

(2016) 05 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Review Application No. 174702 of 2015 & Delay
Condonation Application No. 174703 of 2015 In First Appeal No. 459
of 1984

Jagmal & Others

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (2016) 8 ADJ 123 : (2016) 117 ALR 331 : (2016) 132 RD 577

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : J.S. Srivastava, Amar Nath Tripathi, Counsels, for the Appellant;
S.C., M.N. Singh, U.S. Awasthy, Counsels, for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—On 06.10.2015, Hon'ble Mr. Justice Rajesh Dayal Khare, J. passed an order on the order sheet observing that the review application to be put up before appropriate bench after obtaining nomination from Hon'ble the Chief Justice. On 14.10.2015, Hon'ble the Chief Justice passed an order on the order sheet to lay/ list the case before the appropriate court dealing with such matters. Thus, the afore-noted review application along with delay condonation application has come up before this bench for hearing.

2. Heard Sri Amit Manohar, learned counsel for the applicant/ respondent No. 2 and Sri Y.D. Sharma, learned counsel for the appellants on Delay Condonation Application No. 174703 of 2015 and Civil Misc. Review Application No. 174702 of 2015.

3. The above noted review application has been filed by the respondent No. 2 for review of the order dated 11.03.2015 passed by this Court holding that the claimants appellants shall be entitled for compensation at the rate of Rs. 297/- per square yard in respect of their land of village Aghapur, Pargana and Tehsil

Dadri, District Ghaziabad acquired by Notification published on 16.09.1976 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The judgment dated 11.03.2015 was passed in the first appeal arising from the common judgment dated 23.12.1982 passed in various land acquisition references including the Land Acquisition Reference No. 42 of 1978 of the claimants appellants.

Submission of the Applicant/respondent No. 2:

4. Learned counsel for the applicant/ respondent No. 2 submits that the order dated 11.03.2015 is liable to be reviewed for the following reasons:

(i) The relief claimed in the appeal was only for compensation at the rate of Rs. 10/- per square yard or Rs. 30250/- per bigha. The appellants never sought the relief for payment of compensation at the rate of Rs. 297/- per square yard. Consequently, the relief which was not prayed, could not have been granted in the appeal. In other words, he submits that no relief can be granted beyond the prayer made in the appeal and valuation of the appeal.

(ii) The Act was amended in the year 1984. The acquisition was made in the year 1976. Thus, only unamended provisions were applicable. As per unamended Section 25 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), the amount of compensation cannot exceed the amount of compensation claimed. The provision of Section 25 of the Act was a substantive provision. The amended provision of Section 25 nowhere indicates that the same would have retrospective effect and consequently, it would not apply to awards made prior to 24.09.1984 when new provision was substituted by Act No. 68 of 1984. In support of his submissions, he relies upon a decision of Supreme Court in the case of Land Acquisition Officer-Cum- DSWO, A.P. v. B.V. Reddy and Sons, (2002) 3 SCC 463 (paras-4 to 8).

(iii) Initially by order dated 02.09.2009, the appeal was allowed ex parte granting relief for compensation as sought by the appellants in the memorandum of appeal @ Rs. 30250/- per bigha. The respondent No. 2 moved a recall application stating therein that the order was passed ex parte. On the aforesaid Recall Application of the Applicant/ respondent No. 2, the order dated 02.09.2009 was recalled. Thereafter, the court passed an order dated 11.03.2015 determining compensation at the rate of Rs. 297/- per square yard, which was neither a pleaded case nor an argued case nor prayer to that extent was sought and as such, the relief as has been granted by order dated 11.03.2015, could not have been granted in any circumstances. This was a mistake apparent on record, and, therefore, the order is liable to be reviewed.

(iv) Since the provision of Section 25 of the Act as then existed, was not considered by the High Court while passing the order dated 11.03.2015 and as such, the said order is liable to be reviewed in view of law laid down by Hon'ble Supreme Court in the case of Girdhari Lal Gupta v. D.H. Mehta and another, (1971) 3 SCC 189 (para-15). The judgment on the basis of which the order

dated 11.03.2015 was passed, relates to notifications of the year 1988, 1989 and 1991 while the subject matter of the present appeal was land acquisition as per provisions of Section 23 of the Act made by notification dated 16.09.1976 under Section 4 of the Act. Thus, the court was bound to determine the market value as on the date of acquisition and to determine the amount of compensation accordingly but it cannot rely upon the compensation awarded with respect to a subsequent land acquisition of 10 or 20 years after.

(v) The compensation awarded with respect to land acquisition under a notification of a subsequent period, cannot be applied for determination of compensation of land acquisition of a much prior period. In support of his submissions, he relies upon a judgment of this court dated 14.05.2015 in First Appeal No. 200 of 2015, Rajendra Prasad and another v. State of U.P. and another (para-33).

(vi) The market value determined under the order dated 11.03.2015 passed by this court is wholly arbitrary, baseless and contrary to the provisions of the Act and the settled principles of law and without any foundation.

Submission of the Appellants :

5. Sri Y.D. Sharma, learned counsel for the appellants, submits as under:

(i) A Division Bench of this court has determined the compensation at the rate of Rs. 297/- per square yard with respect to the same notification by order dated 03.12.2014 in the case of Khajan and others v. State of U.P. and others in First Appeal No. 564 of 1997, decided on 11.10.2012 and, therefore, there is no error in the judgment dated 11.03.2015 passed in this appeal. He further submits that in the case of in the case of Khajan and others (supra), the Division Bench considered the land acquisition notifications ranging from the year 1983 to 1992 and awarded compensation @ Rs. 297/- per square yard relating to adjoining villages and as such the same rate of compensation has rightly been allowed by this court by order dated 11.03.2015.

(ii) Several judgments were passed awarding compensation @ Rs. 297/- per square yard and thus, there is no justification to deny the same rate of compensation to the appellants.

(iii) If this bench does not agree with the judgment passed by the Division Bench awarding Rs. 297/- per square yard, then in that situation, the matter has to be referred to a larger bench in view of the decision of Hon"ble Supreme Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd., 2016 (1) Supreme 319 (para-19).

6. I have carefully considered the submissions of learned counsel for the parties.

Delay Condonation Application:-

7. Learned counsel for the appellants has neither raised any objection during the course of his argument against the delay condonation application nor has filed

counter affidavit to the delay condonation application or the review application nor sought time for filing counter affidavit but preferred to argue the review application on merit.

8. In the affidavit filed in support of delay condonation application, the applicant/respondent No. 2 has explained the delay in paragraphs-8 & 9 of the affidavit. Cause shown for delay in filing the review application is sufficient. Consequently, the Delay Condonation Application No.174703 of 2015 is allowed.

Review Application:-

9. The aforesaid review application has been filed by the applicant/ respondent No. 2 on the following grounds:

1. "Because, the relief sought for by means of the present First Appeal, the records as formed part of the Appeal and the pleadings contained therein appear to have been escaped the kind attention of the Hon"ble Court, while passing the judgment and order dated 11.3.2015, and as such, the same is liable to be reviewed.

2. Because, the appeal in question, arising out of Land Acquisition Reference No.42 of 1978, relate to village Ahgapur in respect whereof the Notification under Section 4 of Land Acquisition Act, was issued on 16.9.1976 and possession of the land was taken on 26.10.1976, where after in the Award dated 11.8.1977 the compensation at the rate of Rs. 4.36 per Sq. Yard and Rs. 3.23 per Sq. Yard i.e. Rs. 13205 = 70 per Bigha and Rs. 9777 = 30 per Bigha was fixed for irrigated and un-irrigated category of lands respectively, and as such, there was no occasion to award of Rs. 297=00 per sq. yard as compensation, as has been made under the order dated 11.3.2015.

3. That, against the award made by the Special Land Acquisition Officer the reference was made to enhance the compensation to Rs. 18150=00 per Bigha i.e. Rs. 6/- per sq. yard and the same was allowed vide judgment dated 23.12.1982, and it is against the aforesaid judgment that the present First Appeal has been filed before this Hon"ble Court wherein the relief for enhancing the compensation has been sought praying, inter-alia, therein for enhancement of compensation from Rs. 18150 =00 per Bigha to Rs. 28.12 per sq. yard in terms of the relief sought for by means of other tenure-holdings pertaining to same acquisition and pertaining to the same village as formed subject-matter of First Appeal No. 83 of 1983 (Chandu and others v. State of U.P. and others), and as such, in view of the relief sought for by the appellants by means of the present First Appeal praying for enhancement of compensation to Rs. 28.12 per sq. yard, there was no occasion for the award of Rs. 297=00 per sq. yard in favour of the appellants.

4. Because, the present First Appeal has been decided by this Hon"ble Court vide order dated 2.9.2009, whereby this Hon"ble Court, in view of the judgment dated 29.3.2008 passed in First Appeal No. 83 of 1983 (Chandu and others v.

State of U.P. and others) had been pleased to award compensation to the appellants at the rate of Rs. 10 = 00 per sq. yard, against which judgment the Review Application has been filed on behalf of NOIDA on account of the fact that the same was ex parte; which application had been allowed by this Hon"ble Court on 22.5.2014, where after the Appeal came to be decided afresh vide judgment and order dated 11.3.2015 and while passing such judgment the relevant facts appear to have been escaped the kind attention of the Hon"ble Court.

5. That, the appellants are not at all entitled for the benefit of the judgments rendered in First Appeal No. 564 of 1997 (Khajan Singh v. State of U.P. and others), First Appeal No. 1096 of 1999 (Raghuraj Singh and others v. State of U.P. and others) and First Appeal No. 34 of 2007 (Ganeshi Singh v. State of U.P. and others) and further parity on behalf of the decision rendered in the aforesaid Appeals could not have been extended in favour of the appellants herein inasmuch as not only the Notifications are entirely different but the matter pertains to entirely different but the matter pertains to entirely different villages, and moreover, there was absolutely no claim of the tenure holders/appellants, either before the Reference Court or before this Hon"ble Court, claiming compensation beyond Rs. 28.12 per sq. yard, and as such, there was no occasion for award of compensation amounting to Rs. 297.00 per sq. yard in favour of the claimants/appellants.

6. Because, the Land Acquisition Reference giving rise to the present First Appeal relating to Notification dated 16.9.1976 engaged the attention of the District Judge, Ghaziabad in total 10 Land Acquisition References, including one giving rise to the present First Appeal, and in none of the matters the claimants sought enhancement of compensation beyond Rs. 28.12 per sq. yard and further even the present appellants have not sought enhancement of compensation beyond the said rate, and as such, apparently the aforesaid facts have escaped the kind attention of the Hon"ble Court while passing the judgment dated 11.3.2015.

7. Because, the award of compensation in favour of the claimants/appellants under the judgment and order dated 11.3.2015 passed by this Hon"ble Court is highly exorbitant and irrational inasmuch as the claimants/appellants herein are not entitled for award of similar amount of compensation as has been awarded to the tenure holders of village Bhangel Begumpur, Chhalera Bangar, Sarfabad etc. which fact appears to have escaped the kind attention of the Hon"ble Court while passing the judgment and order dated 11.3.2015.

8. Because, taking into account the entire facts and circumstances of the case and the material as formed part of record, the impugned judgment and order dated 11.3.2015 passed by Hon"ble Mr. Justice R.D. Khare cannot be sustained in law, and as such, the same is liable to be reviewed/recalled."

Questions for Determination:-

10. Considering the rival submissions of learned counsel for the parties, the

following questions emerge for determination in the review application:

(i) Whether the applicant/ respondent No. 2 has made out a case for review of the judgment dated 11.03.2015?

(ii) Whether the appellants are entitled for compensation on the same market value of Rs. 297/- per square yard as determined by the Division Bench by this court in First Appeal No. 564 of 1997, Khajan and others v. State of U.P. and others and First Appeal No. 1056 of 1999, Raghuraj Singh and others v. State of U.P. and others OR on some other rate.

(iii) Whether market value for compensation under Section 23 of the Act for acquisition of land by notification under Section 4(1) of the Act published on 16.09.1976, can be determined on the basis of market value of the acquired land of other villages under notifications of the year 1986, 1988, 1989 or 1990?

(iv) Whether the High Court can enhance compensation to thirty times of the claim of the claimants-appellants and that too, beyond the pleadings and relevant evidences and the relief sought in the appeal?

FACTS OF THE CASE:-

11. Briefly stated, the facts of the present case are that lands of village Agahapur, Pargana and Tehsil Dadri District Ghaziabad (now NOIDA) was acquired for the New Okhla Industrial Development (for short "NOIDA") under notification published in the U.P. Gazette dated 16.09.1976 under Section 4(1) of the Act, which was followed by notification under Section 6 of the Act. The possession was taken over on 26.10.1976. The land-holders filed objections before the Special Land Acquisition Officer (for short "SLAO"), who considered the objections and passed the award dated 11.08.1977 accepting a sale deed exemplar of 07.05.1976 and awarded compensation @ Rs. 13205.71 per bigha for Abi land and Rs. 9777.30 for Khaki land. Several Land Acquisition References were filed at the instance of the landholders under Section 18 of the Act. Several land acquisition references including the Land Acquisition Reference No. 42 of 1978 of the claimants appellants, were decided by the impugned common judgment dated 23.12.1982 passed by the court of District Judge, Ghaziabad determining compensation @ Rs. 18150/- per bigha along with statutory solatium @ 15% in respect of the acquired land and interest @ 6% per annum on the enhanced amount of compensation from the date of dispossession to the date of payment. The court below considered the evidences with regard to market value led by the claimants and recorded the following findings:

"The claimants have filed four exemplar sale deeds to show that the market price of the acquired land was not less than Rs. 10/- per square yard on the material date.

Ex.1 is the certified copy of the sale deed dated 12.03.76 executed by Ram Swarup, Partner, Laxmi Housing Cooperative Society in respect of 300 square yard land of Khasra no. 145 situated in village Nayabans for a consideration of

Rs. 5400/-. The rate comes to Rs. 18/- per square yard. A very small parcel of land was sold by this sale deed, therefore, the purchaser could have paid a fancy price. Thus this sale deed cannot be treated as a good exemplar.

Ex.3 is the certified copy of the sale deed dated 1.3.75 executed by Jiyalal Dhar and Om Prakash, partner M/s Dhar Gupta and Associates, New Delhi, in favour of Smt. Khem Lata Vakla in respect of Shreenagar Garden Colony plot no. 39 measuring 250 square yard land situated in village Nayabans, Tehsil Dadri, District Ghaziabad, for a consideration of Rs. 7500/-. The rate comes to Rs. 30/- per square yard. The sold land was of a developed colony and as such it could fetch better price, therefore, this sale deed cannot be treated as a good exemplar.

Ex.5 is the certified copy of the sale deed dated 10.22.5.74 executed by Ram Singh in favour of Nain Singh, Hari Singh, Desraj and Jawahar in respect of 811 square yards land situated in village Barola, Tehsil Dadri, district Ghaziabad for a consideration of Rs. 9000/-. The rate comes to Rs. 11/- per square yard. At the time of sale a boundary was in existence and the same was also made the subject matter of sale. Moreover, the land was located in the village Abadi and so it was more valuable than the agricultural land, therefore, this sale deed cannot be treated as a good exemplar.

Ex.8 is the certified copy of the sale deed dated 23.1.76 executed by Ram Swarup, Partner, Laxmi Housing Corporation in respect of 200 square land of khasra nos. 905 to 908 situated in village Harola in favour of Deva Singh Bhattacharya for a consideration of Rs. 3330/-. The rate comes to Rs. 15-56 per square yard. The land appears to be a developed plot, therefore, it could easily fetch better price. In the circumstances, this sale deed cannot be treated as a good exemplar.

Reliance has also been placed upon Exs.7, 9, 11,12 and 13 the certified copies of the awards dated 25.2.78, 8.3.77, 25.9.78, 23.3.82 and 15.7.78 in respect of villages Barola, Harola, Chorra and Suthari respectively. It is submitted that the compensation in respect of the acquired land of the said villages was granted under the said awards upto Rs. 18461.34 and the claimants are also entitled to receive compensation at the same rate. Similarly the certified copies of judgments dated 28.5.81 (Ex.2), 17.11.81 (Ex.4), 28.5.81 (Ex.6) and 27.2.82 (Ex.10) passed in L.A.R. No. 247/77 Teja and others v. State, L.A.R. No. 192/77 Tuli Ram and others v. State, L.A.R. No. 76/77 Rampat and others v. State, L.A.R. No. 161/77, Ratia and others v. State respectively have also been filed. In the said cases the compensation was awarded at the rate of Rs. 18,150/- per Bhiga. P.W.1 Mehar Chand has deposed that the boundaries of village Agahapur adjoin those of villages Morna, Barola, Chorra and Suthari. He has also deposed that the situationally the land of his village is at par with the adjoining villages. In these circumstances I am of the opinion that the ends of justice would meet if the compensation is awarded at the rate of Rs. 18,150/- per bigha. The issues are decided accordingly."

12. The present appeal has been filed by the appellants against the aforequoted common judgment dated 23.12.1982 on the following grounds:

Grounds of Appeal

"1. Because the learned District Judge has committed error of law as well as fact in not awarding compensation at the rate of Rs. 30250/- per bigha.

2. Because the compensation awarded by the learned District Judge is grossly inadequate.

3. Because the learned District Judge has erred in law in not treating the sale deed filed by the appellant as exemplar sale deeds while determining the amount of compensation.

4. Because the sale deeds filed by the appellant furnished good basis for awarding compensation at the rate of Rs. 10/- per square yard or Rs. 30250/- per Bigha.

5. Because it has been held by the Hon"ble Supreme Court that sale deeds in respect of small parcels of land can also be treated as exemplar sale deeds. The view of the learned District Judge to the contrary is erroneous.

6. Because having held that the land in dispute will have to be treated as potential building site, the learned District Judge, should have awarded compensation at the rate claimed by the appellant.

7. Because it was proved from the evidence on record that the village Agahpur (in which the land acquired is situated) was on the boundary of Delhi and close to the Delhi-Dadri road and the colonies and industrialists were active in the area. As such the value of the land acquired had considerably increased.

8. Because the fact that the New Okhla Industrial Development Authority for which the land was acquired, had been selling the acquired land at very high rates proved that the market value of the land of the appellant was much more than Rs. 10/- per yard and as such compensation should have been awarded at the rate claimed by the appellant."

13. In the memorandum of appeal, the appellants claimed compensation @ Rs. 30250/- per bigha and accordingly the appeal was valued at Rs. 1,38,000/-. Since the respondent No. 2- applicant/ beneficiary was not heard while the present appeal was allowed by order dated 02.09.2009 and as such the respondent No. 2 moved a 12 Recall Application No. 139469 of 2010, dated 07.05.2010 which, by order dated 22.05.2014; was allowed and the order dated 02.09.2009 was recalled. Thereafter, the appeal was heard and by order dated 11.03.2015, compensation @ Rs. 297/- per square yard was allowed on the basis of Division Bench judgment in the case of Khajan and others (supra) and Raghuraj Singh and others (supra). Thereafter, the applicant/respondent No. 2 has filed the Review Application No. 174702 of 2015, dated 15.05.2015 for review of the aforesaid judgment dated 11.03.2015 on the grounds quoted

above.

DISCUSSION AND FINDINGS:-

Question No. (i) Whether the applicant/ respondent No. 2 has made out a case for review of the judgment dated 11.03.2015 ?

14. In ground No. 3 of the Review Application, the applicant/ respondent No. 2 has specifically stated that in First Appeal No. 83 of 1983, Chandu and others v. State of U.P. and others relating to the same acquisition of the same village as involved in the present first appeal was decided by this court enhancing the compensation to Rs. 28.12 per square yard (or Rs. 30250/- per bigha). The aforesaid decision was followed by the learned Single Judge when present first appeal was initially allowed by order dated 02.09.2009. With respect to another acquisition for NOIDA by notification published in the U.P. Gazette dated 30.04.1976 under Section 4(1) of the Act relating to adjoining village Harola Makhanpur, Pargana and Tehsil Dadri, District Ghaziabad for the same purpose, the court of District Judge, Ghaziabad determined the compensation @ Rs. 20200/- per bigha in Land Acquisition Reference No. 161 of 1977 and other connected References which was challenged in First Appeal No. 528 of 1983, Sohan v. State of U.P. and others and the compensation was claimed by the claimants appellants on the same rate as in the present appeal, i.e. Rs. 30250/- per bigha or Rs. 10/- per square yard. The aforesaid first appeal was allowed by this court vide order dated 29.03.2008 determining the market value at the relevant time to be Rs. 30250/- per bigha or Rs. 10/- per square yard.

15. In First Appeal No. 699 of 1987, Smt. Kamlesh Kumari v. State of U.P., decided on 17.07.2001 a Division Bench considered the land acquisition of nearby village Chora Sadatpur by notification of the year 1975-76 under Section 4(1) of the Act and determined market value of the acquired land at Rs. 28.12 per square yard. In First Appeal No. 304 of 1995, Madan Lal Sharma v. State, decided on 08.09.2009 again the Division Bench determined compensation for the acquired land @ Rs. 28.12 per square yard relating to Notification dated 01.06.1976 for village Suthari, Pargana and Tehsil- Dadri. In First Appeal No. 631 of 1986, NOIDA v. Ratan Lal and another, decided on 20.04.2010 and First Appeal No. 548 of 2001, Brahm Singh and another v. State of U.P., two Division Benches again followed the earlier Division Bench judgments in the cases of Smt. Kamlesh Kumari (supra) and NOIDA v. Ratan Lal (supra) respectively and determined compensation @ Rs. 28.12 per square yard with respect to acquisition of land by Notification under Section 4(1) dated 11.01.1977 of village Raghunathpur, Tehsil Dadri.

16. With respect to land acquisition Notification dated 07.11.1985 under Section 4(1) of the Act relating to another village Gijhode acquired for NOIDA, a Division Bench determined compensation of Rs. 43/- per square yard in First Appeal No.119 of 2002 which was also followed in First Appeal No. 141 of 2002, decided on 10.05.2016. In First Appeal No. 562 of 2001, NOIDA v. Champi and others,

and other connected appeals decided on 23.07.2015, a Division Bench has held compensation of Rs. 34/- per square yard to be just, reasonable and founded on valid principles for the acquired land of village Gijhode adjoining to villages Morna, Mamara and Chaura Sadatpur relating to Notification under Section 4(1) of the Act published on 05.01.1982.

17. The judgments of this court as afore noted clearly demonstrate that compensation for lands of village in question or the adjoining villages in the year 1976 has been determined by different Division Benches @ Rs. 28.12 per square yard. For land acquired by notification published on 05.01.1982, it determined compensation @ Rs. 34/- per square yard and for acquisition by notification published on 07.11.1985, it determined compensation @ Rs. 43/- per square yard. The afore noted long line of Division Bench judgments could not be noticed when the judgment in question dated 11.03.2015 was passed which indicates that the said judgment suffers from mistake apparent on record in determination of the compensation @ Rs. 297/- per square yard for the land acquired by notification published on 16.09.1976.

18. In the judgment dated 11.03.2015, reference to various decisions of this court determining compensation at Rs. 297/- per square yard has been made without noticing the fact that the acquisitions involved in those appeals, were of the years much subsequent to the year of acquisition in question. This court, by inadvertence, completely ignored the provisions of Section 23 of the Act, which provide for determination of compensation for the acquired land on the market value of the land on the date of the publication of the notification under Section 4(1) of the Act. It was also not pointed out to the court that in respect of the same acquisition of the same village, this court passed various orders determining the compensation @ Rs. 28.12 per square yard. While passing the order under review, the 15 court inadvertently lost sight of the fact that initially the appeal was allowed by order dated 02.09.2009 awarding compensation as prayed by the appellants following the decision dated 29.03.2008 in First Appeal No.83 of 1983, Chandu and others (supra), in which also the compensation was awarded on the aforesaid rate of Rs. 28.12 per square yard.

19. Undisputedly, the claimants filed the present first appeal claiming compensation at Rs. 30250/- per bigha to be representing the correct market value as on the date of acquisition and accordingly, the appeal was valued. The appellants have never pleaded nor sought any relief nor led any evidence for compensation @ Rs. 297/- per square yard. Even before the Reference Court, the claimants appellants and other claimants have led evidences by filing various sale deed exemplars demonstrating market value of the acquired land from Rs. 10/- to Rs. 30/- per square yard of small size plots. Thus, the claimants appellants have neither set up any claim nor ever led any evidence for compensation @ Rs. 297/- per square yard nor pleaded at any stage of the proceedings for compensation @ Rs. 297/- per square yard. The order under review was passed in complete ignorance of above noted facts and legal

provisions. Thus, the order under review dated 11.03.2015 suffers from manifest error of law and facts and, therefore, it deserves to be reviewed and review application deserves to be allowed.

Question No. (ii) Whether the appellants are entitled for compensation on the same market value of Rs. 297/- per square yard as determined by the Division Bench by this court in First Appeal No. 564 of 1997, Khajan and others v. State of U.P. and others and First Appeal No. 1056 of 1999, Raghuraj Singh and 16 others v. State of U.P. and others OR on some other rate.

AND

Question No. (iii) Whether market value for compensation under Section 23 of the Act for acquisition of land by notification under Section 4(1) of the Act published on 16.09.1976, can be determined on the basis of market value of the acquired land of other villages under notifications of the year 1986, 1988, 1989 or 1990?

AND

Question No. (iv) Whether the High Court can enhance compensation to thirty times of the claim of the claimants-appellants and that too, beyond the pleadings and relevant evidences and the relief sought in the appeal?

20. Since questions No. (ii), (iii) & (iv) are interlinked and as such, these are being considered together.

21. Undisputedly, the claimants appellants have pleaded and led evidences for determination of market value of the acquired land as on the date of notification under Section 4(1) of the Act published on 16.09.1976 claiming compensation @ Rs. 30250/- per bigha or Rs. 10/- per square yard. Before the Reference Court, the claimants appellants and other claimants have led various evidence by filing sale deed exemplars which indicated consideration from Rs. 10/- to Rs. 30/- per square yard of nearby plots depending upon its size. They valued their first appeal @ Rs. 30250/- per bigha and the court fees was accordingly determined.

22. Thus, according to their own pleaded case of the claimants appellants, the market value of the acquired land as on the date of acquisition i.e. on 16.09.1976, was Rs. 10/- per square yard or Rs. 30250/- per bigha.

23. The provision of Section 23 of the Act clearly stipulates the principles for determination of the amount of compensation by court to be awarded for land acquired under the Act. The first principle clearly mandates that market value of acquired land shall be determined as prevailing on the date of publication of notification under Section 4(1) of the Act. In the present set of facts, the notification under Section 4(1) of the Act was published in the Gazette on 16.09.1976. Thus, the market value of the acquired land has to be determined under the Act as on 16.09.1976. The judgments in the case of Khajan and others (supra) and Raghuraj Singh and others (supra) relates to determination of

market value of land acquired in much subsequent years, which can never be applied to determine compensation of the acquired land as on 16.09.1976.

24. In the case of *Bhupal Singh v. State of Haryana*, (2015) 5 SCC 801 Hon''ble Supreme Court specifically considered similar question of determination of market value under Section 23 of the Act and held that the fair market value of the acquired land is required to be determined on the basis of the market rate of the adjacent lands similarly situated to the acquired lands prevailing on the date of acquisition or/ and prior to acquisition but not subsequent to the date of acquisition. Para-27 of the aforesaid judgment is reproduced below:

"27. As rightly argued by learned counsel for the respondent, the fair market value of the acquired land is required to be determined under Section 23 of the Act on the basis of the market rate of the adjacent lands similarly situated to the acquired lands prevailing on the date of acquisition or/and prior to acquisition but not subsequent to the date of acquisition. In appropriate cases, addition of 10% per annum escalation in the prices specified in the sale deeds (if filed and relied on) in relation to adjacent similarly situated lands for fixing the market value of the acquired land may be permitted. Such is, however, not the case in hand. Here is the case where firstly, no sale deeds were filed by the appellants to prove the fair market value of the acquired land and secondly, what they now want this Court to do is to take into consideration the rate of those lands which were acquired ten years after the date of acquisition in question and then reduce the value of such land by 10% every year so as to determine the fair market value of the acquired land in question. In our view, such procedure for determination is not provided in the Act."

(Emphasis supplied by me)

25. In the case of *Union of India and another v. Raghubir Singh (dead) by LRs*. Etc. (1989) 2 SCC 754 (para-33), Constitution Bench of Hon''ble Supreme Court considered the provisions of Section 23 and Section 11 of the Act and held as under:

"33. We find substance in the contention of the learned Attorney General that if Parliament had intended that the benefit of enhanced solatium should be extended 19 to all pending proceedings it would have said so in clear language. On the contrary, as he says, the terms in which Section 30(2) is couched indicate a limited extension of the benefit. The Amendment Act has not been made generally retrospective with effect from any particular date, and such retrospectivity as appears is restricted to certain areas covered by the parent Act and must be discovered from the specific terms of the provision concerned. Since it is necessary to spell out the degree of retrospectivity from the language of the relevant provision itself, close attention must be paid to the provisions of Section 30(2) for determining the scope of retrospective relief intended by Parliament in the matter of enhanced solatium. The learned Attorney General is also right when he points out that it was never intended to define the scope of the

enhanced solatium on the mere accident of the disposal of a case in appeal on a certain date. Delays in the superior Courts extend now to limits which were never anticipated when the right to approach them for relief was granted by statute. If it was intended that Section 30(2) should refer to appeals pending before the High Court or the Supreme Court between April 30, 1982 and September 24, 1984, they could well refer to proceedings in which an award had been made by the Collector from anything between 10 to 20 years before. It could never have been intended that rates of compensation and solatium applicable to acquisition proceedings initiated so long ago should now enjoy the benefit of statutory enhancement. It must be remembered that the value of the land is taken under Section 11(1) and Section 23(1) with reference to the date of publication of the notification under Section 4(1), and it is that date which is usually material for the purpose of determining the quantum of compensation and solatium. Both Section 11(1) and Section 23(1) speak of compensation being determined on the basis, inter alia, of the market value of the land on that date, and solatium by Section 23(2), is computed as a percentage on such market value."

(Emphasis supplied by me)

26. In the case of *Ashok Kumar and another v. State of Haryana*, (2016) 4 SCC 544 (Para-12), Hon^{ble} Supreme Court considered situation of two acquired lands and held as under:

"In the case of the appellants herein, it is an admitted position that the properties do not abut the national highway. Admittedly, it is situated about 375 yards away from the national highway and it appears that there is only the narrow Nahan Kothi Road connecting the properties of the appellants to the national highway. Therefore, it will not be just and proper to award land value of Rs. 250/- per square yard, which is granted to the property in adjoining village. Having regard to the factual and legal position obtained above, we are of the considered view that the just and fair compensation in the case of appellants would be Rs. 200/- per square yard."

27. In view of provision of Section 23 of the Act and the law laid down by Hon^{ble} Supreme Court in the case of *Bhupal Singh (supra)* and *Raghubir Singh (supra)*, the market value of the acquired land in the present set of facts; cannot be determined at the rate of compensation determined in the case of *Khajan and others (supra)* and *Raghuraj Singh and others (supra)*.

28. In the case of *State of Orrisa v. Mamta Mohanty*, (2011) 3 SCC 436 (para-55), Hon^{ble} Supreme Court laid down the law that pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on

grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. While laying down the above noted principles Hon^{ble} Supreme Court also referred to the judgments in the case of Sri Mahant Govind Rao v. Sita Ram 21 Kesho, (1898) 25 Ind. App. 195 (PC), Trojan and Co. v. Nagappa Chettiar, AIR 1953 SC 235, Ishwar Dutt v. Collector (LA), 2005 (7) SCC 190 and State of Maharashtra v. Hindustan Construction Co. Ltd., 2010 (4) SCC 518.

29. In view of the above discussion, the market value of the acquired land has to be determined as on the date of acquisition, i.e. 16.09.1976. Even the High Court cannot determine the market value ignoring the principles of determination as provided in Section 23(1) of the Act. High Court can enhance the compensation but the enhancement must be within the four corners of provision of Section 23 of the Act and based on evidences on record.

30. Despite being asked repeatedly, learned counsel for the appellant could not show from the relied upon judgments in the case of Khajan and others (supra) and Raghuraj Singh and others (supra) that the Division Bench determined market value of the acquired land as on 16.09.1976 and situationally subject matter of acquisition in those judgments is the same or similar to the land acquisition as involved in the present set of facts.

31. Since in the matter of same acquisition and of the same village and also in acquisitions of land adjoining or nearby villages by notifications of Section 4(1) of the Act of the years 1976 and 1977, this court determined the compensation @ Rs. 28.12 per square yard and also since the claimants appellants or the respondents have failed to point out any distinguishing feature in the present set of facts and as such I have no hesitation to hold that the claimants appellants are entitled to compensation of their acquired land @ Rs. 28.12 per square yard.

32. In result the review application succeeds and is hereby allowed. The judgment dated 11.03.2015 is recalled. The appeal is allowed. Impugned judgment dated 23.12.1982 and the decree passed in L.A. References No. 42 of 1978, is modified determining the market value of the acquired land at Rs. 28.12 per square yard. The claimants appellants shall be entitled for compensation @ Rs. 28.12 per square yard along with other statutory benefits and interest after deduction of the amount, if any, already paid to them. The deficiency in court fees, if any, shall be recovered from the claimants at the time of preparation of the final decree.