

N.K.S.

*Before Pritpal Singh, J.*

DHAN KAUR AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF PUNJAB,—*Respondent.*

*Civil Revision No. 1218 of 1983.*

January, 3, 1984.

*Land Acquisition Act (I of 1894)—Sections 18 & 31(2)—Compensation in respect of land acquired—Claimant receiving the amount under protest but protest not noted in the record of payment—Application of the claimant under section 18 for enhancement of compensation—Whether maintainable.*

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(1) A.I.R. 1962 S.C. 527.

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*Held*, that there is nothing in the second proviso to section 31(2) of the Land Acquisition Act, 1894 that the person receiving the amount must receive the same under a written protest so as to be subsequently entitled to make a reference under section 18 of the Act on the question of sufficiency of the amount awarded in respect of the acquired land. The protest against the quantum of compensation contemplated by the second proviso to section 31(2) is not required to be in writing. The Court dealing with a reference under section 18 of the Act is enjoined to make an enquiry as to whether the amount of compensation was accepted by the applicant without protest. If the Court comes to the affirmative finding on this question it is bound to reject the reference in view of the second proviso to section 31(2) of the Act. If on the contrary, there is evidence to prove that the amount of compensation was received by the applicant under protest, verbal or written, he cannot be deemed to be debarred from claiming additional compensation in a reference under section 18 of the Act. If a claimant had received the amount of compensation under protest, it is of little consequence that his protest was not noted by the official concerned in the record of payment. It is, therefore, manifest that the application of such a claimant under section 18 of the Act is competent.

(Paras 4 & 5).

*Petition under Section 115 C.P.C. for revision of the order of the Court of Mr. N. S. Bhatia, Additional District Judge, Bhatinda, dated 31st January, 1983, holding that the application under Section 18 of the Act Qua Kartar Singh, claimant is not competent to seek enhancement of compensation.*

R. K. Battas, Advocate, for the Petitioner.

J. P. S. Sandhu, Advocate, for the Respondent.

### JUDGMENT

*Pritpal Singh, J.*

(1) This revision petition is directed against the order dated January 31, 1983 of the Additional District Judge, Bhatinda.

(2) The facts of this case are that Kartar Singh and his mother Smt. Dhan Kaur received compensation on March 28, 1980 in respect of their land acquired by the State of Punjab under the Land Acquisition Act (hereinafter referred to as 'the Act'). They preferred a joint application under section 18 of the Act on 8th

April, 1980 for enhancement of compensation. The Punjab State objected that Kartar Singh having received compensation willingly, is not competent to seek its enhancement under section 18 of the Act in view of the second proviso to Section 31(2) of the Act. This objection was accepted by the Additional District Judge, Bhatinda and the application of Kartar Singh was dismissed,—*vide* the impugned order. Incidentally Kartar Singh died during the pendency of the application. Therefore, his legal representatives were brought on the record who have now challenged the impugned order in this revision petition.

(3) The short question which arises for consideration is whether the second proviso to Section 31(2) of the Act, which is in the following terms, is applicable to the application under section 18 of the Act of Kartar Singh deceased:—

“Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18.”

(4) Kartar Singh was owner of 3/4th share and his mother Dhan Kaur of 1/4th share in the acquired land. Both of them had received compensation on March 28, 1980. Although in the official record protest of Dhan Kaur was noted but not of Kartar Singh. From this circumstances, the learned Additional District Judge inferred that Kartar Singh had received the compensation amount without protest. This inference in my view is untenable. It is important to notice that not only Kartar Singh and his mother Dhan Kaur were joint owners of the acquired land but they had also received compensation at the same time on March 28, 1980. Admittedly, Sucha Singh Lambardar (A.W. 1) had witnessed the payment. He deposed in no uncertain terms that Dhan Kaur as well as Kartar Singh had received the payment under protest. His statement was not challenged in cross-examination. It deserves highlighting that only about one week after the receipt of compensation Kartar Singh and Dhan Kaur had filed a joint application under section 18 of the Act for enhancement of the compensation. There is, thus, no room to disbelieve the statement of Sucha Singh Lambardar (A.W. 1) that Dhan Kaur as well as Kartar Singh were dissatisfied with the rate of compensation awarded by the Collector in his award under section 11 of the Act. From the circumstances narrated above it would be reasonable to assume that Kartar Singh was equally dissatisfied with the rate of compensation as his mother

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Dhan Kaur. Simply because his protest was not noted in the official record, whereas that of his mother was recorded, is no ground to deny him his due compensation. It is held in *Rabari Mahadev Amra v. Prant Officer, Radhanpur*, (1) that there is nothing in the second proviso to section 31(2) that the person receiving the amount must receive the same under a written protest so as to be subsequently entitled to make a reference under Section 18 of the Act on the question of sufficiency of the amount awarded in respect of the acquired land. This judgment in my view lays down correct law. The protest against the quantum of compensation contemplated by the second proviso to Section 31(2) is not required to be in writing. The Court dealing with a reference under Section 18 of the Act is enjoined to make an enquiry as to whether the amount of compensation was accepted by the applicant without protest. If the Court comes to the affirmative finding on this question it is bound to reject the reference in view of the second proviso to Section 31(2) of the Act. If on the contrary there is evidence to prove that the amount of compensation was received by the applicant under protest, verbal or written, he cannot be deemed to be debarred from claiming additional compensation in a reference under Section 18 of the Act.

(5) In the instant case it is conclusively proved from the statement of Sucha Singh Lambardar (A.W. 1) that Kartar Singh had received the amount of compensation under protest. It is of little consequence that, his protest was not noted by the official concerned in the record of payment. I am, therefore, of the view that the learned trial Judge was not right in concluding that Kartar Singh had received the amount of compensation without protest. On coming to this conclusion it is manifest that the application of Kartar Singh under Section 18 of the Act is as much competent as that of his mother Smt. Dhan Kaur.

(6) As a result of the above discussion the instant revision petition is allowed, the impugned order of the Additional District Judge, Bhatinda, is set aside and the case is sent back to the trial Court to be decided on merits in accordance with law. There will be no order as to costs.

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(1) A.I.R. 1979 Gujrat 192.