
(2010) 05 P&H CK 0116
In the Punjab And Haryana At Chandigarh

Gurbux Singh through L.Rs. and Another	APPELLANT
Vs	
The State of Haryana	RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 149, 35A
Government of India Act, 1935 — Section 175
Land Acquisition Act, 1894 — Section 4, 54

Citation : (2010) 05 P&H CK 0116

Hon'ble Judges : Alok Singh, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This order will dispose of L.P.A. Nos. 1213, 1311 & 1312 of 1988 and LPA Nos. 1019 & 1020 of 1990, as all the appeals relate to determination of compensation of land acquired by same notification. These appeals have been placed for hearing in pursuance of order of remand passed by the Hon'ble Supreme Court dated 8.5.2008.

2. The land in question was acquired in pursuance of notification u/s 4 of the Land Acquisition Act, 1894 (for short, "the Act") dated 8.2.1983. The same is situated in villages Ratgal, Sunderpur and Palwal in District Kurukshetra and was acquired for public purpose of setting up an Ayurvedic College and Pharmacy at Kurukshetra.

3. The Collector vide award dated 30.3.1984, determined compensation ranging from 25,000/- to Rs. 40,000/- per acre, depending upon agricultural quality of the land. On reference, the reference Court vide award dated 27.2.1985, uniformly enhanced the rate of compensation to Rs. 15/- per square yard i.e. Rs. 72,600/- per acre.

4. On appeal to this Court, learned Single Judge enhanced the compensation to Rs. 20.59 per square yard and on further appeal, the Division Bench further enhanced the same to Rs. 25.82 per square yard. As regards additional evidence produced by appellants being two awards Annexures A-1 and A-2, relating to

acquisition vide notifications dated 29.6.1973 and 11.3.1982 respectively in Villages Darakalan and Ratgal, the Bench observed:

The appellants have made an application for permission to lead additional evidence at the stage of the Letters Patent Appeal. Such a request is normally granted when the Court finds it necessary to examine the evidence so as to be able to pronounce upon the controversy. Such is not the position in the present case. Despite that, we have examined the documents so as to ensure that there is no miscarriage of justice. The land which was the subject matter of the decision in RFA No. 7 of 1982 (copy at Annexure A1 on the record) had been acquired in June 1973. The acquisition was for the purpose of establishing an urban Estate. The land abutted on Pipli-Kurukshetra route. Presumably, it is on this land that part of the town of Kurukshetra was established. Similarly, the land which was the subject matter of the award at Annexure A.2 had been acquired vide notification dated March 11, 1981. This was for development of a city centre. Both pieces of land are at some distance from the land which is the subject matter of the present proceedings. In this situation, it would not be safe to say that the compensation awarded by the Court would be the correct measure for assessing the market value of the land in the present case. In fact, it appears that despite the acquisition of land vide notifications dated June 29, 1973 and March 11, 1981 and the fact that the city of Kurukshetra was developing, the price of land in the three villages had not shown any upward trend. In this situation, we do not find any justification for the claim made on behalf of the appellants that they should be awarded compensation at the same rate at which it was awarded by the Court in these two cases.

5. The appellants preferred appeal to the Hon"ble Supreme Court by Special Leave which was allowed and matter remanded back to this Court for a fresh decision. Considering the said awards, the Hon"ble Supreme Court observed:

9. The Division Bench has merely vaguely mentioned that the present lands are situated at some distance from the lands covered in the above judgments. It is only on this basis that the Division Bench went on to hold that it would not be safe to say that the compensation awarded by the court would be the correct measure for assessing the market value of the land in the present proceedings. Again a statement seems to have been made that despite the acquisition of lands vide notification dated 29th June, 1973 and 11th March, 1981 and the fact that the city of Kurukshetra was developing, the price of land in the three villages had not shown any upward trend. It is on these grounds that the claims made on behalf of the appellants were rejected holding that the said documents could not be made the basis for deciding the correct market value of the land in question. In our opinion this is not the right approach. The Division bench having allowed the application under Order 41 Rule 27 and having considered the documents in question should not have written the vague finding regarding the distance of the land covered in the judgments and the land covered by the present proceedings. Further the Division Bench should not have casually observed that the prices of

lands in the three villages had not showed any upward trend. We do not wish to comment on these aspects as, in our opinion, it would be better for the Division Bench to apply its mind to the facts and figures covered in the aforementioned judgments.

10. It has been held by this Court in Special Land Acquisition Officer, Kheda and Another Vs. Vasudev Chandrashankar and Another, that the earlier Awards which were passed prior to about 8 years would provide a reasonable base for arriving at the correct market value. In the reported decision in the earlier Award Rs. 2100/- per acre was held to be the proper market value, while in the subsequent Award in question, the market value was increased to Rs. 2500/- per acre....

xx xx xx xx xx

12. In our opinion, practically the abovesaid consideration could be applied to the lands in question. The lands are abutting the Kurukshetra town and can easily be said to be a part and parcel of the Kurukshetra town, having a great potential. In our opinion, the Division Bench should have taken into consideration both the Annexure A 1 and A 2 and then should have decided the question of market price. Looking at the judgment of the Division Bench we get the impression that the matter has been approached rather casually.

xx xx xx xx xx

14. ...We accordingly set aside the judgment to the extent that we have indicated above and remand the matter for fresh consideration to the Division Bench....

6. On behalf of the State, affidavit has been filed by the Land Acquisition Collector about the location of the land in dispute vis-?-vis awards Annexures A-1 and A-2 to the following effect:

1. That keeping in view of the directions issued by this Hon''ble High Court, the present matter was considered in the light of relevant record including Annexure A 1 and A 2 alongwith the others circumstances like importance of the place/land, distance from the important places and commercial value of the area etc. Accordingly, it is submitted that -

(a) that the land of City Centre, Sector 10, Kurukshetra belong to the L.A. Case No. 22/4 of 1990 and land of Sector 13 shown in Annexure A 1 and Annexure A 2 is situated at the most important place of the Kurukshetra City. Land of Sector 10 is adjoining to the land of Sector 13 which had been developed at the time of notification of the land belong to Sector 10. Moreover, the land of Sector 10 City Centre and Sector 13 also adjoining the main road from G.T. Road Pipli to Kurukshetra, which was a sole road having the means of transportation at that time. In the present case the award was announced on 30.3.1984 whereas the award of the land belong to Sector 10 was announced on 25.6.1986, after two years then the award of present case. The more importance of the land belonging to Sector 10 and Sector 13 evident from the surrounding places likes

Bus Stand, Housing Board Colony, Red Cross Bhawan, Panchayat Bhawan, Bal Bhawan, Office of Deputy Commissioner, Office of Supdt. of Police, Judicial Complex and Commercial shops/buildings of surrounding location. The land belongs to Sector 10 and Sector 13 had more potential, residential and commercial value than the land of the Ayurvedic College. The land belong to the Ayurvedic College is approximately 1.6 K.M. away from the Radio Station which is between the City Centre Sector 10 and Sector 13. Accordingly, residential and commercial value of the Ayurvedic College and surrounding areas is least than the land belonging to the City Centre. Even the surrounding area of Ayurvedic College has not been fully developed till today. It is also 1.8 K.M. from the Pipli to Kurukshetra main road. The land of Ayurvedic College is on a link road from Village Umri to Kurukshetra. The land belongs to Sector 10 and Sector 13 falls in the municipal limit and was having more future value at the time of award. The price of land surrounding Sector 10 and Sector 13 has increased more than the land surrounding the Ayurvedic College. The market value of the land shown in the Annexure A 1 and A 2 was always more than the land of Ayurvedic College acquired in the present case. Moreover, the land belong to L.A. Case 22/4 of 1990 was acquired only 3 Acres, which have more market value than a wide/open area of 23 Acres acquired for College.

2. The shops constructed for the commercial purpose in Sector 13 and Sector 10 also increases the value of land and the area concerned. Whereas there are no shops and commercial buildings surrounding the Ayurvedic College. The sale transaction of the shop and other commercial building helps the increase of value. The number of sale transaction which is higher in Sector 13 and Sector 10 than the area of Ayurvedic College also helped to increase of value of the land, shown in Annexure A 1 and Annexure A 2.

No mills and factories have been established near the land in question. The land was acquired in 1984 when the land was being utilized only for the agriculture purpose. Moreover, the Hon''ble Courts have already considered the evidence produced by the land owner at various stages and appropriate enhancement of the value of the land has already been made.

7. We have heard learned Counsel for the parties and perused the record.

8. Learned Counsel for the appellants submits that in view of findings recorded by the Hon''ble Supreme Court, stand taken on behalf of the State that Annexures A-1 and A-2 are not relevant, cannot be accepted. There may be some difference in location but that cannot be a ground to ignore Annexures A-1 and A-2. He further points out that part of the land of the appellant was acquired in subsequent acquisitions in the years 1987 and 1992 and referring to Annexures A-1 and A-2, compensation was awarded in the year 1987 @ Rs. 100 per square yard and in the year 1992 @ 150 per square yard, treating enhancement to be @ of Rs. 10/- per square yard per year. He accordingly submits that the compensation should be awarded at the rate of Rs. 79.41 per square yard by taking compensation to be Rs. 71.50 per square yard as awarded

in Annexure A.2 and making allowance for time lag upto 8.2.1983 which is the relevant date being date of notification u/s 4 in the present case. He submits that though the appellants claimed compensation at the rate of Rs. 50/- per square yard in appeal filed in this Court, they have moved applications for amendment in the light of Annexures A.1 and A.2. Alternatively, it was submitted that irrespective of their claim, this Court may award higher compensation by exercising power under Order 41 Rule 33 CPC. He also points out that CM No. 142 of 2009 has been filed to implead Harnam Singh as appellant No. 3 who was not earlier impleaded as appellant though he was also one of the appellants before learned Single Judge and he was a co-sharer.

9. Learned Counsel for the State opposed the prayer for further enhancement and submitted that in the order of the Hon"ble Supreme Court, no final finding has been recorded and matter has been remanded for reconsideration. The location of land covered in Annexures A.1 and A.2 not being at par with the land in question, rate of compensation awarded in the said instances could not be mechanically followed for the acquired land. In any case, the appellants having claimed compensation at the rate of Rs. 50/- per square yard could at best get enhancement at that rate. Learned Counsel for the State also opposed the prayer for adding Harnam Singh as appellant No. 3 as qua him, judgment of learned Single Judge dated 26.5.1988 became final and application for impleading as appellant has been made for the first time in the year 2009

10. Following questions thus arise for consideration:

- i) Whether the appellants can be allowed to amend their claim beyond the claim for enhancement in the appeal and can seek adding of a party as appellant at this stage?
- ii) Whether relief claimed under Question (i) can be allowed under Order 41 Rule 4 or Rule 33 CPC?
- iii) Whether the appellants are entitled to enhancement of compensation on the basis of Annexures A.1 and A2 and to what extent?

Re: (i)

11. We may first deal with the question whether claim can be amended beyond the claim in the appeal at this stage and whether a party who did not initially join in filing the appeal can now be allowed to be added as one of the appellants.

12. In Buta Singh v. Union of India, (1995) 5 SCC 283 Constitution Bench of five Hon"ble Judges considered the conflict of opinions on the question and held that law laid down in The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, is correct and should hold the field. Thereafter, bench of two Hon"ble Judges in Buta Singh (Dead) by L. Rs. Vs. Union of India, decided the matter and observed:

9. Having given anxious consideration to the respective contentions, question

arises whether the claimants would be allowed to pay the deficit Courtfee. It is true that Section 149, C. P. C. gives powers to the Court to give time to the appellant to make up deficiency of Court-fee when the whole or any part of the fee prescribed under the Court-fee Act to pay Court-fee on the Memorandum of Appeal (MOA) but had not been paid while presenting the same; but the power of the Court is one of discretion and not as of right. Generally, before the appeal is admitted under Order 41, Rule 9, the Court would exercise the discretion on showing sufficient cause for not making the required fee on the MOA. The discretion conferred on the Court by Section 149, is a judicial discretion. The Court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit Court-fee or he was under bona fide mistake in payment thereof. Mere poverty or ignorance or inability to pay the Court-fee at the time of presenting the appeal is not always a good ground for indulgence u/s 149 Bona fide mistake on the part of the appellant or applicant in making the deficit Court-fee may be a ground to exercise discretion in favour of the appellant. It is the duty of the Registry before admitting the appeal to point out to the appellant or his counsel that deficit Court-fee is payable on the MOA and some reasonable time may be given for payment of the Court-fee. The MOA would be returned to do the needful. If the deficit Court-fee is not made up and presented within the time enlarged u/s 148, C.P.C, there would be no appeal in the eye of law unless the delay is condoned. If the party deliberately to suit his convenience paid insufficient Court-fee, the mistake is not a bona fide but one of choice made by the party in making the deficit Court-fee. In that situation, even after pointing out the need to make the Court-fee and given time, if the Court-fee is not paid and MOA is represented within the enlarged time, it would be open to the Court either to reject the MOA or refuse to condone the delay for not showing sufficient cause thereon. Therefore, the Court is required to exercise its judicial discretion keeping the facts and circumstances in each case and not automatically for mere asking that the indulgence be shown to the party to make good the deficit Court-fee. In the latter event, it is not the exercise of the judicial discretion but showing undue indulgence.

10. After the arguments were heard in the appeals, an impression obviously gained that the appeals would be likely to be allowed enhancing the compensation. We find that the method adopted by the claimants should not be encouraged. There are no bona fides on their part. The aid of Section 149, could be taken only when the party was not able to pay Court-fee in circumstances beyond his control or under unavoidable circumstances and the Court would be justified in an appropriate case to exercise the discretionary power u/s 149, after giving due notice to the affected party. But that was not the situation in this case. Under the relevant provisions of the Court-fee Act applicable to appeals filed in the High Court of the Punjab and Haryana, the claimants are required to value the appeals in the MOAs and need to pay the required Court-fee. Thereafter the appeal would be admitted and the notice would go to the respondents. The respondents would be put on notice of the amount, the

appellant would be claiming so as to properly canvass the correctness of the claim or entitlement. The claim cannot be kept in uncertainty. If in appeal u/s 54 of the Land Acquisition Act the amount is initially kept low and then depending upon the mood of the appellate Court, payment of deficit Court-fee is sought to be made, it would create unhealthy practice and would become a game of chess and a matter of chance. That practice would not be conducive and proper for orderly conduct of litigation.

11. In *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, , case, the facts were that the claimants had restricted their claim to Rs. 4,00,000/- and paid the Court-fee. Thereafter in other matter when the amount was further enhanced, they filed an application u/s 149, for permission to pay the deficit Court-fee and claimed enhanced compensation. This Court had not encouraged such a practice and dismissed the applications confirming the order passed by the High Court. When similar matters have come up before a Division Bench of two Judges of this Court in *Chand Kaur and others v. Union of India*, (1994) 4 SCC 663 without noticing the above case, delay was condoned and deficit Court-fee was ordered to be made good. When the present cases came up for hearing, the matter was referred to a Constitution Bench. The Constitution Bench has considered the controversy and held that the ratio in the *Scheduled Caste Co-operative Land Owning Society*, case is correct and should hold the field. In that view, it must be held that the appellant must have paid proper Court-fee on the MOA and should have claimed higher compensation. In view of the fact that the claimants have paid lesser Court-fee or restricted the value of the appeals it must be taken that their claims were restricted to the amount to which the Court-fee was paid. The adjudication should be confined to that amount.

12. It is next contended that since in *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, , this Court held that when the appeals were kept alive, the claimants would be entitled to the higher compensation by permitting them to pay the additional deficit Court-fee as their appeals were pending in the High Court. We do not agree with the contention. This Court did not appear to have intended to lay down that it would be open to the appellant to pay deficit Court-fee for a lesser value of appeal and pay the deficit Court-fee after the compensation was enhanced. The observation in *Scheduled Co-operative Land Owning Society* case must be understood in the background of the facts therein. It was not meant to lay down that in spite of choosing to pay a particular Court-fee, the claimants would still be entitled to pay the deficit Court-fee on the doubtful claim after the appeals are allowed and higher compensation was determined.

13. In view of above, the contention that the appellants could at any time amend the appeal or add a party who had not earlier filed appeal cannot be accepted.

Re: (ii)

14. As regards invocation of power under Order 41 Rule 4 and Rule 33 CPC, in Banarsi and Others Vs. Ram Phal, scope of Order 41 Rule 33 and Rule 4 CPC was considered. It was observed:

14. The learned Counsel for the respondent forcefully argued that even in the absence of appeal preferred by the plaintiff or cross-objection taken by the plaintiffrespondent the Appellate Court was not powerless to grant the decree which it has done in exercise of the power conferred by Rule 33 of Order 41 of the CPC. Rule 33 of Order 41 as also Rule 4 thereof, which have to be read necessarily together, are set out hereunder:

ORDER 41

Appeals from Original Decrees

33. Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in crosssuits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order u/s 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration

A claims a sum of money as due to him from X or Y and in a suit against both obtains a decree against X, X, appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.- Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The abovesaid provisions confer power of widest amplitude on the appellate Court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject-matter of

appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate Court may still direct passing of such decree or making of such order which ought to have been passed or made by the Court below in accordance with the findings of fact and law arrived at by the Court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate Court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate Court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate Court. The object sought to be achieved by conferment of such power on the appellate Court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care in discretion while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate Court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations : firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate Court exercising power under Rule 33 of Order 41.

16. Pannalal Vs. State Bombay and Others, so sets out the scope of Order 41, Rule 33 in the widest terms. "The wide wording of Order 41, Rule 33 was intended to empower the appellate Court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate Court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondents as "the case may require". If there was no impediment in law the High Court in appeal could, therefore, though allowing the appeal of the defendant-appellant by dismissing the plaintiff's suit against it, give the plaintiff-respondent a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the rule make this position abundantly clear the Illustration puts the position beyond argument. The suit was filed by the plaintiff impleading the

State Government and the Deputy Commissioner seeking recovery of compensation for the work done under a contract and the price of the goods supplied. The trial Court held that the State was liable as it had beyond doubt benefited by the performance of the plaintiff. The suit was decreed against the State. The State preferred an appeal in the High Court. The plaintiff and other defendants including the Deputy Commissioner were impleaded as respondents. Disagreeing with the trial Court, the High Court held that the contract entered into by the Deputy Commissioner was not binding on the State Government; that the Deputy Commissioner signed the contract at his own discretion; and further, that the contract not having been entered into in the form as required u/s 175(3) of the Government of India Act, 1935, was not enforceable against the State Government. The High Court also held that the Government could not be held to have ratified the action of the contract entered into by the Deputy Commissioner. The State was held also not to have benefited by the performance of the plaintiff. On this finding, the High Court set aside the trial Court's decree passed against the State Government. In an appeal to this Court, the Constitution Bench held that it was a fit case for the exercise of jurisdiction under Order 41, Rule 33 of the CPC. On the findings arrived at by the High Court, while setting aside the decree against the State, the High Court should have passed a decree against the Deputy Commissioner. It was not necessary for the plaintiff to have filed any cross-objection and the illustration appended to Order 41, Rule 33 was enough to find solution.

17. In *Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others*, the three- Judge Bench speaking through Raghubar Dayal, J. observed that "Rule 33 really provides as to what the appellate Court can find the appellant entitled to and empowers the appellate Court to pass any decree and make any order which ought to have been passed or made in the proceedings before it and thus could have reference only to the nature of the decree or order in so far as it affects the rights of the appellant. It further empowers the appellate Court to pass or make such further or other, decree or order, as the case may require. The Court is thus given wide discretion to pass such decrees and orders as the interests of justice demand. Such a power is to be exercised in exceptional cases when its non-exercise will lead to difficulties in the adjustment of rights of the various parties."

18. In *Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others*, the following statement of law made by Venkatarama Aiyar, J. (as his Lordship then was) in the Division Bench decision in *Krishna Reddy v. Ramireddi* AIR 1954 Mad 848 was cited with approval which clearly brings out the wide scope of power contained in Rule 33 and the illustration appended thereto, as also the limitations on such power:

Though Order 41, Rule 33 confers wide and unlimited jurisdiction on Courts to pass a decree in favour of a party who has not preferred any appeal, there are, however, certain well-defined principles in accordance with which that jurisdiction

should be exercised. Normally, a party who is aggrieved by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him under Order 41, Rule 33.

But there are well-recognised exceptions to this rule. One is where as a result of interference in favour of the appellant it becomes necessary to readjust the rights of other parties. A second class of cases based on the same principle is where the question is one of settling mutual rights and obligations between the same parties. A third class of cases is when the relief prayed for is single and indivisible but is claimed against a number of defendants. In such cases, if the suit is decreed and there is an appeal only by some of the defendants and if the relief is granted only to the appellants there is the possibility that there might come into operation at the same time and with reference to the same subject-matter two decrees which are inconsistent and contradictory. This, however, is not an exhaustive enumeration of the class of cases in which Courts could interfere under Order 41, Rule 33. Such an enumeration would neither be possible nor even desirable.

19. In the words of J. C. Shah, J. speaking for a three- Judge Bench of this Court in *Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others*, the limitation on discretion *Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others*, operating as bounds of the width of power conferred by Rule 33 can be so formulated-

The rule is undoubtedly expressed in terms which are wide, but it has to be applied with discretion, and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. Where in an appeal the Court reaches a conclusion which is inconsistent with the opinion of the Court appealed from and in adjusting the right claimed by the appellant it is necessary to grant relief to a person who has not appealed, the power conferred by Order 41, Rule 33 may properly be invoked. The rule however does not confer an unrestricted right to re-open decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from.

20. A Division Bench decision of Calcutta High Court in *Jadunath Basak Vs. Mritunjoy Sett and Others*, may be cited as an illustration. The plaintiff filed a suit for declaration that the defendant had no right or authority to run the workshop with machines in the suit premises and for permanent injunction restraining the defendant from running the workshop. The trial Court granted a decree consisting of two reliefs: (i) the declaration as prayed for, and (ii) an injunction permanently restraining the defendant from running the workshop except with the terms of a valid permission and licence under Sections 436 and 437 of Calcutta Municipal Act, 1951 from the Municipal Corporation. The defendant filed an appeal. The Division Bench held that in an appeal filed by the

defendant, the plaintiff cannot challenge that part of the decree which granted conditional injunction without filing the cross-objection. The Division Bench drew a distinction between the respondent's right to challenge an adverse finding without filing any appeal or cross-objection and the respondent seeking to challenge a part of the decree itself without filing the cross-objection. The Division Bench held that the latter was not permissible. We find ourselves in agreement with the view taken by the High Court of Calcutta.

15. In view of above judgment, a claim given up or lost cannot be revived and if a party has permitted an order to become final, invocation of power under Order 41 Rule 33 CPC is not permitted to reverse an order which may have become final to the advantage of a party which did not file appeal.

Re: (iii)

16. Parameters of allowing additional evidence at the stage of appeal have been laid down, inter-alia, in *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.,* . It was observed that additional evidence could not be allowed as a ritual or to patch up the shortcomings. In the present case, awards Annexures A1 and A2 were earlier taken into account so that there was no miscarriage of justice but it was observed that both the pieces of land were located at some distance from the land which is subject matter of present proceedings. In the affidavit filed on behalf of the State, it has been pointed out that the land in question is located at a distance of 1.8 kms. from Kurukshetra-Pipli road while land covered by earlier instances adjoined the said road and had higher value.

17. In *Ranvir Singh and Another Vs. Union of India (UOI)*, it was observed in para 36:

36. Furthermore, a judgment or award determining the amount of compensation is not conclusive. The same would merely be a piece of evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. We, therefore, are unable to accept the contention of Mr. Nariman that as in one case we have fixed the valuation of Rs. 7000/- per bigha wherein the lands were acquired in the year 1961, applying the rule of escalation the market rate should be determined by calculating the increase in the prices at the rate of 12% per annum. We do not find any justifiable reason to base our decision only on the said criterion.

18. Even if we accept the stand of the State that there was some difference in location and compensation could not be mechanically allowed by making awards Annexures A1 and A2 as the basis, we are of the view that taking into account the additional evidence of awards Annexures A1 and A2, the appellants are entitled to enhancement to the extent originally claimed in the appeal i.e. Rs. 50/- per square yard.

19. Accordingly, we hold that the appellants will be entitled to enhanced

compensation at the rate of Rs. 50/- per square yard which will be in addition to all other statutory benefits permissible under law.

20. The appeals are disposed of accordingly.