
(2012) 06 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 70312 and 72468 of 2011

Allahabad Development Authority Allahabad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 18(1), 26, 28(A)
Transfer of Property Act, 1882 — Section 53A, 54, 55, 95(i)(c)

Citation : (2012) 6 ADJ 444 : (2013) 1 AWC 750

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Ashwani K. Misra, S.M. Iqbal Hasan, B.D. Mandhyan and Satish Mandhyan, for the Appellant; Brijesh Qjha, for the Respondent

Judgement

Ashok Bhushan, J.—These two writ petitions have been heard together and are being decided by this common judgment. In writ petition No. 70312 of 2011 pleadings have been completed between the parties which writ petition is being treated as leading writ petition. It shall be sufficient to refer the pleadings in writ petition No. 70312 of 2011 for deciding both the writ petitions. Brief facts giving rise to the writ petition are; a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act") dated 21.1.1990 was issued for acquisition of 523 Bighas, 9 Biswas and 4 biswansis land of village Sana alias Pipal Gaon, Jhalva, Harwara and Devghat of Pargana Chail, District Allahabad for the establishment of residential colony by Allahabad Development Authority. A writ petition No. 17406 of 1994 Rehman Siddiqui v. State of U.P. and others was filed by the respondent No. 3 praying for direction to the respondents to make an award and pay 20% compensation. Writ petition was disposed of by order dated 1.5.2000, directing the respondents to prepare the award. In pursuance of the order of this Court award was declared on 5.2.2001 with regard to land of village Saha alias Pipal Gaon and Devghat. One tenure holder namely; Jagpat, whose land was acquired by the same notification made an application for reference under. Section 18 of the Act on the basis of which reference No. 10 of 2001 was

registered in the Court of District Judge, Allahabad. The reference was decided by the Additional District Judge vide judgment and order dated 31.5.2002, enhancing the rate of compensation from Rs. 80,000 per Bigha to Rs. 3,25,000/- per Bigha. The respondent No. 3 submitted an application u/s 28A of the Act on 29.8.2002 before the Special Land Acquisition Officer for re-detraining the compensation u/s 28A on the basis of order of the Court dated 31.5.2002, passed in reference No. 10 of 2001 with regard to plots as mentioned in the application. The respondent No. 3 appeared before the Special Land Acquisition Officer, who had issued notice to tenure holders whose names were recorded in the revenue record for receiving the compensation. The respondent No. 3 claimed before the Special Land Acquisition Officer that tenure holders whose names were recorded in the revenue record had executed agreement of sale in his favour and had given possession to the respondent No. 3. The respondent No. 3 also claimed that tenure holders have executed registered power of attorney in favour of respondent No. 3 hence, he be paid the compensation with regard to the aforesaid plots as claimed by him. Special Land Acquisition Officer did not make the payment of compensation to respondent No. 3 and insisted that compensation be received by those persons whose names were recorded in the revenue record. The respondent No. 3 on the allegation that Special Land Acquisition Officer on 20.7.2002 refused to make payment of compensation amount, filed an original suit in the Court of Civil Judge (Senior Division), Allahabad being original suit No. 375 of 2002 arraying the Special Land Acquisition Officer as defendant No. 1, State of U.P. through Collector as defendant No. 2 and original tenure holders as defendant Nos. 3 to 57 praying for mandatory injunction to the effect that he be declared as interested person in the land acquired and be directed to be paid the compensation. The suit was decreed by the Additional Civil Judge (Senior Division) vide judgment and order dated 3.1.2005. The respondent No. 3 filed writ petition No. 52921 of 2004 praying for payment of compensation which was disposed of on 28.4.2005 directing for deciding the representation of respondent No. 3, Another writ petition No. 65880 of 2005 was filed by the respondent No. 3 which was disposed of by this Court on 19.2.2005, directing the Vice Chairman of Allahabad Development Authority to decide his claim. The claim of respondent No. 3 with regard to certain plots was rejected on 28.7.2009 by the Special land Acquisition Officer on the ground that certain plots were already declared surplus. The order dated 28.7.2009 was set aside in a writ petition filed by respondent No. 3 being writ petition No. 61544 of 2009 vide judgment and order dated 11.2.2010. The case of the respondent No. 3 is that he was paid compensation of the land which was acquired.

2. The respondent No. 3 filed a writ petition in this Court being writ petition No. 11655 of 2010 praying a direction to the respondents to decide the application filed by the respondent No. 3 u/s 28A and to re-determine the compensation equal to the amount which was enhanced and paid to Jagpat by order dated 31.5.2002 passed in reference No. 10 of 2001. Against the order of Additional

District and Sessions Judge dated 31.5.2002, deciding the reference No. 10 of 2001 filed by Jagpat, Allahabad Development Authority had filed an appeal being First Appeal (Defective) No. 207 of 2002. The appeal was filed without copy of the decree hence, it was reported to be defective. There was delay of one day in filing the appeal. In the appeal, copy of the decree is claimed to have been submitted by the Allahabad Development Authority after 9.9.2011. This Court disposed of writ petition No. 11655 of 2010, Rehman Siddiqui v. State of U.P. and others vide its judgment and order dated 6.4.2011. The writ petition was disposed of with the direction that application filed by the respondent No. 3 u/s 28A be decided expeditiously, if possible within three months. After order of this Court dated 6.4.2011, District Magistrate wrote a letter on 5.9.2011 to the Allahabad Development Authority to submit its report by the next day i.e. 6.9.2011. Allahabad Development Authority vide letter dated 6.9.2011 informed the District Magistrate that since this Court had directed on 6.4.2011 to decide the application u/s 28A, the said application be disposed of accordingly. The Special Land Acquisition Officer vide order dated 9.9.2011 allowed the application filed by the respondent No. 3 u/s 28A redetermining the compensation at the rate of 3,25,000/- per Bigha as per judgment and order dated 31.5.2002 in reference No. 10 of 2001. The District Magistrate on 18.10.2011 wrote to the Allahabad Development Authority to make the payment, in reply to which a letter dated 22.10.2011 was written by the Vice Chairman, Allahabad Development Authority informing that since Allahabad Development Authority was not a party in writ petition No. 11655 of 2010, the Counsel had advised it to file a review application. The District Magistrate on 28.11.2011 wrote to the Allahabad Development Authority to produce the order of the High Court staying the payment till 5.1.2011, otherwise in compliance of the order of the High Court dated 6.4.2011, the payment would be made to the respondent No. 3 from the amount deposited by the Allahabad Development Authority in other schemes. Writ petition No. 70312 of 2011 has been filed by the Allahabad Development Authority in this Court on 2.12.2011 praying for following reliefs:

- (i) to issue a writ, order or direction in the nature of certiorari quashing the order of the District Collector dated 28.11.2011 and order of the Special Land Acquisition Officer dated 8/ 9.9.2011 (Annexure-9 and 10 to the writ petition).
- (ii) To issue any other writ, order or direction which this Hon"ble Court may deem fit and proper, under the circumstances of the instant case so that justice be done.

This Court while entertaining the writ petition on 7.12.2011 directed that till the next date no amount shall be disbursed by the Collector in pursuance of the letter dated 28.11.2011.

3. Writ petition No. 72468 of 2011 was filed by the respondent No. 3 Rehman Siddiqui v. State of U.P. and others, seeking mandamus commanding the State of U.P. and Special Land Acquisition Officer to pay the entire amount of compensation in pursuance of the decision dated 9.9.2011 of the Special Land

Acquisition Officer alongwith interest.

4. We have heard Sri Ashwani Kumar Misra, learned counsel appearing for the Allahabad Development Authority in the leading writ petition and Sri B.D. Mandhyan, learned Senior Advocate and Sri S.M. Iqbal Hasan for the respondent No. 3.

5. Sri Ashwani Kumar Misra, learned Counsel for the petitioner submitted that the respondent No. 3 having not been conveyed any right or interest in the agricultural land, is not "person interested" and was not entitled to file application u/s 28A for redetermination of compensation. It is contended that the claim of the respondent No. 3 which is based on agreement to sale/power of attorney could not have been entertained in proceedings u/s 28A of the Act and the application u/s 28A being not maintainable was liable to be rejected. It is further contended that the basis of the application u/s 28A filed by the respondent No. 3 was order dated 31.5.2002 passed in reference No. 10 of 2001 filed by one Jagpat. It is submitted that against the judgment dated 31.5.2002, a First appeal was filed by the Allahabad Development Authority in this Court being First Appeal (Defective) No. 207 of 2002. The application for re-determination u/s 28A filed by the respondent No. 3 was required to be kept pending till the first appeal is not finally decided. He submits that during the pendency of the appeal, application u/s 28A could not have been decided. He further submits that in earlier writ petition No. 11655 of 2010 filed by respondent No. 3 decided on 6.4.2011, Allahabad Development Authority was not a party hence, the said order has no effect on the rights of the Allahabad Development Authority and the said judgment is not binding on the Allahabad Development Authority. It is further submitted that decree of the Civil Court dated 3.1.2005 is a nullity due to the reasons; firstly the Allahabad Development Authority which is acquiring body was not impleaded as one of the defendants and secondly any claim regarding entitlement of compensation was to be raised and decided in proceedings under the Land Acquisition Act and a suit in a Civil Court with regard to any claim under the land acquisition proceedings is barred and not maintainable. Lastly, it is contended that the Collector before passing the order dated 9.9.2011 has not given reasonable opportunity to contest the matter since the Collector vide letter dated 5.9.2011 gave only one day's time to submit objection i.e. by 6.9.2011. The time to file objection was so short that the petitioner could not raise any effective objection hence, the opportunity was wholly inadequate and insufficient violating the principles of natural justice.

6. Sri B.D. Mandhyan, learned Senior Advocate and Sri S.M. Iqbal Hasan appearing for the respondent No. 3 refuting the submissions of the learned counsel for the petitioner contended that respondent No. 3 was fully entitled for redetermination of compensation u/s 28A and the application u/s 28A was filed within the time. It is submitted that the decree of Civil Court dated 3.1.2005 was never challenged by the Allahabad Development Authority on any ground. It is submitted that civil suit was fully maintainable and the Allahabad Development

Authority was not a necessary party in the suit since at best the acquiring body is the proper party in the proceedings for determination of compensation and it was not a necessary party in civil suit No. 375 of 2002. It is further submitted that against the order of the reference Court dated 31.5.2002, there was no appeal pending since only a defective appeal was filed in this Court in the year 2002 and filing of defective appeal is not akin to filing of an appeal against the judgment and order dated 31.5.2002. There was no impediment in deciding the application u/s 28A. It is further submitted that this Court having already directed for deciding the application u/s 28A in writ petition No. 11655 of 2010 vide order dated 6.4.2011, the application u/s 28A has rightly been decided by order dated 9.9.2011 and it is not open to the petitioner to contend that application was not maintainable in view of the judgment dated 6.4.2011. It is further submitted that judgment of this Court dated 6.4.2011 in writ petition No. 11655 of 2010 shall operate as res judicata against the petitioner. It is further submitted that Allahabad Development Authority was well aware of the proceedings before the Collector and in response to the notice dated 5.9.2011 issued by the Collector, a reply was given by the Vice Chairman, Allahabad Development Authority on 6.9.2011 in which no objection was raised with regard to application u/s 28A hence, it is not open for the Allahabad Development Authority to raise objection against the application u/s 28A of the respondent No. 3.

7. From the submissions of learned counsel for the parties and materials on record following are the issues which arise for adjudication in this writ petition.

1. Whether the respondent No. 3 was "person interested" within the meaning of Section 28A of the Land Acquisition Act, 1894 to file an application for redetermination of the compensation in the facts of the present case?

2. Whether the judgment dated 6.4.2010 of this Court in writ petition No. 11655 of 2010, Rehman Siddiqui v. State of U.P. shall operate as res judicata against the petitioner and the petitioner cannot be allowed to raise any objections against the application dated 29.8.2002 filed by respondent No. 3.

3. Whether in view of filing of First Appeal by the Allahabad Development Authority against the judgment and order dated 31.5.2002 passed u/s 18 of the Act being First Appeal (Defective) No. 207 of 2002, the Collector was obliged to await the decision of the appeal and not to proceed to decide the application u/s 28A of the Act till the appeal remains pending?

4. Whether decree of Civil Court in Civil Suit No. 375 of 2002 dated 3.1.2005 is a nullity on the ground as urged by the petitioner?

5. To what relief, the petitioner i.e. Allahabad Development Authority or the respondent No. 3 is entitled in these two writ petitions ?

8. The first submission, which has been pressed by the learned counsel for the petitioner, is that the respondent No. 3 was not a "person interested" to file an application u/s 28A of the Act, for redetermination of the compensation. It is

submitted" that the respondent No. 3 claimed entitlement only on the basis of agreement to sale/power of attorney which clearly means that he did not have title to the land, hence the application filed u/s 28A of the Act by the respondent No. 3 was not maintainable. From the pleadings on record, it is clear that the petitioner claims right to receive the compensation on the basis of agreement to sale/ Power of Attorney by the recorded tenure holders and on that basis the application u/s 28a of the Act was filed by the respondent No. 29/8/ 2002.

The words "person interested" has been defined in Section 3(b) of the Act, 1894 which is to the following effect:

3. Definitions.--In this Act, unless there is something repugnant in the subject or context,-

(a)...

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

9. The definition of the expression "person interested" is an inclusive definition and not an exhaustive definition. The key words in the definition are "all persons claiming an interest in compensation". The respondent No. 3 is a person who claimed interest in compensation.

10. The definition of words "person interested" came up for consideration before the Apex Court in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., . The Apex Court laid down that the words "person interested" must be liberally construed. In the said case the Apex Court was considering the question as to whether a body for whom the land is being acquired is a person interested. The Apex Court held that the company for whose benefit the land is being acquired is a person interested. Following was laid down in paragraphs 8, 11 and 13 :

8. So far as this aspect of matter is concerned, there appears to be a general consensus of judicial opinion that even though the company may not have any title to the property yet it certainly has a right to appear and put forward its case in the matter of determination of the quantum of compensation. In the case of Sunder Lal v. Paramsukh Das (1) this Court observed as follows :

It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramsukhdas is a "person interested" within Section 3(b) of the Act because he claims an interest in compensation.

...

It seems to us that Paramsukhdas was clearly a person interested in the objections which were pending before the Court in the references made to it and that he was also a person whose interest would be affected by the objections, within Sec. 21. He was accordingly entitled to be made a party.

11. In the case of *M. Kuppuswami v. The Special Tahsildar (L.A.) II Industrial Estate, Anzabathur at Saidapet, Madras Venkatadri, J.* interpreting the definition of "interested person" observed as follows :

The only question for consideration therefore is whether the petitioner is a person interested, as defined in Section 3(b) of the Land Acquisition Act. The definition Section says that the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. The expression "person interested" is Every comprehensive and it does not profess to give an exhaustive definition. The expression "person interested" has been interpreted by various Courts, and the trend of the opinion seems to be that I should give a liberal interpretation...

On a review of the case-law on the subject, it seems to me that the expression "person interested" does not require that a person must really have an interest in the land sought to be acquired. It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims a interest in the compensation, he is a person interested within the meaning of the definition of that expression.

13. Thus, the preponderance of judicial opinion seems to favour the view that the definition of "person interested" must be liberally construed so as to" include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital ? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly if such a person is not heard by the Collector or a Court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a Court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person or whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid there for because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in

throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.

11. A Full Bench of the Madras High Court in *Engineering Investments P. Ltd. Vs. Bharath Heavy Electricals Ltd., Madras and Another*, had occasion to consider the definition of words "person interested". The Full Bench of the Madras High Court was considering the case of purchaser of property after notification u/s 4 was published. The Full Bench held that even a purchaser of a property after Section 4 notification shall be the person interested within the meaning of Section 3(b) of the Act. Following was laid down in paragraph 15;

15. It is not necessary to refer to a large number of decisions on the point of different High Courts as some land mark judgments of this Court and the judgment of the Supreme Court in *Engineering Investments P. Ltd. Vs. Bharath Heavy Electricals Ltd., Madras and Another*, have almost settled the dispute in this regard. In *M. Kuppuswami v. The Special Tahsildar (LA)*, 1967 1 MLJ 329, a judgment of this Court which learned Judges making the instant reference have also noticed, has proceeded upon the definition in Section 3(b) of the Land Acquisition Act. It is observed in the said judgment:

The only question for consideration, therefore, is whether the petitioner is a person interested, as defined in SECTION 3(b) of the Land Acquisition Act.

The definition Section says that the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. The expression "person interested" is very comprehensive and it does not profess to give an exhaustive definition. The expression "person interested" has been interpreted by various Courts, and the trend of the opinion seems to be that I should give a liberal interpretation.

On a review of the case-law on the subject, it seems to me that the expression "person interested" does not require that a person must really have an interest in the land sought to be acquired. It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims an interest in the compensation, he is a person interested within the meaning of the definition of the expression.

12. A Full Bench of the Allahabad High Court had occasion to consider the expression "person interested" in *Bahori Lal Vs. Land Acquisition Officer and Others*, . In the aforesaid case, a person whose name was not recorded filed an objection u/s 5A of the Act. It was submitted before the Full Bench that since the names were not recorded, they are not persons interested. The argument was repelled and following was laid down in paragraph 10:

10...It has, however, been submitted that since the names of the petitioner did not stand recorded as tenants of the plots in question in the revenue records, the omission of plot numbers etc. was immaterial. This plea is untenable and without merit in view of the definition of the expression "person interested" and the right

of objection given by Section 5A of the Act to "person interested....

13. Similar view was taken by the Allahabad High Court in Vishnu Pratap Singh Vs. State of U.P. and Others, , in which case the right was claimed on the basis of agreement by which right of realisation of compensation was sold. The question arose as to whether the dispute could have been referred to u/s 30 of the Act. Although the Division Bench of this Court took the view that it was not obligatory to the Collector to make reference, but it was not held that the said person is not a person interested.

14. In Katari Satyanarayana and others Vs. The District Collector, Krishna at Machilipatnam, , it was held that even a tenant is a person interested within the meaning of Section 3(b) of the Act. Much reliance has been placed by learned counsel for the respondent No. 3 on the judgment of the Gauhati High Court in Gandhamoyee Devi Vs. Collector of Kamrup, Gauhati, . The Division Bench of the Gauhati High Court in the said case held that even during the course of compensation proceedings or before conclusion of trial in Civil Court, person interested relinquish his right in favour of another person, the another person shall acquire the status of the person interested.

15. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of Suraj Lamp and Industries Put. Ltd. v. State of Haryana and others, JT 2011 (12) SC 564. The Apex Court in the said case had laid down that transfer of immoveable property can only be made by deed of conveyance (sale deed) and agreement of sale does not create any interest or charge on its subject matter. Following was laid down in paragraphs 11.2 and 12 of the said judgment :

11.2 It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted u/s 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

16. There cannot be any dispute to the proposition as laid down by the Apex Court in the said judgment. However, in this case the issue for consideration is definition of the words "person interested" as provided in Section 3(b) of the Act. The Legislature in Section 3(b) of the Act has not used the words "person interested" to mean and as noticed above, the above definition is only an

inclusive definition. While considering the definition of Section 3(b) of the Act the Apex Court had quoted with approval the proposition that when word "includes" is used it enlarges the meaning of the expression definition so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. It is useful to quote paragraph 25 of the judgment of the Apex Court in Delhi Development Authority v. Bhola Nath Sharma and others (supra), which is as follows :

25. The definition of the expressions "local authority" and "person interested" are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in P. Kasilingam and others Vs. P.S.G. College of Technology and others, in the following words:

"A particular expression is often defined by the Legislature by using the word "means" or the word "includes". Sometimes the words "means and includes" are used. The use of the word "means" indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : Gough v. Gough, Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court). The word "includes" when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : Dilworth v. Commissioner of Stamps (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of "college" is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time.

17. From the aforesaid discussion, it is clear that the expression "person interested" as used in Section 3(b) of the Act has to be given a liberal construction. The definition being only illustrative and not exhaustive, any claim of a person interested in the compensation has to be adjudicated and the application filed by the respondent No. 3 u/s 28-A of the Act cannot be thrown out at the threshold on the ground that the application is not maintainable since the respondent No. 3 is not a person interested. The question as to whether the applicant, who is respondent No. 3, makes out a case for entitlement for redetermination of the compensation is another question on merits of the application which is entirely different from the maintainability of the application on the ground of claiming interest in the compensation. We, thus conclude that

the application filed by the respondent No. 3 u/s 28-A of the Act cannot be said to be non-maintainable and cannot be thrown out at the threshold on the aforesaid ground and the same requires consideration on merits.

18. The second issue which has arisen for determination is as to whether the Division Bench judgment of this Court in Writ Petition No. 11655/2010, Rahman Siddiqui v. State of U.P. and others decided on 06/4/ 2010, shall operate res judicata against the petitioner and as to whether the petitioner cannot be permitted to raise any objection to the application filed by respondent No. 3 u/s 28-A of the Act.

19. Before we answer the aforesaid issue, it is relevant to consider the status of the petitioner in the land acquisition proceedings and its right and entitlement to participate in the proceedings.

20. The petitioner, A.D.A. is the body for whose benefit the land was acquired under the notification issued under Sections 4 and 6 of the Act as noted above. Section 50 of the Act, which is contained in Part VIII Miscellaneous of the Act provides as follows :

50. Acquisition of land at cost of a local authority or Company.--(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

21. Section 50(2) of the Act, clearly contemplates that in any proceeding held before a Collector or the Court in such case the local authority may appear and adduce evidence for the purpose of determining the amount of compensation. Thus the local authority has been given express right by the Act to participate in the proceedings regarding determination of the compensation.

22. Re-determination of the compensation u/s 28-A of the Act is also determination of compensation. Section 50(2) of the Act shall also cover the proceedings u/s 28-A of the Act.

23. A Constitution Bench of the Supreme Court had occasion to consider Section 50(2) of the Act in U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., , where the U.P. Awas Vikas Parishad which was a necessary party to participate in the proceedings, was neither impleaded before the Tribunal in proceedings u/s 18 of the Act nor before the High Court in appeal filed u/s 54 of the Act. The question which was considered in the aforesaid case was whether the Act confers any right on the Board to participate at the stage of determination of compensation. Following was laid down in paragraphs 8, 9, 11 and 24 :

8.....Sub-section (2) of Section 50 is the only provision which affords a certain degree of protection to it in the matter of determination of the amount of compensation by the Collector as well as the Reference Court. Keeping these considerations in view we are of the opinion that sub-section (2) of Section 50 must be construed as conferring a right on the local authority for whom the land is being acquired to participate in the acquisition proceedings at the stage of determination of the amount of compensation before the Collector as well as the reference Court.

9. The said right can be effectively exercised by the local authority only if it has information for the proceedings which are pending before the Collector as well as the reference Court. In other words the right conferred u/s 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority u/s 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference Court and has not suffered any prejudice on account of failure to give such notice.

11. Thus, on an interpretation of the provisions of Section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference Court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference Court to give a notice to the local authority with regard to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference Court, can take recourse to any legal remedy. Before dealing with this question we would take note of the decisions of this Court have a bearing on the issue.

24. To sum up, our conclusions are:

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will

be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference Court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference Court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the Court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference Court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority u/s 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.

24. In a recent judgment of the Apex Court in Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others, , Sections 3(b) and 50(2) of the Act came up for consideration where the Delhi Development Authority which was a local authority was a person interested in proceeding for determination of compensation. Referring to earlier judgment of the Apex Court, following was laid down in paragraphs 42 to 44:-

42. In view of the above discussion, we hold that :

(i) the DDA falls within the definition of the expressions "local authority" [Section 3(aa)] and "person interested" [Section 3(b)] of the Act;

(ii) the DDA was entitled to participate in the proceedings held before the Land

Acquisition Collector;

(iii) the failure of the Land Acquisition Collector to issue notice to the DDA and give an opportunity to it to adduce evidence for the purpose of determining the amount of compensation payable to the land owners was fatal to the award passed by him;

(iv) the DDA was entitled to notice and opportunity to adduce evidence before the Reference Court could enhance market value of the acquired land entitling the respondents to claim higher compensation and, as no notice or opportunity was given to the DDA by the Reference Court, the judgments rendered by it are liable to be treated as nullity;

(v) the Division Bench of the High Court also committed serious error by further enhancing the amount of compensation payable to the contesting respondents without requiring them to implead the DDA as party respondent so as to enable it to contest their prayer for grant of higher compensation.

43. In the result, the appeals are allowed. The impugned judgment of the Division Bench of the High Court as also the judgments of the Reference Court are set aside and the matters are remitted to the Reference Court for deciding the two references afresh after giving opportunity of hearing to the parties, which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation. The Reference Court shall decide the matter without being influenced by the observations contained in the judgment of the High Court and this judgment.

44. In view of the above conclusions, the cross-objections filed on behalf of the Union of India and the Land Acquisition Collector in C.A. Nos. 6564 and 6565 of 2001 are disposed of as infructuous. However, as the judgments of the Reference Court and the High Court have been set aside and a direction has been given for fresh determination of the amount of compensation payable to the respondents, the Union of India and the Land Acquisition Collector shall be free to participate in the proceedings before the Reference Court.

25. It is thus clear that the A.D.A. for whose benefit the land was acquired was entitled to participate in the proceedings for determination of compensation/re-determination of the compensation. Thus in the application filed by the respondent No. 3 for proceeding u/s 28-A of the Act, the A.D.A. was necessary to be heard.

26. The Writ Petition No. 11655/2010, was filed by the respondent No. 3 praying for a direction to decide the application u/s 28-A of the Act to determine the compensation equivalent to the amount which was enhanced and paid to one Jagpat in Reference No. 10/2001. In the said writ petition, the A.D.A. was not impleaded as one of the respondents. This fact has been specifically pleaded in paragraph 18 of the writ petition which is to the following effect :

18. That Rehman Siddiqui, thereafter, filed another writ petition, being writ

petition No. 1165 of 2010. In the said writ petition, against Allahabad Development Authority was not arrayed as a party and the four respondents arrayed therein were State of U.P. through the Collector, Allahabad; Commissioner, Allahabad Division; Collector/District Magistrate, Allahabad; and Special Land Acquisition Officer. In view of the fact that Allahabad Development Authority was not arrayed as a party in the said writ petition, the petitioner had no opportunity of contest in the said writ petition and the said writ petition has been decided finally, vide judgment and order dated 6.4.2011. Copy of judgment dated 6.4.2011 passed in writ petition No. 11655 of 2010 is enclosed and is marked as Annexure-6 to this writ petition.

27. Paragraph 18 of the writ petition has been replied by the respondent No. 3 in paragraph 36 of its counter-affidavit. In paragraph 36 there is no denial that the A.D.A. was not impleaded as one of the respondents. In paragraph 36 of the counter-affidavit following has been stated:

36. That the contents of paragraph No. 18 of the writ petition is misconceived hence not admitted as stated, here. In reply thereto the paragraph has already been given in proceedings paragraphs of this affidavit. However it is stated that this is not the reference case for determination of higher compensation through reference Court this is the case for redetermination of. compensation through Collector. Hence Section 50(2) Authorised Controller only to give notice to local bodies which he does before deciding the application for enhancing the compensation u/s 28(A) of the land acquisition Act.

28. It is thus clear that the ADA was not a party to the Writ Petition No. 11655/2010 and the writ petition was disposed of vide order dated 06/4/2011, without the A.D.A. being before the Court.

29. Shri B.D. Mandhyan, learned Senior Counsel and Shri S.M. Iqbal Hasan, appearing for the respondent No. 3 contended that this Court having already directed for deciding the application u/s 28-A of the Act by the judgment and order dated 06/4/2011, the said judgment operates as res judicata against the petitioner. Had the order dated 06/4/2011, only directed for disposal of the application filed u/s 28-A, of the Act, without entering into any issues regarding entitlement to the Collector to decide the application, the petitioner could have raised no grievance. The A.D.A. being not a party to the writ proceedings, the decision in the Writ Petition No. 11655/2010 filed by the respondent No. 3 cannot operate as res judicata against the petitioner. As observed above, the petitioner i.e. A.D.A is entitled to be associated with determination/re-determination of the compensation and since the Writ Petition No. 11655/2010, related to the proceedings u/s 28-A of the Act, the respondent No. 3 ought to have impleaded the A.D.A. as one of the respondents and the present petitioner being not before the Court when the writ petition was filed by the respondent No. 3 which was decided on 06/4/2010, the said judgment cannot operate as res judicata against the petitioner.

30. The judgment of the Apex Court in Delhi Development Authority (supra) also supports the submission of the learned counsel for the petitioner that the judgment of this Court dated 06/4/2010, shall not operate as res judicata against the petitioner. In Delhi Development Authority (supra) the land was acquired for Delhi Development Authority. In the aforesaid case, Delhi Development Authority was not made party to the proceedings before the reference Court and before the High Court when the question of determination of compensation was considered. The judgment of the High Court was challenged by the Union of India and the SLP was dismissed by the Supreme Court on 12/4/1999 and 13/10/1999. The Delhi Development Authority subsequently filed a SLP against the judgment of the High Court. One of the arguments raised before the Apex Court was that there being already a judgment of the Supreme Court dismissing the Special Leave Petition, giving any other judgment in the appeal filed by the Delhi Development Authority shall lead to two inconsistent judgments. The said argument was rejected and following was laid down by the Apex Court in paragraphs 21,22 and 23:-

21. The apprehension expressed by the learned counsel that acceptance of appellant's prayer for setting aside the impugned judgment may lead to passing of two inconsistent decrees and his argument that dismissal of SLP (Civil) No. 1608/1999, Union of India and another v. Bhola Nath (Dead) through L.Rs. and another operates as res judicata does not commend acceptance for the simple reason that the SLP filed by the Union of India and another was summarily dismissed and the question whether the DDA at whose instance the land was acquired for Planned Development of Delhi was entitled to notice and opportunity to adduce evidence in the proceedings held before the Collector and the Reference Court for the purpose of determining the amount of compensation was neither raised in the SLP (C) CC No. 1608 of 1999 nor decided by this Court.

22. In Kunhayammed v. State of Kerala (supra), a three-Judge Bench considered the questions whether summary dismissal of the SLP and that too without deciding any question of law operates as respondent judicata qua the SLP filed by other party and the judgment/order of the High Court merges in the order of this Court. After examining various facets of the doctrines of res judicata and merger, the Court laid down seven propositions including the following:

(i) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the SLP is converted into an appeal.

(ii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or

affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iii) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(iv) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the SLP or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties."

23. In our view, proposition Nos. (iii) and (iv) extracted herein above are attracted in the present case because SLP (C) No. 1608 of 1999 filed by the Union of India and the Land Acquisition Collector was summarily dismissed without going into the merits of the petitioner's challenge to the judgment of the High Court and no question of law was decided by this Court. That apart, this Court neither had the occasion nor did it decide the question whether the DDA, at whose instance the land was acquired as a part of the exercise undertaken for development of the area around Kalkaji temple, was entitled to participate in the proceedings held before the Land Acquisition Collector and the Reference Court for determination of the amount of compensation because no such plea was raised in SLP (C) No. 1608/1999."

The second issue is decided accordingly.

31. Now the submission (Issue No. 3) which has been much pressed by the learned counsel for the petitioner is that the application filed u/s 28-A of the Act for redetermination of the compensation ought to have been kept pending since against the order dated 31/5/ 2002, deciding the reference, First Appeal has already been filed in this Court by the A.D.A. being First Appeal Defective No. 207/2002, which is pending in this Court.

32. To recapitulate the facts which are on the record, it is to be noted that the land was acquired by declaration u/s 6 of the Act, dated 3/12/1991 of four villages of Pargana Chail District Allahabad. Award was given by Special Land

Acquisition Officer on 05/2/2001 by which the Special Land Acquisition Officer determined the compensation of land covered by notification at the rate of Rs. 80,000 per bigha. Several references by different tenure holders whose land were acquired, were made u/s 18 of the Act. The respondent No. 3 did not make any reference u/s 18 of the Act. One of the reference being numbered as Reference No. 10/2001, was filed by one Jagpat which was decided on 31/5/2002, enhancing the compensation to Rs. 3,25,000/- per bigha. It appears that against the award dated 05/2/2001 passed by the Special Land Acquisition Officer, other references were also made being Reference Nos. 09/2001, 10/2001, 11/ 2001 and 17/2001 which were decided by the award of the District Judge dated 31/ 5/2002. Following appeals were filed arising out of the award of the District Judge enhancing the compensation at the rate of Rs. 3,25,000/-. Details of References and First Appeals are as follows:

1 Ref No. 09/2001

Lallan v. State of U. P. and others

First Appeal No. 325/2002 A.D.A. v. Lallan and others

2 Ref No. 10/2001, Jagpat v. State of U.P. and others

First Appeal (Defective)

207/2002, A.D.A. v. Jagpat

3 Ref No. 11/2001, Antu Lal v. State of U.P and others

First Appeal No. 857/2003

A.D.A.V. Om Chand

33. The aforesaid details were submitted by the A.D.A. to the Collector, Allahabad in response to its notice dated 05/9/2011 vide its letter dated 06/9/2011 (Annexure-8 to the writ petition). It has further been stated in the reply of the ADA dated 06/9/ 2011 that in the First Appeals of Husain Ahmad and Om Chand conditional interim orders have been passed by the High Court, thus it is clear that against the award of Reference Court enhancing the compensation of Rs. 3,25,000/- several appeals have been filed which have been entertained by the High Court and interim orders have been passed in some appeals. However, the appeal filed by Jagpat against the award dated 31/5/2002 was a Defective First Appeal..

34. Now, it is relevant to note the law as laid down by the Apex Court regarding Section 28-A of the Act. The leading judgment on the said subject is in the case of Babua Ram v. State of U.P. and others, 1995 (2). SCC 689. In the said case it has been laid down that the Collector is not to redetermine the compensation when an appeal is pending against the award and it must stay the proceedings till final disposal of the appeal. Following was laid down in paragraph 39 :

39. The next question is whether the Collector/L.A.O. on receipt of the

application under sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree u/s 26 is pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award u/s 28-A(2) is illegal? It is settled law that the decree of the trial Court gets merged in the decree of the appellate Court which alone is executable. The finality of the determination of the compensation gets attained with the decree of the appellate forum, be it the High Court or this Court. Take for instance that "A", "B" and "C" are interested persons in the land notified u/s 4(1) and the compensation determined in the award u/s 11. "A" received the compensation without protest. "B" and "C" received the compensation from the Collector's award of Rs. 10,000/- to Rs. 20,000/-. "B" did not file appeal u/s 54 while "C" filed the appeal. The High Court, suppose, further enhances the compensation to Rs. 25,000/- or reduces the compensation to Rs. 15,000/- per acre. "A" is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the Court u/s 26 but he will not get the enhancement of further sum of Rs. 5,000/- granted by the High Court in favour of "C". The decree of the High Court is the executable decree made in favour of "C". Unless redetermination is kept back till the appeal by the High Court is disposed of incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of Civil Court u/s 26 and of the High Court u/s 54. There is nothing left for redetermination. With a view to save "A", or "B" or the State from the consequences of such incongruous situations the Collector/L.A.O. should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the Civil Court is carried in appeal, it becomes obligatory for the collector to keep the application/applications for redetermination of compensation filed within limitation pending awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally, the L.A.O. would file the appeal against the enhanced compensation in a decree of either the Civil Court or the High Court and will know their pendency. In the case of appeal filed by the interested persons, the latter should inform the Collector/L.A.O. of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under sub-section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate Court. Before proceeding with the determination, he should obtain an affidavit from the party making the application u/s 28A that no appeal against the award made u/s 26 relied upon by him was filed" or It had been filed was disposed of by the appellate Court and to produce the certified copy of decree and judgment, if already is disposed of.

35. To the same effect there is another judgment of the Apex Court in U.P. State

Industrial Development Corpn. Ltd. Vs. State of U.P. and Others, . Following was laid down in paragraphs 2 and 3:

2. These appeals arise from the judgment of the High Court of Allahabad dated 29.1.1992 made in W.P. No. 16908/89 & batch. The only controversy in these cases is whether the Collector was right in determining the compensation u/s 28-A of the Act. The notification u/s 4(2) of the Land Acquisition Act, 1894, Act No. 1 of 1894, for short the Act", was published on February 9, 1962. The Collector passed the awards relating to three villages on different dates determining the compensation. Some of the claimants received the compensation without protest and some on protest. Those who received the compensation under protest sought for and secured references u/s 18 to the Civil Court. The Addl. District Judge, Ghaziabad in his award and decree dated. May 23, 1987 enhanced the compensation. The State filed F.A. No. 668 of 1987 which is pending disposal in the High Court at Allahabad. The claimants who received the compensation without protest made applications u/s 28-A(1) of the Act. Following the award of the District Court, the land acquisition officer passed the award u/s 28-A(2) of the Act. This was challenged by the appellants in the High Court in the writ petitions which were dismissed. Thus these appeals by special leave.

3. The entire controversy has been considered by this Court in Babua Ram and others v. State of U.P. dated 4.10.1994 rendered in C.A. Nos. 563/ 94 & batch and held that since an appeal has been preferred by the State against the award of the Dist. Judge made u/s 26 of the Act, the proper course open to the L.A.O., on an application made u/s 28-A(1) of the Act, would be to keep the applications u/s 28-A(1) pending till the appeal filed against the award of the Dist. Judge is disposed of by the High Court and then to take action as per Section 28-A(2) of the Act. Following the law laid down therein and subject to directions contained therein, we hold that the High Court was not right in dismissing the writ petitions. Therefore, the order of the High Court is set aside. The award of the Collector made u/s 28-A(2) is quashed. The Collector/L.A.O. is directed to keep the application filed u/s 28-A(1) of the Act pending till the disposal of the appeal. On receipt of the judgment from the High Court or in an appeal by this Court the L.A.O. is directed to determine the compensation based on the final judgment according to law.

36. The Apex Court had again occasion to consider the aforesaid issue in Kendriya Karamchari Sehkari Greh Nirman Samiti Ltd. Vs. State of U.P. and Another, . In the said case also reference u/s 18 was decided on 28/ 8/2000 enhancing the compensation. An appeal was filed by the State in the High Court against the judgment and order dated 28/8/2000. An application u/s 28-A was filed by the appellant which was not decided. A writ petition was filed in the High Court seeking a direction for deciding the application u/s 28-A. The said writ petition was dismissed by the High Court against which the SLP was filed in the Apex Court which was decided. The Apex Court while deciding the appeal laid down following in paragraphs 40 and 41 :

40. It is true that once Reference Court decides the matter and enhances the compensation, a person who is otherwise eligible to similar relief and who has not sought Reference, may apply u/s 28A of the Act. If the conditions for application of the said provision have been complied with, such person would be entitled to the same relief which has been granted to other persons seeking Reference and getting enhanced compensation. But, it is equally true that if Reference Court decides the matter and the State or acquiring body challenges such enhanced amount of compensation and the matter is pending either before the High Court or before this Court (Supreme Court), the Collector would be within his power or authority to keep the application u/s 28A of the Act pending till the matter is finally decided by the High Court or the Supreme Court as the case may be. The reason being that the decision rendered by the Reference Court enhancing compensation has not attained finality" and is sub judice before a superior Court. It is, in the light of the said circumstance that the State of U.P. issued two Government orders on January 14, 1994 and June 13, 2001.

41. We see no illegality in keeping the applications u/s 28A of the Act pending till the issue is finally settled by the Court and a decision has been arrived at.

37. In the present case, the petitioner has challenged the order passed by the Collector dated 09/9/2011, by which the application filed by the respondent No. 3 u/s 28A of the Act has been allowed. It is relevant to note that although the details of various appeals filed in the High Court against the order of the Reference Court enhancing the amount of compensation has been mentioned in the reply of the ADA dated 06/9/2011, as noted above, but there is no consideration in the order of the Collector dated 09/9/2011 about the effect and consequence of filing and pendency of the aforesaid appeals.

38. Learned counsel for the respondents submitted that the Division Bench of this Court in judgment and order dated 06/4/2010 in Writ Petition No. 11655/2010, has noticed the First Appeal (Defective) No. 207/2002, as filed by the ADA and thereafter directed for deciding the application u/s 28A of the Act. As observed above, the said judgment shall not operate as res judicata against the petitioner, since the petitioner was not a party in the said writ proceedings.

39. Furthermore, supplementary affidavit has been filed by the petitioner in which the copy of the order of this Court dated 06/1/2012 in First Appeal No. 207/ 2002 (Defective) has been brought on record from which it is clear that one day's delay in filing the appeal has been condoned and the office was directed to give regular number to the appeal. The order dated 06/1/2012 passed in First Appeal No. 207/2002 (Defective) is as follows:

Office report dated 22.12.2011 indicates that the certified copy of the decree has been brought on record by the appellant alongwith Application No. 316459 of 2011. Sri A.K. Misra, learned counsel for the appellant states that there has been a delay of one day in filing the appeal and he has made an Application No. 12091 of 2004 for condoning the delay.

Cause list has been revised. None appears on behalf of the respondent.

The delay on one day in filing the appeal has been sufficiently explained. It is accordingly condoned. The condensation of delay application is allowed. Office may verify and in case there is no other defect, give a regular number to this appeal and list in the next cause list for admission.

The Appeal No. 207/2002 (Defective) has been registered as regular F.A. No. 126/2012.

40. The Apex Court in Commissioner of Income Tax, Rajkot Vs. Shatrusailya Digvijaysingh Jadeja, had occasion to consider the question as to whether an appeal which is ineffective can be treated to be an appeal pending before the Court. Following was laid down by the Apex Court in paragraphs 14, 15 and 16.

14. In the case of Dr. Mrs. Renuka Delta (supra), this Court has held on interpretation of Section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration u/s 88 of the Scheme, it is not for the DA to hold that the appeal/ revision was "sham", "ineffective" or "infructuous" as it has.

15. In the case of Raja Kulkarni v. The State of Bombay, AIR 1954 SC 73, this Court laid down that when a Section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the appellate Court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmentionable on any ground whatsoever, it does not follow that there was no appeal pending before the Court.

16. To the same effect is the law laid down by the judgment of this Court in the case of Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, , in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent.

41. It is also relevant to note that in the present case the ADA has filed Defective appeal in the year 2002 itself against the judgment and order of the District Judge dated 31/5/2012 u/s 18 of the Act enhancing the compensation. The said appeal was filed without a decree of the judgment since according to the petitioner the decree was not available. It has been pleaded in the writ petition that decree was also filed in the First Appeal subsequently. In this context it is not out of place to mention that the manner in which the ADA has prosecuted the Defective Appeal No. 207/2002 indicates carelessness and negligence of the ADA officials. Defective Appeal No. 207/2002 was filed in the year 2002 and the same was allowed to remain pending as defective appeal for nine years without taking steps to get the defects removed so that the appeal be heard on merits.

42. Be that as it may, the defective appeal was directed to be given regular number vide order of this Court dated 12/ 1/2012 which has been given regular number as 126/2012 and the same is pending. As noticed above, the other appeals filed by the ADA against the other tenure holders whose land was acquired by the same notifications and in whose case compensation to the same effect i.e. Rs. 3,25000/- was enhanced by the Reference Court, were entertained by the High Court and are pending as has been noticed in the reply of the ADA dated 06/9/2011. When the said facts were brought into the notice of the Collector, the Collector ought to have adverted to the said facts and thereafter decided the application filed u/s 28A of the Act if necessary. In this context it is also relevant to note the judgment of the Apex Court which has been relied on by the learned counsel for the respondents in Union of India (UOI) Vs. Munshi Ram (Dead) by LRs. and Others, . In the said case the Apex Court had laid down that those claiming higher compensation and making reference u/s 18 of the Act as well as those who received higher compensation in Section 28A proceedings are bound by the decree as modified by the superior Court in appeal. The principle of restitution must apply to them. In the said case, the Reference Court vide its award dated 23/10/ 1988 enhanced the compensation. Both the claimants and Union of India filed First Appeal before the High Court and the High Court by its order dated 24/8/1993 further enhanced the compensation. Letters Patent Appeals filed by the Union of India were dismissed by order dated 17/6/1994. Subsequently, the Apex Court in an Appeal filed by the Union of India reduced the compensation on the application of some owners filed u/s 28A of the Act claiming enhanced compensation the order of re-determination was passed on 12/11/1990. The writ petition challenging the redetermination order was filed in the year 1995 which was dismissed on the ground of delay by the High Court. In the said context following was laid down in paragraphs 6 and 7 which are quoted below:

6. On behalf of the Respondents, it was submitted that the redetermination of compensation u/s 28A was done in November, 1990 whereas Union of India challenged that order by filing Writ Petitions in the year 1995. The High Court was therefore justified in dismissing the Writ Petitions on the ground of delay and latches. He submitted that so far as the respondents herein are concerned, the order passed u/s 28A of the Act conferred upon them the right to receive higher compensation as awarded by the Reference Court, and that order attained finality not having been challenged within reasonable time. The High Court was therefore justified in dismissing the Writ Petitions filed by the UOI challenging the orders of redetermination u/s 28A of the Act.

7. We are of the view that the Union of India is right in its submission that the amount payable u/s 28A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference u/s 18 of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference under -Section 18. It cannot be that those who secure a certain

benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied u/s 28A of the Act, is the enhanced compensation decreed by the Reference Court, we must understand the decree to mean the decree of the Reference Court as modified, in appeal by higher Courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference u/s 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by superior Court. There can be no dispute that those claiming higher compensation and claiming reference u/s 18 of the Act are bound by the decree as modified by the superior Court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others.

43. There cannot be any dispute that in event higher compensation which has been allowed on re-determination u/s 28-A of the Act is reduced in appeal challenging the reference order, the principle of restitution shall apply, but in the said case there was neither any issue raised nor considered that if the appeal is pending against the order of the Reference Court whether application u/s 28-A of the Act should be proceeded with or it should await the decision of the appellate Court.

44. In *Babua Ram (supra)* and in *U.P. State Industrial Development Corporation (Supra)* (Three Judges' Bench) it has been laid down that the Collector should keep the application u/s 28-A pending till the appeal filed against the award u/s 18 is disposed of.

45. In view of the aforesaid, we only observe that it was necessary for the Collector that while deciding the application u/s 28-A of the Act to consider all aspects of the matter as was raised in the reply of the ADA dated 06/9/2010 and in the facts of the present case ends of justice be served in asking the Collector to consider the above aspect afresh. It is to be noted that this Court already directed the Collector vide order dated 06/4/2011, to decide the application filed u/s 28-A expeditiously, if possible, within a period of three months.

46. Now the next issue which is to be considered is as to what is the effect and consequence of the decree of the Civil Court dated 3/1/2005 passed in Suit No. 375/2002 filed by the respondent No. 3. The Collector in its order dated 09/9/2011 has not adverted to the said issue and in view of the fact that the matter is being remitted to the Collector for deciding the application u/s 28-A of the Act afresh, it is appropriate that all aspects of the matter including the effect and consequences of the Civil Court's order dated 03/1/2005 be looked into and

the submission and the grounds raised by both the parties be considered by the Collector in that regard. At this stage, it is not necessary for us to enter into the said issue when the Collector is yet to consider and decide the said issue. In view of above, petition is disposed of and the order dated 09/9/2011 passed by the Collector, Annexure-9 to the writ petition, is set-aside. The matter is remitted to the Collector/Special Land Acquisition Officer to decide the application dated 29/8/2002 of the respondent No. 3 filed u/s 28-A of the Act, afresh in accordance with law expeditiously, preferably within a period of three months from the date of filing a certified copy of this order before him. Parties shall bear their own costs.