FULL BENCH

Before S. S. Sandhawalia, C.J., R. N. Mittal & I. S. Tiwana, JJ.

SHER SINGH,—*Appellant.*

versus

UNION OF INDIA,—*Respondent.*

Civil Writ Petition No. 5628 *of* 1981.

November 3, 1982.

Land Acquisition Act (1 *of* 1894)—*Sections* 18 & 31(2)—*Constitution of India* 1950—*Article* 226—*Award by the Collector in land acquisition case—Landowner claims to have filed a reference application under section* 18 *for enhancement of compensation—Factum of such filing in dispute—High Court in writ jurisdiction—Whether should resolve such a factual dispute—Direction to the Collector to entertain a fresh reference application irrespective of the limitation prescribed therefor—Whether permissible—High Court—Whether can condone delay in the filing of such an application—Application for enhancement of compensation filed before the Collector—Compensation as awarded by the Collector accepted subsequently without an express protest—Filing of the reference application—Whether amounts to a protest within the meaning of section* 31(2)—*Such acceptance—Whether bars a claim for enhancement.*

Held, that where a tangled and intricate dispute on facts is involved in a petition under article 226 of Constitution of India, it is well settled that the writ court is loth to enter the thicket of disputed facts. It needs no great erudition to see that this jurisdiction is normally confined to facts alleged and admitted on affidavits or those not seriously traversed on the record.

(Para 5).

Held, that a reference to section 18 of the Land Acquisition Act, 1894 would indicate that a written application against an award claiming a reference for enhancement of compensation is the cornerstone of the claim herein. The statute provides in no uncertain terms for the mode of assailing the award, the manner in which and to whom it is to be presented and the ground on which it can be pressed. Not only that, the statute is further careful in prescribing not one but three specific periods of limitation. If the claimant is present at the rendering of the award he can avail the right to

claim a reference against the same only within six weeks therefrom. However, if he is absent at that material time the law gives him a certain latitude and within six months from the date of the award he can present a similar reference. In case a notice under section 12(2) has been issued the prescribed time of limitation is again only six weeks from the receipt of such a notice. Public policy and public interest are involved in the expeditious finalisation of acquisition proceedings. It seems to be plain that the rights of neither the citizen nor that of the State can be kept in a flux or in a state of ambivalence for years because the land is acquired for a public purpose and in cases of emergency may even be taken possession of and utilized for the said purpose during the interregnum. Therefore, without first holding that a written application under section 18 for a reference was duly filed and that it had been so done within the period of limitation no right for enhancement of compensation can arise in favour of a claimant. Consequently, the court cannot direct the filing of a fresh application under section 18 (irrespective of the fact whether it had been earlier filed at all or not) as such a direction would in effect override the legislative mandate. In other words, to claim the remedy under section 18 of the Act the statutory procedural requirements have to be strictly fulfilled and in their absence no right can flow therefrom. (Para 6).

(i) Chanan Singh *vs.* The Union of India Civil Writ Petition No. 4229 of 1981, decided on November 23, 1981.

(ii) Maghar Singh C.W.P. No. 3593 of 1980 decided on December 16, 1980.

(iii) Baltej Singh & another *v.* Union of India, C.W.P. No. 69 of 1981 decided on June 2, 1981. *Overruled.*

Held, that it is manifest from the provisions of section 31(2) of the Act that the statute does not in any way lay down the precise time or the mode of recording the protest. This, therefore, is necessarily a matter of legal inference. The very time, a landowner prefers a reference under section 18 of the Act, he, in essence, disputes the compensation awarded and lodges a protest against the same. Consequently, the receipt of compensation by him long after the presentation of an application under section 18 of the Act cannot possibly be deemed as a waiver or withdrawal of his earlier clear cut claim of enhancement. To put it tersely, filing a reference application under section 18 is itself a recorded protest within the meaning of the provisos to section 31(2) of the Act. Thus, the filing of a valid application under section 18 of the Act for a reference must be deemed as a protest against the compensation awarded and the subsequent acceptance thereof would in no way bar the claim of enhancement thereof. (Paras 14 & 16).

Suresh Chandra Roy *v.* The Land Acquisition Collector A.I.R. 1964 Calcutta 288. *Dissented From.*

Case referred by a Division Bench consisting of Hon'ble Mr. Justice R. N. Mittal and Hon'ble Mr. Justice Surinder Singh on 3rd May, 1982 to a larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice R. N. Mittal and Hon'ble Mr. Justice I. S. Tiwana on 3rd November, 1982 for deciding the important question of law involved in this case.

Petition under Articles 226/227 of the Constitution of India praying that :—

(*i*) *a writ of mandamus or any other appropriate writ order, or direction to Respondent to perform his statutory duty under the Act and to submit the reference filed by the petitioner to the District Judge, Bhatinda in accordance with the provisions of the Land Acquisition Act ;*

(*ii*) *that any other relief to which the petitioner is found entitled to under law and equity may kindly be granted ;*

(*iii*) *filing of the certified copies of the annexures dispensed with ;*

(*iv*) *writ be allowed with costs.*

Vinod Kataria, Advocate with B. R. Mahajan & P. S. Rana, Advocates, *for the Petitioner.*

H. S. Brar, Advocate with Kanwaljit Singh & Bharat Bhushan Aggarwal Advocates, *for Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Some vital facets pertaining to the filing of references under section 18 of the Land Acquisition Act and a divergence of judicial opinion thereon within this Court (albeit of the motion stage) has necessitated the admission of this set of three civil writ petitions to a Full Bench. Pointedly at issue are the conflicting observations of the Division Benches in *Chanan Singh* v. *Union of India* (1) and *Hakam Singh* v. *Union of India* (2).

(1) C.W. 4229 of 1981 decided on 23rd November, 1981.

(2) C.W. 2378 of 1981 decided on 9th October, 1981.

2. The factual matrix giving rise to the issues may be briefly noticed from *Sher Singh* v. *Union of India* CWP 5628 of 1981. The petitioner owned agricultural land in the revenue estate of village Mehna Patti district Bhatinda jointly with his brother Bhag Singh which was acquired for the public purpose of establishing a military cantonment by a notification under section 4 of the Land Acquisition Act, dated the 9th of October, 1974. In pursuance of the acquisition proceedings, the Collector announced his award on the 11th of June, 1975 at Bhatinda. It is averred that on the 19th of July, 1975, the petitioner specifically filed a reference under section 18, annexure P. 1, with the Collector at Bhatinda. He along with his brother Bhag Singh preferred other similar references also which were decided on the 29th of September, 1979 and they duly received compensation therefor. Thereafter, he made enquiries about the reference, annexure P. 1 from the office of the Collector but was told that the same had been misplaced and despite repeated enquiries thereafter the aforesaid usual reply was given to him. Ultimately in the last week of November, 1981 he learnt that the aforesaid reference, annexure P. 1, had not been forwarded to the District Judge, Bhatinda, and thus the respondent-Collector had failed to perform the statutory duty imposed upon him in this regard.

3. In the return filed on behalf of the respondent, it is admitted that land measuring 11 Bighas 19 Biswas was acquired for the Bhatinda Cantonment, but it is averred that the petitioner was not a co-owner in Khasra No. 2734/1 measuring 4 Bighas. It is then the case that the petitioner had accepted the amount of compensation due to him without protest. Particularly with regard to annexure P. 1, it is the respondent's stand that no such reference was at all received in his office and therefore no question of tracing or forwarding the same to the District Judge arises. The legal stance taken on behalf of the petitioner is expressly controverted.

4. At the very threshold the respondent-Union of India has strenuously pressed its stand that in view of the categoric averments made on its behalf that no reference under section 18 pertaining to the particular piece of land was ever received or traceable in the Collector's office, no cause of action whatsoever was disclosed in the writ petition. In buttressing this stand, Mr. H. S. Brar, the learned counsel for the Union of India highlighted the fact that on the petitioner's own showing two other reference applications under

section 18 filed by the petitioner and his brother had not only been duly received but had been forwarded to the District Judge and in fact had been adjudicated upon way back in 1979. It was highlighted that hundreds of similar references under section 18 by other claimants had been duly received, diarised and then forwarded to the District Court and had been disposed of. Counsel submitted that the petitioner's alleged claim itself is that he had preferred the reference in July, 1975 and it is only after 7 years thereafter that he has woken up as a Rip van Winkle to raise the plea that the same had not been forwarded to the District Court. The very motives of the writ petitioner were severely assailed and put in a lurid light against the fact that in view of a very substantial enhancement of compensation by the District Judge it was only as an afterthought and perhaps some manipulation that the claim is now being raised with regard to the filing of another reference under section 18 in the vain hope of securing big financial advantage by way of enhancement. It was in this context that the respondents' counsel projected the fact that the petitioner had accepted without demur the compensation offered to him under the award of the Collector. At no stage any protest was lodged and this, it was argued, was consistent only with the fact that the petitioner had not in reality intended to assail the award by way of a reference. Lastly, it was pointed out that a categoric denial of the petitioner's allegations had been made on affidavit by a responsible public servant, like the Collector, basing himself upon official record against the mene *ipse dixit* of an interested litigant, now certainly hoping for a large financial windfall. On these premises the larger submission was and it is not without its plausibility, that allowing such a plea as that of the petitioner would open a wide door for chicanery and fraud to come in at any time after long years on the allegation that he had filed a reference under section 18 which was not on the record. Attention was drawn to section 18(2) of the Act prescribing the periods of limitation for preferring the reference under section 18 and it was argued that to override and by-pass these specified periods on the tenous averments that the alleged references were not traceable could only work havoc.

5. It would be plain from the above that at the very outset the first and the primary question that arises is whether as a matter of actual fact a reference under section 18 was duly filed as alleged by the petitioner. In view of the firm stand taken by the respondents and the peculiar factor noticed above a tangled and intricate dispute

on facts going to the very core of the issue is manifest herein. It is well-settled that the writ Court is loth to enter the thicket of disputed facts and within this jurisdiction the matter has been authoritatively dealt with by the Full Bench in *Guru Nanak University* v. *Dr. Iqbal Kaur Sandhu and others,* (3) in the following terms :—

> "With the greatest respect, we are of the view that the above-said finding stems from an apparent misconception about the scope and nature of the jurisdiction in a writ of certiorari. It needs no great erudition to see that this jurisdiction is normally confined to facts alleged and admitted on affidavits or those not seriously traversed on the record. As is well-known, it is an extraordinary remedy resorted to when the basic factual position is not in dispute. It has to be borne in mind that the writ jurisdiction is not and cannot be made a substitute for a regular trial by way of a suit for determination of contentious matters in which the parties are diametrically opposed on material facts."

Faced with the aforesaid stone-wall of binding precedent against him on the point of the writ Court determining the disputed question of the filing or otherwise of a reference under section 18, the learned counsel for the petitioner fell back on the observations in *Chanan Singh's case* (supra). Therein also the claim of the petitioner of filing a reference application was stoutly denied by the respondent Union of India in its return. Nevertheless the Bench directed as under :—

> "***. Since injustice is being caused to the petitioner, we order that if the petitioner files a fresh application within 15 days from today for making a reference to the District Court, the delay in the making of the application shall stand condoned and the Land Acquisition Collector shall forward that application to the District Court for the determination of compensation payable to the petitioner in accordance with law."

(3) AIR 1976 Pb. & Hary. 69.

On the aforesaid basis counsel for the petitioner insisted that he must also be allowed the right to file a fresh reference under section 18 of the Act and the delay in the filing thereof be condoned.

6. Undoubtedly, *Chanan Singh's case* (supra) considerably aids the stand taken on behalf of the petitioner. However, its ratio has been frontally assailed on behalf of the respondent-Union of India. It was highlighted that therein the Bench without resolving the factual dispute whether a reference under section 18 had been filed at all had chosen to direct after a number of years that a fresh reference may be filed and condoned the delay of many years in this context. There seems to be a considerable weight in this challenge. A reference to section 18 would indicate that a written application against an award claiming a reference for enhancement of compensation is the corner-stone of the claim herein. The statute provides in no uncertain terms for the mode of assailing the award, the manner in which and to whom it is to be presented and the ground on which it can be pressed. Not only that, the statute is further careful in prescribing not one but three specific periods of limitation. If the claimant is present at the rendering of the award he can avail the right to claim a reference against the same only within six weeks therefrom. However, if he is absent at that material time the law gives him a certain latitude and within six months from the date of the award he can present a similar reference. In case a notice under section 12(2) has been issued the prescribed time of limitation is again only six weeks from the receipt of such a notice.

Public policy and public interest are involved in the expeditious finalisation of acquisition proceedings. This has been now authoritatively spelt out by the Full Bench in *Radhey Shyam Gupta* v. *State of Haryana*, (4), in the following terms:—

> "***. As their Lordships have pointed out repeatedly in *State of Madhya Pradesh and others* v. *Vishnu Parsad Sharma and others*, (5), *Amodlal Parsad Purshottam etc.* v. *Ahmedabad Municipal Corpn. of the City of Ahmedabad and others*, (6); and *The State of Punjab and another* v. *Gurdial Singh and others*, (7), the whole scheme of the

(4) 1982 C.L.J. (C. & Cr.) 608.
(5) 1966 S.C. 1593.
(6) A.I.R. 1968 S.C. 1223.
(7) A.I.R. 1980 S.C. 319.

Act visualises an expeditious finalisation of the acquisition proceedings once they are commenced. Unexplained and inordinate delays which tend to hold the claimants at ransom, whose properties are sought to be acquired and are further denied compensation within a reasonable time would be sharp and pointed pieces of evidence to establish the lack of bona fides for the exercise of power. The Court has, therefore, to take into consideration the whole spectrum from the initiation of the proceedings till the time of the challenge raised thereto by the petitioners in which delay may well be the most important, if not, the conclusive factor."

From the aforesaid authoritative enunciation and even otherwise on principle, it seems to be plain that the rights of neither the citizen nor that of the State can be kept in a flux or in a state of ambivalence for years because the land is acquired for a public purpose and in cases of emergency may even be taken possession of and utilized for the said purpose during the interregnum. Therefore without first holding that a written application under section 18 for a reference was duly filed and that it had been so done within the period of limitation no right for enhancement of compensation can arise in favour of the claimant. Indeed the raising of such a right in *Chanan Singh's case* in total absence of the aforesaid requisite factual foundation appears to us with the greatest respect as running directly counter to the provisions of the statute. In such a situation, the Court's directions to file a fresh application under section 18 (irrespective of the fact whether it had been earlier filed at all or not) would in effect override the legislative mandate. It is obvious that the express condonation of delay has implicit in it the finding that earlier no application had been filed in time and the condoning of 7 years delay, therefore, may well be a super-statutory direction. In practical terms, therefore, conferring on the petitioner a right to file a fresh application under section 18 without a finding in his favour that any such application had been earlier filed at all is in a way abrogating the mandatory requirement of filing a written application and that too within the specific and prescribed periods of time. To put it in other words, to claim the remedy under section 18 of the Act the statutory procedural requirements have to be strictly fulfilled and in their absence no right can flow therefrom. With the greatest respect, therefore, *Chanan Singh's case* is not good law and is hereby overruled. Again

in *Maghar Singh's* case (8), the Motion Bench without at all deciding the tangled controversy whether earlier an application under section 18 had been filed or not had proceeded to direct the Collector to take a reference if a fresh application within one month was filed by the petitioners. For the identical reasons aforesaid this judgment has also to be consequently overruled. In *Baltej Singh and another* v. *The Union of India and another* (9), the Motion Bench simply followed *Maghar Singh's* case in directing the Collector to make a reference provided the petitioner made a fresh application, within one month. On this specific point this judgment, therefore, has inevitably to be overruled as well.

7. We must in this context notice the fact that in a virtually similar situation, a Division Bench in *Hakam Singh's case* (supra) had declined relief to the petitioner without his first establishing that a reference under section 18 had been duly made earlier. We hereby affirm the view taken in this case.

8. Reverting back, it has already been held that in the present writ proceedings it is inapt to decide and pronounce on the tangled question whether any reference application under section 18 had been filed by the petitioner earlier on which point the parties are diametrically opposed to each other. However, it seems to be equally elementary that this dispute in its context of involving the valuable statutory rights of claimants cannot be left in the limbo. It has to be carefully adjudicated and pronounced upon. Herein we were both surprised and distressed to notice the wholly chaotic fashion in which the valuable rights of the claimants in this context seem to be cavalierly treated at the ministerial level by the respondents. Learned counsel for the Union of India despite being repeatedly pinpointed to do so could bring no instruction or coherent rule and even a consistent practice in its Departments to receive, diarise, and transmit the references under section 18 of the Act when filed by the landowners. The stand of the petitioner consistently was that even when claimed and insisted upon, no receipt or acknowledgement for filing the reference under section 18 was issued by the office of the Collector. This was not denied on behalf of the respondents, and

(8) C.W. 3593 of 1980 decided on 16th December, 1980.

(9) C.W. 969 of 1981 decided on 2nd June, 1981.

not only that, no firm procedure for dealing with the same could be spelt out. The respondents produced a register in which some erratic entries about the receipt of some references under section 18 had been made. Curiously the printed columns of the register pertained to matters altogether different, and which indeed have little or no relevance at all to land acquisition cases. It would appear that this is nothing more than an impromptu record kept by wayward officials at their whim with regard to receiving and diarising of references under section 18.

9. The very look of this register shows that it is neither in proper form nor has it been maintained with any regularity. There is no page-marking, nor the purpose for which it is maintained is indicated any where. In fact as is evident from its columns it is a stock register meant for Patwaris for entering the articles to be used for measurements and almirahs and boxes in their custody. Even the irrelevant headings of the columns had not been corrected. Most of the pages have been left blank with cross-marks. Entries appeared to be made in the most reckless and casual manner. These are neither datewise nor villagewise. For instance, entries Nos. 2 to 37 and 47 to 49 bear no date whatsoever. Sometimes, there is a gap not merely of days but of months together betwixt several entries. In between the entries under the date of 11th October, 1973, there are a few entries dated the 11th of October, 1971. After several entries pertaining to the year 1974 immediately entries in the months of May and June, 1975 have been made. Curiously these are then followed by entries of 1974 again. Thereafter come two entries of 1977 followed by some of 1978. Surprisingly, after 1978 again one finds some entries relating to the year 1975; then of 1978 and yet again of 1975. These are followed by those of 1976 and 1978. If, as alleged by the respondents, it is a receipt register then entries could only have been strictly datewise and cannot possibly be in so topsyturvy and haphazard manner, as noticed above. Perhaps the most startling thing that appears is that in some cases applications seem to have been entered after a lapse of as much as

three years, either from their dates or from their receipt. The representative sample of seven entries is as under :—

	Date of Award	*Date of receipt*	*Date of entry*
Jagbant Singh s/o Bishan Singh, Bhatinda	11-6-75	22-7-75	28-9-78
Jagbant Singh s/o Bishan Singh, Bhatinda	11-6-75	22-7-75	28-9-78
Jagbant Singh s/o Bishan Singh, Bhatinda	11-6-75	22-7-75	28-9-78
Jagbant Singh s/o Bishan Singh, Bhatinda	11-6-75	22-7-75	28-9-78
Jagbant Singh s/o Bishan Singh, Bhatinda	11-6-75	22-7-75	28-9-78
Jagbant Singh s/o Bishan Singh, Bhatinda	11-6-75	22-7-75	28-9-78
Chanan Singh s/o Jagat Singh Bhatinda		14-7-76	25-8-79

There is a note against the last entry that the application has been found out of a bundle of papers and has thereafter been entered. It is plain that both about the procedure and the mode of maintaining this register it seems that the less said is the better.

10. Learned counsel for the petitioner then brought to our notice the Standing Order 28 of the Financial Commissioner with regard to land acquisition. Paras 131 and 132 and the prescribed forms therein lay down a mandate on the concerned officials of the Department to maintain a proper and true record of the receipt, transmission and ultimate orders passed in references under section 18 as also other connected matters with regard to acquisition and compensation. This enjoins the maintenance of a *missal band* register, that is, a regular stitched register for this purpose. It, however,

appears that these directions have either passed into oblivion or are being honoured wholly in breach and in any case the respondents not only seem to be unaware thereof but even claimed that these were not applicable. We, therefore, cannot but direct a strict compliance with these instructions which are binding and mandatory on the respondents. It is to be hoped that in future not only compliance will be made with the long-standing instructions but in fact any lacuna discernible therein would be filled up with the utmost administrative vigilance.

11. In the aforesaid context, it inevitably follows that the petitioner in this case has been denied the right of a meaningful enquiry (which he undoubtedly has) into his very claim that he had in fact preferred a reference under section 18, which has not been duly forwarded. A copy of the said reference has been placed on the record as annexure P. 1. Affidavit of the counsel who states to have filed the same is annexed to the petition. The stand of the petitioner that in respect of two other pieces of land he had filed references which have been admitted by the respondents may well lend weight to his claim that with respect to this particular piece of land also he had claimed similar relief. In the absence of a clear-cut procedure on behalf of the respondents and the glaring failure to maintain the prescribed record it may well be presumed *prima facie* that written application under section 18 was preferred. However, this obviously cannot be conclusive and it would be open to the respondents to rebut the same. It is thus manifest that the correctness of the rival claims on either side have to be decided in a proper forum. This is obviously the Court of the District Judge which can adequately pronounce upon the question whether a reference was duly made to the Collector and, if so, regarding the validity. This is now well-settled by the decision of the Full Bench in *M/s Swatantra Land & Finance Private Ltd.* **v.** *The State of Haryana* (10), holding that it is open to the District Judge to go behind the reference and examine its validity. Therein it was observed as follows :—

> "It will be the duty of the District Judge to adjudicate on all such objections raised by the respondent, who is interested in defeating the application on any ground open to him

(10) A.I.R. 1975 Pb. & H. 52.

under the law. It is, therefore, necessary, before adjudicating on the matters mentioned in the application to hold that the proceedings were initiated in accordance with law which means that all the conditions precedent mentioned in section 18 of the Act had been complied with. The making of the application within time is one of such conditions precedent. If that condition is not complied with, the District Judge will have no jurisdiction to proceed with that application."

12. As has already been observed herein the petitioner at the very threshold is being denied even an adjudication of his claim that he had preferred a reference under section 18 and the respondents had failed in their statutory duty to forward the same. It is manifest that the valuable substantive right conferred upon the landowners for claiming enhancement of compensation under section 18 of the Act cannot be eroded or set at naught by petty procedural wrangles. Apart from this being plainly so on principles, it has been felicitiously recognized by the final Court in the following words in *Inder Sain and others* v. *State of Haryana and others* (11):—

"——— Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of 'alternative remedy', since the root principle of law married to justice, is *ubi jus ibi remedium.* ....."

And again :

"Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects;

Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest .....

(11) 1980 (11) S.C.C. 437.

Keeping in mind these guide-lines we make the following directions :"

Accordingly, we would herein direct that on a proper application (precisely detailing his claim of having filed an application under Section 18 of the Act) made by the writ petitioner to the Collector, the latter shall refer the same to the District Court, which will then proceed to decide the contentions dispute betwixt the parties, whether the stand of the petitioner herein is correct or otherwise. In the event of the matter being decided in favour of the writ petitioner, the District Court would inevitably proceed to try and adjudicate on the reference under Section 18 of the Act.

13. Before parting with this judgment it becomes equally necessary to pronounce on another aspect of the case. The claim of the writ petitioner herein is *inter alia* sought to be defeated on the ground that he had accepted the amount of compensation due to him without an express protest, irrespective of the fact that he may have earlier preferred the reference under Section 18 of the Act. On behalf of the respondent-Union of India, it was sought to be urgued somewhat pedantically that the amount received must be expressly under protest at the time of the making of the application for receiving the disputed amount of compensation, or in any case it must be so recorded in the receipt acknowledging the payment of compensation.

14. I am unable to uphold what appears to me as a hypertechnical and the harsh construction sought to be advocated on behalf of the respondent-Union of India. The matter has to be construed in the light of Section 31(2) of the Act and with particular reference to the provisos thereof :—

"31. (1) — — — — —

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference under Section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

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

15. What appears to be plain on principle and the language of the statute has also the weight of precedent in its favour. It has been so opined in *Shanta Rai* v. *Special Deputy Collector, Land Acquisition, Hyderabad* (12), *Tara Chand* v. *Land Acquisition Collector, Delhi (Shahdara), Delhi* (13) and by the Division Bench in *The Collector Jabalpur and another* v. *Kamal Kumar Jain and others* (14), and within this jurisdiction in *Mukhtiar Singh* v. *The State of Punjab* (15). Undoubtedly, there is, however a discordant note struck by Banerjee, J., sitting singly in *Suresh Chandra Roy* v. *The Land Acquisition Collector, Chinsurah*), (16). This, however, has been considered and not followed in *Kamal*

(12) A.I.R. 1971 A.P. 117.
(13) A.I.R. 1971 Delhi 116.
(14) A.I.R. 1973 M.P. 288.
(15) 1980 R.L.R. 97.
(16) A.I.R. 1964 Cal. 288.

Kumar Jain's case (supra). For the identical reasons, I would respectfully record my dissent therefrom.

16. Both on principle and precedent it is held that the filing of a valid application under section 18 of the Act for a reference must be deemed as a protest against the compensation awarded and the subsequent acceptance thereof would in no way bar the claim of enhancement thereof.

17. To conclude, this set of writ petitions is hereby allowed with costs in the terms specified in paragraph 12 above. Counsel fee Rs. 500 in each case.

Rajendra Nath Mittal, J.—I agree.

I. S. Tiwana, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and M. M. Punchhi, JJ.

BHAGAT SINGH SOHAN SINGH,—*Appellant.*

versus

SMT. OM SHARMA and others,—*Respondents.*

First Appeal from Order No. 159 of 1980.

November 23, 1982.

Motor Vehicles Act (IV of 1939) (as amended by Act 56 of 1969)—Sections 110, 110-A to 110-F—Fatal Accidents Act (XIII of 1855)—Sections 1-A and 2—Compensation in a motor accident case—Actual receipt of insurance, provident fund, pension or gratuity by the dependents of the deceased—Whether to be taken into consideration in assessing the amount of compensation payable to them—Principles underlying the grant of just compensation—Provisions of the Fatal Accidents Act—How for applicable.

Held, that it is well settled that under the general law in case of injuries, insurance benefits are to be excluded from consideration. There appears to be no reason why the same principle should