgment of their Lordships in *Mohammed Hasnudin v. The State of Maharashtra*, (3), wherein it has been observed as follows:—

“* * * 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.”

Equally it calls for pointed notice that in the aforesaid case their Lordships have expressly approved the Full Bench judgment in *M/s. Swantantra Land and Finance Pvt. Ltd's case* (supra) and in categorical terms held that the contrary decisions thereto do not lay down good law and have been in terms overruled. It has not been disputed before us that in the present case, the references were claimed beyond the prescribed period of time and further that the respondent-landowners were estopped from presenting the same for the reason of having accepted the compensation without protest.

(2) A.I.R. 1975 Pb. & Hary. 52.

(3) A.I.R. 1979 S.C. 404.

Hari Palace Ambala City v. The Presiding Officer, Labour Court and another,—(S. S. Sandhawalia, C.J.)

That being so, this appeal has necessarily to be allowed, the order of the learned Single Judge is set aside and the references made by the respondent-landowners are dismissed. There will be no order as to costs.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., B. S. Dhillon and R. N. Mittal, JJ.

HARI PALACE AMBALA CITY,—Petitioner.

versus

THE PRESIDING OFFICER, LABOUR COURT and another,—
Respondents.

Civil Writ Petition No. 3521 of 77

April 2, 1979.

Industrial Disputes Act (14 of 1947)—Sections 7 and 10(1), Second Schedule, Item 3—Termination of services of a workman held invalid—Workman directed to be reinstated—Grant of back wages—Criteria stated—Gainful employment of the workman during the period of forced idleness—Onus of proof—Whether on the employer.

Held, that ordinarily a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule and the party objecting to it must establish the circumstances necessitating departure: (Para 6).

Petition under Articles 226/227 of the Constitution of India praying that the petition be accepted, records of the case sent for and;

- (a) a writ in the nature of certiorari issued quashing the impugned award annexure P. 9.
- (b) any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case.