

(1999) 08 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 243 of 1991 C.M.P. No"s. 147, 260 of 1998

Land Acquisition Collector, HPSEB and Another

APPELLANT

Vs

Rani Rajindera Kumari and Others
 Land Acquisition
Collector, NJPC and Another Vs Smt. Rani Rajindera Kumari
and Others

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 41 Rule 27, Order 6 Rule 17, 115, 151

Constitution of India, 1950 — Article 226

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 26, 27, 27(1), 27(2)

Land Acquisition Act, 1894 — Section 11, 15, 18, 4, 50

Citation : (2000) 2 ShimLC 45

Hon'ble Judges : Surinder Sarup, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : H.S. Hooda and Ramakant Sharma, for the Appellant; S.R. Sharma, in RFA Nos. 243 of 1991, 156 and 157 of 1997, B.P. Sharma, A.A.G. and R.M. Bisht, Asstt. General Advocate for Respondent No. 5 in RFA Nos. 156 and 157 of 1997, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Sarup, J.—This judgment will dispose of Regular First Appeals No. 243 of 1991, 156 of 1997 and 157 of 1997 as common questions of law and somewhat similar facts arise in these cases. Be it stated here that the impugned judgment in R.F.A. No. 243 of 1991 is of the Court of the then District Judge (Forest), Shimla, dated 23rd July, 1991, whereas the common impugned judgment in R.F.A. Nos. 156 and 157 of 1997 is that of Mr L.N. Sharma, District Judge, Kinnaur at Rampur Bushehar, dated 27th March, 1997. In so far as these two impugned judgments are concerned, the common thread which connects them is the fact that while rendering the Award in the references u/s 18 of the

Land Acquisition Act, hereinafter called "the Act", the District Judge, Kinnaur at Rampur Bushehar, has in substance awarded compensation at the same rate i.e. Rs. 5,000/- per blswa, as was awarded by the District Judge (Forest), Shimla, in the earlier references of the same Respondents.

2. The facts giving rise to R.F.A. No. 243 of 1991, as made out from the impugned judgment therein, are that land measuring 32-10 bighas in village Jhakri, Tehsil Rampur Bushehar, District Shimla, was acquired from the Respondent-land-owner, hereinafter to be referred to as "the original claimant" by the H.P. State Electricity Board Nathpa Jhakri Unit, for construction of approach road to "Pachadda-Quarry" in the year 1987, through notification u/s 4 of the Act published on 29.1.1987. The Land Acquisition Collector announced his Award on 24.2.1989 whereby he assessed the compensation of the acquired land at the rate of Rs. 20,000/- per bigha. As usual, aggrieved against the said Award, the claimant applied for a reference to be made u/s 18 of the Act. In his claim petition it was stated that the market value of the acquired land was Rs. 1,40,000/- per bigha on the date of acquisition and, therefore, he was entitled to enhanced amount of compensation. It may be mentioned here that originally there was one single claimant, namely, Rajkumar Rajinder Singh, son of the erstwhile Ruler of State of Rampur Bushehar and the present claimants are his legal representatives and heirs, he having expired during the pendency of the protracted proceedings. It is in this background that the District Judge (Forest), Shimla, has given the impugned Award referred to above. The appeal has been filed by the Land Acquisition Collector, HPSEB, and the State of Himachal Pradesh through the Secretary (Electricity Board). It would be relevant and pertinent to mention at this stage also that during the pendency of the appeal the Nathpa Jhakari Power Corporation was added as Respondent No. 2 in the said appeal, which will be referred hereafter as "NJPC".

3. A perusal of the records of R.F.A. No. 243 of 1991 indicates that after it remained pending in this Court for approximately seven years, an application under Order 41, Rule 27, CPC was filed vide CMP No. 147 of 1998 on behalf of NJPC. Not resting content with the same, within a few months thereafter CMP No. 260 of 1998 was also filed by the same party i.e. NJPC (Respondent No. 2 in the appeal) under Order 6, Rule 17 read with Section 151, CPC for amendment of the reply originally filed by the Land Acquisition Collector HPSEB and its Secretary to the reference petition preferred by the original claimant, Rajkumar Rajinder Singh, u/s 18 of the Act. In the application for production of additional evidence Under Order 41, Rule 27, CPC reply and rejoinder have been filed by the concerned parties. In the subsequent application under Order 6, Rule 17, CPC only a reply has been filed, but no rejoinder thereto has been filed on behalf of the NJPC.

4. The facts giving rise to the other two appeals i.e. RFA Nos. 156 and 157 of 1997, as made out from the common Award of the District Judge, Kinnaur at Rampur Bushehar, are that the State of Himachal Pradesh acquired land for the

construction of residential colony for Nathpa Jhakri Hydel Project in village Jhakri, Tehsil Rampur Bushehar, District Shimla, through a notification u/s 4 of the Act dated 5th March, 1988. This land also belonged to the original claimant i.e. Rajkumar Rajinder Singh. However, when the impugned Award was given by the District Judge, Kinnaur at Rampur Bushehar, he appears to have expired meanwhile and was represented by his legal representatives and heirs who were the Petitioners in the reference proceedings before the District Judge and are Respondents No. 1 to 4 in both these appeals, Respondent No. 5 being the Collector (H.P. Ceiling on Holdings Act), Rampur. In those acquisition proceedings, the Land Acquisition Collector, Nathpa Jhakri Power Corporation, announced his Award on 27th February, 1991, and assessed the price of the acquired land as per details given below:

1. Kiar Awal Rs. 56, 278/- per bigha
2. Bakhal Awal Rs. 26,500/- -do-
3. Bakhal Doem Rs. 23,500/- -do-
4. Uncultivated land Rs. 20, 000/- -do-

In addition, he also awarded compensation for the trees standing on the acquired land. Ultimately, the District Judge, awarded compensation for the entire acquired land in those references at a flat rate of Rs. 5,000/- per biswa, hence these two appeals at the instance of the Land Acquisition Collector, Nathpa Jhakri Power Corporation and the NJPC, Appellants No. 1 and 2 respectively.

5. In these two appeals also CMP Nos. 404 and 403 of 1997 have been filed on behalf of the Appellants under Order 41, Rule 27 read with Section 151, CPC for production of additional evidence. CMP No. 403 of 1997 is on the record of RFA No. 157 of 97 while CMP No. 404 of 1997 is on the record of RFA No. 156 of 1997. Additionally, CMP No. 68 of 1998 has been filed in RFA No. 156 of 1997 on behalf of Respondent No. 5 for impleading him as one of the Appellants under Order 1, Rule 10, Code of Civil Procedure. A similar application has been filed in RFA No. 157/97 being CMP No. 79 of 1998.

6. At the time of hearing lengthy arguments have been advanced before us on behalf of the NJPC by Shri H.S. Hooda, learned Counsel, in support of the application for amendment, referred to above, as well as the applications for production of additional evidence, also referred to above. In so far as the application for amendment is concerned, it has been stated therein that Rajkumar Rajinder Singh feeling aggrieved by the Award of the Land Acquisition Collector, had preferred reference petition for enhancement of compensation at the rate of Rs. 1.40 lacs per bigha. The HPSEB as well as the Land Acquisition Collector HPSEB filed joint reply to that reference petition. In para 2 of the application it has been stated that the said reply requires to be amended inasmuch as it is necessary for the purpose of adjudication of real controversy between the parties to do justice. In substance, the plea is that the question of

title of late Rajkumar Rajinder Singh is in dispute but it could not be amplified with full facts in the original reply, which was filed in October 1989. Shelter has been taken behind the fact that NJPC took over the Project (a joint venture of the Government of India and Government of H.P.) with effect from 1st August, 1991. The plea further is that the public money is involved and in case the prayer for amendment to raise the question of vesting of land is not allowed, it would result in loss of public money. The considerable delay in not earlier applying for amendment is sought to be explained on the ground that the same is neither wilful nor intentional, but due to facts and circumstances beyond its control. These circumstances are sought to be explained on the plea that the NJPC made enquiries with respect to question of vesting of land of late Rajkumar Rajinder Singh and immediately after coming to know of the fact that he was not entitled to any compensation in view of the fact that the land which was notified for acquisition had already vested in the State of Himachal Pradesh, the NJPC moved an application under Order 41, Rule 27, Code of Civil Procedure, the composite applications in this behalf having been already referred to above. Another ground taken is that the NJPC was for the first time arrayed as party in the appeal (RFA No. 243 of 1991) vide order passed by this Court on 9.1.1992 in CMP No. 406/92. On these grounds, inter alia, the following amendment has been sought in the original reply filed to the reference petition of the original claimants:

"Preliminary objection:

That the Petitioner is not entitled for any compensation inasmuch as his entire land has vested in the State of Himachal Pradesh by an order of Compensation Officer dated 12.4.1966 whereby he was allowed to retain the land measuring 64.6 bighas in Jhakri village. It is submitted on behalf of the Respondent that the land which has been acquired by the Land Acquisition Collector in the present case is not the land out of the land retained by Rajkumar Rajinder Singh measuring 64.6 bighas. Therefore, the Petitioner is not entitled for any compensation and notification u/s 4 has wrongly been issued by the authorities whereas, keeping in view the vestment of land in the State of Himachal Pradesh, there was no occasion for the authorities to have issued notification u/s 4 of the Land Acquisition Act and this position is clear from letter dated 8.2.1974 issued by the Under Secretary, MPP and Power to the Government of Himachal Pradesh and late Rajkumar Rajinder Singh filed an appeal before the learned District Judge, Mahasu, and in the said appeal, the compensation was allowed to Rajkumar Rajinder Singh under the provisions of Section 27 of the H.P. Abolition of Big Landed Estates Act and the order passed by the District Judge has not been further assailed. It is further submitted that the vestment u/s 27 of the H.P. Abolition of Big Landed Estates and Land Reforms Act which took place with effect from 26.11.1955 was assailed by Rajkumar Rajinder Singh in CWP No. 15 of 1962 in the Court of Judicial Commissioner, H.P. submitting that the disputed land could not vest in the State u/s 27 of the Act *ibid*. The said writ petition was allowed and against that writ petition, the State filed SLP before the Hon''ble Apex Court and the Hon''ble Apex Court on 17.9.1968 held that the land covered

u/s 27 of the aforesaid Act stood already automatically vested in the State Government with effect from 26.1.1955 and the case was remanded by the Hon"ble Apex Court to the Delhi High Court (Himachal Bench) for decision in accordance with law. The writ petition was heard by the Delhi High Court and decided on 9th July, 1970, by making observations that the Court did not intend exercising jurisdiction under Article 226 of the Constitution and Raj Kumar Rajinder Singh was directed to file Civil Suit. In pursuance to the directions issued by the Court. Rajkumar Rajinder Singh filed a civil suit No. 50 of 1970. That Civil Suit was dismissed on 26th June, 1973. It was held in the aforesaid suit after trial and contest that the land stood vested in the State of Himachal Pradesh with effect from 26.1.1955. Against this judgment, Rajkumar Rajinder Singh filed RFA which was registered as RFA No. 9 of 1973. The said RFA was decided on 22.6.1986 on the basis of statement made on behalf of Rajkumar Rajinder Singh that he had been paid compensation with respect to the disputed land and it was left open to him to file fresh suit on the same cause of action in case there is any necessity to file such subsequent suit. It is further submitted that under the proceedings initiated by the State of Himad il Pradesh under the Ceiling on Land Holdings Act, 19(sic)2, Rajkumar Rajinder Singh did not retain the land which he had retained under the provisions of the Himachal Pradesh Abolition of Big Landed Estates Act and the ceiling case was decided by the Collector Rampur vide order dated 10.6.1980 whereby late Rajkumar Rajinder Singh was allowed to retain two units of the land. It is pertinent to point out here that against the order passed by the Collector, the Settlement Officer filed a revision before the Financial Commissioner and the learned Financial Commissioner after hearing vide order dated 5th September, 1985, set-aside the order dated 10.6.80 and remanded the case back to the Court for fresh decision. Therefore, keeping in view the entire facts and circumstances, especially when Rajkumar Rajinder Singh has not retained the land which is the subject matter of acquisition in the present case, there was no occasion for the authorities to have issued a notification u/s 4 and unless and until the title of Rajkumar Rajinder Singh is decided by the competent authorities, he cannot be allowed to obtain any compensation. Therefore, the reference petition is liable to be dismissed and the amount deserves to be paid to the applicant who is entitled for the same.

7. Apart from the above, amendments in paras 1, 4(a) and 4(d) have also been sought. Lastly, the prayer Clause is sought to be amended to read that the Reference Petition may be dismissed with costs and the amount which has been ordered to be deposited in the H.P. State Co-operative Bank, Shimla, by the Land Acquisition Collector, may be released to the applicant after holding that Rajkumar Rajinder Singh is not entitled to any compensation.

8. In the reply filed on behalf of Respondents No. 1(a) to 1(d) i.e. the claimants who are legal representatives and heirs of late Rajkumar Rajinder Singh, original claimant, the following preliminary objections have been taken:

1. That the application for amendment is not maintainable because the NJPC as

Respondent No. 2 in the main appeal has categorically admitted itself to be limited Company incorporated under the provisions of the Indian Companies Act, 1956. Consequently it is only a proper party and has got a limited right to dispute the determination of compensation in view of the limitation imposed u/s 50(2) of the Act. It is precluded from seeking a reference against the Award of the Collector which can only be defended and opposed on the quantum of compensation. In other words, NJPC being only a proper party, and not a necessary party in these proceedings, has no right to dispute title and interest of the original claimant and that of his successors-in-interest in respect of the acquired land. Additionally, the State of Himachal Pradesh cannot reopen the matter on the plea that the land had vested in it when proceedings were initiated under the Act. Further, the question whether the land had so vested, along with title, in the State must be treated as outside the scope of adjudication under the proceedings of the Act. As such, NJPC and the Appellant are estopped from raising such pleas.

2. That in the original reply filed before the Reference Court, the assertion of ownership and possession qua the acquired land by the original claimant i.e. late Rajkumar Rajinder Singh, has not been denied in the original reply. Moreover, the application for amendment is highly belated, having been filed after six years and eight months, and by moving the said application NJPC as Respondent No. 2 wants to setup altogether a new defence which is totally inconsistent to the averments made in the original reply. Additionally, it has no right to set-up a new defence by way of amendment, as it has not filed any reply at any stage of the proceedings earlier, nor it has any right to be heard inconsistent to the stand which has been set-up and admitted by the Appellants in reference proceedings.

On merits, the pleas taken in the application for amendment have been controverted in the reply of respondents No. 1(a) to 1(d) i.e. the claimants.

10. Adverting now to the applications for production of additional evidence, the same are based on the grounds that before 1st August, 1991, the NJPC was not in the picture and by that time Collector had already passed an Award and compensation was also received by the original claimant to which he was entitled. He got exemption from the Collector under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Act No. 19 of 1973), hereafter to be referred as 'the Ceiling Act', in the absence of the NJPC being party therein. Not only that, he got all the Pattas having been executed by him in favour of number of persons declare as bona fide transactions, by playing fraud and misrepresentation with an ulterior motive, although in no case those could have been declared as bona fide transfers. Before the District Judge (Forests), Shimla, NJPC was not a party during the pendency of reference petition there as it had not come into existence. Shelter is sought to be taken by raising the plea that after coming to know about the factum of the land having been vested in the State of Himachal Pradesh, NJPC immediately took steps by filing application for additional evidence in RFA Nos. 156 and 157 of 1997. Therefore, according to the averments in the

applications, the documents sought to be produced by way of additional evidence and annexed with the said applications, could not be produced before the Reference Court in proceedings u/s 18 of the Act despite due diligence, and no prejudice would be caused to the Respondent-claimants in case the said additional evidence is allowed to be produced before this Court. It has lastly been pleaded that the principles of natural justice, equity and fair play require that the documents annexed with the applications may be permitted to be placed on record as additional evidence before this Court.

11. In the reply filed by the Respondent-claimants two preliminary objections have been taken, namely, that the applicants i.e. NJPC etc. are estopped from disputing the title and ownership of late Rajkumar Rajinder Singh and his successors-in-interest (Respondents No. 1(a) to 1(d) in RFA No. 243/91 who are Respondents No. 1 to 4 in the other two appeals) in respect of the land in question inasmuch as the acquisition proceedings under the Act were initiated by the State of Himachal Pradesh by Award dated 24.2.1989. The State deemed the land in question in exclusive ownership and possession of the original claimant and its possession has also been taken by the Appellants under the provisions of the Act. The acquisition proceedings under the Act pre-supposes that the ownership in the land sought to be acquired vests in the person from whom it is being acquired and the proceedings are initiated on the assumption that the land does not belong to the State. Consequently, the State through its functionaries having admitted ownership and possession of the original claimant in the reply filed to the reference petition, would be deemed to have raised no objections with regard to the acquisition of the land of the original claimant and through him by his successors-in-interest, the present claimants, inasmuch as no specific pleas or pleadings were raised that he was not the owner nor any evidence in this behalf was led before the District Judge. Moreover, there are no averments as to why the documents in question sought to be produced by way of additional evidence could not be produced earlier.

12. On merits, the pleas taken in the applications have been controverted in the reply.

13. Having heard at length and deliberated by deep consideration the respective contentions of the parties, it would be appropriate in the first instance to deal with the application for amendment, referred to above, because in our considered view the fate of the applications for production of additional evidence is inter-dependent on the same.

14. In support of his submissions concerning the application for amendment vide CMP No. 260 of 1998, Shri Hooda has placed reliance on *Ganesh Trading Co. Vs. Moji Ram*, ; *Sukhdev Chand v. Vishnu Dutt* (1994 PLJ 153) and *Dalip Kaur and Anr. v. Major Singh and Ors.* (1995 P.L.J. 494).

15. In so far as the case of *M/s. Ganesh Trading Company* (supra) is concerned, a reliance is placed on paragraph 11 of the report which is as under:

The High Court had also referred to *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, but had failed to follow the principle which was clearly laid down in that case by this Court. There, the Plaintiff had instituted a suit in the name of Jai Jai Ram Manohar Lal which was the name in which the business of a firm was carried on. Later on, the Plaintiff had applied to amend the plaint so that the description may be altered into "Manohar Lal Proprietor Jai Jai Ram Manohar Lal". The Plaintiff also sought to clarify paragraph 1 of the plaint so that it may be evidence that "Jai Jai Ram Manohar Lal" was only the firm's name. The Defendant pleaded that Manohar Lal was not the sole proprietor. One of the objections of the Defendant in that case was that the suit by Manohar Lal as sole owner would be time barred on 18th July, 1952, when the amendment was sought. In that case the High Court had taken the hypertechnical view that Jai Jai Ram Manohar Lal being "a non-existing person" the Trial Court could not allow an amendment which converted a non-existing person into a "person" in the eye of law so that the suit may not be barred by time. This Court while reversing this hypertechnical view observed at p. 1269 :

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend to pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

It is manifest that the facts therein were very much different from the facts in the present appeals. There it was a case of a suit for recovery of money due under a promissory note, which was filed by a partner of a firm. Amendment of the plaint was sought on the ground that the partnership firm already stood dissolved on the date of filing the suit and the suit instituted by one of the partners, was maintainable. It was held by the Apex Court that the amendment as sought in that case did not alter the cause of action or the character of the suit, nor did it change identity of the Plaintiff who remained the same. It only brought out correctly the capacity of the Plaintiff suing. At the same time the Apex Court was also of the view that it is true that if a Plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new and inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. That is exactly what would happen in the present case, if the amendment as is being sought by the NJPC, is allowed for reasons to be recorded hereafter.

16. In Sukhdev Chand's case (supra) the principles to be kept in mind while considering the question of amendment of pleadings under Order VI, Rule 17, CPC have been stated. That was a case arising out of a dispute between the landlord and tenant of the premises in dispute therein under the East Punjab Urban Rent Restriction Act, in which the eviction of the tenant was sought by the landlord u/s 13 thereof on the grounds of arrears of rent, nuisance and material impairment of value and utility of the building. An application for amendment of the same on the ground of personal necessity was made and the Rent Controller permitted that amendment after affording the parties an opportunity of being heard. The Punjab and Haryana High Court upheld the order allowing amendment with a direction that it shall be subject to payment of costs. Needless to say, that the facts and circumstances obtaining in that case have no bearing on the points and contentions issues involved in the present appeals and is thus of no avail to the applicants.

17. In Dalip Kaur's case (supra) again the principles to be kept in mind while considering the question of amendment of pleadings under Order VI, Rule 17, CPC have been stated. The facts therein were that in suit for possession of land and for permanent injunction restraining the Defendants from alienating the same, amendment of the plaint was sought by making a prayer for declaring the judgment and decree passed by the Court in a Civil suit as null and void and ineffective against the rights of the Plaintiff. That application was dismissed mainly on the ground that it had been filed without explaining the alleged inordinate delay by introducing the distinct cause of action. In para 5 of that report it is indicated that the counsel for the Respondents conceded before the Punjab and Haryana High Court that the Plaintiff therein can file a fresh suit challenging the judgment and decree in the civil suit referred therein. In these circumstances it was held that the relief claimed in that case was not barred by time and by the proposed amendment no vested right of the Respondents would be taken away. It is thus crystal clear that the facts therein in the circumstances obtaining in Dalip Kaur's case (supra) were entirely different than the facts and circumstances with which we are to deal with in these appeals.

18. In the present appeals the facts which are sought to be introduced by way of amendment as spelt out on behalf of the applicants, are that the entire land of late Rajkumar Rajinder Singh had vested in the State of Himachal Pradesh by an order of the Compensation Officer dated 12.4.1996 whereby he was allowed to retain the land measuring 64.6 bighas in Jhakri village. The land acquired under the Act in the present case is not the part of the land thus retained by him under the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, hereinafter to be called "the Abolition of Big Landed Estates and Land Reforms Act". In these circumstances by way of amendment it is sought to be pleaded that the original claimant as well as his successors-in-interest i.e. claimant-Respondents herein are not entitled to any compensation under the Act, as there was no occasion for taking recourse to proceedings thereunder. As already indicated above, in the reply filed to the application for amendment, the

main plank is on the ground that by way of the proposed amendment the applicants intend to withdraw the admission made in the original reply to the reference petitions and displace the case of the claimant-Respondents thereby causing them irretrievable prejudice, which is not permissible under the law. Apart from this ground, it has been stated in the reply that the Appellants have in clear terms admitted the right, title of Rajkumar Rajinder Singh in the reply to para No. 1 of the Reference Petition originally filed. Now the NJPC wants to set-up altogether a new case through the proposed amendment to the said reply by changing the admission into denial of ownership of Rajkumar Rajinder Singh, predecessor-in-interest of Respondents No. 1(a) to 1(d). This would amount not only to changing the nature of cause of action but would displace their case and cause them irretrievable prejudice. The proposed amendment shall change the nature and character of the original pleas.

19. We find considerable force in the submission of the learned Counsel for-Respondents No. 1(a) to 1(d) in RFA No. 243 of 1991, who is also their counsel in the other two appeals, where they are arrayed as Respondents No. 1 to 4. If the proposed amendment is allowed at this stage, it would tantamount to reopening the entire case which would have the effect of literally opening a Pandora's box unleashing all sorts of disputes between the parties resulting in further litigation between them, as if enough is not enough already, starting from the proceedings initiated as far back as the year 1966 when, admittedly, order was passed by the Compensation Officer dated 12.4.1966 under the Abolition of Big Landed Estates and Land Reforms Act. So much water having flown under the bridge over this long period of time, in case the proposed amendment is now allowed at this belated stage, it would only have the effect of causing grave prejudice and injustice to the claimants, which by no stretch of imagination can be compensated by any order of costs to the extent of any or utmost quantification thereof in terms of money.

20. During the extended hearing of these appeals by us spread over various dates, we have even gone to the extent of comparing the particulars of the land acquired under the Act in the present appeals, with the particulars of the land which is purported to have vested in the State of Himachal Pradesh by the order of the Compensation Officer dated 12.4.1966, referred to above. This has been possible due to the assistance rendered at the time of hearing by the learned Counsel for the claimants who has enabled us to compare each and every Khasra number in a comparative manner from the record itself before us in these appeals. Illustratively the copy of the order of the Compensation Officer dated 12.4.1966 is there on the record as Annexure A-1 with the application under Order XLI, Rule 27, CPC vide CMP No. 147 of 1998 in RFA No. 243 of 1991 for production of additional evidence. Along with that order has been annexed the list showing the particulars of land, Abadi and Gharat, which has been excluded from vestment u/s 26 of the Abolition of Big Landed Estates and Land Reforms Act in the case pertaining to vestment of land of the aforesaid Rajkumar Rajinder Singh. On comparison, most of the land acquired under the Act is out of that

land which was excluded from vestment to the extent of 64.6 bighas in Jhakari village which he was allowed to retain as per their own case set-up by the applicants i.e. NJPC etc. In other words, the land acquired under the Act is not the same as the land which had vested in the State of Himachal Pradesh by the order of the Compensation Officer dated 12.4.1966. We have taken this step in order to do substantial justice between the parties.

21. There are a number of legal obstacles in the way of allowing the prayer for amendment of the applicant-NJPC. The first and foremost is that the amendment sought for would have the effect of changing a plea of admission, originally taken in the reply to the reference petitions regarding ownership of the original claim in respect of the land acquired under the Act, into denial thereof. In order to appreciate this aspect of the matter, it would be appropriate briefly to refer to the original pleading. In Para 1 of the reference petition regarding the acquisition of land, for the purpose of construction of road etc., which is subject matter of land acquisition proceedings in RFA. No. 243 of 1991, it has been stated that the land in ownership and possession of the original claimant has been acquired for that purpose as per the description given therein. The reply to the said para filed by the Land Acquisition Collector Nathpa Jhakri Project HP SEB, is that the contents of para 1 of the reference petition are admitted. In other words, the ownership and possession of the original claimant of the land in question has been specifically admitted in the reply of the Land Acquisition Collector. Now, by the proposed amendment, the said admission is sought to be changed into denial thereof. This is not permissible under the law.

22. In the case of Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., , it has been held that in application for amendment of written statement, where the amendment introduces entirely a different new case and seeking to displace the Plaintiff completely from admissions made by Defendants in written statement, such an application is liable to be rejected. On the facts of that case, it was held that such displacement from the admissions made in the written statement, if allowed by way of amendment, will irretrievably prejudice the Plaintiff and the High Court in that case was held to have rightly rejected the application for such amendment. Similarly, in Heeralal Vs. Kalyan Mal and Others, it was held while considering the question of amendment of pleadings that withdrawal of admission made in the written statement by Defendant which would displace Plaintiff's case and cause him irretrievable prejudice, was not permissible and subsequent withdrawal of admission by amendment of the written statement by the Defendant was held to be not capable of being allowed. Such a course adopted by the High Court in exercise of revisional power u/s 115, CPC was held not to be justified by interfering with the trial Court's order dismissing the application for amendment of pleadings.

23. Two authorities of this Court have also taken the same view. In the case of Mathia v. Prem Lal and Ors. (1992 (2) Sim. L.C. 292), it was held that

amendment sought by Defendants No. 1 and 2 in that case was totally inconsistent with their pleadings and would amount to withdrawal of admission made by them in their written statement. An order allowing them to file amended written statement to that effect was set aside by this Court in revisional jurisdiction. In *Smt. Mathura and Anr. v. Devi Ram and Ors.* (1997 (3) Sim. L.C. 389), the facts were that the application for amendment in the written statement was rejected by the trial Court on the ground that the proposed amendment had the effect of substituting the admission made by Defendants in their written statement. That order was upheld by holding that the prayer for amendment was rightly rejected by the trial Court.

24. No ruling to the contrary having been cited before us, it must be taken as settled law that changing a plea of admission into one of denial by proposed amendment of the written statement (of the reply in the present case) cannot be permitted.

25. The second reason why the amendment in the present case cannot be allowed is that admittedly the applicant - NJPC is a proper party in the proceedings relating to acquisition of land for a public purpose under the Act of the original claimant and it has only a limited right to oppose enhancement of compensation with regard to the quantum thereof. It has no locus-standi to dispute the title of the original claimants and, through him his Legal Representatives, who are now before us as party. The status of the NJPC would be governed by Section 50 of the Act and in view of Sub-section (2) thereof it had a limited right to appear and adduce evidence for the purpose of determination of the amount of compensation in the present case either before the Land Acquisition Officer or the Court and, in view of the proviso thereto, it was not entitled to demand a reference u/s 18 of the Act. In other words, it has no locus-standi to dispute the title, i.e., the ownership and possession of the acquired land vis-a-vis the original claimant and through him his Legal Representatives.

26. In the case of *U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc.*, the Apex Court summarised the rights of the Local Authority or the Company at the cost of whom the land is acquired as under:

"(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.

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 on the date on which the matter of determination of compensation will be taken up. The only limitation on the right conferred by Section 50(2) is that contained in the proviso to Section 50(2) which precludes the local authority from demanding a reference u/s 18.

(2) to (4) xx xx

(5) In case the amount of compensation has been enhanced by the Court and no appeal is filed by the Government the local authority if adversely affected by such enhancement may file an appeal with the leave of the Court. The right of the local authority does not depend on its being impleaded as party in the proceedings before the reference Court. Even if the local authority is not impleaded as a party before the reference Court it can file an appeal against the award of the reference Court in the High Court after obtaining leave if it is prejudicially affected by the award. In case the Government files an appeal against the enhancement of the award the local authority is entitled to support the said appeal and get itself impleaded as a party."

27. Similarly, in *Modi Spinning and Weaving Mills Vs. Virendra and Others*, it has been held that a Company for whose benefit land is acquired is competent to file an appeal after obtaining the leave of the Court, if no appeal is filed by the Government. In the said case, the Apex Court has interpreted the provisions of Section 54 of the Act which provides for appeals in proceedings before Court. It is thus, clear that the NJPC - applicant, apart from being a proper party, has only a limited right to be heard in proceedings relating to land acquisition in respect of the quantum of compensation and no other. Moreover, there is nothing on record to show that any leave was sought for or granted by this Court for filing an appeal by it against the award of the District Judge in the present case.

28. The third hurdle in the way of allowing the amendment at the instance of the applicant-NJPC in the present case is that the same has been sought for after considerable and long time. The reasons explained in the application for amendment are that the delay is neither wilful nor intentional but due to facts and circumstances beyond its control, which have already been referred to hereinbefore in this judgment. On the face of it, the said facts and circumstances do not hold any water and the entire exercise appears to be an after thought. Even at the hearing before us, the learned Counsel has not been able to satisfy us that the said delay deserves to be condoned in the facts and circumstances as brought out on the record.

29. Yet Anr. impediment in the way of allowing amendment in the present case is that once the land in question has vested in the State under the Act, the scope of a reference u/s 18 thereof, and the present appeals having arisen out of those proceedings before the District Judge, must be limited to those matters, which proceed on the basis that the land did not originally belong to the Government. This Court through a decision of the Division Bench in the case of *State of Himachal Pradesh v. Rajkumar Rajinder Singh etc.* (ILR 1977 HP 537) has held as follows:

On making the award, possession of the land is taken by the Collector and thereupon it vests absolutely in the Government free from all encumbrances (Section 15). It is at once apparent that this detailed procedure (prescribed in

Section 4 - 11) terminating in the vesting of the land in the Government cannot possibly be contemplated where ownership in the land already vests in the Government. Viewed in this context, the scope of a reference made u/s 18 of the Act must be limited to those matters which proceed on the basis that the land did not originally belong to the Government.

The scope of such adjudication must be limited within the object and purpose of the Act and the several provisions intended for achieving that object and purpose. From that stand point, the inference which must reasonably follow must be that the Act contemplates the adjudication of questions of title and interest of persons other than the Government which seeks to acquire the land. The question whether the Government already enjoys title in the land must be treated as outside the scope of adjudication under the Act.

The facts in that case were somewhat similar. The land was acquired from the Respondent in that case under the Act and the Collector gave an award of compensation. A reference u/s 18 of the Act was made by the Respondent therein for enhanced compensation. In those proceedings, the Collector filed a petition taking the point that the Respondent therein was not entitled to compensation as the land in question had vested in the State u/s 27 of the H.P. Abolition of Big Land Estates and Land Reforms Act. The District Judge framed an issue, amongst Ors. , on the question whether the land acquired had vested in the State. He held in respect of the same that the land therein, fell within the scope of Sub-section (2) of Section 27 *ibid*, which provided that land under the personal cultivation of the land owner would stand excluded from the operation of Sub-section (1) and would not vest in the State. In the appeal filed by the State, this Court clearly came to the conclusion that the question whether the Government already enjoys title in the land must be treated as outside the scope of adjudication under the Act. It is thus, crystal clear that the said decision of a Division Bench of this Court squarely applies in the instant case. Following the same, there is no escape from the conclusion that now it is too late in the day for the State or the applicant-NJPC to raise the question of title in respect of the land, which has admittedly been acquired in the present case under the Act.

30. In the case of *The State of Madras Vs. K.N. Shanmugha Mudaliar and Others*, the Estate was notified under Madras Estates Abolition Act (26 of 1948) but proceedings under that Act were stayed and the matter proceeded under the Act, and a reference was made u/s 18 thereof at the instance of the Respondent therein. It was held by the Apex Court in those circumstances that the plea of the State of Madras in that case that as the land in question had vested in it under the said Act, the land-holders were not entitled to compensation, was rightly rejected by the High Court and that in the reference it was not open to the State to set up claim adverse to the interest of the land-holders. In other words, view of the Apex Court is also to the effect that in proceedings for acquisition of land under the Act, it is not open to the State to question the title of the person from whom the land has been acquired in reference proceedings u/

s 18 thereof.

31. In view of the above reasons, the plea for amendment of the reply raised in CMP No. 260 of 1998 in RFA No. 243 of 1991 is untenable and must be rejected.

32. As already observed in para 13 above, the fate of the applications for production of additional evidence depends on the fact whether the application for amendment is to be allowed or rejected. In the view that we have taken to the effect that the amendment prayed on behalf of NJPC-applicant cannot be allowed in the facts and circumstances of the case as available on record, the prayer for additional evidence must also be declined for the reasons already indicated while considering the application for amendment referred to above. Moreover, we are not satisfied that the additional evidence now sought to be produced by way of the documents annexed to the said applications, was not within the knowledge of the applicant-NJPC or could not, after exercise of due diligence, be produced earlier. This is evident from the circumstances and facts brought out on record and for the reasons already stated while considering the application for amendment nor a case has been made out that this Court requires the said additional evidence by way of documents in question for a substantial cause. On the other hand, the said additional evidence if permitted to be adduced, it would result in serious prejudice being caused to the Respondent-claimants who cannot by any stretch of imagination, be compensated with costs. In this view of the matter, no case whatsoever, has been made out for allowing the said additional evidence in all the three appeals.

33. Now coming to the application under Order 1, Rule 10, CPC filed on behalf of Respondent No. 5 in RFA No. 156 of 1997 for impleading him as Appellant in that case. The only ground made out from the contents thereof justifying such a course to be adopted is that in order to safeguard the interest of the State, the said applicant intends to be impleaded as one of the Appellants in that appeal. It has also been stated in para 7 of that application that the applicant has a prima facie and bona fide claim in the property in dispute, therefore, he is entitled to be impleaded as an Appellant, and otherwise also his presence is necessary in order to enable this Court to determine the material questions involved in the appeal.

34. In the reply filed by respondents No. 1 to 4 in that appeal i.e. the successor of claimant Rajkumar Rajinder Singh, a preliminary objection has been taken that the applicant was never arrayed as a party for making a reference u/s 18 of the Act. That was done in the absence of any application from either of the parties to the reference by an order dated 3.11.1993 passed by the District Judge. It has further been submitted that the applicant has no legal right to question the award passed by the Civil Court on a valid reference made to it. On merits also, the prayer for being transposed as an Appellant made on behalf of the applicant-Respondent No. 5 in that appeal, has been opposed.

35. At the outset, it must be stated that the appeal has been filed against the award of the District Judge Kinnaur at Rampur Bushehar dated 27.4.1997, while

the present application was filed almost one year thereafter i.e. March 1998. Here also, it appears to be a case of an after thought as otherwise the application would have been filed within the limitation prescribed for filing the appeal. In our considered view, on the facts and circumstances brought out on record, the prayer of the applicant-Respondent No. 5 for being transposed as Appellant, is not justified at all and must be declined. We also hold accordingly. A similar application, being CMP No. 79 of 1998 has been filed in Regular First Appeal No. 157 of 1997, to which reply has also been filed by the claimant-Respondents No. 1 to 4. The said reply is also similar to the reply filed in CMP No. 68/98 in RFA No. 156 of 1997, therefore, for the same reasons the application for transposing the applicant as Respondent No. 5 as an Appellant in RFA No. 157 of 1997 must be rejected.

36. Having cleared the decks by first disposing of the various miscellaneous applications/petitions in all the three appeals referred to above, we now proceed to deal with the merits of the appeals themselves. In RFA No. 243 of 1991, the learned District Judge has come to the conclusion that market value of the acquired land was Rs. 5,000/- per biswa i.e. Rs. 1.00 lac per bigha at the time of its acquisition. While doing so, he has considered the sale transactions produced in evidence before him and upon such consideration, he has come to the conclusion that the evidence on record would go to show that the acquired land is adjoining to the land which is mentioned in the sales which have been relied upon by the Petitioner i.e. the original claimant. Not only this, the quality of the acquired land is similar to that of the land which is mentioned in the said sales. Thereafter, he has made a reasonable deduction from the average sale price of Rs. 11,500/- per biswa on account of the fact that the said sales are not only in respect of tiny pieces of land, but also do not constitute a sufficient number of bona fide sales. On these facts and circumstances and the evidence on record, he has made a deduction of Rs. 6,500/- per biswa from the average sale price of Rs. 11,500/- and has also held the market price to be Rs. 5,000/- per biswa. The sales in question are reflected in Exs. PW-2-A, 2-B, 2-C, 2-D and 2-E besides Ex. PW 5/A. On a consideration of the said sale transactions and the other evidence on record, we do not find any error in the impugned judgment of the learned District Judge (Forest) Shimla dated 23.7.1991 in so far as the quantum of compensation awarded is concerned and the fixing of market value as Rs. 5,000/- per biswa at the time of acquisition appears to us to be quite reasonable.

37. In view of the contentious issues involved, we ourselves have gone through the evidence led before the Land Acquisition Court in all the three appeals. In so far as RFA No. 243 of 1991 is concerned, out of the above sale transactions as reflected in the sale deeds, the sale transaction, which is subject matter of Ext. PW 2/E is prior to the date of the notification for acquisition in that case, namely, 29.1.1987. The said sale took place on 3.8.1985 whereby PW-3 Major W.B. Stanley had sold 0-00-63 hectares of land in village Jhakri to one Baldev Singh for a consideration of Rs. 20,000, which amount was paid to him in cash by the vendee. He has further stated that the said land sold by him is similar in

situation, kind and quality and is adjacent to the acquired land. In cross-examination, he has stated that the said Baldev Singh had purchased the land for construction of shop and residence.

38. Similarly, the sale transaction, as reflected in Ex. PW-2/ C is of the same year i.e. 1987 in which the land in question was acquired. In this connection, PW-5 Devanand has stated that through the said sale deed he had purchased four biswas (0-01-68 Hectares) of land for a sum of Rs. 40,000/- from one Prem Kumar. According to him, he had purchased the said piece of land in village Jhakri for setting up a steel industry on it. Through Anr. sale deed of same date i.e. 16.12.1987, this very same vendee is stated to have purchased a piece of land measuring 0-00-83 Hectares from the same vendor for a consideration of Rs. 20,000/- vide sale deed Ex. PW-5/A for setting up an industry. According to PW-5, the acquired land is at a short distance from the land thus purchased by him, and the said acquired land is of better quality than the land purchased by him. The said land abuts the road and is approachable by a motor vehicle. In cross-examination, he has stated that when he purchased the above land, at that time the acquired land of the Petitioner was approachable by road. He denied the suggestion that the acquired land is at a far off distance from the National Highway. He has further stated in cross-examination that a part of the acquired land is capable of being cultivated.

39. In so far as RFA's No. 156 and 157 of 1997 are concerned, there also, the learned District Judge has taken sale transactions in the shape of five sale deeds i.e. Exs. P-4/A, P-5/A, P-6/A, P- 6/B and P-8/A into consideration while arriving at the market value of the acquired lands therein. On the basis of the same, he has come to the conclusion that the average sale price comes to Rs. 10,000/- per biswa. He has also made a deduction of 50% and thereafter held that the market value of the acquired land was Rs. 5,000/- per biswa at the time of its acquisition. For the reasons as already stated in respect of the market value arrived at by the District Judge in RFA No. 243 of 1991, we do not find any error in the rate of compensation awarded by the District Judge, Kinnaur at Rampur in the other two appeals.

40. In the above two appeals, three sale transactions, as reflected in Exts. PW-4/ A, PW-5/A and PW-8/A, had taken place prior to the acquisition of the land, which was acquired vide Notification dated 18.6.1988, whereas the respective dates of sale of the above three sale transactions are 16.12.1987 (Ex. rw-4/A), 3.8.1985 (Ex. PW 5/A) and 16.12.1987 (Ex. PW-8/A).

41. In respect of the sale transaction reflected in Ex. PW-4/ A, the vendor PW-4 Lalit Mohan has deposed that he had sold about 6 biswas of land in Jhakri to one Divanand Gujjar for a consideration of Rs. 40,000/- which was received by him from the vendee in cash. According to him, he had sold that land for construction of a house.

42. Similarly, PW-5 Baldev Singh has deposed that through the sale transactions

reflected in Ex. PW-5/A he had purchased 1-1/2 biswas of land for constructing a house from W.B. Stainley (PW- 6). According to the vendee (PW-5), the sale consideration was as per the rate prevailing in the market at that time, regarding which he had made enquiries. In cross-examination by the counsel of the NJPC and the Collector (H.P. Ceiling and Holding Act) (Respondents No. 2 and 3 before the Land Acquisition Court) PW-5 has stated that he has constructed a house and a shop in that land and he is carrying on his business there.

43. In respect of the same sale transaction vide Ex. PW-5/A, the vendor W.B. Stainely has appeared as PW-6 and has stated in his cross-examination that his land is situated adjacent to the road and that the National Highway Number 22 passes next to it. On being cross-examined by the counsel of Respondents No. 2 and 3, he has denied the suggestion that at the time of sale of the said land, the market value of the same was Rs. 5,000/- per biswa. In other words, the Respondents themselves admitted the rate to be Rs. 5,000/- per biswa at the relevant time. To the same effect is the suggestion put in cross-examination to PW-7 Hari Chand who has answered that he does not know whether at that time the market rate of the land was Rs. 5,000/- per biswa.

44. PW-8 Mohan Lal is the son of the vendee of the sale deeds Ex. PW-4/A and Ex. PW-8/A. In cross-examination, he has stated that a shop had been constructed by them on the land so purchased. To him also, a suggestion has been put by the State counsel which he has denied to the effect that at that time, the market rate was Rs. 5,000/- per biswa. Rather, he volunteered that no land was available for less than Rs. 10,000/- per biswa at that time.

45. It will thus be seen from the the evidence led in respect of both the acquisitions that the learned District Judge (Forests), Shimla as well as the learned District Judge, Rampur have correctly arrived at the conclusion that the market value of the acquired land was Rs. 5,000/- per biswa at the time of its acquisition. At the cost of repetition, it needs to be mentioned that they have arrived at this rate by imposing their respective deductions made from the average sale price of Rs. 11,000/- per biswa, calculated from the respective sale transactions forming part of evidence before them.

46. Even if the criteria of arriving at the market value, on the basis of average sale price calculated from the evidence led by the parties in land acquisition proceedings in the shape of sale transactions is discarded, then also in the present case, taking into consideration the location of the acquired land vis-a-vis the proximity of the same to the road as brought out from the evidence discussed above, as also taking into consideration its proximity to the parcels of land vis-a-vis the relevant sale deeds proximate to the respective dates of acquisition, the market rate of Rs. 5,000/- per biswa appears to be just and reasonable in the facts and circumstances borne out from the record. This is all the more so inasmuch as, the case set up by the Land Acquisition authorities in proceedings before the Court u/s 18 of the Act as reflected from the cross-examination of the land owners regarding the sale transactions is also to the

effect that the market value of the acquired land at the relevant point of time was Rs. 5,000/- per biswa.

47. In so far as the evidence led by the Respondents (Land Acquisition Authorities) in R.F.A. No. 243 of 1991 is concerned, RW-1 Mohan Lal Chauhan, Naib Tehsildar Nathpa Jhakri Project, Rampur in his cross-examination denied any knowledge whether the forest department had set up a nursery in the acquired land and he also could not say as to what was the quality of the acquired land at the time of the notification. He also could not say whether there was a quarry on the said land. No other evidence was led apart from this witness.

48. The evidence led by the Respondents (Land Acquisition Authorities) in the other two appeals consists of the statement of RW-1 Shanker Dass Patwari. He stated that the land was acquired for the NJPC Project from Rajkumar Rajender Singh, who was the owner prior to 1991 and in possession of the acquired land. In cross-examination he admitted that at the time when the notification u/s 4 of the Act was issued, the said person was recorded as owner in possession of the land so acquired. He also admitted that when the award was given by the Land Acquisition Court, the very same person was the owner of the entire property and award was also given in his favour. RW-2 is the Office Kanungo, whose statement does not have any relevance in so far as the market value of the acquired land is concerned.

49. In fairness to Shri H.S. Hooda, learned Counsel, he has placed reliance on certain rulings of the Apex Court to the effect that sale instances for small pieces of land are not proper yardstick to determine the market value of a large chunk of land which has been acquired, which is 32-10 bighas as the subject matter of acquisition in RFA No. 243 of 1991. Reference in this connection may be made to the decisions reported in State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, ; K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, ; Smt. Basavva and others Vs. Special Land Acquisition Officer and others, and Administrator General of West Bengal Vs. Collector, Varanasi, On the other hand, the learned counsel for the claimant-Respondents has placed reliance on The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omanna Tumari and others etc., , wherein it has been held that although the sale price of small extent of land should not ordinarily be made the basis for determination of market value of large extent of land, however, such price can be relied on if the small land is a portion of the large extent of land itself by taking into account all the relevant factors which would reduce the value of the large extent of land. This is precisely what has been done by the Land Acquisition Judge by making a deduction of 50% from the average sale price as indicated above. In the case of K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), the Apex Court has held that when genuine and reliable sale deeds of small extents were considered to determine the market value, the same will not form sole basis to determine market value of large tracts of land. In that case, 40% deduction by the High Court was upheld by the Apex

Court whereas in the present case, 50% deduction has been made by the Land Acquisition Court.

50. Reliance on behalf of claimants-Respondents has also been placed on two other reported decisions of the Apex Court, namely, *The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others*, which is to the effect that when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions, and *U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr.* (1998) 2 SCC 467, wherein there was acquisition of a large area (more than 200 acres) and sale of other land in the vicinity was considered, it was held that deduction of 1/3rd value of the land was justified and no interference with the determination of the market value was called for. It is manifest that these two decisions also have relevance and full bearing to the facts in the instant case.

51. An argument has also been raised on behalf of the N.J.P.C. as well as the Land Acquisition Collector of the said Corporation in these appeals before us, that the acquired land in the present case had already vested as surplus area in the State of Himachal Pradesh by virtue of Section 11 of the Ceiling Act, therefore, the compensation awarded under the Act. subject matter of the present appeals, is without jurisdiction. The very basis of this argument is knocked down by a reference to Section 7 of the Ceiling Act. The same provides that except in the case of land acquired by the Union Government or the State Government under any law for the time permissible area except to bonafide transfer after the appointed day shall affect the right of the State Government to the surplus area to which it would be entitled but for such transfers. In other words, the land acquired under the Act in the present case is exempted from the purview of the Ceiling Act by virtue of Section 7 *ibid*. Moreover, there is nothing on record to show that the acquired land, subject matter of these appeals, had vested in the State Government under the Ceiling Act. Even otherwise it cannot supersede the acquisition proceedings, once set in motion under the Act.

52. The matter regarding vesting of the acquired land under the Ceiling Act can be looked at from Anr. angle also. In the decision in the impugned judgment of the learned District Judge (Forest), Shimla dated 23.7.1991, which is the subject matter of RFA No. 243 of 1991, it is recorded that in fact the Respondents (Land Acquisition Authorities) have acquired the land in question and as such, they are estopped by their act, conduct and deed to deny ownership of the original land owner in respect of the acquired land who was the owner on the date of acquisition and was in possession also on that date. After the Collector had announced the award, possession of the acquired land was taken over by the Nathpa Jhakri Project authorities. Moreover, as provided u/s 11 of the Ceiling Act, the surplus area of a person shall vest in the State Government on the date on

which possession thereof is taken by it or on its behalf, and shall be deemed to have been acquired by the State Government for public purpose.....Similarly, in the impugned judgment of the learned District Judge, Kinnaur at Rampur dated 27.3.1997, which is the subject matter of RFAs 156 and 157 of 1997, a finding has been recorded that evidently the State has never taken possession of the acquired land under the provisions of the Ceiling Act and this in view of Section 11 thereof, had not vested in the State Government, which is also the conclusion arrived at by the learned District Judge (Forest), in the earlier judgment dated 23.7.1991. The Appellants in these three appeals before us, have not been able to show any fact to the contrary i.e. whether the State Government had taken possession of the acquired land under the provisions of the Ceiling Act prior to the acquisition proceedings under the Act.

53. Before parting with this judgment, there now remain two applications which has been filed by Respondents No. 1 to 4 in R.F.A. Nos. 156 and 157 of 1997, being CMPs No. 489 and 490 of 1997 respectively. The prayer in both the applications is for release of the amount awarded by the Collector NJPC, Jhakari in Award Nos. supplementary 17/91 and 10/91 respectively to the applicant-Respondents. It has been stated in paras 4 of the applications that a sum of Rs. 10,00,000/- was ordered to be released in favour of late Rajkumar Rajinder Singh on furnishing security by him, he being the predecessor-in-interest of the applicant-Respondents. Accordingly, he withdrew an amount of 10,00,000/- each out of a sum of Rs. 23,69,481/- and Anr. sum of Rs. 53,23,040/- respectively as per order of the Court on furnishing security. It is in these circumstances that a prayer has been made in CMP No. 489 of 1997 for release of the amount of compensation to the extent of Rs. 21,62,169/- inclusive of interest and the amount of Rs. 43,23,040/- plus interest accrued i.e. Rs. 19,12,850/- total Rs.62,35,890/- as per the prayer in CMP No. 490/97.

54. Replies to both these applications have been filed by the Appellants in these appeals. The stand taken in the same in that in case the appeals are allowed it would not be possible for the non-applicants (Appellants) to recover the amount from the claimant-applicants. A perusal of the record shows that when both these applications were filed on 18.12.1997, it appears that no order was passed during the pendency of the appeals. In view of the fact that we have found no merit either in the application for amendment filed by the Appellant in RFA No. 243 of 1991, or in the applications filed by the Appellants for production of additional evidence, as also on the merit of the three appeals itself, there now remains no ground to withhold payment of the amount awarded by the Land Acquisition Collector originally at the time when the land was acquired, which is subject matter of dispute in RFA Nos. 156 and 157 of 1997 is concerned. Moreover, as pleaded in the applications, which has not been denied in the replies, an amount of Rs. 10,00,000/- each has already been released to the original claimant while the reference proceedings were pending before the Land Acquisition Court. Therefore, these applications are allowed to the extent that the amount awarded by the Land Acquisition Collector in respect of the acquired land

which is subject matter of RFA Nos. 156 and 157 of 1997, inclusive of interest, stated to be lying in deposit with the Punjab National Bank, Rampur Bushahar, is ordered to be released to the applicants (Respondents No. 1 to 4) on their furnishing proper receipts and identification.

55. For the reasons recorded above CMP No. 260 of 1998 in RFA No. 243 of 1991 (application for amendment), CMPs No. 147 of 1998 in RFA No. 243 of 1991 (application for additional evidence), along with other two similar applications being CMP Nos. 403 and 404 of 1997 respectively in the other two appeals, and CMP No. 68 and 79 of 1998 in RFA Nos. 156 and 157 of 1997 respectively (applications under Order 1, Rule 10, CPC as well as the three main appeals i.e. RFA Nos. 243 of 1991, 156 of 1997 and 157 of 1997 are without any merit. The same are, accordingly, dismissed. But in view of the circumstances obtaining on the record, the protracted history of these cases as well as the contentious Issues involved, there will be no order as to costs.