(2) A widow does not lose her right of maintenance out of the estate of her husband even though she may have lived apart from him in his lifetime without any justifying cause and was living separate from him at the time of his death."

(11) According to this paragraph, the widow's right of maintenance is a right in and attached to the property of her deceased husband. This right of Har Kaur existed independently of the compromise Exhibit P. 7, and it was *not* for the first time that by virtue of that compromise, the property in dispute was acquired by her.

(12) No other point was argued before us.

(13) In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

Mittal, J.—I agree.

B.S.G.

Before M. R. Sharma, J.

GURDIT SINGH & OTHERS,—*Petitioner.*

versus

THE PUNJAB STATE, THROUGH THE SECRETARY, LOCAL GOVERNMENT, PUNJAB & OTHERS,—*Respondents.*

Civil Writ No. 1149 of 1970.

May 3, 1974.

Punjab Town Improvement Act (IV of 1922)—Sections 36 and 42—Land Acquisition Act (I of 1894 as amended by Act XXIII of 1967)—Section 6—Notification under section 42, issued three years after a notification under section 36 and two years after coming into force of Land Acquisition (Amendment and Validation) Ordinance, 1967—Whether valid—Property covered by such notification—Whether deemed to be acquired—Persons claiming enhanced compensation for the acquired property—Whether estopped from challenging the notification under section 42.

Held, that a notification under section 42 of Punjab Town Improvement Act, 1922 corresponds to a notification under section 6 of Land Acquisition Act, 1894. Such a notification if published after a period of two years from the date of coming into force of the Land Acquisition (Amendment and Validation) Ordinance, 1967 and three years after a notification under section 36 of the Improvement Act is not in accordance with law and is illegal. The property covered by such a notification does not deem to be acquired and does not legally vest in the Town Improvement Trust.

Held, that when the land of a person is acquired, he has got various remedies under the statute. Under certain circumstances he may be able to level a challenge against varying acts of acquisition. The other remedy available to him is that he may claim enhanced compensation by making a reference under section 18 of the Land Acquisition Act. The question of estoppel arises only after a party has received some tengible benefit under a transaction. A party who does not accept or receive any part of the compensation. cannot be met with the plea of estoppel. When more than one remedies are available to a party, it is open to it to avail of them simultaneously. The provisions relating to compulsory acquisition of property have to be strictly construed in favour of those whose property is acquired and if the law allows them more than one remedies, there appears to be no reason why any of such remedies should be denied to them. Hence, a person whose property is acquired claims enhanced compensation is not estopped to challenge the validity of a notification under section 42.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Prohibition or any other appropriate writ, order or direction be issued to the respondents not to act in pursuance of the Scheme prepared by the respondents and published in the Notification No. 12140-3CL-69/94, *dated the 30th September, 1969, and the notices issued under Section 9 and further for the proceedings for compensation under Land Acquisition Act and it be declared that the scheme prepared and sanctioned being illegal and against law and quashing the subsequent proceedings in pursuance of that are all invalid. The Improvement Trust Respondent No. 2 has no jurisdiction to prepare a scheme in which the area is covered by graveyard and also the area which belong to the agriculturists, who are living on the land and further praying that the proceedings before the Land Acquisition Collector be stayed and the possession of the petitioners not be disturbed during the pendency of the writ petition.*

Y. P. Gandhi, Advocate, *for the petitioners.*

H. S. Gujral, Advocate, *for respondent No. 2.*

H. S. Bhullar, Advocate, for Advocate General (Punjab), *for Respondents 1 and 3.*

JUDGMENT

Sharma, J.—The petitioners are landowners of village Tung Pain, which lies within the municipal limits of Amritsar. Their agricultural land and their houses standing upon that land, were brought under a scheme envisaged by section 24 read with section 28(2) of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act). In the petition as originally filed, it was alleged that provisions of section 36 of the Act had not been complied with. In other words, boundaries of the locality comprised in the scheme had not been indicated nor had the requisite notices under that section been published. On 18th October, 1973, this case came up for hearing before me and on an oral prayer made by the learned counsel for the petitioners, I allowed him to amend the petition by raising additional plea that notification under section 42 of the Act could not have been issued after a period of three years from the date when notification under section 36 of the Act had been issued.

(2) In the return to the original petition filed on behalf of the Trust, respondent No. 2, it was asserted that the scheme had been duly published under section 36 of the Act by inserting citations in the press and the official gazette. Notice in this behalf was published for three consecutive weeks in the official gazettes, dated 8th April, 1960, 15th April, 1960 and 22nd April, 1960. Since many of the petitioners were not shown as owners of the property coming under the scheme, notices could not be issued to them.

(3) In reply to the amended petition, additional grounds have been taken. It has been stated that all the petitioners except Jhanda Singh, petitioner No. 11, had filed petitions for getting references made to the Land Acquisition Tribunal for the enhancement of the compensation awarded to them. By so doing the petitioners had accepted the acquisition as good and binding and were now estopped from challenging the same in this petition. The other ground taken was that the respondent No. 2 had already paid about Rs. 41,282 to the Land Acquisition Collector for payment to those persons whose land had been acquired along with that of the petitioners. The impugned scheme had progressed sufficiently involving a lot of expenditure and labour. The work of construction and roads, drains and laying of water supply lines, had consumed over Rs. 2,00,000.

Similarly more than Rs. 4,00,000 had been spent on filling up the low-lying land. After this a number of builing plans had been sanctioned in the areas coming under the present scheme after the owners of such areas had paid development charges to the Trust. The sum and substance of these objections is that the notification under section 36 of the Act having been published on 3rd April, 1960 and respondent No. 2 having incurred a lot of expenditure in the execution of the scheme, the same should not be allowed to be challenged by this petition which was filed on 27th April, 1970. The other objection which Mr. Gujral, learned counsel, developed at the time of arguments, was that since I allowed the amendment of this petition on 18th October, 1973, these objections should not be deemed to have been raised on that date.

(4) Now it cannot be disputed that notification under section 42 of the Act was published in the official Gazette on 24th October, 1969, namely, after more than 9½ years of the publication of the notification under section 36 of the Act. In *Harbans Kaur and others* v. *Ludhiana Improvement Trust, Ludhiana and others* (1) a Full Bench of this Court has held that notification under section 42 of the Act corresponds to a notification under section 6 of the Land Acquisition Act and such a notification, if published, after a period of two years from the date of coming into force of the Land Acquisition (Amendment and Validation) Ordinance, 1967, would not be in accordance with law. I am bound to follow this judgment with respect. Consequently, it must be held that notification under section 42 of the Act published in this case on 24th October, 1969, is illegal and does not legally vest the property in respondent No. 2.

(5) Mr. Gujral, learned counsel for respondent No. 2, has, however, submitted that notification under section 42 of the Act, dated 30th September, 1969, published on 24th October, 1969, was allowed to proceed by the petitioners and the Trust in the meantime spent lakhs of rupees in furtherance of the execution of the scheme. The petitioners, by claiming enhanced compensation, had accepted the acquisition as good and were estopped from challenging the correctness and legality of this notification. It has also been submitted that the original petition had been filed after a lapse of seven months

(1) 1973 P.L.R. 511.

and this objection had been raised by amending the petition after four years and so the petitioners, being guilty of laches, should not be granted equitable relief under Article 226 of the Constitution of India. In support of his contention, Mr. Gujral has placed reliance on a Division Bench judgment of this Court in *Giani Karam Singh and others* v. *The Ludhiana Improvement Trust, Ludhiana and others* (2). In that case the scheme was challenged on the ground that the entire land belonging to those petitioners could not have been acquired and the scheme was arbitrary, discriminatory and unconstitutional. Suffice it to say that the question regarding the discriminatory nature of the scheme has to be decided on evidence. So the question involved in *Giani Karam Singh's case* was entirely different. In the instant case no evidence has to be recorded for coming to the conclusion whether the notification issued under section 42 of the Act was legal or not. Only two dates have to be seen. Furthermore, the jurisdiction of the State Government to issue a notification under section 42 of the Act after a period of two years from the date of the Land Acquisition (Amendment and Validation) Ordinance, involves a pure question of law upon which the legality of the notification depends. If this notification is illegal, then the property would not be deemed to have been acquired. During the pendency of this petition, dispossession of the petitioners from the property in dispute had been stayed. In these circumstances they could have filed civil suit and obtained a stay order as soon as an attempt at their dispossession was made. In my considered opinion the petition could not be dismissed on the ground of laches.

(6) The next point raised by Mr. Gujral is that the petitioners who have claimed enhanced compensation were estopped from challenging the notification under section 42 of the Act. In support of this contention reliance is placed upon a judgment rendered by R. N. Mittal, J., in *Kidara* v. *The State of Haryana etc.* (3) the learned Judge held that the petitioners who had accepted compensation in respect of the acquisition of land and had thereafter applied for enhancement of the compensation, were estopped from challenging the legality of the acquisition proceedings. This judgment is clearly distinguishable because in the instant case none of the petitioners has accepted or received any part of the compensation.

(2) C.W. No. 348 of 1965 decided on 26th November, 1965.

(3) C.W. 1393—73, dated 17th January, 1974.

The other case relied upon by Mr. Gujral, is *Mohammad Habilbullah Sahib and others* v. *Special Deputy Collector for Land Acquisition Madras and others* (4). A Division Bench of that Court has held that a petitioner who has made application for reference claiming increased compensation could not be permitted to challenge the acquisition of land itself. With great respect to the learned Judges who have decided that case, I may observe that the view taken by them does not appear to be sound. When the land of a person is acquired, he has got various remedies under the statute. Under certain circumstances he may be able to level a challenge against varying acts of acquisition. The other remedy available to him is that he may claim enhanced compensation by making a reference under section 18 of the Act. The question of estoppel arises only after a party has received some tangible benefit under a transaction. A party who does not accept or receive any part of the compensation, cannot be met with the plea of estoppel. When more than one remedies are available to a party, it is open to it to avail of them simultaneously. This is, of course, subject to some provisions of the special statute which may have the effect of preventing a party from availing of the two remedies at the same time. The view that I have taken finds indirect support from the perusal of section 18 of the Land Acquisition Act. Under that provision only that person who has not accepted the award, has a right to challenge the same in a reference under section 18 of the Act. The provisions relating to compulsory acquisition of property have to be strictly construed in favour of those whose property is acquired and if the law allows them more than one remedies, there appears to be no reason why any of such remedies should be denied to them. For similar consideration, I express with respect my disagreement with the view taken in *Tirathalal De* v. *The State of West Bengal and others* (5).

(7) For the reasons mentioned above, this petition deserves to succeed and I order accordingly. No costs.

K.S.K.

(4) A.I.R. 1967, Madras 118.

(5) 1961 (66) Calcutta Weekly Notes 115..