
(2010) 02 BOM CK 0030

In the Bombay High Court

Case No : First Appeal No's. 70, 71 and 72 of 1992, 381, 382, 442 of 1993, 369 of 1995, 988 of 1997, 1904 of 2007 and Civil Application No. 6618 of 2007 and Civil Application (St.) No. 28895 of 2007 in Rejected Case No. 1187 of 2007

The State of Maharashtra and Others

APPELLANT

Vs

Sitaram Narayan Patil (since deceased through his L.Rs. Shri Pralhad Sitaram Patil and Others) and Others etc. etc.

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 110, 115, 141, 152

Constitution of India, 1950 — Article 15, 226, 31

Land Acquisition Act, 1894 — Section 11, 12, 13A, 15, 18

Citation : (2010) 2 ALLMR 508 : (2010) 2 BomCR 366 : (2010) 112 BOMLR 652 : (2010) 2 MhLj 387 : (2010) 3 RCR(Civil) 383

Hon'ble Judges : J.N. Patel, Acting C.J.; S.C. Dharmadhikari, J; R.V. More, J

Bench : Full Bench

Advocate : A.R. Patil, AGP and S.V. Sonawane, AGP in FA Nos. 70 of 1992, 71 of 1992, 72 of 1992, 988 of 1997 in RC No. 1187 of 2007, S.P. Thorat, in FA Nos. 369 of 1995, 381 of 1993, 382 of 1993, 442 of 1993, S.G. Surana, in X Objection St. No. 7241 of 1998 and S.S. Kulkarni, in First Appeal No. 1904 of 2007, for the Appellant; S.P. Thorat in FA Nos. 70 of 1992, 71 of 1992 and 72 of 1992, S.G. Surana in First Appeal No. 988 of 1997 and in RC No. 1187 of 2007, for the Respondent

Judgement

R.V. More, J.—By the Order dated 21st March, 2009 passed by the Division Bench of this Court presided over by the Hon'ble Shri Justice B. H. Marlapalle and the Hon'ble Shri Justice D. J. Karnik in First Appeal No. 70 of 1992 with First Appeal No. 382 of 1993, the following questions are referred for the authoritative decision to the Larger Bench:

1. Whether a claimant, whose land is acquired, can be allowed to amend his claim application so as to enhance the compensation claimed in an application for Reference u/s 18 of the Land Acquisition Act, 1894?

2. If yes, at what stage can an amendment be allowed? that is to say during the pendency of the Reference before the Reference Court (Court of first instance) or even at the stage of an appeal in the High Court arising out of the decision of the Reference Court?

3. If answer for the question No. 1 is in the affirmative, whether the enhanced claim made by an amendment effected after the expiry of the period of limitation for making of a Reference u/s 18 of the Act can be considered?

2. In order to answer the issues referred above, brief survey of the facts in First Appeal No. 70 of 1992 giving rise to the Reference, may not be out of place.

The land bearing survey No. 247/1(part) situated at Village Navade, admeasuring 30,620 sq. mtrs. belonging to the claimants was acquired by the State of Maharashtra for New Bombay Project. A notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter for the sake of brevity referred to as the Act) was published in Maharashtra Government Gazette on 4th February, 1970 which culminated in Award which was passed by the Special Land Acquisition Officer on 26th August, 1986 where under the compensation was awarded at the rate of Rs. 1.50 per sq.mtr.. After the receipt of the notice u/s 12 of the Act, the claimants made an application to the Collector u/s 18 of the Act, for making Reference to the Court. In the said application, the compensation was claimed at the rate of Rs. 15/- per sq. mtr. The Collector on 28th January, 1987 referred the matter to the District Court for determination of compensation. On 10th October 1989, the claimants made an application at Exhibit 8 for amendment of Reference claiming enhancement of compensation at the rate of Rs. 20/- per sq. mtr.. The District Court after hearing the respective parties, by an order dated 13th June, 1990 allowed the application. The District Court after appreciating the evidence on record, concluded that the market value of the land on the relevant date was Rs. 12/- per sq.mtr. and passed an Award. Both, claimants as well as the State, being aggrieved by the decision of the District Court filed Cross Appeals. During the pendency of these Appeals, this Court decided few other Appeals arising out of acquisition of other lands acquired under the same notification. The claimants therefore, preferred an Application No. 3244 of 2006 for amendment of the memo of appeal to enhance the claim of compensation for the acquired land at the rate of Rs. 35/- per sq. mtr.. This application was allowed on 9th April, 2007.

It appears that at the time of hearing of the above Appeals, the learned AGP objected permission granted to the claimants to enhance the claim of compensation. It was submitted that the District Court as well as this Court cannot grant compensation at the rate higher than Rs. 15/- per sq.mtr which was claimed by the claimants in original application for Reference u/s 18 of the Act. The learned Counsel for the claimants, on the contrary claimed that the issue of enhanced compensation cannot be re-opened and in any case, in view of the provision of Section 53 of the said Act, the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 are applicable to the reference proceedings and

therefore, no fault can be found in the order allowing the claimants to enhance the claim of compensation.

The Division Bench considered the decisions of another Division Bench in the case of *The State of Maharashtra Vs. Shri Ashok Laxman Wani*, , the *State of Maharashtra v. Ambya Kalya Mhatre* in First Appeal No. 226 of 1994 decided on 11th November, 2008 and the decision of the learned Single Judge in *Sitaram Balu Bhopi Vs. State of Maharashtra*, and concluded that the decision of the Single Judge in *Sitaram Balu Bhopis* case is contrary to the decisions of the Division Benches in *Ashok Laxman Wani* and *Ambya Kalya Mhatres* cases.

In *Wanis* case (supra) , the Division Bench of this Court held that the amendment to the Reference Petition u/s 18 of the Act cannot be granted particularly when the period of limitation prescribed u/s 18(2) of the Act is over. In *Mhatres* case, the Division Bench was considering the question whether the claimants claim for enhanced compensation made by way of amendment to the Reference is barred by the limitation provided u/s 18 of the Land Acquisition Act. The Court on facts found that the amendment so as to claim enhanced compensation was made after the prescribed period of limitation u/s 18 of the Act and consequently held that the said amendment is barred by limitation. The learned Single Judge in *Sitaram Bhopis* case held that the Reference Court is vested with the power to allow the application for amendment of the claim for market value made in the Reference Application u/s 18 of the Act and this power to allow the amendment is not affected by limitation provided under Sub-section 2 of Section 18 of the Act. It was further held that even the memorandum of appeal or cross objection u/s 54 of the said Act can be amended so as to enhance the claim, however, the claimant cannot make a claim in excess of what has been claimed in reference.

3. The Reference to the Full Bench is restricted to the amendments seeking enhancement in the amount of compensation. If the questions framed are perused together with the order of Reference, it is clear that the Division Bench does not express its disagreement with the view taken by another Division Bench in *Ashok Wanis* case. The Division Bench refers to Single Judges Judgment in the field and observes that there are conflicting views of Single Judges of this Court on the point of amendment of the Reference. The Division Bench then observes that an authoritative pronouncement is necessary on the subject. That is how it made the Reference. When we perused the order of Reference in its entirety, we expressed an opinion that the emphasis appears to be on having an authoritative pronouncement on the subject. That is how the arguments proceeded and even the Advocates appearing in other matters which may be affected by our views on the subject, were allowed to address the Bench.

4. Mr. Patil, learned AGP on behalf of the State submitted that a Reference Application u/s 18 of the Act filed before the Collector is in compliance with the Statutory provision and can only be filed within the prescribed period of limitation under Sub-section (2) of Section 18 of the Act. He further submitted that in such a case, therefore the provisions of Order VI Rule 17 of the Code of

Civil Procedure, 1908 will have no application to the proceedings before the Collector even with the aid of Section 53 of the said Act as the Collector does not act as a Court within the meaning of Section 3(d) of the Act. Therefore, there will be no occasion for a claimant to amend his Reference application u/s 18 of the Act, particularly when the period of limitation prescribed under Sub-section (2) of Section 18 of the said Act is over. It is also submitted that the Act is a special enactment, intended to prescribe procedure and is a complete Code in itself, particularly in relation to the proceedings taken under Part II of the Act and the Collector upon making a Reference u/s 18 of the Act, loses its control and jurisdiction over such proceedings. While making an application u/s 18 of the Act, the claimant is required to state the amount which he wishes to claim while raising the objections with regard to the quantum offered to him. Once that stage is over the claimant would be bound by the amount stated by him in his Reference application. Section 53 of the Act provides that the provision of the Code shall apply to all proceedings before the Court in so far as they may not be inconsistent with anything contained in this Act. If the Reference application becomes barred by time then the provisions of CPC cannot be utilized for the purpose of defeating the bar which emerges from the specific provisions of the Act. In other words, the application of the Code to the proceedings before the Collector will create inconsistency with regard to the limitation prescribed u/s 18(2) of the Act. It is further submitted that the claimant gets two opportunities to state his claim. Firstly in response to the notice u/s 9(3) of the Act and secondly, before the Collector while making a claim u/s 18 of the Act. However, at the later stage, if the claimant wants to enhance the amount of compensation same will amount to resile from an express admission made by him. The learned AGP in order to substantiate his submission relied upon the Apex Court Decision in Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, , the decision of the Division Bench of this Court in The State of Maharashtra Vs. Shri Ashok Laxman Wani, , and decision of another Division Bench in Mhatres case and also the learned Single Judges Judgment in Sitaram Balu Bhopi Vs. State of Maharashtra, .

5. Mr. Thorat, learned Counsel appearing for the Claimants, on the contrary submitted that the Application under Order 6 Rule 17 was already allowed by the District Court and by this Court, enhancing the claim from Rs. 15/- to Rs. 20/ and Rs. 35/-respectively. The orders allowing the amendments are not at all challenged by the State Government by filing separate proceedings. Mr. Thorat, learned Counsel, invited our attention to the amendment to the provisions of Section 25 of the said Act and submitted embargo of not to grant compensation more than the claim of the claimants before the Land Acquisition Officer in pursuance of notice u/s 9 of the Act is removed and therefore, Court can grant an amount more than the amount awarded by the Collector. He submitted that the object of the legislatures appears that there should not be inadequate compensation to the claimant. Reliance was placed on Article 31 of the Constitution of India under which No person can be deprived of his property,

save by the authority of law. Mr. Thorat, lastly submitted that in view of the provisions of Section 53 of the said Act, the provisions of the Civil Procedure Code, 1908 are applicable to the reference proceeding, therefore once the matter comes before the Court, there is no restriction or bar to amend the Application for Reference or Appeal Memo, so as to claim enhancement in the amount of compensation. Mr. Thorat, learned Counsel, relied upon the Apex Court decisions in *Harcharan Vs. State of Haryana*, , *Nand Ram and Ors. v. State of Haryana* reported in 1988 (4) SC 260 and *Ghaziabad Development Authority Vs. Anoop Singh and Another*, .

6. Mr. Kulkarni, learned Counsel appearing for the Appellant/Claimant in Appeal No. 1904 of 2007 was allowed to address the Bench as the Appellant in this case is likely to be affected by our views on the subject. Mr. Kulkarni, learned Counsel, submitted that in view of the provisions of Section 53 of the said Act, the provisions of the Code of Civil Procedure, 1908 are applicable to the proceedings before this Court, in so far as they are not inconsistent with the provisions of the Act. He submitted that the scheme of the Act, if considered in proper perspective then the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 cannot said to be inconsistent with the provisions of Section 18 of the said Act and therefore, the Application for amendment can be entertained and granted, so as to enhance the amount of compensation. Mr. Kulkarni, learned Counsel, further submitted that u/s 18 of the said Act, the claimant is required to make a written application to the Collector requiring that the matter be referred by him for determination of the Court and scope of this application is restricted to four objections viz. measurement of the land, the amount of compensation, the persons to whom it is payable and the dispute of apportionment within the prescribed time of limitation. It was also the submission of the learned Counsel that the claimant is not enjoined with a duty to specify the claim in the said application and therefore, it is always open to him to amend his claim once the objection to the amount of compensation is raised within prescribed time of limitation. The learned Counsel relied upon Apex Court decisions in *Harcharan Vs. State of Haryana*, , *Ghaziabad Development Authority Vs. Anoop Singh and Another*, , *Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others*, and latest judgment of Apex Court in the case of *Chandrashekhar and Others Vs. Additional Special Land Acquisition Officer*, .

7. Before we advert to the above submissions of respective Counsel and decisions of the Apex Court, it will be necessary to appreciate the nature of the proceedings and power of reference court. In this context, the scheme of the Act must be borne in mind.

In the case of *State of Bihar Vs. Dhirendra Kumar and others*, , the Supreme Court held that the Civil Court has no jurisdiction to go into the validity or legality of the notification u/s 4 and declaration u/s 6 of the Land Acquisition Act. It was held that a civil suit for this relief is not maintainable. While holding thus, the Supreme Court observes that the Land Acquisition Act is a complete Code and is

meant to serve public purpose. Hence, one thing is clear that it will have to be assumed that this Act alone is the repository of the power to make a reference. Part III of the Land Acquisition Act is entitled Reference to Court and Procedure thereof. Section 18 as far as the State of Maharashtra is concerned, reads thus:

18. (1) Any person interested who has not accepted the award (or the amendment) thereof 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 (or the amendment) 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 (or the amendment) within six weeks from the date of the Collectors award (or the amendment).

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collectors award (or the amendment), whichever period shall first expire.

(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908.

A bare perusal of the same would indicate that the matter has to be referred by the Collector for determination of the Court. The term Court is defined in Section 3(d) as follows:

3(d) [the expression Court (except in Sub-section (3) of Section 18) means] a principal Civil Court of original jurisdiction, unless the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act; [and shall in relation to any proceedings under this Act, include the Court of a Civil Judge (Senior Division), to which the principal Civil Court may transfer any such proceedings];

The definition itself indicates that the reference is to be made to a pre-existing judicial authority. The expression Court means the Principal Civil Court of Original Jurisdiction and it empowers the appropriate Government to appoint a Special Judicial Officer within a specified local limit to perform functions of the Court under the Act. Thus, the reference is to a Court and, therefore, the proceedings can be safely termed as judicial. From the provisions of the Act itself, it is apparent that in part II thereof, what is contemplated is acquisition, preliminary investigation and, therefore, the Authorities empowered to do so are specified. However, even when such authorities which are specified therein viz., the

Collector, who makes an enquiry and award u/s 11 he has been conferred with the power to summon and enforce attendance of witnesses and production of documents in the same manner as is provided in case of civil court under the Code of Civil Procedure, 1908. Section 13A of the Act which falls in Part II confers Collector with discretion to correct the clerical or arithmetical mistakes in the Award or errors arising therein either on his own notion or on the application of any party interested or a local authority.

Section 18 can be invoked by any person interested who has not accepted the award. He may by written application to the Collector require that the matter be referred by Collector for determination of the Court and his objections are of the nature specified in Section 18(1). Sub-section 2 of Section 18 states that the application which is to be made in writing shall state the grounds on which the objections to the Award is raised. On receipt of this application, u/s 19, while making a reference, the Collector shall state for the opinion of the Court in writing under his hand, the particulars of the case, and in our case, Sub-clause (d) of Section 19(1) states that if the objection be to the amount of compensation, the grounds on which the amount of compensation is determined. Thus, the Collector in his statement to the Court gives an opinion in writing under his hand about the grounds on which the amount of compensation was determined by him. Thus, what is contemplated by the Legislature is determination of the amount of compensation. If that has been determined by the Collector and he makes an Award, which may be an offer. Nonetheless, he has to state the grounds on which he determines the amount of compensation. Thereafter, Sections 20, 21 and 22 deal with service of notice, restriction on scope of proceedings which is clarified by the Legislature to mean an Inquiry. If Sections 18, 19, 20 and 21 are perused and read harmoniously it is clear that what the Court is required to do is to decide the objections which could be of the nature specified in the application and regarding which information is provided by the Collector in his statement to the Court. Section 21 uses both words Inquiry and Proceedings.

Section 22 of the Land Acquisition Act mandates that proceedings should be in open court but at the same time clarifies that all persons entitled to practice in any civil court in the State shall be entitled to appear, plead and act (as the case may be) in such proceedings. Then come Sections 23 and 24, which set out the matters to be considered and neglected respectively by the Court in determining the compensation. Section 25 has been amended after the Amendments to the Land Acquisition Act in 1984 and states that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector. Thus, now, the Legislature has clarified that in no case the amount awarded as compensation can be lesser than that awarded by the Collector u/s 11. Section 26 is crucial for our purpose and reads thus:

26. (1) Every award under this Part shall be in writing signed by the judge and shall specify the amount awarded under clause first of Sub-section (1) of Section

23, and also the amounts (if any) respectively awarded under each of the other clauses of the same Sub-section, together with the grounds of awarding each of the said amounts.

While the title of this section may be Form of Awards but if this section is read carefully, it is clear that Sub-section 1 of it mandates that the Award under this part shall be in writing, signed by the Judge, shall specify amount awarded under Clause First of Sub-section 1 of Section 23 and also the amount, if any, respectively awarded under each of the other clauses to the same Sub-section together with the grounds for awarding each of the said amounts. Sub-section 2 of Section 26 further clarifies the position by stating that 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(2) and Section 2, Clause (9) respectively of the Code of Civil Procedure, 1908. Thus the Award is a judgment and decree of a civil court. The Court is nothing but a civil court which is presided over by the Judicial Officers empowered to so preside and they determine the compensation, they conduct the necessary Inquiries in the proceedings before them, they render the award which is deemed to be a judgment and decree of a civil court.

8. Once above position is appreciated, then, it will be proper to consider the question referred for our determination. The Apex Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, on page 1656 observed as follows:

4. The following factors must be etched on the mental screen:

1. A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award, unless the same material is produced and proved before the Court.

2. So also the award of the Land Acquisition Officer is not to be treated as a judgment of the Trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapproved its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court.

3. The Court has to treat the Reference as an original proceedings before it and determine the market value afresh on the basis of the material produced before it.

4. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the Award is inadequate on the basis of materials produced in the Court. Of course, the materials placed and proved by the other side can

also be taken into account for this purpose.

The above observations make it clear that the claimant can seek compensation without any pre-condition or restraint. The Court has to treat the reference as the original proceedings before it and determine the market value afresh on the basis of the materials produced before it. The claimant is in the position of the plaintiff who has to show that the price offered to his land in the award is inadequate on the basis of materials produced before the Court.

In a further decision with regard to the nature of the proceedings, the scope of enquiry and burden of proof the Supreme Court in the case of *The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc.*, , observes as under:

5. The amount of compensation payable for land acquired under the LA Act is required to be determined by Court u/s 23 at the instance of a claimant, who does not accept the award of Collector made in that regard u/s 11. As becomes clear from Sub-section (2) of Section 11 of the LA Act, an award as to the amount of compensation payable for the land, could be made by the Collector on the basis of agreement reached in that regard between him and the claimant. However, where no such agreement is reached, the Collector is required to make an award as to the amount of compensation payable for the land as required by Sub-section (1) of Section 11, being guided by the provisions contained in Sections 23 and 24, as envisaged u/s 15. The provision in Section 12 makes such award of the Collector final and conclusive evidence as between him and the claimant, subject to later provisions.

6. Since later provision in Section 18 entitles a claimant who does not accept the award u/s 11 as to the amount of compensation determined thereunder for his land, to raise an objection thereto and to seek reference to the Court for determination of the amount of compensation payable for his land, undoubtedly the Court deciding such reference could determine the amount of compensation payable for land exceeding the amount of compensation determined in the award u/s 11. But, the point is, whether it is open to such Court to determine the amount of compensation exceeding the amount of compensation determined in the award without recording a finding on consideration of the relevant material therein, that the amount of compensation determined in the award u/s 11 was inadequate.

7. When the Collector makes the reference to the Court, he is enjoined by Section 19 to state the grounds on which he had determined the amount of compensation if the objection raised as to the acceptance of award of the Collector u/s 11 by the claimant was as regards the amount of compensation awarded for the land thereunder. The Collector has to state the grounds on which he had determined the amount of compensation where the objection raised by the claimant in his application for reference u/s 18 was as to inadequacy of compensation allowed by the award u/s 11, as required by Sub-section (2) of

Section 18 itself. Therefore, the legislative scheme contained in Sections 12, 18 and 19 while on the one hand entitles the claimant not to accept the award made u/s 11 as to the amount of compensation determined as payable for his acquired land and seek a reference to the court for determination of the amount of compensation payable for his land, on the other hand requires him to make good before the Court the objection raised by him as regards the inadequacy of the amount of compensation allowed for his land under the award made u/s 11, with a view to enable the Court to determine the amount of compensation exceeding the amount of compensation allowed by the award u/s 11, be it by reference to the improbabilities inherent in the award itself or on the evidence adduced by him to that effect. That is why, the position of a claimant in a reference before the Court, is considered to be that of the plaintiff in a suit requiring him to discharge the initial burden of proving that the amount of compensation determined in the award u/s 11 was inadequate, the same having not been determined on the basis of relevant material and by application of correct principles of valuation, either with reference to the contents of the award itself or with reference to other evidence adduced before the Court. Therefore, if the initial burden of proving the amount of compensation allowed in the award of the Collector was inadequate, is not discharged, the award of the Collector which is made final and conclusive evidence u/s 12, as regards matters contained therein will stand unaffected. But if the claimant, succeeds in proving that the amount determined under the award of the Collector was inadequate, the burden of proving the correctness of the award shifts on to the Collector who has to adduce sufficient evidence in that behalf to sustain such award. Hence, the Court which is required to decide the reference made to it u/s 18 of the Act, cannot determine the amount of compensation payable to the claimant for his land exceeding the amount determined in the award of the Collector made u/s 11 for the same land, unless it gets over the finality and conclusive evidentiary value attributed to it u/s 12, by recording a finding on consideration of relevant material therein that the amount of compensation determined under the award was inadequate for the reasons that weighed with it.

Thus, it is the Court which is obliged in law to determine the market value and make an award. The matter being referred to a court and the jurisdiction of the court being amply clarified hereinabove, would it be proper then to hold that there is no power to allow amendment to the reference?.

9. The decision of the Privy Council in the case of AIR 1930 64 (Privy Council) in this regard is one of the earliest in point. In that decision the Privy Council has held that Section 18 of the Act clearly specifies four different grounds of objection. The distinction between the objection to area and to amount of compensation is also borne out by other sections of the Act. Therefore, once the objection is to the amount of compensation, then, any other objection could not have been introduced during the pendency of the Reference and even in an appeal from the order/award made by the Reference Court. A careful perusal of the decision of the Privy Council would show that if the objection taken is to the

amount of compensation, that alone is the matter referred and the Court has no power to determine or consider anything beyond it. In the present case we are concerned with the objection as to the compensation. The plain reading of the provisions of Section 18 of the said Act reveals that it is not necessary to claimant to specify the claim for enhancement in market value while filing an application u/s 18 of the said Act.

10. The issue, whether specification of the claim is an essential element or integral part of the matter under reference is considered by the Division Bench of Calcutta High Court in AIR 1945 Calcutta 312. The Division Bench of the Calcutta High Court negated the argument of the appellant therein that the sum of Rs. 56,000/- was an essential element or integral part of the matter under reference. The Calcutta High Court after referring to the judgment of the Privy Council in the case of AIR 1930 64 (Privy Council) has taken a view that the matter of reference is the objection to the amount of compensation and therefore, the amount which the claimant mentions in his petition for reference cannot be regarded as an essential element/integral and inseparable part of the matter in reference where the reference is directed against the amount of compensation awarded by the Collector. The Calcutta High Court also noted a significant omission in Sections 9 and 18 with regard to specific claim for compensation to be made by the claimant and further held that the Statute does not in express terms requires the claimant to state his exact claim of compensation. The Calcutta High Court held that the reference would be in order and valid, even without mentioning any claim.

11. The view that the applicant is not required to specify the claim in reference u/s 18 of the Act, is further supported by the Judgment of the Apex Court in Kashi Ram Namdeo Zambro Vs. State of Maharashtra, . In this case the Award u/s 11 was passed on 15th November, 1977 and notice u/s 12 was served on the Appellant therein on 17th November, 1977. It appears that the Reference u/s 18 was made within the prescribed limitation. However, deficit court fee was paid. On objection being raised, the Appellant made good the deficit court fee and thereafter, the Collector made the reference to the Court. During the pendency of the reference proceedings, the State raised a preliminary objection as to the maintainability of the reference on the ground that the requisite court fee was not paid within limitation of six weeks from the date of the receipt of the notice of the award. This objection was upheld by the Court. The High Court confirmed the order of the Reference Court. The Apex Court in Appeal in paragraph No. 2 observed as follows:

2. The only question that arises for consideration is whether the claimant is required to pay court fee on an application seeking reference u/s 18. We are at a loss to understand that a claimant is required to pay advalorem court fee on an amount awarded by the Collector u/s 11 for seeking reference u/s 18. What is required is to make a written application with particulars envisaged u/s 18(2) of the Act, to the Collector requiring the matter to be referred to the civil court to

decide his objection regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Act is a self-contained Code and it does not speak of payment of any court fee. It requires only that the application should be made within the limitation prescribed either in Clause (a) or (b) of Sub-section (2) of the Act. It is, therefore, clear that non-payment of the deficit court fee, though wrongly made by the appellant, is not necessary. The owner or person interested is not enjoined under law to pay any court fee on the application made u/s 18(1) seeking reference for determination of the compensation by the civil court etc. The civil court and the High Court, therefore, have committed grave error of law in rejecting the claim of the appellant for determination of the compensation.

12. The Apex Court in subsequent decision in (1998) 9 SCC 723 clarified its judgment in Kashirams case. The clarification was given as follows:

Accordingly, it is hereby clarified that the above mentioned judgment in Civil Appeal No. 3604 of 1982 shall not be construed to mean that it overrides the effect of Article 15 of Schedule (I) of the Bombay Court Fees Act, 1959 in cases where that provision apply.

The above observations of the Apex Court makes it clear that u/s 18(2) of the said Act, the Collector is required to refer the matter to the Court to decide the objections regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Apex Court further held that the said Act is a self-contained Code and reference to the Court u/s 18 of the said Act is restricted to the four objections mentioned above.

13. Under the scheme of Section 18 of the Act, the reference is required to be filed within a period of limitation. The period of limitation depending upon the facts of a given case would be six weeks to six months. Six months being outer limit, in either of the events, when the applicant was present before the Collector at the time when the award was made or when he was served with notice under Sub-section 2 of Section 12 of the Act. It is now fairly a settled law that this specific period of limitation is mandatory and is not flexible. As stated above, in order to refer the matter before the Collector for determination to the Court, the claimant is required to raise objections regarding the amount of compensation. He is not under an obligation to specify the amount of compensation. Once his objection as to the amount of compensation is filed within a prescribed period under Sub-section 2 of Section 18 of the said Act, before the Collector, then the Collector is duty bound to refer the matter to the Court alongwith his statement as contemplated u/s 19 of the said Act. The claimant thereafter, cannot introduce any other objections as contemplated u/s 18 of the Act either before the Court or in an appeal u/s 54 of the said Act. However, the claimant once take objection to amount of compensation within a prescribed period is at liberty to claim enhancement in the compensation, thereafter.

14. Section 53 of the Act makes provisions of CPC applicable to reference proceedings, which reads as follows:

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the [Code of Civil Procedure, 1908] shall apply to all proceedings before the Court under this Act.

The plain reading of the above provisions, makes it clear that the proceedings before the Court shall be governed by the Code of Civil Procedure, 1908. Save in so far as they may be inconsistent with anything contained in the Act. The expression shall denotes the mandate of the Parliament that the reference proceedings shall be governed by the provisions of the Code of Civil Procedure, 1908 before the Court, unless any provision of the said Act is inconsistent with the Code of Civil Procedure. In order to answer the issues referred to the Full Bench, it is necessary to ascertain whether the provisions of Order 6 Rule 17 are inconsistent with the reference u/s 18 of the Act. It is required to be seen, whether the provisions of the CPC are colliding with and/or directly in conflict with the provisions of the Act and if the situation is such that only one provision will prevail and one has to perish, then the inconsistency can be found out. It is also to be kept in mind that the rule of interpretation contemplates that all possible efforts shall be made by the Courts to survive both the provisions, so as to avoid inconsistency or repugnancy and if the collusion of two provisions is inevitable, then the Court must ascertain which provision should perish, having regard to the scheme of the Act. Keeping in mind the Rule of Interpretation and the meaning of the word inconsistent, we do not find any inconsistency in the provisions of Order 6 Rule 17 of the CPC vis--vis Section 18 of the Act and therefore, the provisions of Order 6 Rule 17 is applicable to the Reference u/s 18 of the Act.

15. The intention of the Parliament in adding Section 28A also cannot be overlooked while answering the issues referred to this Bench. Section 28A was introduced by Amending Act 68 of 1984. In terms of this section, where the Court allows the Applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11 of the Act, the persons interested in all other land covered by the same notification u/s 4 Sub-section 1 and who are also aggrieved by the Award of the Collector may notwithstanding that they have not made an application to the Collector u/s 18 of the Act by written application within three months from the date of the Award of the Court, claim that amount upon re-determination. Thus, the claimant whose land is acquired pursuant to the Section 4 notification under the said Act, can without filing a reference petition u/s 18 of the Act, can claim enhancement of compensation u/s 28A in the event the Court allows enhancement of compensation to any other applicant in respect of the land covered by the same notification u/s 4(1) of the Act. The intention of the Parliament appears to be that the claimant must get equal market rate in respect of the land covered by the same notification u/s 4(1) of the said Act. In the present case, we find that the claimant by filing reference

petition u/s 18 of the Act, claimed compensation at the rate of Rs. 12/- per sq. mtr. and subsequently enhanced the claim at the rate of Rs. 20/- and Rs. 35/- per sq.mtr.. It appears that the claim of enhancement was made in view of the decisions in other appeals arising out of the acquisition of the other lands acquired under the same notification. In the event of rejection of the amendment, for enhancement of claim, the claimant may not get market rate similar to those claimants whose lands are acquired under the same notification. He is also not entitled to file proceedings u/s 28A of the Act. However, at the same time, the claimant who has not filed any reference petition u/s 18 of the Act and if his land is covered by the same notification u/s 4(1) of the Act, may get enhanced compensation u/s 28A of the said Act. The Government as a Welfare State should not as far as possible take technical plea to defeat the legitimate and just claim of the citizens.

16. At this stage, it is worth to consider the provisions of Section 25 as amended by the Act 68 of the 1984. Under an unamended Section 25, the Court was not empowered to grant compensation in a reference u/s 18 of the Act in excess of the amount claimed by the claimant in response to the notice u/s 9 of the said Act. However, after the 1984 amendment, the said embargo on power of Court is now removed. Now, the amount of compensation awarded by the Court shall not be less than the amount of compensation awarded by the Collector u/s 11 of the Act. The intention of the Parliament in substituting Section 25 appears to be that the claimant should get market value for the lands which are compulsorily acquired resorting to the provisions of the Act. If that is so, there is no reason to deprive the claimant of the market value for his land acquired under the Act by refusing the amendment so as to enhance the claim of compensation.

17. In this regard, reference also can be made to the provisions of Section 3(d) of the said Act and Sections 151 and 153 of the Code of Civil Procedure, 1908. Section 3(d) of the said Act defines the expression Court means the principal Civil Court of original jurisdiction. Section 151 of the Code of Civil Procedure, 1908 speaks about inherent powers of the Court. Under this section, the Court has inherent powers to make orders to meet the ends of justice. Section 153 of the Code of Civil Procedure, 1908 gives Court general powers to amend any defect or error in any proceeding or a suit.

18. In *Khazan Singh Vs. Union of India*, , the Supreme Court has held that a reference made by Collector u/s 18 of the Act cannot be dismissed in default. The provisions of Sections 18, 20 and 26 make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector u/s 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the enquiry it would be at his risk because an Award would be passed perhaps to the detriment of the concerned party. But non participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference in default. Thus, it is for the Court to determine the market value of the land once a reference has been made to it. The determination of the market value of

the land is adjudicative process which the Court must complete irrespective of participation by the claimant in the enquiry. If that is the mandate of law and this is the obligation on the Court, then, all such materials as are placed before the Court to enable it to determine the market value, must be permitted to be produced. Production of materials and additional facts/figures, data is something which is part of a procedure evolved by the Court. There are procedural provisions by which the proceedings are governed. Ultimately, the procedural provisions are hand-maids of Justice. They can never be held to be mandatory. Therefore, it will have to be held that the provisions, namely, Sections 18, 19 - 21 read with Section 53 of the Land Acquisition Act enable the claimant to apply for amendment to the reference. However, just as others any amendments sought to the Reference are governed by certain salutary principles which are by now well settled, even this application must be considered on that touch stone. Merely because an application for amendment is made does not necessarily mean that it has to be granted. Ultimately, whether application will be allowed or not depends on facts and circumstances in each case and no general rule can be laid down.

19. We have already referred to the decision in Khazan Singhs case (supra) in this behalf which sets out the extent of the Courts power and obligation so also its duty. In another decision (Sharda Devi Vs. State of Bihar and Another,) this is what the Supreme Court observes with regard to the nature of the power u/s 18:

28. u/s 18 of the Act, the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter; whether the dispute has any merit or not is to be left for the determination of the Court. u/s 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on are such illustrative factors which may enter into the consideration by the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination u/s 30 of the Act. In case the Collector refuses to make a reference u/s 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

20. In such circumstances, it would not be just and proper to hold that the reference before the Civil Court cannot be amended. The proceedings before the Reference Court are civil proceedings. In S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, , the Supreme Court held that there is no reason for restricting expression Civil proceedings only to those proceedings which arise out of civil suit or proceedings which are tried as civil suits.

21. The expression proceedings when it appears in a particular Statute or provisions of Statute, its meaning will have to be ascertained by looking at the relevant Statute. Bearing in mind that the term proceedings indicates something in which business is conducted, according to the prescribed mode, it would be only right to give it a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not confine it to civil proceedings alone. In our opinion, the power to allow amendments of pleadings is also conferred so as to enable the Court to determine the real question in controversy between the parties. All amendments shall be made as may be necessary for the purpose of determining the real question and controversy between the parties. If such is the power, then, to hold that it is unavailable while deciding a reference u/s 18 would be, with respect, contrary to the object of determining the compensation to be awarded for compulsory acquisition of the land for public purpose. Justice and fair play demands that this procedural provision which assists the Court in determining the matter must be held to be a necessary aid or else the determination may not be fair.

22. Now let us proceed to consider whether an amendment can be allowed at appellate stage. Section 54 of the said Act reads as follows:

54. Subject to the provisions of the Code of Civil Procedure, 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 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.

The plain reading of this section makes it clear that an appeal shall lie to the High Court from the award passed by the Court in a reference u/s 18 of the Act. The Appeal is subject to the provisions of the Code of Civil Procedure, applicable to the Appeals from the original decrees.

Order XLI of the Code of Civil Procedure, 1908 deals with Appeals from original decrees. Rule 3 of Order XLI reads as follows:

3. Rejection or amendment of memorandum: (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such Officer as he appoints in this behalf, shall sign or initial the amendment.

The reading of Rule 3 clearly spells out the power of the Appellate Court to allow

the amendment to the Appeal Memo. We have already found that there is no inconsistency in the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 and Section 18 of the Act. It is now a fairly settled principle that Appeal is in continuation of the suit. In these circumstances, we do not find any reason why the amendment should not be allowed so as to enhance the claim made under reference application at appellate stage. Thus, amendment can also be granted at the appellate stage, however subject to the restraint prescribed under Order 6 Rule 17 of the Code of Civil Procedure, 1908. Whether amendment in particular case can be granted or not depends on facts and circumstances of each individual case. For example, the amendment so as to enhance the claim under reference application if rejected by Reference Court and the said order if allowed to become final, then similar amendment may not be allowed at appellate stage. Even the delay and laches on the part of applicant in applying for amendment can be considered in proper perspective.

23. In view of our affirmative answers to the questions Nos. 1 & 2, the 3rd question referred to this Bench will not survive. The limitation for making an application u/s 18 of the Act is six weeks to six months depending upon the facts of the individual case. However, there is no limitation for referring the reference to the Court by the Collector. If the written application is barred by limitation prescribed under the proviso of Sub-section 2 of Section 18, then the said application cannot be referred to the Court. We have already held that the claimant is at liberty to amend his claim application so as to enhance the compensation claimed in an application u/s 18 of the Act. We have also held that the said amendment can be allowed at appellate stage. In view of the above affirmative finding, the issue No. 3, if necessary, will have to be answered in affirmative.

24. Having thus so far considered the questions referred to this Bench, we now move on to consider the authorities in this regard.

We start by referring to the decision of the Apex Court in Pramod Guptas case (Supra) on which heavy reliance is placed by the State. In that case notifications u/s 4 of the Act were issued on 24th October, 1961 and 23rd January, 1965 for acquisition of lands admeasuring 1105.04 bighas and 3895.07 bighas respectively for the purpose of planned development of Delhi. Notifications u/s 6 of the Act were issued on 6th August, 1966 and 6th December, 1966. Two awards were made on 2nd December, 1967 and 8th April, 1969. The Land Acquisition Officer divided the acquired land in three categories viz. Blocks A, B and C and awarded compensation @ Rs. 1000 per bigha for Block A, Rs. 900 per bigha for Block B and Rs. 600 per bigha for Block C in respect of the acquisition of land under the notification dated 24th October, 1961 and Rs. 1580 per bigha for Block A, Rs. 1175 per bigha for Block B and Rs. 600 per bigha for Block C in respect of the acquisition of land under the notification dated 23rd January, 1965. The Court in a reference u/s 18 of the Act awarded compensation at the rate of Rs. 12,000/- and 18,000/- per bigha for the lands covered by award

made on 2nd December, 1967 and 8th April, 1969 respectively. The claimants as well as the State filed appeals u/s 54 of the Act, before the High Court. The High Court dismissed the appeals filed by the State and allowed the appeals of the claimants. The High Court enhanced the compensation in respect of acquisition of land with china clay and without china clay and fixed the amount of compensation at the rate of Rs. 56/- per sq. yard and Rs. 30/- per sq. yard respectively in relation to notification dated 24th October, 1961 and Rs. 98/- per sq. yard and Rs. 72/- per sq. yard in respect of acquisition of land with china clay and without china clay respectively, in relation to the notification dated 24th January, 1965. Being aggrieved the Union approached the Apex Court. The argument of the Union was that the claimants having made a claim of Rs. 25/- per sq. yard before the Land Acquisition Officer were estopped and precluded from claiming any higher amount in view of Section 25 of the Land Acquisition Act, as it then stood. This argument of the Union was tried to be repelled by the claimant by submitting that the unamended Section 25(2) of the Act had no application to the fact of the matter as the High Court had arrived at finding that no notice under Sections 9(3) and 10 was served on the respondents, in which event only the bar envisaged u/s 25(2) of the amended Act, would be attracted and secondly the claimants having amended their memo of appeal as also the reference in terms of Order 6 Rule 17 of the Code of Civil Procedure, vis--vis Section 53 of the Act, the High Court had requisite jurisdiction to enhance the amount of compensation in favour of the respondents. In order to substantiate the second submission, the claimant relied upon the decisions of the Apex Court in Harcharan Vs. State of Haryana, and Ghaziabad Development Authority Vs. Anoop Singh and Another, .

The claimant had participated in the enquiry before the Collector u/s 11 of the Act and therefore, the Apex Court raised the presumption as regards proper service of notice u/s 9 of the Act. The Apex Court in paragraph No. 124 observed that in the event it is found that the unamended provision of Section 25 of the Act is applicable, the High Court could not have awarded compensation at the rate of Rs. 98/- per sq. yard as the claim was made only for Rs. 25/- or Rs. 50/- per sq. yard by the claimants.

The claimants faced with the difficulty that in view of unamended Section 25 of the Act they could not have asked compensation more than that of made before the Land Acquisition Officer, relied upon the decisions of the Apex Court in Harcharan and Gaziabad Development Authority (supra) and submitted that in view of the amendment of the memo of appeal u/s 53 of the Act read with provisions of Order 6 Rule 17 of the Code of Civil Procedure, the High was justified in enhancing the compensation. This argument was rejected by the Apex Court holding that by amending the memo of appeal, the original pleadings cannot be amended. The Division Bench of Apex Court in Pramod Guptas case (supra) held that the ratio of decision of another Division Bench of the Apex Court in Anoop Singhs case (supra) to the effect that an application under Order 6 Rule 17 would be maintainable having regard to old Section 25 of the Act, does

not constitute a binding precedent. Having gone through the ratio of decision in Pramod Guptas case (supra), we find that the Apex Court considered the provisions of unamended Section 25 of the Act vis-a vis claim for enhancement compensation than that of made before the Land Acquisition Officer u/s 9 of the Act. The Apex Court found that in view of the applicability of the unamended Section 25, parties are estopped and precluded from claiming any amount higher than that of claimed before the Collector and therefore, did not consider the ratio of decision of another Division Bench in Anoop Singhs case (supra). The Apex Court in Pramod Guptas case (supra) in paragraph No. 134 observed as follows:

The respondent claimants made their claim before the Reference Court claiming compensation for the lands acquired under two different references at a certain rate. They are bound by the said pleadings. Section 53 merely provides for applicability of the provisions of the CPC including the one containing Order 6 Rule 17 thereof. Order 6 Rule 17 of the CPC postulates amendment of pleadings at any stage of proceedings. Before an amendment can be carried out in terms of Order 6 Rule 17 of the CPC the court is required to apply its mind on several factors including viz. whether by reason of such amendment the claimant intends to resile from an express admission made by him. In such an event the application for amendment may not be allowed.

Hence, the Supreme Courts decision in Pramod Guptas case (supra) cannot be held to be laying down any absolute prohibition and principle that no application for amendment of reference can be granted.

25. In Anoop Singhs case (supra), the Apex Court considered the provisions of unamended Section 25 of the said Act vis--vis provisions of Section 53 of the said Act. The Apex Court held that if the claim for compensation is amended under the CPC as permitted u/s 53, the bar under unamended Section 25 of the Act against awarding the amount in excess of the amount claimed before Collector would not apply. In paragraph No. 7 the Apex Court observed as follows:

7. As in the above case, in the instant case too, the award was passed by the Land Acquisition Officer and the Reference Court earlier to the effective date of substitution of Section 25. Hence, the limitation on the power of the court to award compensation as enjoined by the pre-amended section would be attracted. However, there is a formidable impediment for the appellant to take shelter under the pre-existing Section 25. On a petition filed by the claimant, the application dated 11th July, 1967 wherein compensation was claimed at Rs. 20 per square yard was allowed to be amended by an order of the Reference Court passed in the year 1983. It is to be noted that by virtue of Section 53 of the Land Acquisition Act, the provisions of the CPC shall apply to all proceedings before the court unless they are inconsistent with anything contained in the Act. In the light of this provision, the High Court rightly held that there is no bar under the Land Acquisition Act to file a petition for amendment of the claim application in regard to the quantum of compensation claimed as there is no provision in the Land Acquisition Act which is inconsistent with the power to allow

amendment. The effect of allowing the amendment is to substitute the figure of Rs. 20 by Rs. 100 per square yard. When once this amendment is recognized and taken note of, it is obvious that the bar u/s 25 does not get attracted. Whether this amendment could have been permitted in the face of the unamended Section 25 has not been put in issue before the High Court in specific terms. Even in the SLP we found, in vain, any ground questioning the order allowing the amendment. No doubt, a party has right to challenge a non-appealable order in an appeal against the decree as laid down in Rule 1 A of Order 43. But, the fact remains that the legality or propriety of the order permitting amendment was neither specifically challenged before the High Court nor a specific ground taken that it was contrary to Section 25. At this stage, the appellant cannot be permitted to assail the correctness of the order permitting amendment. If that be so, the first contention based on the pre-existing Section 25 has to be necessarily rejected.

The Apex Court thus, held that there is no bar under the said Act to file Petition for amendment of claim application u/s 18 of the Act for seeking amendment of quantum of compensation claimed.

26. The Apex Court in Harcharans case (Supra) also held that the amendment in memorandum of appeal to claim enhanced compensation in High Court cannot be rejected solely on the ground of delay in filing the amendment application. It is true that in this case, the Apex Court was not directly considering the entitlement of the claimants to the enhanced compensation in the background of the provisions of Section 18 of the said Act. However in paragraph No. 7, the Apex Court has also held as follows:

7. The position before us is far better than the situation was before the Court in the aforementioned case. The appellant sought amendment relying upon the decisions of the High Court itself and the decisions provided a comparable yardstick for effectively disposing of the real controversy before the High Court and the amendment was sought before the High Court proceeded to dispose of the appeal.

27. The Apex Court in yet another decision in Nandlal v. State of Haryanas case (Supra) granted prayer for amendment of appeal memo to enable the appellant therein to claim appropriate compensation on the basis of compensation awarded to those whose similarly situated lands were acquired under the identical notification.

28. Reference can be made to the decision of the Apex Court in the case of Chandrashekhar and Others Vs. Additional Special Land Acquisition Officer, . In this case, the High Court refused to grant enhanced compensation @ Rs. 32.10 paise per sq. ft. on the ground that the claimants had restricted their claim to Rs. 23/- per sq. ft. The Apex Court considered the judgments in the case of Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , Buta Singh v. Union of India, (1995) 5 SCC 283 and The

Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, and held that claimants were entitled to enhanced compensation and they should not be denied the same on mere technical ground of non-payment of court fees and an opportunity must be given for payment of the same. If the enhanced compensation can be directed to be paid to the claimants, we find no reason to deny the claimants an opportunity to amend the reference application u/s 18 of the said Act, so as to claim enhanced compensation.

29. With due respect to the Division Bench deciding Wanis case (supra), we are of the opinion that all these facets of the controversy were not brought to the notice of the Division Bench. Attention of the Division Bench was not invited to the definition of the term Court, Section 13A and Sections 18 - 26 so also the authoritative pronouncement and binding precedents with regard to the nature and scope of the inquiry. Therefore, if the Collector is empowered to correct the clerical or arithmetical mistakes and errors in the Award, it cannot be held by any stretch of imagination that such a power is not there in the Court. However, that such a power is there in the Collector alone is not determinative. That is a power to correct the mistakes and errors in the award. However, when it comes to the proceedings in any Court of Civil Jurisdiction, provisions of Code of Civil Procedure, 1908 are applicable by virtue of Section 141 of said Code. By virtue of the explanation below Section 141, proceedings under Article 226 of the Constitution of India are excluded. Although these provisions fall in Part XI of the Code of Civil Procedure, 1908, it is clear that the Legislature has made the procedural provisions of the Code applicable as far as it can be. Further, the Land Acquisition Act by virtue of Section 53 makes provisions of Code of Civil Procedure, 1908 applicable to the proceedings before the Court under the Land Acquisition Act, save insofar as they are inconsistent with anything contained in this Act. In Code of Civil Procedure, 1908, itself, by virtue of Section 151, 152 and 153 the powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Court are conferred. Section 153 of the Code of Civil Procedure, 1908 provides for general power to amend. Thus any defect or error in any proceeding in a suit can be amended. All necessary amendments shall be made for the purpose of determining the real question or issue raised by or dependent upon such proceedings. Besides, the general power to amend any proceeding in the suit by virtue of Order VI Rule 17, amendment of pleadings is also permitted under Code of Civil Procedure, 1908. The word pleadings is defined to mean plaint or written statement. Thus, when the nature of the proceedings before the Reference Court are such as placing the applicant in the position of plaintiff and his application a plaint so also the burden cast upon him in law, then, one can safely hold that what are filed before the Reference Court are pleadings. Once the object and purpose is to award compensation at the market value for a land acquired for public purpose, then, it would not be proper to hold that the Court while determining the matter referred u/s 18 of the Act does not have any power to allow the amendment of the

pleadings. Of course, the ambit and scope of this discretionary power does not mean all amendments prayed for should be granted straightaway. The discretion must be exercised judiciously.

30. The Division Bench of this Court in *Ambya Kalya Mhatres* case was considering the question whether the claim of claimants for enhanced compensation made by way of amendment of the reference is barred by the limitation provided u/s 18 of the Act. The Division Bench having found that the amendment is made after prescribed period of limitation u/s 18(2) of the Act held that the amendment is barred by law of limitation. The legal position about the applicability of the provisions of Order 6 Rule 17 in view of the provisions of Section 53 of the Act was not argued before the Division Bench. The provisions of Section 3(d), 13A and 18 - 26 of the Act were not brought to the notice of the Court. The decision of the Apex Court in *Anoop Singhs* case and *Harcharans* case was also not brought to the notice of the Division Bench. In these circumstances and in the light of discussion made above, the decisions of the Division Bench in *Wanis* case (supra) and *Ambya Kalya Mhatres* case (supra) cannot be held to be laying down the correct law.

31. So far as the decision of *Sitarams* case supra is concerned, the learned Single Judge held that the reference can be amended so as to claim enhancement in market value in Reference Court as well as at appellate stage. However, it was further held that the claimant by amending memorandum of appeal or cross objection cannot make a claim in excess of what has been claimed in reference. We find no reason as to why the claimant should not be allowed to make a claim in excess of what has been claimed in a reference. Ultimately, the market value of the land under the acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Act.

32. In the light of the above discussion, we are answering the issues referred to this Bench for consideration as follows:

1. The claimant whose land is acquired can be allowed to amend his claim application so as to enhance the compensation claimed in an application for reference u/s 18 of the Act.

2. The amendment so as to enhance the compensation claimed in the application for reference u/s 18 of the Act can be allowed before the Reference Court as well as at the stage of an Appeal in the High Court arising out of the decision of the Reference Court. However, while granting amendment so as to enhance the compensation, the general principles for considering an application for amendment made under Order 6 Rule 17 of the Code of Civil Procedure, 1908 are applicable.

3. In view of the affirmative answers to question Nos. 1 & 2, the 3rd question does not survive for consideration.

33. These being our answers to the questions formulated by the Bench, we direct the matters to go back to the Bench for further consideration.