
(1990) 07 BOM CK 0069
In the Bombay High Court
Case No : First Appeal No. 141-A of 1982

Sk. Khaja Sk. Choota

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : (1991) 93 BOMLR 453

Hon'ble Judges : A.A. Halbe, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.A. Halbe, J.—The important question posed in this First Appeal is whether the claimant is entitled to enhanced compensation in an application u/s 18 of the Land Acquisition Act, when he has not recorded the protest at the time of receiving the compensation amount of the land acquired by the State Government. The facts, which give rise to this question are as under:

The Government acquired lands at Roze Bagh, Aurangabad, for the City and Industrial Development Corporation (hereinafter referred to as "the Corporation") and for that purpose, the Government issued necessary notifications u/s 4 and Section 6 of the Land Acquisition Act and Section 126 of Maharashtra Regional Town Planning Act. The Notification u/s 6 was issued on 14th October, 1973, under which survey No. 10 of Roze Bagh was acquired. The claimant Sk. Khaja Sk. Choota had his house No. 10.11. I, situated in this survey number and he had constructed a house comprising of four rooms on the plot No. 41/11, situated in the above survey number. According to the claimant/petitioner, the house comprised of four rooms and one big hall and the said house had envious situation of having College and other important institutions and Offices around. The structure comprised of cement and mortar, having doors and windows and ventilators fixed therein. The roof of the house was made of

wooden beams and rafters. In view of notification u/s 6 of the Land Acquisition Act, the appellant laid claim for Rs. 25,000/- as compensation for his house. The compensation for the land could not be preferred as the title thereof was under dispute and that is a subject matter of other proceedings. Under the award dated 19.11.1976, the compensation of Rs. 9,292/ was awarded in respect of house by the Acquiring Body. For that purpose, the notices under Sections 9 and 12(2) of the Land Acquisition Act (for brevity hereafter "the Act") were served on the claimant/appellant. It is contended that the said claim was accepted under protest and this was followed by making an application to the Collector to refer the claim to the District Court as required u/s 18 of the Act for enhancement of compensation. The said Land Reference was forwarded to the Court and the same was registered as Land Acquisition Reference No. 2/79.

2. The respondent/Government appeared and opposed the petition on the ground that though the notices under Sections 9 and 12 of the Act were served on the appellant, he did not lodge protest in writing as contemplated under the Act and hence, he could not be awarded any compensation more than that what was given under the award. It was also contended that since the compensation was not received under protest and since some of the items of structure were removed by the appellant/claimant, his claim for enhancement could not be entertained.

3. The learned District Judge after going through the documents and the oral evidence on record, came to the conclusion that the appellant had not lodged the protest in response to the notices under Sections 9 and 12(2) of the Land Acquisition Act. On the quantum of compensation, the Court found that even the oral evidence did not warrant for any enhancement of compensation. The Court was, therefore, pleased to dismiss the petition u/s 18 of the Act principally on the ground that the requirements of Sections 9 and 12 of the Act were not complied with by the appellant/claimant.

4. Being aggrieved by this dismissal of the claim, the appellant/claimant has preferred this First Appeal and the main plank of attack in this appeal is that, the appellant/claimant had lodged necessary protest, both in response to the notices issued u/s 9 and Section 12 of the Land Acquisition Act. As regards protest u/s 9 of the Act, it was contended that his statement was recorded by the Acquiring Authority and that was enough compliance u/s 9 of the Act. Regarding the acceptance of amount under protest in response to notice u/s 12(2) of the Act, it was contended that filing of application for reference by the Collector to the Court was itself the compliance of Section 31(2) second proviso of the Act and for these reasons, the technical objections, on which his claim for enhancement has been rejected by the learned District Judge, should be overruled and this Court should award the compensation claimed in the reference.

5. The learned advocate for the appellant has further contended that this is a case wherein looking to the nature of structure and looking to the potential to which the property could be put to, the claim of Rs. 25,000/ is by no means

exaggerated and the same should be awarded. It is also contended that the District Judge did not consider the question of solatium and hence on that count also the judgment of District Judge needs to be re-examined.

6. The learned Assistant Government Pleader has urged that the contentions are devoid of merit, firstly because no protest was lodged u/s 9 and further no protest was lodged at the time of payment u/s 12 of the Act. These are the lapses which are in breach of legal mandate, and which cannot be waived or overruled by the Court. The learned District Judge has, therefore, rightly come to the conclusion that since the appellant/claimant has not complied with the requirements of law, he cannot be allowed to succeed on the question of enhanced compensation. Regarding solatium, she has contended that since the appellant has not satisfied the requirements u/s 31(2) proviso 2 of the Land Acquisition Act, he cannot claim any amount under any head because in absence of protest, the appellant had accepted the award, which now cannot be challenged by the appellant in this appeal and which must have included the amount of solatium.

7. It seems that the evidence of the appellant Sk. Khaja s/o Sk. Choota and his witness Zahur Ahmed was recorded in support of the claim for enhancement. Whereas this evidence was countered by the Field Officer Sonawane and Circle Inspector Kadi.

8. On going through the judgment of the District Judge, it would be found that the award was declared on 19.11.1976. As per Ex. 21 and Ex. 22, the appellant/claimant accepted the compensation on 6th Decemeber, 1976, whereas the application for reference u/s 18 was filed on 1st January, 1977. These are the dates which are not disputed even by the appellant/claimant, nor by the Respondent State.

9. The learned District Judge has stated in the judgment that the petitioner had not filed any statement of claim in response to the notice u/s 9 which was possibly served upon him on 10th August, 1976. He, therefore, came to the conclusion that there is a breach of Section 9 and hence the question of enhanced compensation could not be considered in view of old Section 25 of the Land Acquisition Act, which clearly provides that in absence of claim by the appellant to the notice u/s 9 of the Act, the Court cannot award any enhanced claim. Now, in this regard, it is manifest from the reading of Section 9 of the Act that the statement regarding claim may not be in particular format or even in writing. u/s 9(2) of the Act, discretion is given to the Acquisition Officer to record even the oral statement. Briefly stated, the wordings of Section 9 nowhere suggest that the statement should as of compulsion be in writing and that seems to be so because, it provides for an alternate mode of accepting the statement even made orally to the Officer concerned in the proceedings. In this regard, my attention is drawn to the evidence of the claimant, who has categorically stated that the first notice was served on him on 10th August, 1976 and after the services of that notice, his statement was recorded by the Land Acquisition

Officer. He had laid claim of Rs. 25,000/- in that statement. The learned advocate for the appellant has rightly contended that this statement on oath has not been cross-examined by the respondent/State. I do find substance in this submission, because there is no cross-examination of this witness on this aspect. The Officers examined on behalf of the respondent/State have also not adverted to regarding such statement. There is nothing to suggest that this statement was recorded by the Collector or Acquisition Officer during enquiry u/s 11 of the Act. It is, therefore, felt that the requirement u/s 9(2) of the Land Acquisition Act has been adequately complied with in this case. Hence, the observation of the learned District Judge in this behalf that the claim for enhanced compensation could not be entertained in view of non-compliance of Section 9 of the Land Acquisition Act is erroneous. To that extent, the observations of the learned District Judge shall have to be ignored. Even the learned Assistant Government Pleader has not been able to controvert this position and point out that this was not an error on the part of the learned District Judge.

However, the next hurdle which the appellant has to cross is about the compliance of Section 31(2) proviso 2 of the Land Acquisition Act. The learned A.G.P. has vehemently contended that, it is not stated by the appellant that the amount was accepted by the petitioner under protest. Likewise, the Land Acquisition Reference was made on 1.1.1976 and hence there is a clear breach of Section 31, which cannot be remedied in this appeal. There is created a legal bar, which prevents the party from making reference and prevents the Court from awarding enhanced compensation. Unless, the appellant could show that the amount was accepted under protest, there remains a breach of Section 31 and if that be so, the claim cannot be entertained and in keeping with this argument, it is urged that the dismissal of the claim by the learned District Judge need not be interfered with.

11. Now, before probing into the other Rulings, it would be necessary to analyse what is meant by award, and why the requirement u/s 31 has to be complied with. u/s 11, making of an award under the Act does not constitute a decision or determination of the Court, It merely constitutes an ascertainment of market value of the property by the Collector as an agent of the Government. It cannot be said to be a decision or determination by Judicial or Quasi-Judicial Officer. It is only an invitation to the offer made by Government to the owner of the land about the amount of price the Acquiring Authority feels as adequate and reasonable. The award might be a tender as to what the Government through its agent is willing to pay. It is a sort of proclamation by the Collector to the person whose lands are acquired that the Government was prepared to offer the price as mentioned in the award. The award does not mean anything beyond invitation to offer or at best an offer by the Court about the amount of compensation to the land owners. It is, therefore, fairly well settled proposition that an award by Land Acquisition Officer can be assimilated to an offer of price of the property acquired, made on behalf of the Government. If the owner accepts the award there is an end of the matter, but if offer is not accepted the owner can ask for

reference to the Court for determination of fair and proper compensation. It would, therefore, follow that a claim made on a notice u/s 9 of the Act for getting compensation cannot be equated to be an offer which leads to the formation of contract. All that follows is that as soon as the award is declared, the Court is prevented from awarding anything in excess of what is claimed by the claimants and not less than what has been awarded. This is indeed an injunction to the Court and not to the party. Proceedings before the Collector in an award are, therefore, of administrative character and not judicial and that award by itself is no evidence of the market value of the land acquired. It simply remains a tender as to what sum the Government through its agent is willing to pay to the claimant. It is, therefore, binding only on the Acquiring Body the Government.

12. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , in the case of *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and Anr.*, it is observed by the Supreme Court:

The award made by the Collector u/s 12 is, in a sense, a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings stand concluded thereupon.

The same view is reiterated by the Supreme Court in *Mohammed Hasnuddin Vs. State of Maharashtra*, , in the case of *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, held that, "the Collector in making an award acts as an agent of the Government, and that the legal character of the award made by the Collector was that of a tender or offer by him on behalf of the Government". This would, therefore, show that the declaration of award is an offer or an invitation to the offer by the claimant to accept the amount that may be mentioned in the award. Now in the first instance, when notice u/s 6 followed by notice u/s 9, the intention of acquisition is made clear by Government and the persons affected by the Land Acquisition are being directed to make a statement of the price of the land to be acquired. It is at that stage that the transaction is set in motion. The equity is seen in calling upon the claimant to make a statement of claim. As soon as that statement is filed, the Collector is supposed to investigate into the various aspects of acquisition including the price of the land to be acquired. The Collector, after due enquiry u/s 11, is required to make an award and that, as indicated above, is an amount of compensation which the Government is willing to pay to the claimant. It is at that stage the offer is finalised and if this offer is accepted without protest, there creeps in a position which is analogous to the concluded contract.

13. In the above background, the provisions of Section 31(2) proviso 2 assumes importance. It provides that on the award being made u/s 11 the Collector shall

tender payment of compensation to the person interested and the second proviso reads that:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18.

This would mean that if at the time of receipt of compensation, the petitioner does not file a protest then the said claimant is excluded from making the application u/s 18 of the Act. That proviso virtually disentitles the claimant to make an application u/s 18 of the Act. The legal position appears to be that there is a concluded contract and the claimant cannot resile from it after having accepted the amount of award. Now, this statutory position is stated in S.M.A. Somasundaram Mudaliar Vs. District Collector Chittoor and Another, . in the case of S.M.A. Somasundaram Mudaliar v. District Collector, Chittoor and Anr. In that case the amount was paid by a treasury bill, which was not encashed. It was not equivalent to bill of exchange. That treasury bill was in respect of compensation. The claimant received the same in the early hours of the day and in the latter part of that day, he protested about the quantum of compensation. The Court held that Section 31(2) proviso 2 came in operation and the claimant was incompetent to claim enhanced compensation. In that case, it was urged on behalf of the claimant that words, "receive the amount otherwise than under protest" appearing in proviso 2 were different from the words, "receive such payment under protest" under proviso I of that section. The Court on elaborate reasons rejected that distinction and discussed the anomalies that would follow if the distinction is accepted. The Court held that the said distinction was artificial. If the receipt of amount was to be construed as receipt of payment in cash and if the receipt under payment is to be construed otherwise the objector will have to file protest at the treasury because it is a treasury which is going to make the payment and not the person tendering the compensation contemplated u/s 31 of the Act. Similarly, it was also pointed out that if this distinction was maintained, a person may encash the treasury bill after a long time and may during that time lodge a protest. That was for all practical purposes incapable of conception. The Court, therefore, held that the payment by treasury bill was equivalent to payment of compensation of amount and the main ratio that can be deduced from this ruling is that the party has to prefer the protest before receiving the amount, It would be found that when a contract is concluded and if the protest is filed later on, the party shall be deemed to have resiled from the contract for no obvious reason and such a situation cannot be contemplated in a matter analogous to the concluded contract.

14. In Tara Chand Vs. The Land Acquisition Collector, (Delhi Shahdara), Delhi, , in the case of Tara Chand v. The Land Acquisition Collector. Delhi, the Court observed that a party shall be deemed to have waived the right to claim enhanced compensation if he has received the compensation under an award otherwise than under protest. The Court also considered the question of waiver in regard to the application filed to the Collector for reference and the

consequential reference. The Court held that there was no waiver against reference.

15. My attention is also drawn to The Collector, Jabalpur and Another Vs. Kamal Kumar Jain and Others, , in the case of The Collector, Jabalpur v. Kamal Kumar Jain and Ors., wherein the claimant had preferred an application for reference u/s 18 of the Act before receiving the compensation. The Court held that filing of the application was a step which clearly indicated that the compensation which was received later was under protest. The Court negatived the argument that the protest should be recorded at the time of payment. The learned advocate for the appellant/claimant has further drawn my attention to Sher Singh Vs. Union of India, . in the case of Sher Singh v. Union of India and it is pointed out by him that the mode and manner of lodging a protest has not been prescribed by the Act. the format of the protest is also not prescribed under the Act and this view is supported in this judgment, wherein the Court observed:

It is manifest from the above that the statute does not in any way lay down the precise time or the mode of recording the protest. This, therefore is necessarily a matter of legal inference. The very time, a land owner preters a reference u/s 18 of the Act. he, in essence, disputes the compensation awarded and lodges a protest against the same. Consequently, the receipt of compensation by him long after the presentation of an application u/s 18 of the Act cannot possibly be deemed as a waiver or withdrawal of his earlier clear cut claim of enhancement. To put it tersely, filing a reference application u/s 18 is itself a recorded protest within the meaning of the provisos to Section 31(2) of the Act.

This is also a case where the reference was made before receipt of compensation. The learned advocate for the petitioner also has squarely relied on Rabari Mahadev Amra Vs. Prant Officer, Radhanpur, . in the case of Rabari Mahadev v. Prant Officer. Radhanpur. It is observed by the Court that, "the mode of protest is generally by endorsing on the, counterfoil of the cheque or the receipt taken by the Collector, that the payment is taken under protest. There must be some thing in writing indicative of the protest. However, there is nothing in the statute to show that the protest must necessarily be in writing and if an oral protest is not only pleaded but also proved that would be sufficient to remove the bar created by the second proviso to Section 31(2) of the Act. To lay down that the protest ought to be in writing is to read words in the statute which are not present. Now in that case, the claimant had examined witnesses in support of his say that he has lodged the oral protest before the Acquiring Authority before accepting the amount. The Court was pleased to believe that oral evidence, but the main requirement that this protest was lodged before the receipt of the payment of compensation, was complied within that case.

16. On this point, the learned advocate for the petitioner has drawn my attention to the deposition of the claimant and according to him, the protest was lodged before the receipt of compensation by statement recorded on 25th October, 1976. The claimant stated that the second notice was served upon him on 25th

October, 1976 and by that notice, he was informed that the amount of Rs. 9,000/- and odd was fixed as compensation. He had received the amount but in writing he had informed that the compensation was less and accordingly he had made a grievance as required u/s 31. The learned advocate for the appellant has urged that this evidence has not been controverted by the respondents and hence this should be deemed to be the compliance of Section 31 of the Act. Now, in this regard, his pleadings do not at all indicate as to whether any notice was served on 25th October, 1976. What is being canvassed in this regard is that in reply to that notice he had challenged the quantum of compensation. The undisputed facts are that the award was declared on 19.11.1976 and hence the notice u/s 12(2) of the Act could not have been issued earlier. In law, this is only the notice, which contains the quantum of compensation offered. It is only thereafter that the claimant can challenge the compensation. In the application u/s 18 there is a clear cut averment that the notice u/s 12(2) was served on him on 20.12.1976 for an amount of Rs. 9,292/-. That amount was accepted under protest. It would be thus clear that the date 25th March, 1976 mentioned in the evidence of the claimant is apparently erroneous. It only refers to the notice dated 20.11.1976 and cannot refer to any other notice, because the amount of compensation could not be disclosed to him earlier in point of time than the date of the award. The claimant/appellant, therefore, cannot rely on the stray statement that in pursuance of second notice he had protested the quantum of compensation. Similarly, he has also drawn my attention to the evidence of the claimant in the cross-examination that the claimant made statement on 30th October, 1976. It was signed by him. The contents therein were admitted. Although that statement is not before the Court, it is tried to be canvassed that was also the stage when the quantum of compensation was challenged. However, looking to the Sections 11 and 12 of the Land Acquisition Act and looking to the fact that the award was declared on 19.11.1976 the question of challenge to the quantum could not be earlier than the date of the award and hence no useful purpose can be served by referring to the statement dated 30th October, 1976. Presumably this may be a statement recorded by the Collector during the course of enquiry u/s 11 of the Act. Briefly stated, there is no evidence on record to suggest that the petitioner had filed protest before the receipt of payment as required under the proviso 2 of Section 31(2) of the Land Acquisition Act.

17. The learned advocate for the appellant has urged that even if these formalities are not satisfied still he is entitled to enhanced compensation, firstly on the ground that he has been permitted the privilege of reference u/s 18 of the Land Acquisition Act. By making that reference, the acquiring authority shall be deemed to have waived the requirement u/s 31 of the Land Acquisition Act. He has further urged that compensation has been received and that the application has been filed being Land Acquisition Case No. 2/77 and that should be construed as a protest irrespective of the requirements u/s 31 of the Act. For that purpose, he has drawn my attention to M. Linga Murthy Vs. District Social Welfare Officer, Cuddapah, , in the case of M. Linga Murthy v. District Social

Welfare Officer, Cuddapah. My attention is drawn to the following paragraph:

It is well-settled position of law that a claimant is entitled to receive the compensation amount awarded by the Land Acquisition Officer with or without protest. In case he receives the amount under protest, he is entitled under law to lay an application for reference u/s 18(1) to the Civil Court within the limitation prescribed under the Act. In case he receives the amount without protest and makes an application for reference, then it is open to the Land Acquisition Officer either to make or refuse to make a reference. In a case where the Land Acquisition Officer refuses to make a reference, the appropriate remedy open to the claimant is to approach this Court under Article 226 of the Constitution of India and then assail the legality of the order. In case the Land Acquisition Officer makes a reference to the Civil Court, it would not be open to him subsequently to raise the plea that the reference itself is bad, provided the conditions precedent to make an application u/s 18(1) are fulfilled, i.e. (i) an application in writing; (ii) nature of the objection and (iii) within the time.

These observations are based on the Supreme Court view, enunciated in Mohammed Hasnuddin Vs. State of Maharashtra, , cited supra. It is, therefore, urged that, looking to this view even if the claimant has not tiled protest before receiving the amount, all the same he has received the amount and reference is made to the Court, hence the claim petition is maintainable.

18. On going through the judgment, it would be manifest that these observations really may not have reference to the matter in dispute. In the first instance, the main bone of contention raised on behalf of the appellant was that the Civil Court refused to revive the market value because the appellant had not laid his claim pursuant to the notices under Sections 9 and 10 of the Act. As indicated, Section 9 requires the party to file a statement of claim in response to individual notice and in response to the notification u/s 6 of the Act. Now, the Court held that the service of the notice was not proper and hence it could not be said that he had failed to make a statement of claim as required u/s 9 of the Act. If these observations are further taken into consideration, they would be obviously in conflict with the Supreme Court view which is to be found in Mohammed Hasnuddin Vs. State of Maharashtra, . It would also do away with the statutory requirements u/s 9, Section 12, Section 25 and Section 31 of the Land Acquisition Act. Briefly, these observations would virtually set at naught all the requirements under the Land Acquisition Act. I am afraid that may not be the view point with which these observations are recorded.

19. In Mohammed Hasnuddin Vs. State of Maharashtra, the Supreme Court interpreted the question of competency of the District Court to go behind the reference u/s 18 of the Act. There was a long line of decisions favouring the view that as soon as the reference was made to the Collector, the Court had no authority to go behind the validity of the reference. The Court was left only to determine the question of adequacy or inadequacy of the compensation. Even the question of limitation was not within the purview of the District Court. The

Supreme Court observed in an elaborate judgment that the view expressed by the Bombay High Court I.L.R.1906 30 Bom. 275 that formalities required u/s 18 are the matters of supervision and their observance is a condition precedent to the Collector's powers of reference. The Court was not only entitled, but was bound to satisfy itself that the conditions laid down in Section 18 have been complied with. The Supreme Court went into an elaborate discussion on the scope of Part II and Part III of the Land Acquisition Act and the powers of Collector under these parts. Under part II, which comprises of Sections 4 to 17, the powers of the Collector are described to be administrative powers and not judicial powers. It is observed that the proceedings before the Collector till that stage are not judicial proceedings and the irregularities in those proceedings could not vitiate the award. However, the powers under part III were judicial powers since they related to the discretion vested in the Collector to make or to reject the reference to the District Court. So far as Section 18 is concerned, it was specifically observed that the functions of the Collector u/s 18 were statutory or at least quasi-judicial in nature and the Supreme Court lastly held that:

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.

This would, therefore, clearly mean that the Court has to consider the question as to whether the requirements under Sections 9, 12 and 31 of the Act are satisfied and whether the reference is validly made.

20. The learned advocate for the appellant/claimant has urged that on the detailed reading of the above judgment, it would be found that only the question of limitation has been considered by the Court. If the claim was barred by limitation, then only validity of the reference would be questioned, it, cannot be, therefore, assumed that other conditions were under active consideration of the Supreme Court. It must, therefore, be held that by virtue of this ratio, the Supreme Court empowered the District Court only to consider the question of validity of reference, on the point of limitation. I am afraid that this argument is misconceived. The tenor of the judgment is in respect of all the statutory conditions, which a Court has to satisfy before exercising jurisdiction on the reference. This will be obvious because, if the amount has been accepted without protest and still the reference is made through oversight or on the reference by the party in ignorance of this proviso, the Collector shall be debarred from sending the same and if at all it is sent, the Court shall have to hold that the said reference is incompetent as there cannot be a reference on an accepted award.

21. Similarly, in *Sher Singh Vs. Union of India*, , in the case of *Sher Singh* the Court has observed that it will be the duty of the District Judge to adjudicate on all such objections raised by the respondent, who is interested in defeating the

applicant on any ground open to him, under the law. It is therefore, necessary before adjudicating on the matters mentioned in the application to hold that the proceedings were initiated in accordance with law which means that all the conditions mentioned in Section 18 of the Act had been complied with. The making of the application within time is one of such condition precedent. If that condition is not complied with, the District Judge will have no jurisdiction to proceed with the application. The learned advocate for the appellant has urged that even these observations relate to only question of limitation. However, if the entire paragraph is scrutinized, it requires that the District Judge has to satisfy that all the conditions mentioned in Section 18 of the Act are being complied with. As stated above, there is nothing to suggest or to prove that the protest was lodged before the receipt of the amount and if that be so, this is a reference which is based on an award, which has been accepted. It does not fall within the category of award that "not accepted" as provided in Section 18 of the Act.

22. These observations would, therefore, answer the further argument on behalf of the appellant that making a reference u/s 18 virtually amounts to waiver on the part of the Acquiring Authority to question the competence of the reference. As indicated above, even if the reference has been made by the Collector in spite of the apparent breach of the provisions under Sections 9, 12 or 31, still that would not amount to waiver because the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, , has held that this would not amount to waiver because the Collector does not act as an agent on behalf of the Government. It is the bounden duty of the Court to examine the validity of the reference keeping in mind the requirements u/s 18 of the Act. If they are not complied with the reference must fail irrespective of the fact that the Collector has forwarded the same to the Court, with known defects.

23. Now coming back to M. Linga Murthy Vs. District Social Welfare Officer, Cuddapah, , in the case of M. Linga Murthy, it would be obvious that if the observations recorded therein are taken to be ratio, they would directly conflict with the observations of the Supreme Court. The learned Assistant Government Pleader has drawn my attention to S.M.A. Somasundaram Mudaliar Vs. District Collector Chittoor and Another, , cited supra, wherein the same Court has held that if the amount is accepted without protest, the reference is not permissible. She has pointed out that that is a Division Bench judgment, whereas the judgment recorded above is of a Single Bench. As stated above, the observations shall have to be construed as observations and not the ratio, which may not have bearing on the facts of the case. Even if, they are treated as ratio of the Court, I would respectfully differ from them. If these observations are allowed to prevail as indicated above, the mandatory procedural part of the Land Acquisition Act shall be rendered redundant. As soon as the reference is made on the basis of application, all the legal formalities therefore shall be deemed to have been waived and shall not operate against the claimant. I am afraid that this cannot be the purpose of these observations.

24. The learned advocate for the petitioner has lastly drawn my attention to *Goparanjan Dube and Others Vs. Arbitrator, Hirakud Land Organisation and Others*, . He has stated that in that case also the compensation was accepted without protest, the protest was lodged long after the acceptance of the compensation and it was held that does not amount to estoppel. In this case, there is no question of estoppel at all. In that case, the question of estoppel arose because the Court held that the award was not final, that the award was based on negotiations, that the amount had to be quantified and in that light, it held that although the amount was accepted before the protest, the Court could not hold that the protest lodged thereafter was barred. The learned Government Pleader has contended that that was a case where the award was not finalised and hence the relevant provisions of Land Acquisition Act would not come into operation. I do agree with that argument and hold that the view enunciated by Orissa High Court is of no assistance to the cause of the petitioner.

25. The learned advocate for the appellant has further urged that the appellant is a poor indigent person, that he has immensely suffered in his business, because his hotel was acquired, that he has filed application for reference within three weeks and hence, this Court should interfere and hold that failure to comply with Section 31 can be condoned. I am afraid that such view is not possible because the tenor of the law is very clear and that is when the payment of the award is accepted without protest, it is acceptance of award. The mode of protest is provided in Section 31(2) proviso 2 and if the claimant fails to comply with that, he has to thank himself. The Court cannot act against the mandate of the law. The equities also cannot be invoked and hence no assistance can be rendered to the petitioner.

26. The learned advocate for the appellant has stated that the appellant was entitled at least to solatium and that there are no clear observations in that behalf. In the first instance, such a prayer cannot be considered because the appellant has accepted the amount of award. He cannot question the amount of solatium separately. It may be that the total compensation might be inclusive of that solatium. Having landed in the legal blockade, the appellant now cannot at this stage urge that the question of solatium should be considered afresh and that there is legal omission in this behalf.

27. The foregoing discussion would clearly show that the petitioner has failed only because he failed to comply with the requirements of second proviso to Section 31(2) of the Land Acquisition Act. The learned advocate for the petitioner/claimant has contended that this is a lapse, which has been caused because of the illiteracy of the claimant. He has indirectly suggested that there is a strong case to delete the proviso 2 of Section 31(2) of the Land Acquisition Act. There is a common consensus amongst several High Courts that filing of a reference is an expression of protest by a party. He has further stated that the State has assumed the character of the welfare State. Such technicalities should not prevent the illiterate and indigent claimants from being denied the enhanced

compensation. There is a lot of substance in this argument. It would be found that in AIR 1971 Delhi 113 , Tarachand's case, cited supra, the Court has held that when a valid application u/s 18 is made, that would not amount to waiver of his right to ask for the reference. In that case, of course, the reference was made prior to receiving the compensation. All the same, the Court has felt that this is one mode of expressing protest. In Sher Singh Vs. Union of India, , in Sher Singh's case, cited supra, the Court observed that, the very time a land owner prefers a reference u/s 18 of the Act. he in essence disputes the compensation awarded and lodges a protest against the same. In The Collector, Jabalpur and Another Vs. Kamal Kumar Jain and Others, , it is observed that where a landholder has already filed a reference of his claim, that should be deemed to be a protest. Similarly, in AIR 1979 Guj 193 , Rabari's case it is observed that even an oral protest should be deemed to be a protest envisaged under the above second proviso to Section 31(2) of the Land Acquisition Act. Likewise, the Andhra Pradesh High Court in M. Linga Murthy Vs. District Social Welfare Officer, Cuddapah, has even taken a view that these formalities should not deprive the claimant in case of their non-compliance. It would be thus found that the High Courts have handed down the progressive views on the liberal construction of the statutes. The Courts have consistently held that if the land reference is made on the application of the claimant that should amount to the protest as envisaged under the proviso. The only infirmity attached to this proviso is that the protest has to be lodged before receipt of the amount. In the above point of-view. it is impliedly suggested that the technicality of proviso 2 of Section 31(2) of the Act should not constitute an hurdle in getting enhanced compensation. If the reference is made within limitation, as required u/s 18 and even if no protest is lodged at the time of payment, the lapse in that behalf should not be treated as a legal infirmity. It is, therefore, felt that the Parliament should think whether the second proviso to Section 31(2) of the Act causes immense hardship to illiterate and indigent population. If that proviso is deleted, the hardships caused on account of the failure of litigants to record protest at the time of receipt of compensation would be obviated. Since in the matter of acquisition the land-holder has to part with the lands involuntarily, the strict requirements of contract cannot be invoked to defeat the real purpose of the Act. Time has come when the State would take the necessary action in relieving hardships caused to indigent people. With these observations, it has to be held that the appeal is devoid of merit and it is accordingly dismissed. However, there shall be no order as to costs. Copies of this judgment be sent to the Law Department of Union of India and Law and Judiciary Department of the State Government.