further brought to my notice that more than 50 per cent of the employees of the Board will retire this year and new incumbents have to be appointed and residential accommodation will be required for providing them shelter. Residential colony was establish to provide residential accommodation to the employees of the Board. The petitioners are putting all obstacles in the way of the Board for recovering possession. The Law Officer further submitted that for want of 'no demand certificate', gratuity could not be released. The petitioners want this Court to issue a writ of prohibition restraining the Board from effecting recoveries under the Act. The writ of prohibition can be issued to interdict an authority when it is proceeding contrary to law. The purpose is preventive. In the instant case, the authorities are proceeding under the Act and it cannot be urged that they are acting contrary to law. Interdiction is not required in the instant case. Moreover, issuance of high prerogative writs is discretionary. The conduct of the party can disentitle it from the relief. As stated above, some of the petitioners retired in 1980. Still they are illegally occupying the Government accommodation to which they are not entitled to. The authorities are justified in refusing to grant 'no demand certificate' and till the certificate is granted, they are not entitled to the release of gratuity.

(7) For the reasons aforesaid, except where the rights of the petitioners have been safeguarded, this petition is dismissed. However, I leave the parties to bear their own costs.

S.C.K.

Before N. C. Jain, J.

REWATI, SON OF RATTAN LAL, AND OTHERS,—*Appellants.*

versus

THE STATE OF HARYANA THROUGH THE LAND ACQUISITION COLLECTOR, FARIDABAD,—*Respondent.*

Regular First Appeal No. 1497 of 1982.

11th July, 1989.

Land Acquisition Act (Act 1 of 1989) Sections 18 and 25—Reference—Power of the Civil Court to determine compensation—Technical view should not be taken by Civil Court—Principles of law stated.

Held, that the following principles of law can well be formulated:—

(i) No request can be made to the Collector at the time of seeking reference under Section 18 of the Act for the grant of a particular amount of compensation and if such a request is made, the same will have to be treated as surplusage.

(ii) The Collector can only make reference under Section 18 of the Act for determination of compensation to the Civil Court. Even if he is agreeable, he cannot grant compensation asked for by a landowner.

(iii) It is only the civil court and civil court alone which has got the power to determine the compensation in reference under Section 18 of the Act. The landowner under the unamended provision of Section 25 of the Land Acquisition. Act could have been bound down to the grant of that much claim which he made in reply to notice under Section 9 of the Land Acquisition Act. Under the amended provisions of the Section 25 of the Act, the landowner cannot be bound down to any claim while giving reply to the notice under Section 9 of the Act.

(iv) On the analogy of the observations made by the Hon'ble Supreme Court in that *Bhag Singh's* case (Supra) no technical view should be taken by the civil court in the land acquisition matters.

(v) Wherever two views are possible, taking of technical view, as far as possible, should be avoided until and unless such a view is in direct conflict with the express provision of the statute. This principle applies with greater force in land acquisition cases where the land is acquired against the wishes of a landowner. (Para 5)

Regular First Appeal from the order of the Court of Shri Surinder Sarup, Additional District Judge, Faridabad dated 24th August, 1982 entitling the petitioners to compensation at the rate of Rs. 6 per sq. yard for the land in dispute and also ordering that in addition, they shall also have 15 per cent compulsory acquisition charges on the enhanced compensation as well as 6 per cent interest per annum from the date of taking possession till the date of payment alongwith the costs of the reference.

Claim:—*Reference Under Section 18 of the Land Acquisition Act.*

Claim in Appeal :—*For the enhancement of the compensation.*

M. L. Sarin, Sr. Advocate with Asish Handa, Advocate, *for the Appellants.*

S. C. Mohunta, A.G., with N. K. Kapoor, Advocate, *for the Respondent-State.*

ORDER

Naresh Chander Jain, J. (Oral)

(1) This judgment of mine shall dispose of two appeals, that is, R.F.A. Nos. 1497 and 1498 of 1982 as they arise out of a common Award of the Additional District Judge dated August 24, 1982. By the Awards under challenge, the market value of the acquired land has been determined at Rs. 12.50 per square yard. However, the appellant-claimants have been granted compensation at the rate of Rs. 6 per square yard only as according to the Additional District Judge they made this much claim in their applications under Section 18 of the Land Acquisition Act (for short 'the Act'). In other words, the Additional District Judge was of the view that although the market value of the acquired land was Rs. 12.50 per square yard as was determined in Exhibits A.1 and A.2—the two Awards given earlier, yet the appellants would not be granted the compensation at the aforesaid rate as they did not claim beyond Rs. 6 per square yard in their applications under Section 18 of the Act.

(2) After hearing the learned counsel for the parties, I am of the view that the finding of the Additional District Judge can neither be sustained in law nor on facts. A bare perusal of the application under section 18 of the Act would make it clear that the petitioners had stated therein that the Award has been made in which the appellants were persons interested in the land which has been acquired and that the appellant-claimants were aggrieved by the Award which they did not accept and requested the Collector to refer the case to the Civil Court under Section 18 of the Act for determination of the question of valuation and compensation on the grounds stated in the reference application. In Ground No. (a) it was stated that the land acquired had been greatly under valued and that its market value should have been held to be not less than Rs. 6 per square yard. At the end of the reference application, no prayer had been made to the effect that Rs. 6 per square yard may be granted to the claimants. In view of the averments made in the reference application, it cannot be said that any request was made that the claimants be granted compensation at the rate of Rs. 6 per square yard. The Additional District Judge was reading something more in the application which is not mentioned therein. This is one aspect of the matter.

(3) The second aspect of the matter is as to what is the correct scope of the provisions of Section 18 of the Act wherein a reference is sought from the Collector at the instance of an aggrieved person who does not accept the Award. Section 18 of the Act envisages the filing of an application for reference to the Civil Court whenever any person interested does not accept the Award. In the case of non-acceptance of the Award by a person interested, he by, a written application to the Collector, requires the matter to be referred by the Collector for the determination of the Court, whether his objections be to the measurement of the land, the amount of the compensation, or the apportionment of the compensation. Since the application is made to the Collector for seeking reference to the Civil Court, no prayer can be made for the grant of a particular amount of compensation to the Collector. Even if such a prayer is made and even if the Collector is agreeable to the grant of the request of the person interested, he cannot simply grant that amount of compensation to the claimant. He ceases to have jurisdiction in the matter after the pronouncement of the Award. Thereafter it is only the Civil Court and Civil Court alone which can determine the questions contemplated within the meaning and ambit of Section 18 of the Act. In other words, it can safely be held that if a particular aggrieved land-owner makes a prayer to the Collector to fix a higher amount of compensation in the application under Section 18 of the Act than the one which has been awarded to him in the Award of the Collector, such request will have to be treated in the eye of law as surplusage.

(4) In a nut shall this Court is of the view that no request is generally made to the Collector while seeking reference under Section 18 of the Act for the grant of compensation and if such a request is made, the same will not bind the claimant. This Court is further of the view that the question of determination of appropriate compensation lies within the domain of the Civil Court after a reference is made by the Collector. The claims are filed by persons interested in reply to the notice served under Section 9 of the Act. If at all, an interested person could have been legally bound down to his claim, the same could only be done if such a claim had been made in reply to the notice under Section 25 of the Land Acquisition Act 1894. This was the legal position on account of a specific provision having been made in Section 25 of the unamended Land Acquisition Act which is reproduced below :

> "Section 25. *Rules as to amount of compensation.*—(1) When the applicant has made a claim to compensation, pursuant

to any notice under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector."

Even the parliament thought it appropriate not to bind down such claimants who have demanded a particular amount of compensation in reply to notice under Section 9 of the Act, and it is for this reason that Section 25 of the Land Acquisition Act 1894 has been amended by Act 68 of 1984. Section 25 of the Amended Land Acquisition Act reads as follows :

"Section 25. *Amount of compensation by Court not to be lower than the amount awarded by the Collector.*

The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."

The amendment of Section 25 of the Act, as is apparent, is in consonance with the equitable view which the courts should take by not binding down the person to the limited relief which is claimed by him. To whatever relief a landowner is entitled to in law, the same should be allowed to him irrespective of the claim made by him. This is the intention of the Legislature which is manifest from the perusal of the unamended and amended provisions of Section 25 of the Act. In view thereof, there is no room left for upholding the technical view which has been taken by the Additional District Judge. Once the other land-owners similarly circumstanced have been held entitled to the grant of compensation at the rate of Rs. 12.50 per square yard and the case of the appellants is covered by the earlier Awards, it would be quite unjust to deny the same amount of compensation to the appellants whose lands have been acquired under the same notification. In other words the grant of compensation at the rate of Rs. 6 per square yard to the appellants

when they are entitled to compensation at the rate of Rs. 12.50 per square yard, it would be taking a technical view of the matter. The Apex Court in *Bhag Singh and others* v. *Union Territory of Chandigarh* (1), refused to take a technical view of the matter while dealing with the question whether time should be granted for making up the deficiency in court-fee to those persons who did not affix proper court-fee at the initial stage. The following observations made by their Lordships of the Supreme Court can be read with advantage:—

> "We are of the view that when the learned single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an apportunity of paying up the deficit court-fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court-fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been

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

denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1984, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrivably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned Single Judge should have allowed the appellants to pay up the deficit court-fee and awarded to them compensation at the higher rate or rates determined by them."

(5) In view of the discussion made above, the following principles of law can well be formulated:

(i) No request can be made to the Collector at the time of seeking reference under Section 18 of the Act for the grant of a particular amount of compensation and if such a request is made, the same will have to be treated as surplusage.

(ii) The Collector can only make reference under Section 18 of the Act for determination of compensation to the Civil Court. Even if he is agreeable, he cannot grant compensation asked for by a landowner.

(iii) It is only the civil court and civil court alone which has got the power to determine the compensation in reference under Section 18 of the Act. The landowner under the unamended provisions of Section 25 of the Land Acquisition Act could have been bound down to the grant of that much claim which he made in reply to notice under Section 9 of the Land Acquisition Act. Under the amended provisions of the Section 25 of the Act, the landowner cannot be bound down to any claim while giving reply to the notice under Section 9 of the Act.

(iv) On the analogy of the observations made by the Hon'ble Supreme Court in that *Bhag Singh's case* (supra) no technical view should be taken by the civil court in the land acquisition matters.

(v) Wherever two views are possible, taking of technical view, as far as possible, should be avoided until and unless such a view is in direct conflict with the express provision of the statute. This principle applies with greater force in land acquisition cases where the land is acquired against the wishes of a landowner.

(6) In the light of the observations made above, both the appeals filed by the appellants are allowed with costs and they are held entitled to the grant of compensation at the rate of Rs. 12.50 per square yards. They are also held entitled to the grant of the statutory benefits of the amended provisions of Sections 23(1-A) 23(2) and 28 of the Act on the entire amount.

P.C.G.

Before : J. V. Gupta, J.

ROSHAN LAL MINOR SON OF RAM DIA,—*Objector—Petitioner.*

versus

KISHAN LAL AND ANOTHER,—*Respondent—JD.*
Civil Revision No. 1926 *of* 1988.

8th August, 1989.

Criminal Procedure Code (II of 1974) S. 421—Attachment of immovable property—Powers of Judicial Magistrate stated.