

(1988) 09 DEL CK 0010

In the Delhi High Court

Case No : Regular First Appeal No. 190D of 1966 and Civil Miscellaneous Petition No"s. 130 and 131 of 1981

Chander and Others

APPELLANT

Vs

Mauji and Others

RESPONDENT

Date of Decision : 28-09-1988

Acts Referred:

Citation : AIR 1989 Delhi 97 : (1988) 15 DRJ 380

Hon'ble Judges : Sunanda Bhandare, J;S.S. Chadha, J;Gian Chand Jain, J

Bench : Full Bench

Advocate : P.P. Juneja and O.N. Vohra, for the Appellant;

Judgement

S.S. Chadha, J.

(1) The Delhi Administration vide notification dated October 20, 1961 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) notified that it appeared to the appropriate Government that land specified therein was needed for a public purpose, namely, for the planned development of Delhi. The declaration u/s 6 of the Act was made by the Delhi Administration vide notification dated March 27, 1963. This was in respect of 865 bighas 14 bids was of land in village Asalatpur Khadar, Tehsil and District Delhi. The Land Acquisition Collector (for short called the Collector) made his award No. 1685 and notified it on March 19, 1964. The Collector directed that the owners and the interested persons would be paid compensation according to the shares as entered in Jamabandi of the village. There were occupancy tenants as well as non-occupancy tenants in the land under acquisition. Occupancy tenants were held entitled to a substantial amount of compensation i.e. 87 Paise in a rupee for the land acquired and the owners were awarded 13 Paise in a rupee for the land acquired.

(2) Since the owners and the tenants had not come to an amicable settlement, the Collector referred the case to the Court for apportionment and disbursement

of the compensation to the entitled persons. The Collector enclosed a cheque dated July 27, 1964 for Rs. 13,151.22 being the disputed amount. It was registered as L.A.C. 102/64 for determination of the respective rights of the land owners and the occupancy tenants in the acquired area in the estate of Asalatpur Khadar to which award No. 1685 related. Shri Hans Raj, the learned Additional District Judge answered the reference in the order dated August 17, 1966 and directed that the compensation amount for the acquired land be apportioned between the land owners and occupancy tenant in equal shares. An appeal u/s 54 of the Act was filed on September 19, 1966 by the occupancy tenants praying for setting aside the judgment and order dated August 17, 1966 and for awarding to the appellants the amount of compensation as awarded by the Collector. The appeal was admitted to D.B. by the order dated October 7, 1966.

(3) During the pendency of the appeal, an information was given on January 14, 1981 by Shri H.L. Dutt, Advocate appearing for some of the respondents that respondents 3, 4 and 9 died on August 14, 1975, November 28, 1978 and June 16, 1973 respectively. The counsel for the appellants was given notice by this Court to show cause as to why the appeal should not be dismissed as having been abated. The appellants then filed an application under Order 22 Rule 4 read with Section 151 of the CPC on February 16, 1981 turning bringing on record the legal representatives of deceased respondents 3, 4 and 9. This is C.W. 130/81. It was also accompanied by an application u/s 5 of the Limitation Act, 1963 praying for condensation of delay in filing the petition for bringing on record the legal representatives of deceased respondents 3, 4 and 9. This is C.M. 131/81.

(4) These applications came up for hearing before S.B. Wad, J. The counsel for the appellants submitted that the provisions of the CPC and the Limitation Act do not apply to a proceeding u/s 30/31 of the Act as also to an appeal arising out of the said proceedings. One of the contentions raised was that there is a material difference in the object and procedure of the proceedings u/s 18 and Section 30/31 and that the procedure u/s 30 is inconsistent with the procedure laid down in the CPC and thus Section 53 would not apply. During the hearing two cases were cited by the respondents before the learned Single Judge. In *The Union of India Vs. Rameshwar Nath and Another*, a question arose whether Order 22 of the CPC was or was not applicable to appeals against decrees passed by the Court upon a reference u/s 18 of the Act. A Division Bench of this Court, on the construction of the provisions of Sections 53 and 54 of the Act, held that an appeal against a decree of a Court upon a reference u/s 18 of the Act is an appeal under the CPC and the provisions of Order 22 of the Code apply to such an appeal and that the limitation applies to such an appeal. In *Ram Piari and Others Vs. The Union of India*, a Full Bench of this Court came to the conclusion that the procedure laid down in the CPC has to be followed by the Court in deciding a reference application by virtue of the provisions of Section 53 of the Act, that the procedure laid down in the Code being applicable to these proceedings, it could not be urged that the applicability of the provisions of Order 22 are not attracted to the proceedings in Court and that on the application of

the provisions of Order 22 to the proceedings on a reference application before Court, it is futile to contend that the provisions of the Limitation Act would not be applicable for filing an application under the aforesaid provisions of law for bringing on record the legal representatives of deceased heir. S.B. Wad, J., however, expressed the opinion that there is a fundamental difference between the proceedings u/s 18 and Sections 30/31 of the Act. His view is that considering the peculiar nature of the proceedings u/s 30, the imposition of the period of limitation prescribed by the Limitation Act in the case of abatement might result into undue prejudice to the interested parties and the very basis of a separate provision in Section 30 as a residuary provision would thus get defeated by the imposition of such fetters. He is doubtful if the Limitation Act is applicable by a reference or by incorporation in the provisions of Order 22 of the Code of Civil Procedure. He, Therefore, referred the following questions to the Full Bench for its decision :

(A) Are the objects and procedure of Section 30 inconsistent with the provisions of the CPC in regard to suits? (b) In absence of express provision, can the provisions of the Limitation Act in relation to abatement, be made applicable to proceedings u/s 30 of the Land Acquisition Act by a reference or by incorporation? (c) Whether the decision of the Full Bench, Ram Piari and Others Vs. The Union of India, is applicable to proceedings u/s 30 of the Land Acquisition Act? (d) Is there a difference between the appeal arising out of the proceedings u/s 18 and proceedings arising out of Section 30 for the purposes of abatement of appeal? (e) Whether the Division Bench judgment of this Court-The Union of India v. Rameshwar Nath and another, 2nd 1972(1), Delhi page 200 would apply to the present appeal?

(5) These questions may be answered after noticing the statutory provisions. Part II comprising of Sections 4 to 17 lay down the provisions and the Rules for the guidance of the Collector engaged in acquisition proceedings. The first stage is the publication of the preliminary notification u/s 4. The second stage is the hearing of objections u/s 54 from any person interested in the land in response to the preliminary notification u/s 4. The third stage is the issue of the declaration u/s 6, the Collector is to take an order for acquisition of the land (Section 7). The land is then to be marked out, measured and planned (Section 8). The notices have to be issued to persons interested in the manner prescribed in Section 9. Besides a public notice, the notices are required to be served by the Collector on the occupier, if any, of the land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf. Section 10 empowers the Collector to require and enforce the making of statements as to names and interests with a view to ascertain all persons having an interest in the land.

(6) Section 11 requires the making of an enquiry by the Collector into measurements, value and claims. The statutory duty of the Collector is to

enquire into the objections by any person interested made in answer to the notice u/s 9 as to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4 and into the respective interests of the persons claiming the compensation. The Collector is then required to make an award under his hand of:

(i) the true area of the land ; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims, he has information, whether or not they have respectively appeared before him. As required by Section 12, such award has to be filed in the Collector's office and on filing becomes 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 apportionment of the compensation among the persons interested. Section 16 provides that when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Section 17 confers special powers in cases of urgency of acquisition of the land.

(7) Sections 18, 30 and 31(1) and (2) of the Act read as under :

"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 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 ,

(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 u/s 12, Sub-section (2), or with- in six months from the date of the Collector's award, which- ever period shall first expire.

30.Dispute as to apportionment-When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

31.Payment of compensation or deposit of same in Court-(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more the contingencies mentioned in the next sub-section. (2) If they shall not consent to receive it, or if

there be no person competent to alienate the land, or if there be any dispute as to the- title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted : Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount : Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18 : Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(8) In our view, there are two provisions, one u/s 18(1) and the other u/s 30 which invest power in the Collector to refer to the Court dispute as to the apportionment of the compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable. The scheme of the Act is that all disputes about the measurement of the land and the amount of compensation must be determined by the Court in accordance with the procedure laid down in the Act. The dispute about the persons to whom the compensation is payable or its apportionment is ancillary to the dispute to the quantum of compensation. It has, Therefore, been included in the reference u/s 18. There may be an independent dispute as to title to compensation which can be adjudicated upon either on a reference u/s 18 or u/s 30. The scope of the enquiry on the aforesaid dispute as to title to compensation whether on a reference u/s 18 or u/s 30 is identical and would be governed by the same principles. There are, however, some points of distinction wholly unrelated to the procedure or to the merits of the disputes relating to the title to compensation. Section 18 contemplates an actual demand by a written application. The Collector is enjoined to make a reference of the dispute on the application slating the grounds on which objection is taken to the award on anyone or more of the grounds specified in Section 18. Section 30 enables a reference by the Collector suo motu or on an application of the interested persons after the compensation is settled u/s 11 if any dispute arises as to the apportionment of the same or any part thereof, or as to the person to whom the same or any part thereof is payable. The making of a reference is, however, within the discretion of the Collector and he is not bound to make it. The petition u/s 18 for reference has to be filed within six weeks from the date of the Collector's award in case the petitioner was present or was represented before the Collector at the time when he made his award. In other cases, the petition has to be filed within six weeks of the receipt of the notice from the Collector u/s 12(3) or within six months from the date of the Collector's award, whichever period shall first expire. While Section 18 of the Act prescribes a period for making a petition for reference, no such period is prescribed for reference u/s 30 of the Act. The Collector may make the reference at any time. There is, however, one additional condition for a reference u/s 18, and that is, it should not be barred by the second proviso to Section 31 of the Act. The persons who are before the Collector are proper parties to litigate before the Court for the

settlement of the question of apportionment of the compensation or as to persons to whom the same or any part thereof is payable. A person who was not before the Collector, can be added as a party if that person is an "interested person" within the meaning of the definition in the Act. The right to receive compensation may have existed in him at the time of the award or it may have devolved on him after the award.

(9) In *Dr. G.H. Grant Vs. State of Bihar*, the Supreme Court opined that the powers which are exercised by the Collector u/s 18(1) and u/s 30 are distinct and may be invoked in contingencies which do not overlap. It was held "A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served under Sub-section (2) of Section 12, must, if he does not accept the award, apply to the Collector within the time prescribed u/s 18(2) to refer the matter to the Court. But a person who has not appeared in the acquisition proceedings before the Collector, may, if he is not served with a notice of filing, raise a dispute as to the apportionment or as to the person to whom it is payable, and apply to the Court for a reference u/s 30 for determination of his right to compensation which may have existed before the award, or which may have devolved upon him since the award."

(10) The finality of the award provided in Section 12 of the Act is, however, subject to the result in a reference, if any. Until the award is set aside or modified on a reference u/s 18 or Section 30 or when deposit is made u/s 31, it is final and valid. u/s 31 of the Act, the Collector is enjoined to tender payment of the compensation awarded by him to the person interested entitled thereto according to the award. If there is any dispute about the apportionment of the compensation among all the persons known or believed to be interested in land, of whom, or of whose claims he has information, whether or not they have respectively appeared before him then he has to determine that dispute and make his award. The Collector no doubt is not authorised to decide finally the conflicting rights of the persons interested in the amount of the compensation. The Collector has, however, to examine the respective claims and determine how the total amount is to be apportioned amongst them. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment are to be specified in the award and as between such persons the award is conclusive evidence of the correctness of the apportionment. If they do not consent to receive it, or if there is any dispute as to the title to receive the compensation or as to apportionment of it, the Collector is enjoined to deposit the amount of compensation in the Court in which a reference u/s 18 would be submitted. The Collector has no power in such cases to finally adjudicate upon the title to compensation and the dispute has to be decided either in a reference u/s 18 or u/s 30 or u/s 31 when compensation is deposited or may be in a separate suit. The finality of the award u/s 12 is subject to the decision, of the Court in reference under Sections 18, 30 or 31(2). A separate civil suit is clearly contemplated in the third proviso to Sub-

section (2) of Section 31 (quoted above).

(11) The settlement of the dispute as to the title to compensation has to be decided by the Court either in a reference u/s 18 or u/s 30 or when the amount is deposited u/s 31(2). But there is no obligation on the Court to itself embark on an enquiry of to make an award on the failure of the interested persons to proceed with proceedings. It is their duty to produce material before the Court both relating to the enhancement of compensation or for settlement of disputes relating to the title to compensation. The Collector has already made his award u/s 11 with respect to all the specified matters. He has no obligation to takeover the proceedings in the absence of the interested parties. If the parties absent themselves or retreat from the proceedings before the Court, the award of the Collector becomes final and would govern the rights determined. The reference is made at the instance of the interested persons or by the Collector suo motu u/s 30. These references are in the nature of ordinary litigation for displacing the award of the Collector. It is thus for the parties to pursue it to the logical end like an ordinary suit. There is no obligation in the Court to terminate the proceedings only in an award of the Court. If the claimant dies and his heirs do not make an application to bring themselves on record within the time specified, the reference abates. The statute has cast a duty on the Collector in Sections 9 to 11 of the Act to issue notices to person known or believed to be persons interested and proceed to enquire into the objections to make an award. There is no obligation on the Collector to furnish names of the heirs to the Court in the reference proceedings whether u/s 18 or u/s 30 to take over the conduct of the proceedings on behalf of the estate of the deceased.

(12) The dispute relating to the title to the compensation has to be adjudicated upon by the Court both on a reference u/s 18 or u/s 30. The Court is defined in Section 3(d) of the Act. The expression "Court" means a principal Civil Court of original jurisdiction. The Act specifically lays down the reference of the matters for the determination of an already constituted Court of record. Even if there were no further provisions, the Court will determine the reference as a Court in accordance with its practice and procedure. Section 53 of the Act has, however, been enacted and provides that save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC would apply to all proceedings before the Court under the Act. A Court functions under the Act when a reference is made under Sections 18, 30, 31(2)-when there is a deposit, 35(3), 37 or 49(1). It is the common case of the parties that the provisions of the CPC apply to the proceedings before the Court while holding proceedings u/s 18 of the Act. Section 53 provides for adopting the procedure contained in the CPC in all proceedings before the Court under the Act, except in so far as it may be inconsistent with anything contained in the Act. Nothing has been pointed out that there is an exception made by any provisions of the Act, which may be so inconsistent with the provisions of the Act or there is anything repugnant in the context so as to make CPC inapplicable to a proceeding before the Court under the Act under the aforesaid provisions.

(13) The scope of the reference u/s 18 of the Act can be with reference 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. The person interested in his one written application can raise objections against the measurements of land, quantum of compensation or title to compensation. An application combining all the objections is permissible and has to be tried by the Court on a reference by the Collector. The provisions of Section 18 allow the parties to seek enhancement of compensation as well as to have title to compensation decided in one proceedings. The Court has to proceed to determine these questions in the combined proceedings. The provisions of the CPC are made applicable to all proceedings before the Court, except in the case of inconsistency. The consistent view taken by this Court is that the Code applies to proceedings initiated on a reference u/s 18. There is no justifiable reason to hold that the proceedings initiated on a reference u/s 30 are in any way different when the dispute as to title to compensation is to be determined in both proceedings.

(14) In Ram Piari's case (supra), a Full Bench of this Court held that the Act itself does not prescribe the procedure applicable to the proceedings before the Court while hearing a reference application. Section 53 of the Act, however, makes the provisions of the Code applicable to these proceedings and accordingly, the procedure laid down in the Code has to be followed by the Court in deciding a reference application. The observation, to the contra relied upon by the counsel, contained in Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, were dissented from. It was ruled :

20. The procedure laid down in the Code being applicable to these proceedings, it cannot be urged that the applicability of the provisions of Order 9 and Order 22 of the Code are not attracted to the proceedings in the Court. 21. an application under Order 22 requiring the legal representatives to be brought on the record has to be moved within the period prescribed for moving such application. In case the application is not moved within time the reference would abate and the Court is not obliged to answer such a reference. It is no doubt true that a reference application is not a suit, however because of the applicability of the procedure prescribed in the Code to the proceedings before the Court in such applications, the proceedings before the Court partake the nature of a suit. During the proceedings before the Court in the reference application the claimants will partake the status of the plaintiffs while the non-claimants and Collector would occupy the position of defendants.

(15) similar view was taken in State of W.B. Vs. Dwijendra Chandra Sen, holding that the reference under the Act cannot be regarded in any way different from an ordinary civil proceedings and in this view of the matter, a reference u/s 18 of the Act or an appeal arising out of an award would be attracted by Order 22 of the Code of Civil Procedure. This was by virtue of Section 53 of the Act that the provisions of the CPC are applicable to all proceedings before the Court under the

Act unless such provision in the Code is inconsistent with anything contained in the Act. The view taken in *Abdul Karim and Another Vs. State of Madhya Pradesh*, was dissented from because of the scheme and the language of Sections 18 and v of the Act.

(16) Whether the proceedings have been initiated on a reference u/s 18 or u/s 30, the dispute to be settled is as to the persons to whom the compensation is payable or the apportionment of the compensation among the persons interested. The conflicting claims to the compensation money is the dispute which has been referred either u/s 18 or u/s 30 of the Act. The lis between the parties is identical whether the proceedings are u/s 18 or u/s 30. An adjudication on the title to receive compensation on a reference u/s 18 stands on the same footing as an adjudication on a reference u/s 30 or for that matter on a deposit u/s 31(2) of the Act. The scheme of the Act is that the Collector has to pay compensation to the rightful owners about whom he gives his award. The disputes could be settled either on a reference u/s 18 or on a reference u/s 30 to enable the Collector to disburse the compensation to the rightful owners. All questions relating to the dispute as to title to compensation, whether on a reference u/s 18 or on a reference u/s 30, traverse the same field. We can see no fundamental difference in the proceedings u/s 18 and Section 30/31 of the Act. The procedure before the Court on a reference u/s 30 would also be governed by the provisions contained in the Code of Civil Procedure. Section 30 does not contain any provision expressly or by necessary implication that the provisions of the CPC are not applicable. The Full Bench in *Ram Piari*'s case said that a reference u/s 18 of the Act partakes the nature of a suit. Similarly any dispute as to the apportionment of compensation or as to the persons to whom the same is payable on a reference, whether u/s 18 or u/s 30, is really in the nature to an inter-pleader suit initiated by the Collector either on a petition or suo motu. The persons interested are directed to establish their title to the acquired land. There is no reason for not making the provisions of the CPC including the provisions of Order 22 and for that matter the limitation contained therein, applicable to the proceedings u/s 30 for the same reasons as are applicable to the proceedings u/s 18 of the Act.

(17) Section 54 provides for appeals in proceedings before Court reading as follows:- "Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order Xlv thereof."

(18) The right of appeal is a creature of statute. It cannot be assumed that there is a right of appeal in every case which comes before a Court. Such right has to

be given by a statute or by some authority equivalent to a statute. The right of appeal being a creature of statute, it can be controlled or regulated by the provisions of the statute conferring it. The right of appeal in the Act is made subject to the provisions of the CPC applicable to appeals from original decrees and notwithstanding anything to the contrary in any enactment for the time being in force. The limited right of appeal is from any award or from any part of the award. It also provides for a forum of appeal i.e. the appeal shall only lie in any proceedings under the Act to the High Court from the award, or from any part of the award of the Court. It further provides an appeal from any decree from the High Court passed from such appeals to the Supreme Court. By virtue of the provisions of Section 26(2) of the Act, every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2), and Section 2, Clause (9), respectively of the Code of Civil Procedure. There is also a consensus of judicial opinion of the High Courts that a decision u/s 30 of the Act is a "decree" and as such an aggrieved party has the right of appeal u/s 54. In "Rama Chandra v. Rama Chandra AIR 1922 P.C. 80 it was held that from the moment when the sum has been deposited in Court u/s 31(2), the functions of the award has ceased and all that is left is a dispute between the interested people as to the extent of their interest. If that is so, then any adjudication would relate only to the title of the parties. It would partake the character of a decree of the Court. This view was in departure of the old view that orders under Sections 30/31(2) were awards and appealable u/s 54. Thereafter the consensus of judicial opinion is that an award in a reference under Sections 30/31(2) is a decree and is appealable.

(19) Section 54 prior to its amendment by Act Xix of 1921 stated that "subject to the provisions of the Code of Civil Procedure, applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the Court in any proceedings under this Act". Section 26(2) of the Act was also added by the same amendment and makes by a deeming fiction every such award as a decree. Section 54 gives a right of appeal in the case of award or any part of the award. The word "only" in the amended Section 54 does not restrict the right of the appeal but on the other hand, intended to make it specific about the forum of the appeal that in awards in land acquisition it would always be the High Court.

(20) The object of the enactment by amendment in Section 26 is to make the awards of the Court a judgment and decree and to extend the scope of the right of appeal. The enhancement or quantification of the compensation under the award of the Court may be on a reference u/s 18 restricted to objection to the amount of compensation. In that case there is no dispute that the appeal lies and is governed by the procedure of the Code of Civil Procedure. The award of the Court may be on a composite reference u/s 18. In other words, in addition to the amount of compensation, it would also have adjudicated upon the title of the persons to whom it is payable or the apportionment of the compensation among

the person interested. In that case the determination regarding the title to compensation would also be an award to which Section 54 would apply. As a matter of policy it is provided in Section 54 that all appeals against the award should lie to the High Court and, Therefore, the appeal against the composite award would lie to the High Court. It cannot be construed that the portion of the award determining title to compensation is not an award against which no appeal would lie u/s 54 of the Act. The provisions of the CPC contained in Section 96 etc. would be attracted relating the practice and procedure and not the forum of appeal.

(21) Besides the determination of a common reference u/s 18 both on the question of enhancement of compensation and title to compensation, it is the common practice of the trial Courts to determine reference petition u/s 18 of the Act and the reference petition u/s 30 of the Act when the dispute in both relates to the title to the compensation or to its apportionment in a consolidated proceedings. The two references are disposed of by a common order of the Court. We cannot treat that an appeal from a combined reference u/s 18 of the Act would be treated to be an appeal governed by the provisions of the CPC but not the appeal against the same judgment arising out of the reference u/s 30 of the Act. The practice and procedure for the two appeals in the High Court cannot be at variance merely because one petition is u/s 18 and the other is u/s 30 of the Act.

(22) A question arose before the Supreme Court in "Vidhya Charan Shukla v. Khub Chand Baguel 1964(6) S.C.R.729 relating to an appeal filed in the High Court u/s I 16A of the Representation of the People Act, 1951. The question was whether such an appeal is an appeal under the Code of Civil Procedure. The majority held that though the right of appeal is conferred by Section 116 of the said Act and it is by virtue thereof that the appeal was filed in the High Court, it is still an appeal under the Code of Civil Procedure, 1908 to the High Court. It was observed that to attract Article 156 to the 1st Schedule to the Limitation Act, it was not necessary for an appeal to be an "appeal under the Code of Civil Procedure" that the right to prefer the appeal should be conferred by the CPC and that it was sufficient if the procedure for the filing of the appeal and the power of the Court for dealing with the appeal when filed, are governed by the Code. Ayyanger, J. noticed that several Indian enactments, among them, the Indian Succession Act, the Probate and Administration Act, the Land Acquisition Act and the Provincial Insolvency Act, proceeded on the basis of legislative practice of conferring right of appeal under the respective statutes without prescribing any period of limitation within which the appeal should be preferred, but directing the application of the provisions of the CPC to these appeals. The provisions of the Limitation Act were held attracted to such appeals.

(23) By the Amending Act 19 of 1921, every award under the Part Iii of the Act shall be deemed to be a decree and the statement of the grounds of every such award a judgment (Section 26(2)). By the Amending Act of 1921 the awards of

the Courts made in the land acquisition cases by a legal fiction are placed in the same category as decrees and the statement of such grounds thereof a judgment within the meaning of the Code of Civil Procedure. There is no dispute that an award passed by the Court dealing with a reference u/s 18 of the Act embracing the question of title to compensation or its apportionment is vulnerable in appeal before the High Court in view of Section 54. Every such award being a decree as contemplated in the CPC is also appealable under it. Such an appeal would be governed by the provisions of Code of Civil Procedure. We are in respectful agreement with the reasoning and view taken by the Division Bench of this Court in "Union of India v. Rameshwar Nath" (supra) that an appeal against a decree of a Court upon a reference u/s 18 of the Act is an appeal under the CPC and the provisions of Order 22 of the Code apply to such an appeal and that the limitation applies to such an appeal. Identical is the position when the dispute as regards the title to compensation or its apportionment is referred by the Collector u/s 30 or by deposit of compensation in Court u/s 31(2), even though Section 26 refers to the awards in Part Iii and Sections 30/31 are contained in Part IV. As already noticed, the High Courts' consistent view is that a decision u/s 30 of the Act is a decree and that is how the appeal has been preferred even in this case claiming to be an appeal u/s 54 of the Act. The decision on a reference is construed as a decree within the definition of that term contained in the CPC and thus appealable as a decree, in the forum to which other appeals under the Act lie. The CPC governs the right of appeal as claimed by the appellant himself, for adjudication of conflicting rights in respect of compensation in the appellate Court and then why not the procedure. The practice and procedure of the Court in hearing similar appeals would govern this appeal also. The procedure adopted in hearing similar appeals is that contained in the CPC including the provisions of Order 22 and the limitation also.

(24) We, Therefore, answer the questions posed as under : - (a) The objects and procedure of Section 30 are in no way inconsistent with the provisions of the Code of Civil Procedure. (b) Yes. The provisions of the Limitation Act or that contained in Order 22 of the CPC are applicable to the proceeding u/s 30 of the Act. (c) The reasons and the view taken by the Full Bench in Ram Piari's case is equally applicable to the proceedings u/s 30 of the Act. (d) There is no difference between the appeal arising out of the proceedings u/s 18 and the proceedings arising out of Section 30 for the purposes of abatement of appeal. (e) The ratio of the judgment in "Union of India v. Rameshwar Nath's" case would apply to the present appeal.

(25) The case is sent back for determination of the applications on merits.