

FULL BENCH

Before Bal Raj Tuli, S. S. Sandhawalia and C. G. Suri, JJ.

THE STATE OF PUNJAB,—Appellant.

versus

SHRIMATI HARCHARAN KAUR,—Respondent.

R.F.A. No. 10 of 1969.

February 27, 1974.

Land Acquisition Act (I of 1894)—Sections 18, 19, 20 and 31—Compensation amount for the acquired land determined by the Collector and accepted by the claimant without protest—Reference under section 18 made by the Collector on the application of the claimant for enhanced compensation—Whether can be dismissed or declined on the ground of such acceptance—Co-sharers of the claimant allowed higher compensation for similar plots—Whether entitles the claimant accepting the compensation to similar raise.

Held, that the collective reading of sections 18, 19, 20 and 31 of the Land Acquisition Act, 1894, as in force in the State of Pepsu, makes the policy of the Legislature clear that any person who has accepted the award is not entitled to make an application under section 18 of the Act nor is he entitled to receive the notice of any application that may have been made by some other person. The Act has not prescribed any procedure to be followed by the Collector for dealing with the applications under section 18 of the Act and the practice is that the Collector decides such applications *ex parte* without issuing notice to the respondents so that at that stage the respondents have no opportunity to object that the application is not competent and should not be referred to the Court. The Collector, as a designated statutory authority and not as an agent of the State Government takes a decision whether to refer or not to refer the application to the Court. If he decides to refer, he has to state the information required by clauses (a) to (d) of section 19(1) of the Act. Neither section 18, nor section 19 bars the respondents from pleading any defence to the *locus standi* of the applicant or the maintainability of the application. The limits prescribed in those two sections with regard to the matters which can be referred to the Court only relate to the applicant and not the respondents. Since section 31(2) Second Proviso of the Act creates a statutory bar to a person who has accepted the compensation without protest from making an application under section 18 of the Act, it is the duty of the Court, if an objection is raised by the respondent, to determine whether the applicant

The State of Punjab v. Shrimati Harcharan Kaur (Tuli, J.)

has the right to make the application or not. If he comes to the conclusion that the application had been made by a person who had accepted the award, he must throw out the reference without deciding it on merits. Such a decision will disentitle the applicant from claiming any enhancement in the amount of compensation awarded by the Collector. Even if his co-sharers or the owners of similar plots of land are allowed a higher compensation by the Court, the person who accepted the compensation without protest will not be entitled to claim a similar raise in the compensation already awarded to him because under section 20 of the Act, he is not entitled to a notice of such an application by his co-sharers or any other owner of similar plots.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice C. G. Suri to a larger Bench on 13th December, 1972, for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice C. G. Suri sent the case back to the Division Bench for final decision on 27th February, 1974, after deciding the question referred to.

Regular First Appeal from the order of the Court of Shri H. S. Bhandari, District Judge, Patiala, dated the 20th October, 1959, enhancing the compensation at the rate of Rs. 3,500 per bigha which was the market value of the land and at which land from this very area had already been sold. The petitioner has been given Rs. 7,130 and calculating the price at the rate of Rs. 3,500 the total value comes to Rs. 10,850 which would mean that the petitioner is entitled to the balance amounting to Rs. 3,720. In addition, also allowing 15 per cent on the sum of Rs. 3,720 in accordance with the provisions of section 23(2).

M. J. S. Sethi and Lakhinder Bir Singh, Advocates, for the appellant.

I. S. Karwal, Advocate, for the respondent.

JUDGMENT

TULI, J.—(1) The Patiala and East Punjab States Union published a notification dated April 14, 1954, in the Patiala and East Punjab States Union Government Gazette dated April 25, 1954, under the provisions of section 4 of the Land Acquisition Act, No. 1 of 1894 (hereinafter called the Act), which had been extended to that State by the Patiala and East Punjab States Union Land Acquisition Act, 1953, wherein it was stated that the land mentioned in the notification was likely to be required to be taken by Government at public expense for a public purpose, namely, for construction of roads in notified area No. 1 and that any person interested,

who had any objection to the acquisition of any land, should file his objection within 30 days of the publication of the notification before the Collector, Patiala District.. A notification under section 6 of the said Act was published on March 29, 1955, which was later on superseded by notification dated September 30, 1955. Under these notifications, the land of Shri Bhagwan Singh Grewal was acquired. The Collector made his award under section 9 of the said Act on March 14, 1956, and on the next day, that is, March 15, 1956, he received the amount of compensation without making any protest,—*vide* receipt Exhibit R.W. 1/A of that date. On April 24, 1956, Shri Bhagwan Singh Grewal made an application for reference under section 18 of the Act which was forwarded by the Collector to the Court of the District Judge on April 30, 1956. A notice of that reference was issued to the State of Pepsu through the Collector, Patiala, who filed his reply dated August 11, 1956. On the pleadings of the parties, the following issues were framed:—

- (1) Is the application for reference made within time ?
- (2) Has the petitioner accepted the compensation amount without any protest and hence this reference is not competent ?
- (3) Has the petitioner not been awarded adequate compensation and, if so, what it should be ?

(2) The case was then adjourned to September 13, 1956, for the evidence of the claimant. Since Bhagwan Singh did not produce any evidence on that date, the District Judge, Patiala, dismissed the reference for non-prosecution. Against that order, an appeal (F.A.O. 13 of 1957) was filed in this Court which was accepted by R. P. Khosla, J., on April 27, 1959, and the case was remitted back to the District Judge for decision in accordance with law after allowing the parties an opportunity to lead necessary evidence in support of their respective contentions. From the order of R. P. Khosla, J., it appears that Bhagwan Singh died on or about January 15, 1957, and his widow Shrimati Harcharan Kaur got herself impleaded as his legal representative. In the meantime, the merger of the States of Pepsu and Punjab took place with effect from November 1, 1956, and the State of Punjab defended the case thereafter. The learned District Judge recorded the evidence of the parties and accepted the reference by order dated October 20, 1959, by deciding all the issues in favour of the claimant and enhanced the

The State of Punjab v. Shrimati Harcharan Kaur (Tuli, J.)

amount of compensation. Against that decree, the State of Punjab filed this appeal which came up for hearing before my learned brethren (Sandhawalia and Suri, JJ.) when the learned counsel for the appellant stated that he did not press the point of limitation and the only objection pressed was that the reference before the District Judge was not legally competent as the application under section 18 of the Act had been made by a person who had accepted the award by receiving payment of the compensation without protest. In view of the conflict of authorities, my learned brethren felt that the following question of law should be decided by a larger Bench:—

“Can the Court, after a reference has been made to it by the Collector under section 18 of the Land Acquisition Act, 1894, dismiss or decline the reference on the ground that the applicant was a person who had accepted the Collector’s award by receiving, without protest, the compensation amount determined by the Collector ?”

and directed that the records of the case should be placed before Hon’ble the Chief Justice for the constitution of a larger Bench. This is how this case has come up before this Bench for decision.

(3) There were two reported judgments of Mahajan, J., dealing with this point which were not brought to the notice of the Division Bench. The first judgment in point of time is *Sardara Singh and another v. State of Punjab* (1) where in the compensation was accepted by the claimant in accordance with the award made by the Land Acquisition Collector and later on he made an application under section 18 of the Act for reference to the District Judge. His case was referred to the District Judge by the Collector in spite of the provisions of section 31 (2), second proviso, of the Act and the question was raised before the District Judge whether the reference was valid. That reference was heard by the Senior Subordinate Judge, Ferozpur, who had been empowered to hear and decide such references. Before him two points were raised, namely, that the application before the Collector was barred by time and the petitioner had received the payment of compensation without protest and, therefore, the application was not maintainable. The learned Senior Subordinate Judge held that the plea of limitation could not

(1) 1970 Curr. L.J. 68.

be raised in view of the Division Bench judgment of this Court in *Hari Krishan Khosla v. The State of Pepsu* (2). He, however, held that the petitioner was not entitled to any enhancement in compensation because he had received the payment of compensation in accordance with the award without protest. The application of the claimant was thus dismissed. Against that decree, R.F.A. No. 311 of 1960 (*Sardara Singh etc. v. State of Punjab*) was filed in this Court which was dismissed by Mahajan, J., with the following observations:—

“The short contention advanced by the learned Advocate General is that there is no merit in this appeal because the claimant accepted the compensation after the award without protest; and if he does so, he has no right to seek a reference under section 18 of the Act in view of the provisions of section 31(2) — Second Proviso; and, in any event, if a reference is made, it is open to the Court not to give him relief in view of his having accepted the compensation without protest — in other words, having accepted the award as a good award. Reference is also made to section 20, clause (b) of the Act.

After hearing the learned counsel for the parties, I am of the view that the contention of the learned Advocate General is sound and must prevail. The learned Advocate General does not contend that the reference before the District Judge was without jurisdiction and could not be entertained. He admits that there was a valid reference to the District Judge. But it is another matter, if a person is precluded by the Statute from contesting the award; and the reason for that is that under section 31(2) — Second Proviso read with section 20 (b), there is a clear indication that a person, who accepts the award without protest, cannot question it. Moreover, there is no estoppel against a statute. There is no provision regarding limitation in section 31. This is a matter which was solely within the jurisdiction of the Collector while determining the question, whether a reference should or should not be made. But there is a positive bar to a reference if the amount has been accepted without protest,

under section 31(2) — Second Proviso; and in any event, even if a reference is made in ignorance of that provision, as it appears from the present case, section 20 (b) clearly gives jurisdiction to the Court to non-suit the claimant if he has accepted the award without protest, that is, he has accepted the amount awarded without protest. I see no escape from this conclusion. The view, I have taken of the matter, finds support from the observations of the Calcutta High Court in *Suresh Chandra Roy v. The Land Acquisition Collector, Chinsurah* (3)."

(4) From these observations, it is apparent that the learned Judge was of the view that the reference before the District Judge was not without jurisdiction and could be entertained but no relief by way of enhancement of compensation could be allowed to the claimant for the reason that he had accepted the compensation in accordance with the award without any protest. The next case decided by Mahajan, J., in which this point directly arose is *Hazara Singh and others v. The State of Punjab* (4). In that case the District Judge declined to interfere in the reference made by the Collector on the ground that the claimant had received the amount of compensation without protest and in view of the clear provisions of section 31(2), Second Proviso of the Act, he was not entitled to claim a reference. The Claimant, being dissatisfied, filed an appeal in this Court and the learned counsel for the appellant contended that once the reference was made by the Collector, the Court had no jurisdiction to reject it as incompetent and must decide the same. Reliance was placed on the judgment of a Division Bench of this Court in *Hari Krishan Khosla's case* (2) (supra). Mahajan, J., observed that that case had no bearing on the controversy before him. In *Hari Krishan Khosla's case* (2) the question for decision was whether the reference could be rejected on the ground that the application to the Collector was made beyond the time prescribed. The learned Judge further observed that the Collector had the undoubted power of extending the period of limitation for sufficient cause and if he chose to make a reference when the application under section 18 was outside limitation, he must be deemed to have condoned the delay and that it was in

(3) A.I.R. 1964 Cal. 283.

(4) 1972 P.L.R. 374.

that situation that it was not open to the Court, to which reference was made, to sit on the judgment of the Collector because there the function of the Court was to answer the reference. In the opinion of the learned Judge the case of Hari Krishan Khosla (supra) had been decided correctly on its own facts but it had no hearing on the point which was in controversy before him. He expressed himself thus on the point of controversy before him:—

“In any event, no application was competent under section 18 in view of the fact that the claimant had accepted the compensation without protest. The Collector could pass no order under section 18 and, therefore, there would be no valid reference before the District Judge. In any event, the object of section 31 (2), Second Proviso, is that a person who accepts compensation without protest in fact accepts the award and the compensation, and a person who has accepted the award and compensation given by the Collector cannot challenge that award. The rule of estoppel will step in.”

(5) A similar matter was canvassed before a learned Single Judge of the Madras High Court in *Mrs. S. Thomas v. The Collector of Madras* (5). In that case, the petitioner had accepted the amount of compensation without protest and then made an application for reference under section 18 within the period of limitation prescribed. The Collector refused to refer that application to the Court for adjudication. A writ petition was filed for the quashing of that order and for directing the Collector to make a reference. The plea raised was that it was not the Collector, but the civil court which had to decide whether the receipt of compensation by the petitioner was an acceptance of the award and that since the petitioner filed the application for the reference within time under section 18, it must be taken that she had not accepted the award and that consequently, the Collector had no jurisdiction to refuse to refer. The learned Judge did not agree with that submission and held:—

“The acceptance of an award under section 18 and the consent referred to in section 31 (2) connote the same idea and is an inference drawn from the same facts. When section 31 speaks of a receipt without protest as debarring the

The State of Punjab v. Shrimati Harcharan Kaur (Tuli, J.)

order for making further claims, the same criterion must apply to the construction of section 18, and when admittedly the owner — the petitioner here — received the compensation awarded without protest, I must take it she accepted the award.”

This judgment is only relevant for the meaning of the phrase “who has not accepted the award” mentioned in section 18 of the Act and not for the decision of the question of law which this Bench has been called upon to answer.

(6) A Division Bench of the Calcutta High Court in *Ananta Ram Banerjee v. Secretary of State* (6) held :—

“If the question raised by the Secretary of State before the Special Judge is that the reference had been made by the Collector by mistake at the instance of a person who had accepted the award, the question of fact as to whether the claimant had accepted the award must be gone into by the Special Judge and if he decides that question in the affirmative, he must throw out the reference on that ground.”

This judgment is clearly in favour of the appellant.

(7) The learned counsel for the appellant has also relied on the judgment of a learned Single Judge of the Calcutta High Court in *Suresh Chandra Roy v. The Land Acquisition Collector, Chinsurah* (3) (supra). In that case, the petitioner was informed that he was at liberty to withdraw the amounts in accordance with the award on a certain date either himself or through an authorised agent from the Land Acquisition Collector's office. On receipt of that notice, the petitioner made an application praying that a reference be made to the Court for determination of the amount of compensation and that he would receive the compensation as awarded under protest on the date notified. He then made an application to the Land Acquisition Collector for withdrawal of the compensation money. His application for reference was rejected by the Collector on the ground that it was barred under section 31(2) of the Act. Against

that order, a revision was filed in the Calcutta High Court which was dismissed with the following observations:—

“An application for reference is not the proper document wherein to record such a protest. A protest ought to be made, firstly, in the application for receiving the disputed amount of compensation, if any such application is to be at all made and must be recorded in the receipt granted showing that the disputed amount of compensation money was accepted under protest. Since the petitioner failed to receive the compensation money under a properly recorded protest, I am disinclined to interfere in this matter.”

This judgment is of no help for the decision of the question of law before us.

(8) There is no other reported judgment brought to our notice which may be directly relevant for the decision of the question of law which we are called upon to decide. However, it is submitted that the decisions of various High Courts with regard to the jurisdiction of the civil Court to determine, after reference by the Collector, whether the application for reference made to the collector was within time or not will be helpful in arriving at a correct decision on the point, and that the overwhelming judicial opinion is in favour of the proposition that the civil Court, to whom application is referred for decision, can go into the matter whether the application for reference made to the Collector was within time or or not in spite of the fact that the Collector had made the reference to the civil Court under section 18 of the Act.

(9) This matter has been considered by us in Civil Revision No. 202 of 1969 (*M/s. Swatantra Land and Finance (P) Ltd. v. The State of Haryana*) decided today wherein the decisions of the various High Courts cited by Shri Sethi have been noticed and discussed. We have agreed with the view held by the majority of the High Courts that it is open to the District Judge to go behind the reference made to him and to determine whether the reference made to him was valid or not. We have, with respect, dissented from the decision in *Hari Krishan Khosla's case* (2) (*supra*) and have overruled the same. The reasons stated in that judgment fully apply to the determination of the question of law before us for decision and

need not be reiterated herein. Suffice it to say that one of the conditions precedent to the making of an application under section 18 of the Act to the Collector for referring the case to the Court is that the applicant must not have accepted the award, as such a person is not entitled to make the application in view of Second Proviso to sub-section (2) of section 31 of the Act. The present case relates to the State of Pepsu and the question referred is to be answered in the light of the provisions of the Act then in force. The relevant sections 18, 19, 20 and 31(1) and (2) read as follows:—

- “18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.
- (2) The application shall state the grounds on which objection to the award is taken :
- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.
19. (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—
- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
- (b) the names of the persons whom he has reason to think interested in such land ;
- (c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(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.”

(10) The policy of the Legislature is clear from the collective reading of sections 18, 20 and 31 that any person who has accepted the award is not entitled to make an application under section 18 of the Act nor is entitled to receive the notice of any application that may have been made by some other person. The Act has not prescribed any procedure to be followed by the Collector for dealing with the applications under section 18 of the Act and the practice is that the Collector decides such applications *ex parte* without issuing notice to the respondents so that at that stage the respondents have no opportunity to object that the application is not competent and should not be referred to the Court. The Collector as a designated statutory authority and not as an agent of the State Government takes a decision whether to refer or not to refer the application to the Court. If he decides to refer, he has to state the information required by clauses (a) to (d) of section 19 (1) of the Act. Neither section 18 nor section 19 bars the respondents from pleading any defence to the *locus standi* of the applicant or the maintainability of the application. The limits prescribed in those two sections with regard to the matters which can be referred to the Court only relate to the applicant and not the respondents. Since section 31 (2) Second Proviso of the Act creates a statutory bar to a person who has accepted the compensation without protest from making an application under section 18 of the Act, it is the duty of the Court, if an objection is raised by the respondent, to determine whether the applicant has the right to make the application or not. If he comes to the conclusion that the application had been made by a person who had accepted the award, he must throw out the reference without deciding it on merits. Such a decision will disentitle the applicant from claiming any enhancement in the amount of compensation awarded by the Collector. Even if his co-sharers or the owners of similar plots of land are allowed a higher compensation by the Court, the person who accepted the compensation without protest will not be entitled to claim a similar raise in the compensation already awarded to him. That is the effect of section 20 because he is not entitled to a notice of such an application by his co-sharer or any other owner of similar plots.

(11) In the light of the above discussion and the reasons stated in our judgment in *M/s. Swatantra Land and Finance (P) Limited v.*

The State of Haryana (C.R. No. 202 of 1969) our answer to the question of law referred to us is in the affirmative. The appeal shall now be laid before a Division Bench for decision. In the circumstances of the case, we make no order as to costs of this reference.

S. S. SANDHAWALA, J.—I agree.

C. G. SURI, J.—I agree.

K.S.K.