

**(2000) 08 KL CK 0056**

**High Court Of Kerala**

**Case No:** O.P. No"s. 17444, 17445, 17568 and 18321/98

Peedikkakumbi Joseph

APPELLANT

Vs

Special Tahsildar (L.A.) and  
Others

RESPONDENT

**Date of Decision:** Aug. 25, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 141
- Kerala Land Acquisition Act, 1961 - Section 33(2)
- Land Acquisition Act, 1894 - Section 11, 11(1), 12(2), 16(1), 17

**Hon'ble Judges:** A.V. Savant, C.J; R. Rajendra Babu, J; K.S. Radhakrishnan, J

**Bench:** Full Bench

**Advocate:** Philip Mathew, for the Appellant; Mohamed Youseff, A.A.G., for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

A.V. Savant, C.J.

Heard Mr. Philip Mathew, learned Counsel for the Petitioners and Mr. Mohamed Youseff, learned Additional Advocate General for the Respondents.

2. These petitions have been placed before us pursuant to the order of reference dated 1st August, 2000 passed by a Division Bench. The questions of law, which arise for our determination, are as under:

- Whether in the scheme of the provisions of Section 31 read with Section 18 of the Land Acquisition Act, 1894 (for short, the Act) is an application for reference maintainable u/s 18 of the Act, without the applicant proving that he had received the payment under protest as to sufficiency of the amount?
- What is the stage at which the protest contemplated by the first two provisos to Section 31(2) has to be lodged? Can such a protest be lodged subsequently, after

receiving the payment without protest?

(iii) If the acceptance of compensation under protest is the sine qua non as required by the second proviso to Section 31(2) to the making of an application u/s 18, can such a protest be made orally or whether it is necessary that such protest should always be in writing?

(iv) If there is neither a written protest nor even an oral protest (assuming that oral protest is permissible) made at the time of receiving payment, is the mere making of an application u/s 18 of the Act, by itself, sufficient to infer that the claimant must be deemed to have accepted the amount under protest so as not to disentitle him of the remedy u/s 18 of the Act? In other words, can an oral protest be inferred to have been made merely because, subsequently, an application for reference has been made u/s 18 of the Act?

3. These petitions were initially heard by a learned Single Judge. He referred them to a Division Bench. His order refers to the apparent conflict in the observations in two decisions of the Apex Court viz. (i) Ajit Singh and Others Vs. State of Punjab and Others, (for short, Ajit Singh's case) and (ii) Wardington Lyngdoh and others Vs. The Collector, Mawkyrwat, (for short, Wardington's case). The observations-made in Wardington's case have been reiterated in a later decision in Land Acquisition Officer Vs. Shivbai and others, (for short Shivabai's case).

4. When the petitions were heard by the Division Bench, both the learned Counsel invited the court's attention to two decisions of this Court and contended that, apparently conflicting views have been expressed therein. Similar questions are involved in a large number of cases pending in this Court under the Act. The apparent conflict is as under.

5. In Writ Appeal No. 599 of 1994 decided on 6th August, 1998 arising out of O.P. No. 1183/93 Special Tahsildar, Land Acquisition v. Kariyamparambil Raghavan (for short, "K. Raghavan's case"), a Division Bench of this Court referred to the decisions of the Apex Court in (i) Wardington's case (supra) and (ii) Shivabai's case (supra) and came to the conclusion that an oral protest was necessary before the claimant could make an application u/s 18 of the Act. A perusal of the said two decisions of the Apex Court would show that no person who had received the amount, otherwise than under protest, would be entitled to make an application u/s 18 of the Act. In other words, the receipt of the amount under protest is a condition precedent for making an application u/s 18.

6. The other view taken by another Division Bench of this Court is in Kannan v. Land Acquisition Officer 1999 (2) KLT 643 (for short, "Kannan's case"), where the Division Bench preferred to rely upon the earlier decision of the Apex Court in Ajit Singh's case (supra). It was held in Kannan's case that though the plea set up by the claimant that he had received the amount under oral protest was denied by the Respondent State, the mere fact that Respondent had denied the fact that claimant

had lodged any protest at the time of receiving payment, did not inspire confidence in the Court, having regard to the fact that the very next day the claimant had sent an application u/s 18 for referring the matter to the competent court for determination of just compensation. It was further held in Kannan's case that, "the fact that Appellant has sent Ext. P-1 on the very next day itself amply proves that he would not have received the amount on 20th May, 1996 without any protest". The Division Bench in Kannan's case decided on 24th June, 1999, preferred to rely upon the observations of the Apex Court in Ajit Singh's case (supra).

7. In view of the above, the Division Bench referred the matters to a Full Bench for resolving the conflicting views expressed by two Division Benches of this Court (i) in K. Raghavan's case and (ii) in Kannan's case. In order to answer the above questions, it is necessary to reproduce the provisions of Sections 18, 19, 20 and 31 of the Act.

8. Section 18 of the Act reads as under:

18. Reference to Court. 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 persons 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: Provided that every such application shall be made,-

(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 u/s 12, Sub-section(2), or within six months from the date of the Collector's award, whichever period shall first expire.

9. Section 19 of the Act reads as under:

19. Collector's statement to the Court.-(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 u/s 11;

(cc) the amount paid or deposited under Sub-section (3A) of Section 17; 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.

10. Section 20 of the Act reads as under:

20. Service of notice.-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.

11. Section 31 of the Act reads as under:

31. Payment of compensation or deposit of same in Court.-(1) On making an award u/s 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 u/s 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 u/s 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.

(3) Not with standing anything in this section, the Collector may, with the sanction of the appropriate Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such

land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing Sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

12. Question No. (i):

Whether in the scheme of the provisions of Section 31 read with Section 18 of the Land Acquisition Act, 1894, is an application for reference maintainable u/s 18 of the Act, without the applicant proving that he had accepted the compensation under protest as to sufficiency of the amount?

On a plain reading of the provisions of Section 31, it appears to us that the first proviso to Section 31(2) permits a person interested receiving the payment under protest as to sufficiency of the amount. It is abundantly clear from the second proviso to Section 31(2) that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18. The payment contemplated under both the provisos is the one of which Collector makes a tender u/s 31(1) viz, the payment merit of compensation awarded to the persons interested entitled thereto according to the award. This payment has to be made to such persons interested unless this is prevented by one or more of the contingencies mentioned in Section 31(2), in which event, the Collector, instead of making payment to the persons interested, is obliged to deposit the amount of compensation in the court, for which a reference u/s 18 would be submitted.

13. When we turn to Section 18 of the Act, Sub-section (1) makes it clear that any person interested who has not accepted the award meaning thereby who receives the payment under protest as to the sufficiency of the amount as stated in the first proviso to Section 31(2) may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court. Such a person may have objection to either (i) the measurement of the land; (ii) the amount of compensation; (iii) the persons to whom it is payable; or (iv) the apportionment of the compensation among the persons interested. Section 18(2) makes it clear that the application u/s 8(1) shall state the grounds on which the objection to the award is taken. Section 19 dealing with the Collector's statement to the Court enjoins the Collector to state for the information of the Court, in writing under his hand, several factors. Clause (d) of Sub-section (1) says that if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined be stated. Section 20 dealing with "service of notice" casts a duty on the Court to serve notices on several persons - (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. Reading the above provisions in Sections 31 and 18 together, there is no doubt in our mind that an application for reference u/s 18 would not be maintainable, unless it is proved that the applicant had received the payment under protest as to the sufficiency of the amount. The second proviso to Section 31(2) leaves no manner of doubt that this is a pre-requisite to the making of an application u/s 18. We may refer to a few decisions on the point.

14. Both the learned Counsel have agreed that in the scheme of the provisions of Section 31 read with Section 18 of the Act, two conditions must be satisfied, viz., (a) person interested should have accepted the compensation under protest and (b) such a person must make a written application to the Collector within the period stipulated u/s 18 of the Act. Since there was no controversy on this question before us, we will only refer to a few decisions on the point.

15. In Ashwani Kumar Dhingra Vs. State of Punjab, it has been held that the provisions of Section 18 of the Act make it clear that,

person interested, in order to enable him to seek the remedy of reference can do so only if does not accept the award. In order to show that the person concerned had not accepted the award the claimants accept the compensation only under protest because once the compensation awarded in pursuance of the award is accepted without protest the person concerned may lose his right to a reference for various matters mentioned in Section 18 of the Land Acquisition Act.

(emphasis hours)

The relevant observations are to be found in Para 10 at page 977 of the report,

16. In Ajit Singh's case (supra), the claimants accepted the amount awarded without protest, but later made an application for reference u/s 18 of the Act. On a reference, the Additional District Judge declined to grant the benefit of enhancement to those claimants who had received the amount of compensation without any protest. In para 5 of the judgment of the Apex Court, there is an observation as under: "Inasmuch as the Appellants have filed an application u/s 18 of the Act, that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court fell into patent error in denying the enhanced compensation to the Appellants". Consequently, the appeal was allowed and the Appellants who had not lodged any protest were also held entitled to enhanced compensation.

17. In Wardington's case (supra), the award was made on 17th May, 1989. The Appellants received the compensation on 5th July, 1989 under agreement Ext. B which was signed by them and the Collector. Thereafter, on 8th August 1989, they objected to the amount of compensation determined by the Collector and claimed

enhanced compensation by way of reference. On appeal by the State, the High Court reversed the decree of the reference court and held that since the claimants had agreed in Ext. B and received the compensation subject to the terms and conditions in Ext. B, they were not entitled to make an application for reference. In agreement Ext. B, they had stated: "...the total amount of compensation arrived at is fully acceptable to us". A contention was raised before the Apex Court that despite the agreement Ext. B under which the compensation was accepted, there was later on a protest and hence, the application for reference was maintainable. Construing the scheme of the provisions of Section 31 read with Section 18 of the Act in Para 4 of the judgment, the Apex Court held in Para 5 of the judgment as under:

...No person who had received the amount otherwise than under protest should be entitled to make the application u/s 18. In other words, the receipt of the amount under protest is a condition precedent to make an application u/s 18 within the limitation prescribed under the proviso to Sub-section (2) of Section 18 together with the grounds on which the objections have been taken. Thereon the Collector is enjoined to make a reference to the civil court with the statement in the manner stated in Section 19.

(emphasis ours)

The High Court had recorded a finding that claim of oral protest was belied by written agreement, Ext. B. The Apex Court upheld the view of the High Court and dismissed the Special Leave Petition.

18. In Shivabai's case (supra), there was a controversy as to whether the claimant had lodged any protest when they received the amount on 25th November, 1965. The Apex Court called for the Acquittance Register and came to the conclusion that the concerned officer had acted in collusion with the claimants and had made a reference without making any enquiry. On a perusal of Acquittance Register, the court came to the conclusion that when the award was made, the claimants were present and the amounts were received without protest on 25th November, 1965. In this view of the matter, it was held that if the amount was received without any protest, by operation of the second proviso to Section 31(2), a person who has received the amount without protest is not entitled to seek a reference u/s 18 of the Act. The court concluded the matter by observing in para 9 at page 713 as under:

It is now settled position in law that claimants who receive compensation under protest and who make application u/s 18(1), alone are entitled to seek a reference; third parties, who have been impleaded, have no right to claim higher compensation by circumventing the process of reference u/s 18. Under these circumstances, the reference itself is without any jurisdiction and barred by limitation. Thereby, the award of the reference court is clearly illegal. On appeal, the High Court has not considered all these perspectives and found it convenient to rely on another judgment to uphold the award of the civil Court.

(emphasis ours)

19. It is evident from the two cases mentioned above, (i) Wardington and (ii) Shivabai that, on a consideration of the scheme of the provisions of Section 31 read with Section 18 of the Act, the court came to the conclusion that no person who has received the amount otherwise than under protest would be entitled to make an application u/s 18. In other words, the receipt of the amount under protest is a condition precedent for making an application for reference u/s 18 within the limitation prescribed.

20. In view of the decisions in Wardington's case and (ii) Shivabai's case, it is now well settled position in law that, claimants who receive the compensation under protest and who make application u/s 18(1) of the Act within the prescribed limitation alone are entitled to seek a reference. It is not, as if, a claimant can receive the compensation without protest and subsequently make an application for reference u/s 18 and contend that making of application u/s 18 of the Act, itself, manifests his intention and, therefore, he must be deemed to have accepted the compensation under protest. To that extent, the observations made in para 5 of the judgment in Ajit Singh's case. " ...In as much as the Appellants have filed an application for reference u/s 18 of the Act, that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation" are not borne out by the view expressed by the Apex Court in the two subsequent decisions. In the admitted facts of Ajit Singh's case, the claimants had not made any protest when they received the amount of compensation. The ratio of the decisions in Wardington's and Shivabai's case would clearly show that persons who had not objected or protested at the time of receiving compensation are disentitled to make an application for reference u/s 18. In our view, such a construction is also borne out by the provisions of the Act.

21. The opening words of Section 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" make it clear that a person must not accept the award, meaning thereby that he must protest while accepting the compensation. Section 18(2) makes it clear that the application to the Collector must state the grounds on which the objection to the award is taken. Nature of the objections is indicated in Sub-section (1) itself. It may be to the (i) measurement of land; (ii) amount of compensation; (iii) persons to whom it is payable; and (iv) apportionment of the compensation among the persons interested. When we turn to Section 19 dealing with the Collector's statement to the Court, the Collector is enjoined to state for the information of the court, in writing, various particulars mentioned in clauses (a) to (d) of Section 19(1) of the Act. Clause (d) is relevant which requires the Collector to state if the objection be to the amount of compensation, the grounds on which the amount of compensation was determined. u/s 20 of the Act, dealing with service or notice, the Court is enjoined to

serve a show cause notice on several persons, such as (a) applicant; (b) all persons interested in the objection except such, (if any), of them as have consented without protest to receive the compensation awarded and (c) if the objection is in regard to the area of land or to the amount of compensation, the Collector.

22. When we come to Section 31, Sub-section (1) deals with the Collector tendering payment of compensation to the persons interested and entitled thereto according to the award and has to pay the amount to them. If, however, the Collector is prevented by one or more contingencies mentioned, in Section 31(2), then instead of paying the amount, he is obliged to deposit the amount in the Court to which a reference u/s 18 would be submitted. The contingencies mentioned in Section 31(2) are-(i) if the persons interested shall not consent to receive it; (ii) if there be no person competent to alienate the land; (iii) if there be any dispute as to the title to receive the compensation or as to the apportionment of it. The first proviso to Section 31 has obviously to be read with Sub-section (1) under which the payment is made to persons interested and entitled to compensation. They may receive the payment under protest as to the sufficiency of the amount. The words ~~♦~~protest as to the sufficiency of the amount~~♦~~ may take within their sweep several grounds on which a protest can be lodged regarding the amount not being sufficient. The grounds are already indicated in Section 18(1) discussed above. The second proviso to Section 31(2) is also to be read with Sub-section (1) dealing with the Collector making the payment to the persons interested and entitled. It makes it clear that no person who received the amount, otherwise than under protest shall be entitled to make an application u/s 18 of the Act. Construing the scheme of Sections 18 and 31 read together we have no doubt in our mind that, if a person receives the amount without protest u/s 31(1), he would not be entitled to make an application for reference u/s 18(1) of the Act.

23. We will briefly indicate the view taken by some of the High Courts on this point. In Lalithamma and Others Vs. Land Acquisition Officer and Special Deputy Collector, a Single Judge of this Court while construing the scheme of second proviso to Section 33(2) of the Kerala Land Acquisition Act, 1961, which corresponds to second proviso to Section 31(2) of the Central Act, came to the conclusion that the protest must precede the receipt of the amount or atleast must be simultaneous. It must not be in writing, but it must be shown that the amount was received under protest. The relevant observations are to be found in para 2 and 4 of the judgment at page 74.

24. In Rabari Mahadev Amra Vs. Prant Officer, Radhanpur, A.M. Ahmadi, J. as His Lordship then was construed the second proviso to Section 31(2) of the Act and held that the protest contemplated need not be in writing. The fact, however, remains that there has to be a protest. In Surendra Mohan Hans and Another Vs. State of U.P. and Another, a Division Bench of the Allahabad High Court held that if a person has accepted the compensation without protest, he would be deemed to

have waived his right to get higher compensation and his application for reference would not be maintainable in law. The relevant observations are to be found in para 8 of the judgement at page 154. In *Kamalakshy v. District Collector* 1981 (2) KLT 898, a Division Bench of this Court held that the claimants who receive the compensation under protest and who make an application u/s 18 of the Act alone are entitled to seek a reference. Mere receipt of the amount under protest is not sufficient to satisfy the requirement of Section 18. Separate application is required.

25. It is not necessary to multiply the authorities on the point. In view of the clear dictum laid down by the Apex Court, our answer to the first question is as under:

An application seeking a reference u/s 18 of the Act is not maintainable, unless the applicant proves that he had received the payment under protest. It would, therefore, follow that if the compensation was received without protest, application seeking a reference u/s 18 will not be maintainable.

26. Question No.

What is the stage at which the protest contemplated by the first two provisos to Section 31(2) has to be lodged? Can such a protest be lodged subsequently, after receiving the payment without protest?

The opening words of Section 18(1) of the Act are, "any person interested who has not accepted the award may, by written application to the Collector require that The first proviso to Section 31(2) reads, ♦provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount♦. The second proviso to Section 31(2) of the Act says, ♦provided also that no person who has received the amount otherwise than under protest shall be entitled to make any a u/s 18♦. Reading the above provisions together, it appears to us that, the protest must be lodged at the time of receiving the payment. If a person receives the payment without protest and then subsequently lodges the protest, it would not satisfy the requirement of the opening words of Section 18(1) or the scheme of the two provisos to Section 31(2). However, making a written application for referring the matter to the Court u/s 18(1) of the Act even before receipt of the compensation amount would be indicative of the fact that the applicant had protest with regard to the sufficiency of the amount. in that event, even though the amount was received without protest, the prior filing of the reference application would be sufficient to infer protest within the meaning of the second proviso to Section 31(2). Hence, in our view, lodging a protest even before the receipt of payment followed by the filing of the application for reference would undoubtedly be sufficient compliance with the mandate of Section 18 read with Section 31 of the Act. We will refer to a few decisions on this point.

27. In [Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah](#), the award was made prior to 9th July. 1958 on which date, the claimant was informed that he could withdraw the amount on August 18, 1958. On receipt of the notice, the

claimant made an application on July 18, 1938 praying that a reference be made to the Court. In the application the claimant stated, inter alia, that he would receive the amount awarded under protest on the date notified. On 12th August, 1958, the claimant made an application for withdrawal of the amount of compensation. On 18th August, 1958, he prayed for issuance of two bank drafts and duly executed two receipts. Neither in the applications dated 12th and 18th August, 1958 nor in the receipt dated 30th January, 1959, there was any mention of the protest under which the claimant was prepared to accept the compensation money. His application was rejected on 2nd January, 1962. It was held that the protest contemplated by the first proviso to Section 31(2) must be made, either in the application for receiving the disputed amount of compensation, if any such application was at all made, or it must be recorded in the receipt granted showing that the disputed amount of compensation was accepted under protest. Since, there was no properly recorded protest, in either of the two ways indicated above, it was held that application for reference was not a proper document where the protest could be recorded for the first time. Hence, the claimants plea was rejected.

28. In [S.M.A. Somasundaram Mudaliar Vs. District Collector Chittoor and Another](#), the award was made on 16th July, 1960. The claimant received the bill drawn on the treasury for the amount payable to him on the same day at 10-30a.m, He received it without protest. Later on at 3.30 p.m., he appeared before the Land Acquisition Officer and filed a petition disputing the amount of compensation awarded to him and requiring that the matter be referred for determination by the court. He did state in the application that he had received the bill under protest, but that was an incorrect statement. The Land Acquisition Officer rejected his application on the ground that he had received the bill for the amount without protest. Claimant had cashed the bill on 18th July, 1960. Analysing the scheme of the provisions, the Andhra Pradesh High Court held that a protest is contemplated at the time of receipt of payment. It would not fit in with the scheme of the Act that the payment could be received today by a bill drawn on the Government Treasury and the person could take his own time to draw the money from the Treasury and, in the process, have for himself the intervening period at his disposal to lodge his protest. The protest must necessarily be made to the Land Acquisition Officer who tenders payment. The relevant observations are to be found in para 7 of the judgment at page 127.

29. In [Lalithamma and Others Vs. Land Acquisition Officer and Special Deputy Collector](#), (para 23 supra) a Single Judge of this Court has taken the view that a protest must precede the receipt of payment or atleast must be simultaneous. It may not be in writing, but it must be proved that the amount was received under protest. Therefore, when cheques towards compensation are received by the claimant without a protest, his reference application is not valid though the application was prepared prior to the receipt or the cheques were not encashed at the time the reference application was received by the Land Acquisition Officer.

Though the decision was rendered under Section 33(2) of the Kerala Land Acquisition Act, 1961 (Act 21 of 1952), the provisions are parallel material with Section 31(2) of the Central Act. Notices were sent to the claimants on 28th June, 1971 requiring them to appear before the Land Acquisition Officer on 8th July, 1971 to receive the compensation. The claimants appeared in person or through their representative and received the compensation without protest. The applications alleged to have been prepared by them prior to 8th July, 1971 were sent by Registered Post on 9th July 1971 and were received by the Land Acquisition Officer on 10th July 1971. This Court held in para 4 of the judgment,

What is required is that the receipt of payment should be under protest. So it must be made to the Land Acquisition Officer either before receiving the amount or at least simultaneous with the receipt. There is no protest until and unless it is communicated to the Officer disbursing the payment. The preparation for a protest cannot amount to an act of protest. So even accepting the Petitioners case that the reference applications were prepared before the cheques were received, it does not help them.

30. In [The State of Punjab Vs. Smt. Harcharan Kaur](#), a Full Bench of the Punjab and Haryana High Court dealt with the situation where the Collector made the award on 14th March, 1956, payment was made to the claimant on 15th March, 1956 which was accepted without protest. On 24th April, 1956, the claimant made an application for reference u/s 18 of the Act. Question arose whether the application for reference was maintainable. It was held in para 10 of the judgment that if the person had accepted the payment without protest, the application for reference must be rejected without going into the merits thereof.

31. In [Fateh Singh Vs. Land Acquisition Collector and Others](#), it has been held that protest under second proviso to Section 31(2) of the Act must be made at the time when the Collector tenders the payment. Acceptance of cheque amounts to acceptance of payment, and if no protest was made at the time of such acceptance, no application will lie u/s 18 of the Act. It is immaterial that the cheque was encashed later. The cheque is looked upon as a payment. Reliance was placed on the decision of Chagla, C.J. in [Kirloskar Bros. Ltd. Vs. Commissioner of Income Tax, Bombay](#), to hold that cheque is looked upon as a payment. If a creditor accepts the cheque in place of country's currency, it was immaterial when the cheque was cashed; what is material is when the cheque was given, and the payment is made when the cheque was given and not when the cheque was encashed.

32. In Wardington's case (supra), the award was made on 17th May, 1989. The claimants received the compensation on 5th July, 1989 under agreement Ext. B signed by them and the Collector. Thereafter, on 8th August, 1989 they raised objection to the amount of compensation determined by the Collector and prayed for reference u/s 18, which was made. The civil court enhanced the compensation from Rs. 40 to Rs. 60 per square metre. On appeal by the State, the High Court

reversed the decree of the reference court on the ground that the claimants had, under Ext. B agreement agreed and received the compensation which was termed as "just and equitable and fully acceptable". A contention was raised before the Apex Court that the claimants had objected to the award after receiving; the compensation viz., on 8th August, 1989 before the Collector. It was held that if a person had received the amount without protest, he was not entitled to make an application u/s 18. If at the time of receiving the compensation, no protest was lodged, an application for reference will not be maintainable merely because a protest was lodged subsequently. The SLP was, therefore, dismissed.

33. Similarly in Shivabai's case (supra), decided by the Apex Court, the award was made on 22nd November, 1965 and the amount was received by some claimants, without protest, on 25th November, 1965. Some received the amount without protest on 27th November, 1965. An application was subsequently filed seeking a reference u/s 18 on the ground that the amount was received under protest. The application was rejected. In a writ petition, the High Court confirmed the rejection of the application for reference. One of the grounds for rejection of the application for reference was that the application was barred by limitation. It has been held by the Apex court that the claimant must show that he had received the compensation under protest. Then alone, he can apply u/s 18 seeking a reference.

34. We will now refer to the two conflicting decisions of this Court. In W.A. No. 599/94, K. Raghavan's case (para 5 supra), a Division Bench took the view that there has to be a protest at the time of receiving the compensation. If the compensation was received without any protest, the application for reference would not be maintainable. Since, it was held that there was no protest at the time of receiving the compensation by cheque, the application for reference was rejected. Reliance was placed on the two decisions of the Apex Court, viz. (i) Wardington's and (ii) Shivabai's. SLP (C) No. 20790/98 against the decision of this Court in K. Raghavan's case was summarily dismissed on 18th January, 1999.

35. In the light of the above catena of decisions, including the two decisions of the Apex Court and one of the Division Bench of this Court in K. Raghavan's case, with respect, the view taken in Kannan's case (para 6 supra) seems to be contrary to the settled legal position. In Kannan's case, the award was made on 15th April, 1996, and served on the claimant on 16th May, 1996. Possession of the property was handed over on 18th May, 1996 and compensation was received by the claimant on 20th May, 1996 without lodging any written protest. On 21st May, 1996, the claimant submitted application u/s 18. Though the claimant stated that he had received the amount on 20th May, 1996, under oral protest, this was denied by the Land Acquisition Officer. This Court held that, the fact that claimant had sent his application for reference on the very next day itself amply proved that he would not receive the amount on 20th May, 1996 without any protest. It was further held that filing of an application for reference on the very next day of receiving the

compensation, would itself manifest his intention and, therefore, protest against the award was implied notwithstanding the acceptance of the compensation. For the reasons indicated above, with respect, we find it difficult to agree with this observation made in para 2 of the judgment In Kannan's case.

36. In view of the above discussion, our answer to the second question is as under:

The protest contemplated by the first two provisos to Section 31(2) of the Act must be lodged at the time of receiving the payment. Undoubtedly, such a protest as to the sufficiency of the amount can be lodged prior to the receipt of the payment. If, however, a protest is lodged for the first time after receiving the payment, or for the first time in the application seeking reference u/s 18 of the Act, it would not be a valid protest as contemplated by the first two provisos to Section 31(2) of the Act.

37. Question No.(iii):

If the acceptance of compensation under protest is the sine qua non as required by the second proviso to Section 31(2) to the making of an application u/s 18, can such a protest be made orally or whether it is necessary that such protest should always be in writing?

The opening words of Section 18(1) "any person interested who has not accepted the award may, by written application to the Collector, require that do not indicate that the non-acceptance, protest, should be in writing or in any particular form. As far as the objection contemplated u/s 18(1), the written application to the Collector seeking a reference must indicate whether his objection be to the (i) measurement of the land; or (ii) amount of compensation; or (iii) persons to whom it is payable; or (iv) apportionment of the compensation amongst the persons interested. Section 18(2) makes it clear that the application shall state the grounds on which objection to the award is taken. u/s 19, dealing with the Collector's statement to the court, clause (d) of Sub-section (1) requires the Collector to state if the objection be to the amount of compensation, the grounds on which the amount of compensation was determined. u/s 20 dealing with service of notice, the Court has to serve notice, inter alia, on persons interested in the objection, except such of them as have consented without protest to receive payment of the compensation awarded.

38. When we turn to Section 31, in none of the two proviso to Section 31(2) where the word "protest" occurs, is there any reference to the mode of lodging a protest or the fact that the protest should be in writing. All that is stated in the first proviso is that "provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount". Similarly the second proviso reads thus:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18.

No rule or form prescribed either under the Central Act or the Kerala Land Acquisition Manual has been brought to our notice to contend that the protest must necessarily be in writing or in a particular form. In this background we will turn to the relevant decisions.

39. In Wardington's case, though it is emphasised by the Apex Court that "no person who had received the amount otherwise than under protest should be entitled to make the application u/s 18", it is nowhere indicated in the judgment that such a protest should be in writing or in a prescribed form. Similarly in Shivabai's case the claimants' plea that the compensation was accepted under protest was rejected. AU that has beeaa stated in para 9 of the judgment is that "It is now settled position in law that the claimants who receive compensation under protest and who make application u/s 18(1), alone are entitled to seek a reference". No decision of the Apex Court has been cited before us in support of the co itention advaicel by the learned Additional Advocate General Mr. Mohammed Youseff that a protest has to be in writing or in a particular form.

40. In Lalithamma's case (para 23 and 29 supra) this Court only held that a protest must precede receipt of payment or at least must be simultaneous. It may not be in writing but it must be proved that the amount WAS received under protest. In Rabari Mahadev Amra Vs. Prant Officer, Radhanpur, (para 24 supra), A.M. Ahmadi, J. (as his Lordship then was) ruled that there is nothing in the scheme of the provisions of the Act to suggest that the protest should be in writing. If, therefore, an oral protest at the time of receiving the compensation is pleaded and proved it would be sufficient to remove the bar created by the second proviso to Section 31(2). In Bakshi Ram Jain v. State of Haryana 1997 2 L.A.C.C. 590, a Division Bench of the Punjab and Haryana High Court took a similar view that no protest in writing is required while accepting the compensation and that oral protest is sufficient. To this limited extent, we are in agreement with the view expressed in Bakshi Ram Jain's case.

41. In K. Raghavan case, this Court held that the provisions of the Act did not explicitly state that the protest must be in writing. All that is requited is that there should be a protest at the time of receiving the compensation. It was further held that an oral protest was permissible in law. Recently, the Bombay High Court in Amol Ramhau Arjun v. State of Maharashtra C.R.A. No. 309 of 2000 decided on 29th March, 20C0, took a similar view. Relying upon the provisions of Sections 31 and 18 of the Act, it was held that, it was nowhere laid down that the piotest should be in writing.

42. In this view of the matter our answer to the third question is that protest contemplated by the provisos to Section 31(2) can be an oral protest and it is not neccstary that the protest should always be in writing.

43. Question No. (iv)

If there is neither a written protest nor even an oral protest (assuming that oral protest is permissible) made at the time of receiving payment, is the mere making of an application u/s 18 of the Act, by itself, sufficient to infer that the claimant must be deemed to have accepted the amount under protest so as not to disentitle him of the remedy u/s 18 of the Act. In other words, can an oral protest be inferred to have been made merely because, subsequently, an application for reference has been made u/s 18 of the Act.

As indicated earlier, u/s 31(1), on making an award u/s 11, the Collector has to Under payment of compensation to the persons entitled thereto unless he is prevented by one or more reasons mentioned in Section 31(2). In a case where the Collector is prevented from making the payment, for one or more reasons mentioned in Sub-section (2) he is obliged to deposit the amount in the Court to which a reference u/s 18 would be submitted. Section 18 makes it clear that 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. What Mr. Philip Mathew the learned Counsel appearing for the Petitioners, contends is that the mere making of an application seeking a reference u/s 18 is, by itself, sufficient to infer that the claimant must have made the protest at the time when he received the compensation. Counsel contends that even if there is no independent plea or evidence of such a protest made at the time of receiving the payment, (assuming that it can be oral as indicated above), the making of an application u/s 18 shows that the claimant is not satisfied with the amount of compensation awarded. It is only a person aggrieved due to one or more of the reasons indicated in Section 18(1), who makes an application to the Collector requiring him that the matter be referred for determination of the Cornt. It is, therefore, contended that the making of an application for refertnce, would itself, be indicative of the fact that the claimant had lodged the protest.

44. We must at the outset, indicate that Section 18(1) indicates four kinds of objections to be taken in the application fur reference. The objections can be to the (i) measurement of the land; (ii) amount of compensation; (iii) persons to whom it is payable, or (iv) apportionment of the compensation among the persons interested. Sub-section (2) makes it clear that the application shall state ihe grounds on which objection to the award is taken. As against this, under the first proviso to Section 31(2) of the Act, what is contemplated is that a person admitted to be interested may receive such payment under protest as to the sufficiency of the amount. The second proviso says that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18. The word "protest" has been defined in Black's Law Dictionary, Fifth Edition, at page 1101 as under:

Protest. A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses.his dissent or disapproval, or affirms the act against his will. The object of such a declaration is

generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to him unless he expressly negatived his assent.

\* \* \* \*

The formal statement, usually in writing, made by a person who is called upon by public authority to pay a sum of money, in which he declares that he does not concede the legality or justice of the claim or his duty to pay it, or that he disputes the amount demanded; the object being to save his right to recover or reclaim the amount, which right would be lost by his acquiescence. Thus, taxes may be paid under "protest".

The word "objection" has been defined at page 967 and 968 in the same Dictionary as under:

Objection. Act of objecting; that which is, or may be, presented in opposition; an adverse reason or argument; a reason for objecting or opposing; a feeling of disapproval.

The act of a party who objects to some matter or proceeding in the course of a trial, or an argument or reason urged by him in support of his contention that the matter or proceeding objected to is improper or illegal. Used to call the court's attention to improper evidence or procedure. Such objections in open court are important so that such will appear on the record for purposes of appeal. See Fed. Evid. R. 103 (a) (1); Fed. R. Civil P. 46, and Fed. R. Crim. P. 51. See also Object (v).

45. On a plain reading of the provisions of the Act, it is not possible for us to come to the conclusion that the making of an application for reference u/s 18 by itself, is sufficient to infer that when the claimant received the payment he must be deemed to have received it under protest within the meaning of the provisos to Section 31(2). We will refer to a few decisions on the point.

46. In Wardington's case the compensation was received under an agreement and thereafter the claimants objected to its sufficiency and therefore, sought a reference u/s 18(1). Making of an application u/s 18(1) is undoubtedly the basic requirement for seeking a reference by the Collector to the Court. In para 5 of the judgment, the Apex Court observed as under:

5. It will thus be clear that the persons interested in the land are entitled to receive compensation awarded by the Collector u/s 11 under protest and entitled to object to the compensation determined by the Collector. No person who had received the amount otherwise than under protest should be entitled to make the application u/s 18. In other words the receipt of the amount under protest is a condition precedent to make an application u/s 18 within the limitation prescribed under the proviso to Sub-section (2) of Section 18 together with the grounds on which the objections

have been taken. Therefore, the Collector is enjoined to make a reference to the civil court with the statement in the manner stated in Section 19.

(emphasis ours)

Similarly in Shivabai's case the payment was received on 25th November and 27th November, 1965 by different claimants without protest. Subsequently an application for reference was made. It has been held in para 9 that in seeking a reference two conditions need be satisfied; (i) claimant should have received the compensation under protest; and (ii) he must make an application u/s 18(1). These two decisions, therefore, make it clear that lodging of a protest at the time of receiving the payment and making of an application u/s 18(1) are two different and distinct events. The fact that an application seeking a reference u/s 18(1) is made does not, by itself, indicate that the claimant must have lodged the protest when he received the payment.

47. We will now refer to a few High Court decisions on the point. In Mrs. S. Thomas v. The Collector of Madras AIR 1958 Mad 186, the claimant had received the payment without protest. He thereafter filed an application for reference u/s 18. A contention was raised that the filing of an application for reference must be taken to mean that the claimant had not accepted the award and further that he had protested. The contention was rejected. It was held that the acceptance of an award u/s 18 and the consent referred to in Section 31(2) connote the same idea and is an inference to be drawn from the same facts.

48. In Bakshi Ram Jain v. State of Haryana 1997 (2) L.A.C.C. 590, (para 40 supra), the claimants contended that they had accepted the amount under oral protest as also a written protest. They had set out their claim u/s 9 of the Act for getting the market value of the land. If the amount awarded was less than what was claimed u/s 9 it was held that it would be reasonable to infer that they must not have accepted the amount without recording the protest. In any case, the filing of an application for reference u/s 18 of the Act manifested their intent to accept the award under protest. On the last aspect reliance has been placed on the decision of the Apex Court in Ajit Singh's case. It is necessary for us to deal with the difference in the approach of the Apex Court in Ajit Singh's case on the one hand and Wardington's case and Shivabai's case on the other.

49. In Ajit Singh's case (para 16 supra), the notification u/s 4 was issued on 4th October, 1978. The award was declared and the claimants accepted the compensation without protest, but made an application for reference. To such of those claimants who had accepted the compensation under protest, enhancement was granted. The others like the Appellants before the Apex Court, who had received the amount without protest, enhancement was denied. The Apex Court discussed the evidence regarding the comparable instances and observed thus in para 5:

5. Having regard to the contiguity of these lands the High Court is correct in its valuation. Besides, the date of notification, issued u/s 4 of the Act, is October 4, 1978 while Ext. R-6 is nearer to it namely, August 16, 1978, in comparison to Ext. A-6 dated January 14, 1977. Inasmuch as the Appellants have filed an application for reference u/s 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court therefore, fell into patent error in denying the enhanced compensation to the Appellants.

We have emphasised the observations on which Mr. Philip Mathew has placed reliance.

50. As against the above Mr. Mohammed Youseff, the learned Additional Advocate General invited our attention to the observations in para 5 of the judgment of the Apex Court in Wardington's case, which we reproduced in para 17 above. Reliance was also placed by him on the observations in para 9 of the judgment in Shivabai's case reproduced in para 18 above. Mr. Philip Mathew also placed reliance on the judgment of the Gujarat High Court in Machabhai Bakorbhai v. State of Gujarat 1998 (2) L.A.C.C. 157, where it has been held that when an application was made by the claimant requesting the Collector to refer the matter to the competent court, it was incumbent on the Collector to refer the matter in accordance with the provisions of Section 18 to a competent court. The claimant's case was that he never accepted the award. In this view of the matter, it is held that the application was maintainable u/s 18 as the acceptance of the amount offered by the Land Acquisition Officer would not preclude the claimant from raising a dispute and getting the matter referred to a competent court in accordance with law. These observations are made in paragraph 4 of the judgment at page 158.

51. It is true that relying upon the observations of the Apex Court in Ajit Singh's case, a Division Bench of this Court in Kannan's case has taken the view that though there was a word against word on the question as to whether oral protest was lodged at the time of receiving compensation, the fact that on the next day the claimant had made an application u/s 18 seeking a reference it self proved that he would not have received the amount without protest on the prior day. It was held that inasmuch as the claimant had filed the application for reference the very next day after receiving the compensation, it would manifest his intention. The Division Bench went further to the extent of observing that a "protest against the award of the Collector is implied notwithstanding the acceptance of compensation". Such an inference has been drawn on the basis of the fact that an application for reference u/s 18 was made on the next day. In the circumstances the Division Bench in Kannan's case relied upon Ajit Singh's case in preference to the decision in Wardington's case. Though Kannan's case was decided by this Court on 24th June, 1999, the attention of the court does not appear to have been invited to the decision of the Apex Court in Shivabai's case decided on 4th April 1997. Shivabai's case takes

the same view as was taken in Wardington's case decided on 17th April 1995, though there is no reference to either Wardington's case or Ajit Singh's case in Shivabai's case. In Shivabai's case, the Apex Court made it clear that it was well settled position in law that the claimants who receive compensation under protest and who make the application u/s 18(I) alone were entitled to seek a reference. In K. Raghavan's case, (writ Appeal No. 599 of 1994) (paras 5 and 34 supra) relying upon Wardington's case and Shivabai's case, this Court made it clear that though an oral protest was permissible, in the absence of any evidence to show that an oral protest was made at the time of receiving the compensation, the application for reference was liable to be rejected and was accordingly rejected.

52. With respect, we regret our inability to agree with the observations of the Division Bench in Kannan's case that if there was word against word on the question as to whether oral protest was made at the time of receiving the compensation, the mere fact that the claimant had subsequently made an application u/s 18 seeking a reference must necessarily lead to the inference that he must have accepted the amount under protest. There is no doubt that the making of an application u/s 18 is a must for seeking a reference by the Collector to the Court. But when the statute makes it clear in the second proviso to Section 31(2) that no person who has received the amount otherwise than under protest, shall be entitled to make any application u/s 18, it is difficult to see how the making of an application u/s 18 is itself an evidence of a prior event that the protest must have been made when the compensation was received. There are cases where compensation has been received without protest and subsequently protest was lodged. The courts have refused to entertain the applications. In Mrs. S. Thoma's case (para 47 supra) the Madras High Court refused to accept the contention that the making of an application u/s 18 must be taken to mean that the claimant had not accepted the amount without protest. Similarly in S.M.A. Somasundaram Mudaliar's case (para 28 supra) the claimant received the amount at 10.30 a.m. without protest and later on at 3.30 p.m. appeared before the Land Acquisition Officer and raised the objection as to the amount of compensation. His application u/s 18 was rejected on the ground that he did not object to the compensation when he received the same. The Andhra Pradesh High Court confirmed the rejection.

53. In Lalithamma's case (para 23 and 29) it was emphasised that what was required was that the receipt of payment should be under protest. The protest must be made to the Land Acquisition Officer either before receiving the amount or at least simultaneous with the receipt of the amount. There is no protest until and unless it is communicated to the officer disbursing the amount. In Smt. Harcharan Kaur's case (para 30) the Full Bench of Punjab and Haryana High Court held that any person who has accepted the award without protest was not entitled to make an application u/s 18. In Surendra Mohan Han's case (para 24) it was held that if there was nothing on record to indicate that the compensation awarded had been accepted under protest, application u/s 18 would be barred in view of the second

proviso to Section 31(2) of the Act. It was therefore, held that making a wrong note by the officer in the absence of any proof under which the compensation was received by the claimant would be of no consequence.

54. In view of the catena of decisions referred to above, it is not possible for us to agree with the broad proposition canvassed by the Petitioner's counsel that the mere making of an application for reference u/s 18 is enough to infer an oral protest. If we were to accept this plea, it would render the scheme of Sections 31 and 18 wholly nugatory. u/s 31(1) the Collector has to tender the payment of compensation to the persons entitled thereto unless prevented by one or more contingencies mentioned in Section 31(2) in which case the Collector has to deposit the amount of compensation in the court to which a reference u/s 18 would be submitted. The first proviso to Section 31(2) makes it clear that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount. The second proviso makes it further clear that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18.

55. The broad proposition canvassed by Mr. Philip Mathew is that independently of the question as to whether an oral protest was made at the time of receipt of the payment, which would be a question depending upon the facts of each case, the mere making of an application u/s 18 must lead to the necessary inference that the claimant must have received the payment under protest as to the sufficiency of the amount within the meaning of the first proviso to Section 31(2). Such a person would therefore, not be hit by the second proviso. One can well imagine the consequence of such an interpretation. Persons receiving the amount without protest, indeed in certain cases, accepting the amount willingly and signing an agreement to that effect, as was done in Wardington's case, would later on be entitled to make an application u/s 18. If it is held that merely because a person claims to be dissatisfied with the sufficiency of the amount in the sense that he has made an application u/s 18 claiming a reference, one cannot necessarily come to the conclusion that he had accepted the amount under protest. We are afraid, such a proposition would amount to rewriting the second proviso to Section 31(2). In our view this will be wholly impermissible in the scheme of Sections 31 and 18.

56. We are aware that, in many cases, illiterate agriculturists accept the amount of compensation. We have already held above in reply to question No. 3 that an oral protest is permissible and it is not necessary that the protest should be in writing. Evidence of oral protest can be led in variety of ways. Oral protest at the time of receiving the amount of compensation can be pleaded in a subsequent application and it can also be pleaded in the application for reference u/s 18. Affidavits can be filed to substantiate such a contention and even oral evidence can be led in support of such a contention. There may be intrinsic and contemporaneous evidence in the records of the Land Acquisition Officer himself which may support the case of the

claimant. We may, in this behalf, refer to the Kerala Land Acquisition Manual issued by the Government of Kerala in 1981. In Appendix III, which appears at page 235 of the said Manual, procedure for payment of compensation for land taken under the Kerala Land Acquisition Act, 1961 has been laid down. Para 1 of the procedure reads as under:

1. When an award is made u/s 11 or Section 16(1) of the Act, the Land Acquisition Officer shall have a statement prepared in the appended Form A showing the amounts payable to each person under the award, and shall on the day the award is made, forward a copy of the statement (in duplicate) signed by himself to the Accountant General, Kerala. Before signing the copy, the Officer should satisfy himself that it correctly shows the amounts due under the award, and should himself enter the total of column (7) of the statement in words both in the original and copies. A subsidiary statement in Form B (in duplicate) giving particulars regarding the acceptance by the persons concerned of the amounts entered in column (7) of the award statement should also be furnished to the Accountant General at soon as possible. If the subsidiary- statement is not complete on the day that award is made the necessary entries in column 8 of the Statement A will be made in the Accountant General's Office on the receipt of the Statement in Form B. (emphasis ours)

When we turn to Form B which is to be found at page 241 of the said Manual, it deals with the particulars regarding the acceptance by the persons concerned of amounts entered in Award Statement. Particulars of amount entered in column 8 of the award statement are split up into four sub columns; (a) amount accepted without protest; [b] amount accepted under protest; (c) amount deposited in court and (d) amount undisbursed owing to non-attendance and the treasury in which it is deposited. This column reads as under:

Particulars of amount entered in column 8 of the award statement

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(a)

(b)

(c)

(d)

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Amount deposited in court

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| |

Amount accepted without protest	Amount accepted under protest	Amount deposited	Court in which deposited	Reasons for nonattendance and the treasury in which it is	Amount undisbursed

57. Thus, on the facts of an individual case, it would depend on the actual evidence produced to come to the conclusion whether the amount was accepted under protest or without protest. Needless to say that such an exercise can be undertaken by the Court as was done by the Apex Court itself in *Shivabai*'s case (supra). The acquittance register was sent for and it transpired that the concerned officer himself had acted in collusion with the claimants and had made a reference at the behest of persons who could not make an application u/s 18(1) of the Act. The relevant observations are in para 9 of the judgment of the Apex Court in *Shivabai*'s case reproduced in para 18 above. It is not unknown, though fortunately in few cases, that officers of the State Government may act in collusion with the claimants and permit an application u/s 18 being made without complying with the mandate of the provisos to Section 31(2) as it happened in *Shivabai*'s case. Holding that the making of an application u/s 18 must itself lead to the inference that a claimant must have accepted the amount of compensation under protest and that the protest was lodged at the time when the amount was received will be, as stated earlier, rendering the scheme of Section 31 wholly nugatory and promote a lot of mischief. Parties who may agree to accept a particular rate of compensation may file a statement to that effect in the course of the acquisition proceedings. This may result in adequate evidence of comparable sale instances not being led by the State Government. The amount of compensation may be accepted without protest, indeed, under an agreement saying that the amount was just and equitable and was fully acceptable to the claimants as was the fact in *Wardington*'s case decided by the Apex Court. Later on an application u/s 18 would be made. In our view, in such a situation, no reference can be made by the Collector u/s 18(1) merely because an application is made to him in writing by a person interested saying that he had not accepted the amount. The pre requisite of such a written application u/s 18(1) is that the person interested has not accepted the amount. The fact of non-acceptance of the award namely, lodging of a protest, must undoubtedly precede the making of a written application u/s 18(1). To hold otherwise and to say that making of an application u/s 18(1) is, by itself, enough evidence to hold that protest must have been lodged at the time of receiving the payment is, in our view, wholly impermissible in the scheme of Sections 31 and 18. We are, therefore, unable to agree with the broad proposition stated by the Division Bench of this Court in *Kannan*'s case as indicated above.

58. It is true that the Division Bench in *Kannan*'s case has made a reference to *Ajit Singh*'s case in preference to *Wardington*'s case. A perusal of the decision in *Ajit Singh*'s case shows that in para 5 an observation has been made to the following effect:

5. \*\*\*Inasmuch as the Appellants have filed an application for reference u/s 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation.

With great respect, the above quoted observation can neither be construed as the ratio or even an obiter in that case. Mr. Philip Mathew, the learned Counsel for the Petitioners contended that since the decision in Ajit Singh's case is also a two Judge Bench decision, it should be preferred to the subsequent two decisions of equal strength, namely, Wardington's case and Shivabai's case each of which was decided by two learned Judges. Our attention was invited by Mr. Philip Mathew to a decision in [Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another](#), . The facts of that case are clearly distinguishable and hence its ratio can have no application to the question raised before us. Under Article 141 of the Constitution, it is the law declared by the Apex Court which would undoubtedly be binding on all courts within the territory of India. Article 141 reads as under:

141. Law declared by Supreme Court to be binding on all courts. The law declared by the Supreme Court shall be binding on all the courts within the territory of India.

Para 3 of the decision in Indian Oil Corporation's case would show that an earlier of Three Judge Bench decision of the Apex Court was rendered under the M.P. Municipal Corporation Act and was directly on the point involved between the parties. When the same parties agitated a similar contention before a Division Bench of the Madhya Pradesh High Court *Municipal Corporation v. Ratnaprabha*, the Division Bench took the view that the earlier Apex Court decision of the Three Judge Bench was not binding since that Three Judge Bench decision of the Apex Court was explained by the Apex Court in later decisions of equal strength of Judges in *Dewan Daulat Rat Kapoor's case* and *Balbir Singh's case*. This view of the Division Bench was disapproved and overruled by the Full Bench of the Madhya Pradesh High Court. The decision of the Full Bench was challenged before the Apex Court in the Indian Oil Corporation's case and the SLP was dismissed. Paras 3 and 8 of the judgment in Indian Oil Corporation's case make it clear that the contention of Mr. Philip Mathew is clearly misconceived. It is not possible to hold that the observation made in Ajit Singh's case which we have reproduced in para 58 above is its ratio or the law declared by the Apex Court within the meaning of Article 141 so as to be binding on this Court.

59. In this behalf, we may refer to a decision of a Full Bench of this Court, to which one of us K.S. Radhakrishnan, J. was a party. In *United India Insurance Co. Ltd. v. Alavi* 1998 (1) KLT 951 this Court dealt with the question of a precedent of the Apex Court binding on this Court by virtue of Article 141. A reference was made to the decision in [M.B. Sanghi, Adv. Vs. High Court of Punjab and Haryana and others](#), dealing with the expression "declared" as against the words "found" or "made". The Apex Court held that a decision which is not expressed and is not founded on reasons nor proceeds on consideration of issue cannot be deemed to be a law

declared to have a binding effect as is contemplated by Article 141 of the Constitution. Reference was then made to the decision in [State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another](#), where it was held:

Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law. \* \* \* \* Law declared is not that can be culled out, but that which is stated as law to be accepted and applied. A conclusion without reference to relevant provision of law is weaker than even casual observation.

(emphasis ours)

60. K. S. Radhakrishnan, J. speaking for the Court in Alavi's case then observed:

It is therefore well settled that what is the essence of a decision is its ratio and not every observation, nor what logically follows from various observations made in it.

Reference was made to the decision in Quinn v. Leathern (1901) A.C. 495 , where the observations of Lord Halsbury, L.C. appeared to the following effect:

...there are two observations of a general character which I wish to make and one is to repeat what I have every often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what is actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

(emphasis ours)

Reference was then made to the decision of the Apex Court in [M/s. Orient Paper and Industries Ltd. and another Vs. State of Orissa and others](#), and it was held that any conclusion without any reference to the relevant provisions of law is weaker than even casual observation. Such a casual observation cannot be treated as declaration of law much less as an authority which as a binding precedent.

61. We may now refer to a few High Court decisions on the question where an apparent conflict between an earlier and a later decision of the Apex Court by Benches consisting of equal number of Judges is pointed out. In our view, in such a situation the later decision must prevail over the earlier decision. Applying this principle we must follow the ratio of a decision in Wardington's case decided on 17th April, 1995 and Shivabai's case decided on 4th April, 1997 in preference to the

observation made in Ajit Singh's case decided on 18th March, 1994. The decisions of the High Court are as under:

- (i) In [Vasant Tatoba Hargude and Others Vs. Dikkaya Muttaya Pujari](#), a Division Bench of the Bombay High Court was dealing with a similar question under Article 141. It was held that in case of a clear conflict between two decisions of the Apex Court of equal number of Judges, the later decision would be binding on the High Court.
- (ii) In Govindati G. Kalaghatigi v. West Patent Press Co. Ltd. AIR 1980 Kar 92 a Full Bench of five learned Judges of the Karnataka High Court held that if two decisions of the Apex Court on a question of law cannot be reconciled and one of them was by a larger Bench while the other is by a smaller Bench, the decision of the larger Bench, whether it is earlier or later in point of time, should be followed by the High Courts and other courts. However, if both such Benches of the Apex Court consist of equal number of Judges, the later of the two decisions should be followed by the High Court and other courts. This opinion of the Full Bench is to be found in para 12 at page 95.
- (iii) In [Amar Singh Yadav and Another Vs. Shanti Devi and Others](#), a Full Bench of the Patna High Court held that where there is a direct conflict between two decisions of the Apex Court rendered by Benches of equal strength, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The said observations are to be found in para 24 of the judgment at page 201.

62. Applying the above principles we have no hesitation in coming to the conclusion that the observation in Ajit Singh's case decided by the Apex Court on 18th March, 1994 namely: "Inasmuch as the Appellants have filed an application for reference u/s 18 of the Act, that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation" cannot be taken to be the law declared by the Apex Court so as to be binding on us by virtue of Article 141. It appears to us to be an observation and not the ratio of the judgment. On the contrary, we feel that the conclusions recorded in para 5 of the decision in Wardington's case rendered on 17th April, 1995 on a consideration of the scheme of the provisions of Section 31 read with Section 18 of the Act are the ratio of the decision in the following terms:

5. It will thus be clear that the persons interested in the land are entitled to receive compensation awarded by the Collector u/s 11 under protest and entitled to object to the compensation determined by the Collector. No person who had received the amount otherwise than under protest should be entitled to make the application u/s 18. In other words, the receipt of the amount under protest is a condition precedent to make an application u/s 18 within the limitation prescribed under the proviso to Sub-section (2) of Section 18 together with the grounds on which the objections

have been taken. Thereon the Collector is enjoined to make a reference to the civil court with the statement in the manner stated in Section 19.

(emphasis ours)

Similarly the law laid down in para 9 of the judgment in Shivabai's case decided on 4th April, 1997 to the following effect is the ratio of the decision:

It is now-settled position in law that the claimants who receive compensation under protest and who make application u/s 18(1), alone are entitled to seek a reference; third parties, who have been impleaded, have no right to claim higher compensation by circumventing the process of reference u/s 18. Under these circumstances, the reference itself is without any jurisdiction and barred by limitation. Thereby, the award of the reference court is clearly illegal. On appeal, the High Court has not considered all these perspectives and found it convenient to rely on another judgment to uphold the award of the civil court.

(emphasis ours)

63. In this view of the matter it is not possible for us to agree with the broad proposition stated by the Division Bench in Kannan's case. The broad propositions are as under:

The fact that the Appellant has sent Ext. P-1 on the very next day itself amply proves that he would not have received the amount on 20th May 1996 without any protest. Inasmuch as the Appellant has filed the application for reference the very next day of receiving the compensation amount will manifest his intention...protest against the award of the Collector is implied notwithstanding the acceptance of compensation.

It is true that the learned Judges were dealing with the situation where there was a word against word on the question of oral protest. But, as indicated earlier, it is one thing to accept the evidence of the claimant on the question of oral protest and reject the contention of the Land Acquisition Officer. It is quite a different thing, to conclude that the making of an application for reference on the very next day, by itself, proves that the claimant must not have accepted the amount earlier without any protest. To that extent the decision in Kannan's case must be held to be limited to the facts of that case and not laying down any general proposition of law. Indeed it would be contrary to the ratio of the decisions of the Apex Court in Wardington's case and in Shivabai's case quoted in para 62 above.

64. In view of the above our answer to the fourth question is as under: If there is neither a written protest nor an oral protest at the time of receiving the compensation, the mere making of an application for reference u/s 18, by itself, would not be sufficient to infer that the claimant must be deemed to have accepted the amount under protest so as not to disentitle him of the remedy available u/s 18 of the Act. In other words, oral protest at the time of receiving the compensation

cannot be inferred to have been made merely because, subsequently, an application for reference has been made u/s 18.

65. In conclusion, our answers to the four questions, framed in para 2, are as under:

An application seeking a reference u/s 18 of the Land Acquisition Act is not maintainable, unless the applicant proves that he had received the payment under protest. It would, therefore, follow that if the compensation was received without protest, application seeking a reference u/s 18 will not be maintainable.

(ii) The protest contemplated by the first two provisos to Section 31(2) of the Act must be lodged at the time of receiving the payment. Undoubtedly, such a protest, as to the sufficiency of the amount, can be lodged prior to the receipt of the payment. An application for reference if pending, at the time of receipt of the amount, though not under protest, would be sufficient to infer that the applicant had received the amount under protest. If, however, a protest is lodged for the first time after receiving the payment, or for the first time in a subsequent application seeking reference u/s 18 of the Act, it would not be a valid protest as contemplated by the first two provisos to Section 31(2) of the Act

(iii) Protest contemplated by the provisos to Section 31(2) can be an oral protest and it is not necessary that the protest should always be in writing (para 42).

(iv) If there is neither a written protest nor an oral protest at the time of receiving the compensation, the mere making of an application for reference u/s 18, by itself, would not be sufficient to infer that the claimant must be deemed to have accepted the amount under protest so as not to disentitle him of the remedy available u/s 18 of the Act. In other words, oral protest at the time of receiving the compensation cannot be inferred to have been made merely because, subsequently, an application for reference has been made u/s 18

66. In view of the above, the four petitions would now be placed before a learned Single Judge for being disposed of in accordance with law. Needless to say that petitions involving any of the above four questions will also be placed before a learned Single Judge for being disposed of in accordance with law.