FULL BENCH

Before V. Ramaswami, C.J., Ujagar Singh and G. R. Majithia, J.

BANTA SINGH and others,—*Appellants.*

versus

UNION OF INDIA and others,—*Respondents.*

Civil Misc. No. 1512 *of* 1985 *in*
Letters Patent Appeal No. 235 *of* 1982 *in*
Regular First Appeal No. 1700 *of* 1980.

May 17, 1988.

Code of Civil Procedure (V of 1908)—Sections 149, 151, 152 and *Order XLVII—Land Acquisition Act (I of 1894)—Section* 28-*A—Letters Patent Appeal already decided—Applicant seeking leave to amend memorandum of appeal—Enhanced amount of compensation sought to be claimed by such amendment—Maintainability of such application—Power of courts to allow such application—Scope of Section* 28-*A.*

Held, that it may be open to a Court, when the case is pending before it to permit an amendment of the claim by increasing or varying it and pay the court fees or if there is any mistake in the payment of the court-fee to permit payment of the deficit court fee, it is not open to applicant to ask the Court to permit an amendment of the claim after the case has been finally disposed of by that Court. It may be, if the party had preferred an appeal against the judgment and decree, the appellate Court may permit an amendment which will have the effect of both amending the trial Court pleadings as also the grounds of appeal. The appellate court also cannot do it after it had disposed of the matter finally. "At any stage" in section 149 of the Code would only mean at any stage when the matter is pending disposal before the court where the deficit court fee is sought to be paid. In fact, subject to the review power referred to in Order 47 and the amendment of judgments, decrees or orders as provided under Section 152 of the Code of Civil Procedure, 1908, the Court becomes *functus officio,* so far as the appeal which has already been finally disposed of, in respect of the subject-matter which had been dealt with in appeal.

(Para 8)

Held, further that section 28-A of the Land Acquisition Act, 1894 is applicable only to a case where the claimant had not asked for a reference under section 18 of the Act, subject to the condition of the Court re-determining the amount more than what determined by the Collector and the applicant or the person, who had not asked for reference, filing an application before the Collector within three months from the date of the award of the Court which re-determined the amount of compensation. It is a direction to the Collector to

re-determine the amount in accordance with the award of the Court and not a direction to the appellate Court to modify or vary the decree after it has become final. (Para 9).

The case was referred to Larger Bench by Division Bench consisting of Hon'ble Mr. Justice J. V. Gupta and Hon'ble Mr. Justice G. C. Mital,—vide *order dated 13th December, 1985 in view of the facts that the important question of law involved in this case is :*

> *The main question to be decided in the present petition in as to whether the cases which have attained finality can now be reopened because of the certain observations made by the Supreme Court in Bhag Singh's case (supra). Ordinarily, any observations made by the Supreme Court are for the future to be kept in view for deciding the cases, but whether because of those observations the cases which have already been decided earlier could also be re-opened, remains to be answered here. Moreover, while making those observations the Supreme Court fixed some time for payment of the court fee and did not lay down that the deficiency may be made good at any time.*

In these circumstances, the case be laid before Hon'ble the Chief Justice for constituting the Full Bench. Since many applications are being filed in this Court in this matter, it will be proper and advisable if the Bench can be constituted at the earliest.

Application under section 149 *read with section* 151 *C.P.C. praying that the applicants be allowed to make good the deficiency in the court fee and three month's time be granted to the applicants to* pay the additional court fee of Rs. 976.

It is further prayed that the solatium be allowed at the rate of 30 *per cent and the interest at the rate of* 15 *per cent while modifying the earlier order dated 2nd December,* 1982 *by this Hon'ble Court.*

A. L. Bansal, Advocate, *for the applicants.*

Mrs. Mohinder Gupta, Additional Standing Counsel, Government of India, *for the Respondents.*

M. L. Sarin, Senior Advocate with Miss Ritu Bahri, Advocate as intervener.

K. C. Puri, Advocate also for the intervener.

JUDGMENT

V. Ramaswami, C.J.

(1) This is an application under section 149 of the Code of Civil Procedure praying for permission to the applicants "to make good the deficiency in the court-fee and three month's time be granted to the applicants to pay the additional court-fee of Rs. 976".

(2) The facts and circumstances under which this application came to be filed and the real purport of the application may now be noticed. A large extent of 2243.52 acres (10768 Bighas and 18 Biswas) were acquired under the provisions of the Land Acquisition Act, 1894, for the establishment of a military cantonment at Bhatinda. Section 4(1) notification was published in the Gazette on October 9, 1974 and the declaration under section 6 on October 10, 1974. The petitioners' lands formed part of the lands acquired. Notices under section 9 of the Land Acquisition Act were issued and served on the landowners and interested persons including the petitioners on various dates. After hearing such of those landowners who filed objections and wanted to be heard, the Land Acquisition Officer divided the entire area into three belts 'A', 'B' and 'C' and further divided the belts into zones and blocks and awarded compensation at a rate ranging from Rs. 4,500 to Rs. 16,000 per acre and also granted the usual 15 per centum solatium and 6 per centum interest by an award dated June 11, 1975. At the instance of the landowners, the Land Acquisition Officer made as many as 161 land references under section 18 of the Act to the Additional District Judge, Bhatinda. The learned Additional District Judge, Bhatinda, almost maintained the same three belts and the division of blocks and zones inside the belts and awarded compensation ranging from Rs. 5,625 to Rs. 20,000 per acre. Aggrieved by that award of the Additional District Judge, Bhatinda, the present applicants filed R.F.A. No. 1700 of 1980 claiming enhanced compensation of Rs. 1,60,000. Almost all the other claimants also filed regular first appeals against the award of the Additional District Judge, Bhatinda, claiming various amounts as additional compensation. The applicants in Ground No. 4 of the Grounds of Appeal had made the following ground :—

> "That although the appellants are entitled to claim much higher amount, but they on their own accord are filing

this appeal only for Rs. 1,60,000 (Rs. One lac sixty thousand only) more than the amount allowed by the learned Additional District Judge,—*vide* the impugned judgment. Hence, court-fee in this appeal is being paid on the amount of Rs. 1,60,000.

It is, therefore, respectfully prayed that the appeal be accepted, judgment of the learned Additional District Judge be modified and the appellants be awarded Rs. 1,60,000 (One lac sixty thousand only) more as compensation than allowed by the learned Additional District Judge."

(3) This appeal was taken up for hearing along with the other appeals filed by the other claimants and by a judgment dated November 10, 1981, I. S. Tiwana, J. accepted the classification of the land into belts, but restricted the same into two belts. He accepted the first belt upto 500 meters from the road and the remaining as the second belt. In the first belt, he awarded compensation at the uniform rate of Rs. 15 per square yard, i.e. at the rate of Rs. 72,600 per acre and for the remaining lands at the rate of Rs. 25,000 per acre in addition to granting the usual 15 per centum solatium and 6 percentum interest. The learned Judge also awarded proportionate costs. Since the learned Judge had fixed flat rates of Rs. 72,600 for the first belt and Rs. 25,000 for the remaining lands and the claimants had claimed in their appeals varying amounts, at the end of the judgment, he made the following direction :—

"All this, however, is subject to the claims made by them in their memorandum of appeals and cross-objections and the court-fee paid thereon.

Many of them filed appeals against this award of the learned Single Judge and the applicants herein also filed L.P.A. No. 235 of 1982. In the grounds of appeals, the applicants contended that fixing of the uniform rate of Rs. 25,000 per acre for the second belt was not proper and that though Rs. 72,600 was given to the first belt upto 500 meters from the road, the land immediately after the first belt drops down to Rs. 25,000 and at least he should have divided the lands into three belts and granted Rs. 10 per square yard for the second belt and ultimately in Ground No. 9, it was stated :—

"That although the appellants are entitled to more compensation yet they on their own accord are filing this appeal

for Rs. 85,000 (Rs. Eighty five thousand only) more than the amount of compensation allowed by the learned Single Judge. Hence, court-fee in this appeal is being paid on the amount of Rs. 85,000.

"It is, therefore, respectfully prayed that the appeal be accepted, judgment/order of the learned Single Judge be modified and the appellants be awarded Rs. 85,000 (Rs. Eighty five thousand only) more as compensation than allowed by the learned Single Judge."

The Division Bench of this Court partly allowed all the Letters Patent Appeals filed against the judgment of the learned Single Judge by a judgment dated December 8, 1982. In this judgment, the learned Judges accepted and confirmed the division of the lands into two belts. However, they granted compensation at the rate of Rs. 8 per square yard for the second belt while confirming Rs. 15 per square yard for the first belt given by the learned Single Judge. The operative part of the Division Bench judgment reads as follows :—

"In view of the above, the judgment of the learned Single Judge is modified and it is ordered that the claimants, whose land is situate beyond 500 metres from the municipal limits of Bhatinda town would be entitled to compensation at the rate of Rs. 8 per square yard. However, the enhancement would not exceed the amount claimed in these appeals on which court-fee has already been paid. Besides the above, the claimants would be entitled to 15 per cent solatium and interest at the rate of 6 per cent per annum on the enhanced amount from the date of taking over possession till payment. The appeals accordingly stand allowed to the aforesaid extent with proportionate costs." (Emphasis ours).

(4) The appeal of the applicants herein (L.P.A. No. 235 of 1982) on the basis of the judgment was allowed in full and the sum of Rs. 85,000, as claimed in the appeal as also the solatium and interest was directed to be paid.

(5) The Land Acquisition Act, 1894 was amended by the Land Acquisition Amendment Act, 1894 (Act No. 68 of 1984. Subsection (2) of section 23 was amended by this Amending Act by providing 30 per centum solatium instead of 15 per centum. Section 18, clause (a) of the Amending Act provides that

"in section 28 of the principal Act for the words 'six per centum' the words 'nine per centum' shall be substituted." Section 30(2) of the Amending Act further provided that "the provisions of sub-section (2) of section 23 and section 28 of the principal Act, as amended by clause (b) of section 15 and section 18 of this Act respectively, shall apply and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or the Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and before the commencement of this Act." The Amending Act also inserted a new section — Section 28-A in the principal Act which reads as follows :—

"28-A. *Redetermination of the amount of compensation on the basis of the award of the Court.*—(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18 by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court;

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector,

require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

The Amending Act gave retrospective operation to the amended provisions with effect from April 30, 1982, the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People. Though the Amending Act was passed and published in the Gazette on September 24, 1984, in view of the retrospective operation given to the relevant provisions, the various claimants filed applications (1) claiming 30 percentum solatium and 9 percentum interest on the amount awarded on the ground that the judgment of the Division Bench was delivered on December 8, 1982, i.e., subsequent to 30th day of April, 1982, the date on which the Act shall be deemed to have come into force, though the award of the Land Acquisition Officer itself was given on June 11, 1975, long prior to the Amending Act and (2) though the claimants had restricted their claims in the appeal before the learned Single Judge and in the letters patent appeal before the Division Bench, in view of Section 28-A they are entitled to be paid compensation at the rate of Rs. 8 per square yard which works out to Rs. 38,720 per acre and that therefore, they should be permitted to pay the difference in court-fee and that decree should be amended and they should be paid enhanced compensation subject to the payment of court-fees. The applicants' prayer for payment of increased solatium at 30 percentum and increased interest at 9 percentum on the amount claimed by them and awarded by the Court was allowed and that is not now in dispute.

(6) The dispute is relating to the entitlement of the applicants and persons similarly situated for claim of payment of more compensation than that claimed in appeals subject to payment of court-fee. The prayer, in effect, therefore, was that they should be permitted to amend the Grounds of appeal and increase the claim in appeals upto Rs. 8 per square yard and permit them to pay the difference of the court-fee so as to enable them to get compensation at the rate of Rs. 8 per square yard as determined by the Court. Thus, though the relief claimed in the application is couched as if there is deficiency in the payment of the court-fee in the Memorandum of Appeal, in effect it means that they should be permitted to

amend the Grounds and increase the claim in the appeal up to the extent of Rs. 8 per square yard. However, this application has been filed as if the claimants have not paid the full court-fee on the amount claimed by them and they should be permitted to pay the deficit court-fee. In the light of the real contention of the petitioners, we have to proceed on the basis that this is an application for amendment of the Grounds of Appeal by increasing the amount of claim in the appeal. As already stated, both in the regular first appeal and the letters patent appeal, the applicants restricted their claim for enhanced compensation and in the letters patent appeal itself, the compensation claimed in respect of the lands of the applicants was only Rs. 85,000. In the light of the fixation of compensation at the rate of Rs. 8 per square yard, the appeal of the applicants was allowed in full and no part of the claim of the applicants was rejected. As already stated, in view of the amendment with retrospective effect and in view of the fact that solatium and interest need not be specifically claimed and court-fee paid, they also got the increased solatium and interest as per the Amended Act.

(7) As noticed, earlier, this application has been filed under section 149 read with section 151 of the Code of Civil Procedure. This is not an application for review of the judgment of the Division Bench. In fact the learned counsel very fairly conceded that he is not asking for review of the judgment. There could be no review also as in terms of Order 47 C.P.C., the review application would not have been maintainable.

(8) Section 149 of the Code of Civil Procedure reads as follows :—

> "*Power to make up deficiency of court-fees.* Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fee has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

The learned counsel relying on the words "at any stage" contended that he could ask for permission to pay the deficiency of court-fee

even after the disposal of the appeal. We are unable to agree with this contention. Section 149 applies only to a pending case where the relief asked for is not properly valued and court-fee paid or that court-fee under the provisions of the Court-Fees Act has not been properly calculated and paid. Though it may be open to a Court, when the case is pending before it to permit an amendment of the claim by increasing or varying it and pay the court-fees or if there is any mistake in the payment of the court-fee to permit payment of the deficit court-fee, it is not open to him to ask the Court to permit an amendment of the claim after the case has been finally disposed of by that Court. It may be, if the party had preferred an appeal against the judgment and decree, the appellate Court may permit an amendment which will have the effect of both amending the trial Court pleadings as also the grounds of appeal. The appellate Court also cannot do it after it had disposed of the matter finally. "At any stage" in section 149 of the Code would only mean at any stage when the matter is pending disposal before the Court where the deficit court fee is sought to be paid. In fact, subject to the review power referred to in Order 47 and the amendment of judgments, decrees or orders as provided under section 152, the Court becomes functus officio, so far as the appeal which has already been finally disposed of, in respect of the subject-matter which had been dealt with in appeal.

(9) The learned counsel strenuously contended that in view of section 28-A, the applicants are entitled to enhanced compensation irrespective of the fact whether they have filed an appeal or not. However, since the appeal was disposed of by this Court, this Court is competent to grant relief to the applicants. The argument is that under the provisions of section 28-A, a claimant who had not made an application to the Collector under section 18, could ask for the amount of compensation payable to him as determined by the Court in a third party's application for enhancement. *A fortiorari*, a person who has been claiming enhanced compensation and whose matter was pending before the Court when the provisions of section 28-A came into force, was entitled to claim an amount as re-determined by the Court in the appeal. We are unable to agree with this submission of the learned counsel. We can neither amend, nor vary the provisions of section 28-A. We can apply only if the provisions are, in terms, applicable to the applicants. Section 28-A, in terms, is applicable only to a case where the claimant had not asked for a reference under section 18, subject to the condition of

the Court re-determining the amount more than that determined by the Collector and the applicant or the person, who had not asked for reference, filing an application before the Collector within three months from the date of the award of the Court which re-determined the amount of compensation. It is a direction to the Collector to re-determine the amount in accordance with the award of the Court and not a direction to the appellate Court to modify or vary the decree after it has become final.

(10) Further, at the stage when the matter is before the Collector, the provisions of the Code of Civil Procedure are not applicable and when it comes by way of an appeal against the award of the Additional District Judge and on further appeal by way of letters patent appeal, the proceedings are governed by the provisions of the Code of Civil Procedure. Section 53 of the Land Acquisition Act, 1894, provides that "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." To an appeal filed against the award made on a reference under section 18, the provisions of the Code applicable to the appeals from original decrees are applicable.

Section 8 of the Court Fees Act, 1870, provides:—

> "The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for a public purpose shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

There is no dispute that this provision applies to the appeals filed by the claimants in this case. As may be seen from this provision, the amount of court-fee has to be computed according to the difference between the amount awarded and that claimed. The court-fee payable on the memorandum is *ad valorem* court-fee as provided in the Court-Fees Act and not fixed court-fee. It is also now well-settled that an appeal filed under Clause X of the Letters Patent against a judgment which constitutes a decree, the appellant is liable to pay the same court-fee as was payable in the regular first appeal. Under section 4, no document of any kind specified in the first or second schedule to the Act as chargeable with fees shall be filed,

exhibited or recorded in, or shall be received, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. These provisions clearly show that in the case of money claim for payment of additional compensation, the memorandum of appeal must precisely state the amount of excess compensation claimed in the appeal and pay sufficient court-fees according to the valuation of the relief claimed in the appeal. If the amount paid as court-fee is not in accordance with the First schedule, the deficit court-fee shall be paid before the appeal is received or filed as provided in section 4 of the Court-fees Act. The jurisdiction of the Court in respect of a properly and sufficiently stamped appeal relates to the subject-matter of the appeal and the relief claimed. The Court is not entitled to grant a decree for more than the amount, which was claimed in the appeal. The power of the appellate Court over such decree is entirely different. It may be, in proper cases, the appellate Court may permit the appellant to amend the relief which he has asked for in the Court below as also in the appeal when the appeal is pending, but once the appeal is disposed of, that jurisdiction is lost except as provided under section 151 and Order 47 of the Code of Civil Procedure. In this case, as already said, the appellants claimed only Rs. 85,000 in the memorandum of grounds of letters patent appeal and paid court-fees thereon and the entire amount claimed was allowed. In those circumstances, it is not possible for the claimants to ask for an amendment of the grounds so as to increase the claim after the disposal of the appeal. In fact, the point is not *res integra*. The decision of a Division Bench of the Calcutta High Court reported in *Percival* v. *Collector of Chittagong*, (1) is a direct authority on the question. The facts in that case were as follows : There were 22 references made to the Civil Court under section 18 of the Land Acquisition Act by the Collector, and the cases were tried together by the Subordinate Judge of Chittagong. The total amount of compensation decreed by the Subordinate Judge was Rs. 21,726-4-10. The claimants 1, 2 and 5 appealed to the High Court and the appeal was valued as Rs. 13,000 and court-fee was paid for that amount. In the appeal, the High Court enhanced the amount of compensation to over Rs. 40,000. After the judgment was delivered, the Government Pleader for the Collector of Chittagong, who was the respondent in the appeal, pointed out that the appeal was valued at Rs. 13,000 only

(1) I.L.R. (30) Cal. 516.

and that, under the decree passed by the High Court, the appellant would get much more than that amount and that, therefore, the decree should be restricted to the value of the appeal. The claimant urged that if this objection had been taken at the proper time, he would have made an application for leave to amend the memorandum of appeal, or for liberty to put in additional court-fees. The claimant also formally filed an application for leave to put in additional court-fee. The Land Acquisition Officer also put in an application praying that in the circumstances of the case, the compensation awarded should not be raised beyond the amount stated in the memorandum of appeal. A Division Bench of the High Court held :—

> "It appears to us that the controversy which has arisen, in consequence of the mistake, or otherwise, on the part of the appellants, and owing to the objection taken by the learned Government Pleader, after the pronouncement of the judgment does not seen to turn upon the question of valuation so much as upon the jurisdiction of the Court to allow the appellant to amend the memorandum of appeal, or, in other words, to allow the award to be raised beyond the amount stated in the memorandum of appeal as the amount in respect of which the appeal was brought.
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> It is quite clear that in the majority of cases, the plaintiff is bound by the amount of the claim which he puts forward in his plaint, excepting in certain cases provided for by the Statutes; for example, as regards claims for mesne profits. The Court has no power to make a decree in favour of the plaintiff beyond the amount of the claim stated in the plaint.
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> We may take one instance as an illustration. A suit is brought upon a balance of accounts, and the plaintiff, instead of claiming whatever may be found due upon the taking of accounts, stated a specific sum as the amount claimed. It does not seem to us that the Court would be entitled without an amendment of the paint to award a decree for more than what is claimed. Section 53, Code of Civil Procedure, gives the Court the power of allowing the claim to be amended at any time before judgment, upon such terms as to the payment of costs as the Court may think fit, so that the power of allowing the amendment is restricted to the time before judgment

is delivered, and it would be open to the plaintiff, in the event of his stating the amount of his claim by inadvertance, or if he has not chosen to proceed upon the basis of the taking of the accounts, to ask for amendment at any time before the judgment is pronounced; but under the Code, the plaintiff is not allowed the amendment after judgment. By section 582, Code of Civil Procedure, the provisions of the Code relating to suits are made applicable to appeals, and the question for consideration is, whether the principle applicable to the amount of claim mentioned in the plaint is also applicable to the amount of claim stated in the memorandum of appeal. It is, of course, open to the appellant to appeal for the whole amount disallowed by the Court below, or only in respect of a part thereof. He must choose his own course. It is not the duty of the respondent to bring to the notice of the appellant any omission or inadvertance on his part; and the Courts, in the generality of cases, except in cases of mesne profits and the like, which are regulated by the Statutes, cannot pass a decree for a larger amount than that stated in the memorandum of appeal and in respect of which the appeal is actually brought. Suppose, for instance, a plaintiff brings a suit for Rs. 50,000 in the Court below and obtains a decree for Rs. 30,000 the claim for Rs. 20,000 being disallowed. For some reason or other, the plaintiff appeals for Rs. 10,000. There is nothing to show that unless an amendment is allowed before judgment is pronounced, the Court could in appeal decree anything more than the amount for which the appeal is brought.

As the appellants made no application to us before the judgment was pronounced, we think we cannot, after delivery of judgment, allow him leave to amend his memorandum of appeal and that under the provisions of section 582, Code of Civil Procedure, we ought to restrict our award to the amount stated in the memorandum of appeal *plus* the amount allowed by the lower Court, and the usual statutory allowance."

(11) A similar question was also considered by the Privy Council in Sooriah Row *v.* Cotaghery Boochiah, (1838)2 Moore's Indian

Appeals 113. Shortly stated, while asking for a decree for possession and mesne profits, the plaintiff claimed a sum of Rs. 25,387 as the value of the produce as mesne profits, but during the trial, the plaintiff proved that she was entitled to more damages than the amount claimed in the original plaint. While rejecting the prayer for enhanced claim, the Privy Council observed :—

> "With respect to the damages, the Court have given the amount laid in the original plaint, but it appears that adding the interest a greater amount was proved, and the Court was restrained from giving that great amount, only because they could not give more than the amount claimed."

A Full Bench of the Madras High Court in *Putta Kannayya Chetti and two others* v. *Budrabhatta Venkata Narasayya,* (2) while holding that the Court can give a decree for such sum as it finds due to the plaintiff although such sum is above the pecuniary limits of its jurisdiction, said :—

> "...This can happen only in suits for accounts or mesne profits, as in all other cases the plaintiff without amending his plaint cannot get more than what he claims; even in suits for accounts or mesne profits, the plaintiff does not really get more than what he asks, for the relief prayed for in those suits is not for a particular sum, whatever sum the plaintiff is found ultimately entitled to and the amount fixed approximately is for the purpose of determining the Court which has jurisdiction to try the suit."

In *Narayana Pillai* v. *Raghavan Pillai and others,* (3) a Division Bench of that Court on this point observed, "that whereas the mesne profits claimed in the plaint is only Rs. 150 per year, the award of the Court below at the rate of Rs. 206-3-8 was without jurisdiction and that the Court could not grant the relief in excess of the claim." There could, therefore, be no doubt that the appellant who has claimed a special amount as compensation could not claim more than that amount after the appeal is disposed of nor can a Court grant a decree for more than what is claimed.

(2) I.L.R. (40) Madras 1
(3) AIR 1953 Tra-Co. 563

It is also not possible to contend that as in the case of account suit the appellant will value the appeal normally and pay a nominal court fee and as and when he is held entitled for a larger amount pay the difference in court-fee and claim the amount. In fact, it was brought to our notice that subsequent to the decision of the Supreme Court in 1985 S.C. 1576, which would be noticed later, on the assumption that they need not pay the court-fee in the beginning itself, that they can value it nominally at the time of filing the appeal and as and when the Court enhanced the value of the acquired lands, up to the extent of such enhancement, they could pay the court-fee and obtain a decree for payment, the claimants have started filing appeals with nominal court-fee. We are definitely of the view that this practice should be deprecated and put an end to immediately. We may point out that before the Land Acquisition Officer, the claimant need not pay any court-fee and therefore, he can make his claim to any extent without having regard to the real market value of the land. Similarly, even in the reference under section 18 before the Additional District Judge, no court-fee is payable and, therefore, he can make as large a claim as he could and in fact we can take judicial note of such fantastic claims made in the past without any regard for the real market value. Since a judicial officer has determined the market value already, the legislature in its wisdom though that he (claimant) shall not be permitted to prefer a further appeal without payment of court-fee. This was in order to prevent any fantastic or exaggerated claims without any regard for market value and preventing a gambling on decisions. They are directed to pay the court-fee so that the claimant should restrict his claim really to the market value and not make any unrealistic and fantastic claims. Levy of court-fee in such circumstances is a real check on such gambling instincts. If no Court-fee is payable no claimant will stop with the decision of the District Judge. Even though he may be liable to pay court-fee after the appellate Court or the second appellate Court determines the amount if he wants to get decree, there will be no safeguards against a litigant filing a vexatious, unrealistic and fantastic claim and certainly he will try to gamble. Even a gambler baits but not the claimant. We have, therefore, absolutely no doubt that the claimant shall not be permitted to claim amendment of the memorandum after the appeal had been finally disposed of, nor can we permit the appellants pay notional court-fees and present appeals in the hope that they can make claims for larger amounts.

Thus though before the appeal is taken up for hearing or the judgment is delivered, the party may ask for variation of the memorandum of grounds or increasing the claim and if there are justifiable reasons the Court may permit the same and allow the deficit court-fee to be paid. Once the appeal is disposed of, he cannot claim to amend the memorandum of grounds claiming a larger relief than what he claimed originally.

(12) Learned counsel for the applicants, however, relied on a decision of the Supreme Court in *Bhag Singh and others* v. *Union Territory of Chandigarh*, (4). We have verified the original records relating to this case, which is an appeal from this Court. We find the Cause title given in this case does not appear to be correct, but probably the learned Judges disposed of a bunch of cases and, therefore, while reporting, the name of the case was given differently. But facts of the case detailed in that decision related to the very acquisition, which is now under consideration. The case that was the subject in the appeal before the Supreme Court was disposed of by the common judgment along with L. P. A. 235 of 1982. The passage, which was strongly relied on by the learned counsel for the applicants, is that contained in paragraph 3 which reads as follows :—

> "We are of the view that when the learned single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notification issued under sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an opportunity of paying up the deficit court-fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court-fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not

(4) A.I.R. 1985 S.C. 1576.

to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to citizens and should not, as far as possible except in cases where tax or revenue is received or recovered without protest or where the State Government would be otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just-claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned single Judge should have allowed the appellants to pay the deficit court-fee and awarded to them compensation at higher rate or rates determined by them.

As we have already pointed out, if we had been sitting in appeal over the decision of the Division Bench, we could follow the Supreme Court judgment above referred and grant the relief prayed for by permitting the amendment of the grounds and modifying the decree of the Bench and awarding enhanced compensation subject to payment of court-fee. Neither an appeal lies against the Bench judgment before us, nor, as already stated, a review application is possible under Order 47 of the Code of Civil Procedure. This cannot also be treated a clerical or arithmetical mistake because the learned Judges definitely stated that their reliefs shall be with reference to the claims in the appeals and it could not be more than what they have asked for in the appeal. If the applicants were aggrieved by that direction, they should have preferred an appeal as has been done in the decision reported in A.I.R. 1985 S.C. 1576. Therefore, we are unable to agree that we can invoke the principles enunciated in the judgment of the Supreme Court and grant the relief in this case.

(13) As already pointed out, it is also not possible for us to give such relief because if this Court were to hold that they are entitled for amendment even after disposal of the appeal and grant such relief, then in no land acquisition appeal, the appellant will pay the court-fee and he will await the determination of the compensation first and then pray that he may be permitted to pay court-fee and get the compensation as per determination of the Court. He shall have to make a *bona fide* claim in the appeal and pay court-fee thereon in order to get a relief. If for any reason, the market value determined is more and he is entitled to claim the same compensation as given to a third party, he shall file an appeal against that order, satisfy the appellate Court that he is entitled for an amendment of the claim, ask for an amendment, which relief would be given to him by the appellate Court by permitting him to amend both the lower Court grounds as also the grounds before the appellate Court. But we have no doubt that we cannot invoke the principles enunciated by the Supreme Court in this case though that judgment also related to the same acquisition, but in respect of a different party. As pointed out earlier, the Supreme Court was sitting in appeal over the Bench judgment and sitting in appeal, they could give any direction to the High Court in respect of the appeal, which is the subject-matter before them. In fact they allowed the appeal in that case.

(14) It was then contended by the learned counsel relying on the decision of the Delhi High Court in *Ram Mehar* v. *Union of*

India (5), that though in terms of Order 47, the applicants are not entitled for a review of the order, we should invoke our inherent powers under section 151 and permit the re-determination of the compensation subject to their paying the court-fee. The facts dealt with in the Delhi High Court case, shortly stated are these : In respect of the same acquisition, two different claimants filed two different appeals, one claimant had claimed compensation at the rate of Rs. 15,000 per bigha and another person had claimed compensation at the rate of Rs. 10,000 per bigha. The appeal of the claimant, who had claimed compensation at the rate of Rs. 15,000 per bigha, came up for hearing first before a Division Bench. In the appeal, the Division Bench determined the compensation payable at Rs. 3,500 per bigha as against the claim of Rs. 15,000 per bigha. The other appeal of a different claimant came before a different Bench on a subsequent date. Without noticing the earlier judgment in which Rs. 3,500 per bigha was given, the second Bench determined the amount at Rs. 10,000 per bigha, and gave an award accordingly. Coming to know that in the other appeal, the claimant was given Rs. 10,000 per bigha, the first claimant filed a review application for review of the earlier judgment and claimed that he was entitled to compensation at the rate of Rs. 10,000 per bigha. In this connection he relied on the provisions of section 28-A, wherein a claimant, who had not asked for a reference was given the right to claim compensation as determined by the Court on reference by another party. The claim was that since in the other case, Rs. 10,000 had been given, on the same analogy as in section 28-A, he should also have been given compensation at the same rate of Rs. 10,000 per bigha. While holding that Order 47, rule 1 could not be invoked, the Division Bench of the Delhi High Court was of the view that the ends of necessity should persuade them to invoke their inherent jurisdiction to redetermine the asessment which they have already done so as to enable them to redetermine the market value of the acquired land. This is not the case here. There, the question did not arise as to whether a claimant, who has restricted his claim, could ask for more money than what he has claimed before the same forum where he had made that claim after the disposal of his case. In the Delhi High Court case, the claimant had asked for Rs. 15,000 per bigha, but the Bench did not give him that money but gave Rs. 3,500 per bigha. When it was pointed out to the Bench that another Bench in respect of the same acquisition had awarded

(5) A.I.R. 1987 Delhi 130.

Rs. 10,000 per bigha, the learned Judges rightly considered that they should be perusuaded to invoke their inherent jurisdiction to reopen the case and give relief to the aggrieved claimant. In this case, no such question arises. As we have already stated, the entire appeal of the claimant was allowed and the only thing is that in another case where the claimant had asked for more money that had been given. The learned Judge himself was aware that some of the claimants have restricted their claims in the appeal and therefore specifically stated that they will be entitled only to the amounts claimed by them in the appeal. In the circumstances, we are not persuaded to invoke our inherent jurisdiction to reopen the case. It may be, the claimants herein thought that the market value of their land was only that much as claimed in the appeal and especially in this case where the Land Acquisition Officer not merely divided it into belts and even in the belts he had divided it into zones and blocks and gave valuation ranging between Rs. 4,500 and Rs. 16,000 per acre. Even the learned Additional District Judge under section 18 maintained the same difference and awarded various compensations from Rs. 5,625 to Rs. 20,000 per acre. It is only in the first appeal, the learned Single Judge thought that it should be divided into only two belts, the first belt upto 500 metres and the rest as second belt. Even in the first appeal, the applicants specifically restricted their claim to Rs. 1,60,000 and in the letters patent appeal, they specifically claimed enhanced compensation to the extent of Rs. 85,000. But the present claim is for more than Rs. 1,60,000.

(15) The learned counsel pointed out that in one or two cases a Single Judge of this Court had permitted some of the claimants to amend the prayer after the disposal of the appeal and granted relief, but another learned Single Judge differed from the view and that in these circumstances, the matter was referred to the Full Bench. The learned counsel also brought to our notice that when the application of another claimant praying for similar relief before a learned Single Judge was dismissed, he directly took the matter in appeal before the Supreme Court in Civil Appeal No. 1365-80 of 1985 and the Supreme Court following the earlier decision reported in A.I.R. 1985 S.C. 1576 gave the direction as in the reported judgment. As already stated, the Supreme Court was sitting in appeal over the judgment of the Division Bench in the Civil Appeal, and, therefore, the direction was given as in the earlier judgment. We are not sitting in appeal over the letters patent appeal, nor in review of that order, nor have we found any grounds for interfering with the same in exercise of our powers under section 151 of the Code of Civil Procedure.

(16) In the result, we hold that the petitioners are not entitled to the order prayed for in the application and the application is accordingly dismissed. There will be no order as to costs in this reference.

(17) Before parting with the case, we want to make certain observations. As already stated, in some of the cases which went to the Supreme Court against the order in the letters patent appeal, the Supreme Court has given direction to give the compensation to all those people at the rates given to the other claimants. We have refused to interfere in this matter on the ground that we are not sitting in appeal or review. We have also refused to invoke our inherent jurisdiction in view of our apprehension that any such relief granted will encourage the practice of not paying the court-fee, in the hope that as and when the valuation is determined in the appeal they can invoke our jurisdiction under section 151 of the Code for paying court-fee and get large amounts of enhanced compensation. In fact in such cases, it could also be prayed that compensation may be given to them after deducting the amount of court-fee payable in respect of compensation. We are of the view that such an undesirable practice should be put an end to at the earliest and not encouraged. However, as noticed earlier in the same batch of cases sitting as an appellate Court over the Division Bench order, the Supreme Court have given the relief prayed for on the basis that each of the claimants, should be paid market value in respect of the land and one should not be deprived of the payment of the market value merely because he had not claimed that much money in the appeal. If the claimants in this case also file an appeal even now before the Supreme Court by way of a special leave petition, the Supreme Court may exercise their discretion and grant the relief prayed for by them. Therefore, the Government should take notice of this situation and grant the compensation as prayed for by them after re-determining the same in accordance with the judgment of this case and pay the same as an *ex gratia* payment and not to drive the parties to file an appeal before the Supreme Court. We have chosen to make these observations on the facts and special circumstances of these cases but it shall not be treated as a precedent nor a ratio be deduced from them. It shall be restricted to the facts of the acquisition made in pursuance of the notification dated October 9, 1974, for the establishment of the military cantonment at Bhatinda.

S.C.K.