

**(1984) 08 KL CK 0028**  
**In the High Court Of Kerala**  
**Case No : L.A.A. No. 69 of 1979**

State of Kerala

APPELLANT

Vs

C.R. Viran

RESPONDENT

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**Date of Decision :** 02-08-1984

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 9  
Constitution of India, 1950 — Article 19(1), 300A, 31A  
Kerala Land Acquisition Act, 1961 — Section 11, 20, 58

**Citation :** AIR 1984 Ker 229

**Hon'ble Judges :** K. Bhaskaran, Acting C.J.; M.P. Menon, J

**Bench :** Division Bench

**Advocate :** Advocate General, for the Appellant; C.S. Rajan, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.P. Menon, J.—This is an appeal by the State u/s 60 of the Kerala Land Acquisition Act, 1961. The award u/s 11 was passed on 26-2-1973 and notice thereof was given to the claimant on 20-2-1973. On 2-3-1973 the claimant addressed the following communication to the Special Tahsildar : --

"Petition submitted by C. R. Viran, Sitaram Nivas, Vyttila, requesting for immediate action.

Your Award in L.A.C. No. 90/72 (dated nil) in respect of:

0.0861 hectares of land situate in the village of Poonithura of Kanayannur Taluk and the bungalow etc. of which I am the owner was acquired by Government for the Cochin bye pass to N. H. 47.

The award was communicated to me on 26-2-1973. I find from the award that a compensation of RS. 1,36,979.18 is awarded as compensation due to the compulsory acquisition. The award admits that I am the registered holder occupying the land and entitled to the compensation so awarded.

I have claimed a compensation totally Rs. 2.33.450/- as per the provisions of the Kerala Land Acquisition Act.

Under Section 33 of the Kerala Land Acquisition Act of 1961 you are bound to pay the amount of compensation tendered as per your notice of award dated 27-2-1973 to me.

I do not admit the sufficiency of the amount awarded. I make it clear that I am proposing to receive such amount of compensation under protest as to the sufficiency of the amount.

Therefore on 7-3-1973 the date fixed as per the notice of award u/s 12(2) of Act 21 of 1961, I will be presenting myself before you to receive under protest as to sufficiency of the amount of compensation tendered by you and I request you to make available the amount immediately.

Sd/- C.R. Viran.

This was followed by another communication dated 25-9-1973 wherein the claimant made a specific request for reference u/s 20. Reference was first made on 29-9-1973 u/s 33(2) read with S, 20; but the Court was subsequently informed by the Collector that the application for reference u/s 20 was belated and that the matter had to be treated as a reference u/s 33(2) only. Admittedly, the last date for making an application u/s 20 was 11-4-1973 and in this view, the claimant's second communication dated 25-9-1973 was out of time. The question therefore was whether the first communication dated 2-3-1973 could be treated as a reference application u/s 20. The Court held that it could be so treated, as the claimant had disclosed "an intention to get more amount by way of compensation", and all that was required was "substantial compliance". It accordingly proceeded to enhance the compensation. And the main question in this appeal is whether the above view taken about the letter dated 2-3-1973 could be sustained.

2. There are two lines of decisions, one taking a very liberal or generous view of the matter, and the other, a more restricted one; but before considering their scope, it is necessary to advert to the relevant statutory provisions.

3. Section 2(5) of the Act defines "Court" as the Land Acquisition Court or any civil Court invested with the jurisdiction of a Land Acquisition Court u/s 58. Section 11 deals with the award to be passed by the Collector; it should specify the true area of the land, the compensation allowed and provide for apportionment of the same among persons interested. Section 20 reads as follows :--

"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 notice from the Collector under Sub-section (2) of Section 12 or within six months from the date of the Collector's award, whichever period shall first expire."

Section 21 enumerates the matters on which information should be given to the Court by the Collector, while making a reference u/s 20. Section 22 requires the Court to give notice to the parties specifying the day on which it will "proceed to determine the objection". Section 23 restricts "the scope of enquiry in every such proceedings" to a consideration of the interests of person affected by the objection. Section 24 provides that the proceedings shall be in open Court, and Section 27 lays down "rules" as to the amount of compensation the Court can award. Section 28 speaks of the decision of the Court as an "award" : the award is only deemed to be decree under Sub-section (2). Section 58 authorises the Government to establish Land Acquisition Courts at any place or places in the State. And Section 59 provides that except when they are not inconsistent, the provisions of the CPC shall apply to all proceedings before the Court.

4. The first thing that emerges from a scrutiny of the above statutory provisions is that the Land Acquisition Court is a special Court established u/s 58, and not a Court within the meaning of Section 9 C.P.C. with jurisdiction to entertain all civil claims. When a reference is made u/s 20, the function of the L.A. Court is to determine the objections, hold an enquiry into them and pass an award. There is no trial, but only an enquiry into objections. There is no judgment or decree, but only an award. The objector cannot directly approach the Court, nor can the Court, on its own, frame issues for trial; the approach is only via a reference, and the enquiry is also limited to the grounds on which objection is taken to the award. These grounds, as indicated in Section 20, must relate to : (i) measurement of the land (ii) amount of compensation (iii) the persons to whom it is payable and (iv) the apportionment. The Court can pronounce on only one or the other of the above objections; it cannot decide any other question.

5. The second aspect deserving notice, and which follows as a corollary to the first, is that the Court's jurisdiction rests entirely on a valid reference made u/s 20. If no reference is made by the Collector, or if the reference made is invalid for any reason, the Court will have no jurisdiction to enquire into any objection and pass an award.

6. There was at one time a view that the Court cannot go behind the reference

made by the Collector and examine whether it is valid or not; but that view has been overruled by the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, , holding as follows :-

"..... the Court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference".

xxx xxx xxx "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 u/s 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."

The same decision also holds that in the exercise of his function u/s 18 (Section 20 of the Kerala Act) the Collector has to act as a statutory authority, and not as an agent of the Government.

7. The reference u/s 20 and the application which is the foundation of exercise of statutory duty by the Collector, are thus of great importance in the matter of attracting the jurisdiction of the L. A. Court and shaping the ambit of the proceedings before it. Going by the language of the Section, its requirements are : (i) a person interested in the award, but who has not accepted it; (ii) a written application by such a person to the Collector; (iii) a prayer in that application that the matter be referred to Court; (iv) specification in the application of the grounds of objection and (v) making of it within the time prescribed. As regards requirements (i), (ii), (iv) and (v), the law is practically settled that no reference at all could be made in their absence. The Supreme Court has clarified the position in Mohammed Hasnuddin Vs. State of Maharashtra, in these words : --

"The word "require" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference u/s 18 on the fulfilment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference u/s 18 is thus circumscribed by the conditions laid down therein.....

Though the Court classifies the conditions into three, it can be noticed that the

first among them includes two of the requirements enumerated earlier. The enquiry in the present appeal should therefore be into the grey area represented by requirement No. (iii), and probably into the question as to what could he treated as an "application" for the purposes of requirement No. (ii).

8. In Maddur Krishnammal Vs. Collector of Coimbatore, the objection of the claimant was: "I will not receive the amount but will contest the matter in the District Court and the court held that from the spirit of the objection, it was clear that the claimant was seeking a reference. In Re: S. Rengaswamy and Others, was a case where the claimants had made it known that they were not accepting the amount of compensation, and the Court again held that by implication, they were applying for a reference. Where a claimant received the amount awarded by the Collector with an endorsement on the receipt that the dispute be referred to Court, the Andhra Pradesh High Court held, in Peace Memorial Association, Anantapur by its Secy. P. Lakshminarayana Reddy Vs. Collector, Anantapur and Another, that there was substantial compliance with the requirements of the statute. The question in P. Chandrasekhara v. Collector ILR (1966) Mad 428 was whether a mere objection to the award ("I do not accept the award given by you. I request you therefore to refer the matter to the Court....") could amount to specification of the grounds of objection also: and the Court thought, with reference to the claim statement filed during the award enquiry, that the objection was to the adequacy of compensation. Failure to specify the grounds of objection in the request for reference was overlooked by applying the theory of substantial compliance. A more or less similar view was taken by this Court in Kelappan v. State of Kerala. 1968 KLT 7 when Govindan Nair J. (as he then was) observed : --

"The fact that there is no specific prayer in the application that a reference should be made, is not sufficient to nullify the petitioner (?) and reject the application. It is the substance of the application and not the form that must be looked into."

The petitioner in Annamma Chacko v. Land Acquisition Officer, 1981 Ker LT 36 had, on receipt of award notice, filed an application objecting to the adequacy of compensation and requesting for a reference to Court, but the amount awarded was subsequently withdrawn without registering a formal protest. The Land Acquisition Officer declined to make a reference for the reason that the petitioner had "accepted" the award, but Khalid J, (as he then was) did not approve of this stand. His Lordship said :

"The Act clothes the authorities with powers which an ordinary citizen does not have. The properties belonging to the citizens are compulsorily acquired by resort to provisions of the Act. Citizens do not have any remedy against such deprivation except on limited grounds. Therefore those who are deprived of property should be compensated adequately. They should be permitted to make liberal use of the relevant provisions of the Act to secure reasonable compensation. A rigid approach to the provisions of the Act is neither helpful nor

desirable. Adequate and reasonable compensation, to which such persons are entitled, should not be denied to them on hyper-technical pleas,"

9. When an award is passed u/s 11 and the claimant forwards some communication objecting to it or protesting against it, the objection in most cases would be about the amount of compensation awarded. At any rate, the nature of his objection can be ascertained from the statement filed by him in the award proceedings. And it can also be inferred that the objection or protest is made with a view to have his claim referred to a Court, for that is the only forum which can resolve the dispute. If "substance", "spirit", "implication" and the like are sufficient to invoke the Collector's power u/s 20, mere communication of a two-word letter : "I protest" will be enough to fill the bill. It will be possible for the Collector to examine the files and find out what the protest is about. The grounds can be fished out, and a desire for a reference can be inferred. But can such a mere protest do duty for the requirements of the section when it speaks of an application requiring reference and setting out grounds of objection? If the intention of the legislature was that the Collector should make a reference when he comes to know that the claimant is not accepting the award, the Section would have been couched in different language, somewhat like this :

"When a person interested in an award informs the Collector that he is not accepting it, the Collector shall refer the matter to the Court".

But one cannot proceed on the basis that the legislature has added unnecessary or surplus words to the provisions of a statute, and think of substituting its express requirements with "implication" or spirit".

10. Turning now to the other line of decisions, the Bombay High Court had, in *In re Land Acquisition Act (1906)* ILR 30 Bom 275, said : --

"First, he must make a written application to the Collector. Secondly, that written application should require the Collector to refer the matter for the determination of the Court, whether the objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Thirdly, such application shall state the grounds on which objection to the award is taken. These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into force." In *Kana Navanna Narayanappa Naidu Vs. Revenue Divisional Officer, Sivakasi*, a Division Bench of the Madras High Court observed : --"The necessary sine qua non of the reference is the basic fact that the application for such a reference must be made in accordance with the provisions of Section 18 of the Land Acquisition Act and within the period specified in the first proviso to that Section, and if those provisions are not complied with, there cannot be any valid application at all and necessarily if such an application does not exist, a positive reference is incapable of existence. It would be the height of technicality to say that even a scrap of paper styled as reference is made by the Collector and that is before the Court, it

is bound to go into the merits of the dispute. No Court can be compelled to adjudicate on matters which do not come before it in strict conformity with the requirements of law..... A passive attitude which the Court is compelled to adopt in cases it is asked to adjudicate upon invalid references cannot be founded on law or reason."

M. S. Menon. J. (as he then was) noticed the said two decisions with approval in *Veeraraghava Iyer v. S.T.M. Project*. 1957 KLT 1040. for considering whether Exts. A and B before his Lordship could be construed as valid applications for reference. In Ext.B the claimant had referred to the award notice and requested that the papers be sent to the Court; and in Ext, A. he had indicated that the amount was being received under protest. His Lordship said : --

"There is no mention of any of the four grounds in Ext.B. There is no prayer for a reference in Ext. A. And 1 see no justification for introducing into Ext.B a ground of objection which is not there as to the amount of compensation, on the strength of Ext.A."

The learned Judge was not for introducing implications or for overlooking the absence of a prayer. In *Trichur Dt. Co-op. Bank v. Dt. Collector* 1963 K LJ 193 the claimant's communication to the Collector was to the effect that all the properties had not been fully valued in the award and that the amount was being received under protest. M. S. Menon, C. J., speaking for a Division Bench this time, characterised the communication as :

"nothing else or other than a request for a payment under protest of the amount awarded to the appellant for the land acquired".

and held that it was "impossible" to treat it as an application for reference.

11. We think that the two lines of approach could be reconciled, if at all, only by holding that while the essential elements of Section 20 have to be insisted upon in every case, the question whether any one of them is satisfied or not in a given case can be approached pragmatically by looking into the substance and not the form. Thus, the written application need not be one couched in formal terms : it may be in the form of a letter or an intimation. It need not contain a formal prayer to make a reference u/s 20; but it should contain at least a statement or suggestion that the claimant is looking forward to an adjudication by Court. It should also be possible for the Collector, from a fair reading of the communication to discern on what ground the award is being objected to. Substantial compliance may be sufficient in these regions of form, but compliance there must be, intelligible and clear. It cannot be a matter of pure conjecture, of supplying patent omissions, or of discovering something where nothing exists. This is the limit within which the quaint dichotomy of strict law and liberal construction could be preserved.

12. Counsel for the respondent-claimant referred us to recent decisions construing the scope of Section 80 of the CPC and contended that the approach

should be analogous in the matter of Section 20 of the Land Acquisition Act also. There are no doubt rulings to the effect that terms of a notice u/s 80 cannot be scrutinised in a pedantic manner or in a manner completely divorced from common sense, and that the enquiry should be as to whether they substantially fulfil the object of the provision; but no decision has gone to the extent of holding that the essential requirements of the Section, namely, a statement as to the cause of action, description of the plaintiff and the relief claimed, can altogether be dispensed with. Section 80 of the Code is but part of adjectival law, intended to regulate procedure in the matter of doing justice between the parties, and it is only proper that such a provision be interpreted with reasonable elasticity so as to subserve and advance the cause of justice, Sub-section (3) introduced by Amending Act 104/76 has also expressly introduced the rule of substantial compliance. These considerations cannot wholly govern the construction of Section 20 of the Land Acquisition Act, as long as the law is that its requirements are conditions precedent for exercise of power by the Collector and even for attracting the jurisdiction of the Land Acquisition Court.

13. A point was mooted at the hearing whether court-fee has to be paid under the Kerala Court-fees and Suits Valuation Act. 1959 on an application made u/s 20 of the L.A. Act. Section 4 of the former enactment provides that fee is chargeable in respect of any document which is to be acted upon by a public officer, and Entry 10(k) in Schedule II speaks of an application presented to a public officer for exercise of power conferred by law. It may therefore be possible to think that the "application" in Section 20 of the L.A. Act is something more than a mere letter of protest; but as the Advocate General submits that fees are not being insisted upon as a matter of practice, and that the concerned Manual is also silent on the question, it is unnecessary to finally pronounce on this question.

14. The right to property was a fundamental right till the 44th Amendment of the Constitution. Even when Articles 19(1)(f) and 31 were there in Part III, there were judicial observations that it was the weakest of all fundamental rights. With the deletion of these articles, the right to receive full market value for lands acquired in land acquisition proceedings ceased to be a fundamental right except perhaps in relation to portions of land under personal cultivation and falling within the prescribed ceiling limits, as laid down in Article 31A. The provisions of the Land Acquisition Act need not therefore be read down, as of old, to protect a fundamental right guaranteed by the Constitution. Article 300A only requires the authority of law for depriving a person of his property. The right to get a reference u/s 20 of the L.A. Act is now but a statutory right, and it is well settled that when a statute confers jurisdiction only on terms specified therein, those terms must be complied with before the jurisdiction can be created and raised.

15. That takes us to the question as to what exactly the respondent had attempted to communicate in his letter dated 2-3-1973, extracted earlier. The sufficiency of the amount awarded was no doubt disputed, and a clear protest was also entered. The request for "immediate action", however, was in the

matter of making available without delay the amount already held payable. There was no mention of any desire, intention or even expectation in the matter of having his claim adjudicated through a Court. Sections 12(2) and 33 of the Act were specifically referred to, but Section 20 was significantly omitted at that stage; the omission was cured only on 25-9-1973, after time had run out. We are unable to hold, in the circumstances, that the latter dated 2-3-1973 had "required" the Collector to make a reference u/s 20.

16. In the result, we hold that the Court below erred in thinking that there was a valid reference application, and in enhancing the compensation on such a basis. The Appeal is therefore allowed, but without any order as to costs. Considering, however, that the respondent and even the Court below are entitled to rely on decisions which were taking a very liberal view of the matter, we suggested to the learned Advocate General that the respondent could be relieved of the liability of refunding the entire enhanced compensation which he has already received from the State on furnishing security. The Advocate General could not readily agree to the extent of compassion that could be shown, but he indicated that it would be just and proper to fix the liability for refund at 40% of the enhanced amount paid. We record this, and order accordingly.